

**Hearing  
Before the  
United States  
Commission on Civil Rights**

**AMERICAN INDIAN ISSUES  
IN THE STATE OF SOUTH DAKOTA**

**Hearing Held in**

**RAPID CITY,  
SOUTH DAKOTA**

**July 27-28, 1978**

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## U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to denial of equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information in respect to denials of equal protection of the laws because of race, color, religion, sex, or national origin;
- Submit reports, findings, and recommendations to the President and Congress.

## MEMBERS OF THE COMMISSION

Arthur S. Flemming, *Chairman*

Stephen Horn, *Vice Chairman*

Frankie M. Freeman

Manuel Ruiz, Jr.

Murray Saltzman

Louis Nuñez, *Acting Staff Director*

# CONTENTS

## SESSIONS

Morning Session, July 27, 1978 .....	1
Afternoon Session, July 27, 1978 .....	65
Morning Session, July 28, 1978 .....	138
Afternoon Session, July 28, 1978 .....	211

## STATEMENTS

Opening Statement	
Chairman Arthur S. Flemming .....	1
Statement of Rules	
Commissioner Frankie M. Freeman .....	2
Welcoming Statement	
Stanford Adelstein, Member, South Dakota Advisory Committee to the U.S. Commission on Civil Rights .....	5
Background Statement	
Mary Ellen McEldowney, Vice Chairperson, South Dakota Advisory Committee to the U.S. Commission on Civil Rights .....	7

## TESTIMONY

Chief Frank Fools Crow (Eagle Bear) and Matthew King (Noble Red Man) .....	12
Thomas De Coteau, Chief of Police, Sisseton-Wahpeton Sioux Tribe; Neil Long, Sheriff, Roberts County; Ralph Olauson, Sheriff, Marshall County; and Eugene Trottier, Special Officer, Bureau of Indian Affairs, Aberdeen .....	18
Jerry Flute, Tribal Chairman, Sisseton-Wahpeton Sioux Tribe; Roger Pearson, Mayor, City of Sisseton; Edward Red Owl, Planning Director, Sisseton-Wahpeton Sioux Tribe; and Leslie Stillson, Businessman, Sisseton .....	29
Ronald Goldsmith, Director, Dakota Mental Health Center, Chamberlain; Michael Jandreau, Councilman, Lower Bruie Tribe; Robert Philbrick, Chairman, Crow Creek Tribe; and Ruth Potter, Director Title I Program, Chamberlain Public School System .....	48
Leonard Andera, State's Attorney, Brule County; Vernon G. Collins, Chief Deputy, Sheriff's Office, Brule County; Boyd L. McMurchie, Judge, Circuit Court for the Fourth Judicial District; and William Shields, Jr., Police Captain, Fort Thompson, Crow Creek Reservation .....	65
Art Brown, Community Action Program Director, Eagle Nest District; Philip Hogen, State's Attorney, Jackson County; Francis Horacek, Businessman, Kadoka; and Elijah Whirlwind Horse, Chairman, Oglala Sioux Tribe, Wanblee .....	80

Alice Flye, Community Service Representative, Oglala Sioux Tribe; Bruce Hodson, Banker; Harold Larson, Bennett County Commis- sioner; and Lorelei Means, American Indian Movement Survival School .....	95
Lee H. Antelope, Lieutenant, Oglala Sioux Tribal Police, La Creek District; Ellsworth C. Brown, Sr., Police Lieutenant, Eagle Nest District; Ed Cummings, Sheriff, Bennett County; and Arnold Bruce Madsen, Sheriff, Jackson-Washabaugh County .....	111
Jack Freeman, Businessman, Ziebach County; and Marion Schulz, Farmer, Batesland Area .....	124
Beatrice McLean, Former Community Health Representative, Winner; Walter Schramm, Businessman, Winner; and Stan Smith, Mayor, Winner .....	139
John King, Executive Secretary, Rosebud Sioux Tribe, Winner .....	144
Charles Colombe, Member, Rosebud Sioux Tribal Council; Terry Pe- chota, Attorney for the Rosebud Sioux Tribe, Mission; Tom Tobin, State's Attorney for Tripp County, Winner; and Marvin S. Talbott, Circuit Judge, Winner .....	154
George Keller, Superintendent, Rosebud Reservation Agency, Bureau of Indian Affairs .....	156
Henry Gayton, Special Officer, Bureau of Indian Affairs, Standing Rock, Fort Yates, North Dakota; Walter V. Plumage, Special Offi- cer, Bureau of Indian Affairs, Aberdeen and Fred Two Bulls, Cap- tain, Pine Ridge Reservation Police Department .....	170
David Brumble, Agent-In-Charge, FBI, Minneapolis, Minnesota; Thomas H. Greene, Senior Agent-In-Charge, Rapid City; and David Vrooman, U.S. Attorney for the District of South Dakota, Sioux Falls .....	184
Mary Sue Donahue, Former Director, State Division of Human Rights; Donald C. Dahlin, Secretary, State Department of Public Safety; William Janklow, State's Attorney General; and Arthur W. Zimiga, State Coordinator of Indian Affairs .....	211
Leo Cardenas, Regional Director, Community Relations Service, U.S. Department of Justice, Denver, Colorado; and Harley Zephier, Area Director, Bureau of Indian Affairs .....	229
Wayne Ducheneaux, Chairman, Cheyenne River Sioux Tribe .....	236
George Bartlett, Custer, South Dakota .....	244
Marvin Amiotte, Attorney, Oglala Sioux Tribe, Pine Ridge .....	246
Charmaine Wisecarver, Rapid City .....	247

**EXHIBITS**

1. Notice of Hearing .....	250
2. Cross-Deputization Agreement Between Sisseton-Wahpeton Sioux Tribe and Marshall County .....	251
3. Letter from Joseph E. Genia, Chief Judge, Sisseton-Wahpeton Sioux Tribe to Mildred Ramynke, Judge, Fifth Judicial Circuit Court, Feb. 15, 1977 .....	253

4.	Judgement and Order, <i>Mandan v. Tribal Police of Sisseton-Wahpeton Sioux Tribe</i> , Jan. 10, 1977 .....	254
5.	Sisseton-Wahpeton Sioux Tribe, Federal Funding, Fiscal Year 1978 .....	256
6.	(No Exhibit; Misnumbering) .....	289
7.	Kadoka Human Relations Commission Ordinance .....	290
8.	Letter from Lawrence E. Long, State's Attorney, Bennett County, South Dakota, July 24, 1978 .....	292
9.	Statement of Raleigh Barker, July 26, 1978 .....	294
10.	Memorandum from Jack Freeman, Interstate Congress for Equal Rights and Responsibilities .....	296
11.	Photographs of Drainage and Street Conditions in Winner, South Dakota, submitted by John King, Secretary, Rosebud Sioux Tribe .....	297
12.	Rosebud Sioux Reservation, Non-Indian Traffic Violations, submitted by George Keller, Superintendent, Rosebud Agency, BIA..	303
13.	Letter from Henry J. Gayton, Jr., Special Officer, BIA, Standing Rock Reservation .....	304
13a.	Letter from Tobias A. Moran, Acting Area Director, Aberdeen, South Dakota, BIA, June 8, 1979 .....	305
14.	Prosecutorial Guidelines, July 5, 1977, FBI-US. Attorney for South Dakota .....	306
14a.	Letter from David A. Brumble, Special Agent-in-Charge, Minneapolis Office, FBI, Aug. 8, 1978 .....	311
15.	Letter from William H. Webster, Director, FBI, Aug. 29, 1978 ..	312
15a.	Letter from David V. Vrooman, U.S. Attorney for the District of South Dakota, July 31, 1978 .....	314
16.	Statement of Mary Sue Donahue, Former Director, South Dakota Division of Human Rights, July 28, 1978 .....	319
17.	Letter from Mary Sue Donahue to Donald C. Dahlin, Secretary, Department of Public Safety .....	323
18.	Funding and Reservations, submitted by Harley Zephier, Area Director, BIA .....	324
19.	Report to the U.S. Commission on Civil Rights concerning Law Enforcement and Civil Improprieties in the State of South Dakota, by George Bartlett .....	330

# UNITED STATES COMMISSION ON CIVIL RIGHTS

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Thursday, July 27, 1978

The public hearing was convened, pursuant to notice, at the Mount Rushmore Civic Center, Rapid City, South Dakota, Arthur S. Flemming, Chairman, presiding.

Present: Arthur S. Flemming, Chairman; Frankie M. Freeman, Commissioner; Louis Nunez, Acting Staff Director; Richard Baca, General Counsel; Paul Alexander, Assistant General Counsel; Shirley Hill Witt, Regional Director; Jack Hartog, Counsel; Linda Huber, Counsel; Marvin Schwartz, Counsel; and William Levis, Regional Counsel.

## PROCEEDINGS

CHAIRMAN FLEMMING. Come to order, please.

The function of the U.S. Commission on Civil Rights is to investigate deprivation of equal protection of the law and to submit its findings to the Congress and to the President along with the recommendations the Commission decides to make for corrective action. To enable the Commission to fulfill these duties, the Congress has empowered it to hold public hearings and issue subpoenas for the attendance of witnesses and for the production of documents.

This hearing is being held under the authority of the Civil Rights Act of 1957 as amended. As required by law, notice of the hearing was published in the *Federal Register* on June 23, 1978. A copy of this notice will be introduced into the record at this point as Exhibit No. 1.

The purpose of this hearing is to listen to evidence relative to Indian tribes and tribal people and non-Indian governments and people and, also, to consider evidence relative to Indian governments and non-Indian governments working together to arrive at constructive solutions of common problems.

The Commission on Civil Rights is an independent bipartisan agency of the U.S. Government established by Congress in 1957. Its duties are the following;

To investigate sworn allegations that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, or national origin;

To study and collect information regarding legal developments which constitute denial of equal protection of the laws under the Constitution in such fields as voting, education, housing, employment, and use of public facilities, transportation, or in the administration of justice;

To serve as a national clearinghouse for information with respect to denial of equal protection of the laws because of race, color, sex, religion, or national origin;

Finally, to investigate sworn allegations of vote fraud in Federal elections.

The session we begin today will be a public session. The majority of the witnesses we will hear have been subpoenaed by the Commission, and the schedule, as you note from the agenda, has been planned in advance. There will be, however, on Friday afternoon, a session at which persons who have not been subpoenaed, but who feel they have relevant testimony may appear and speak. Anyone desiring to speak at this session should contact staff and make appropriate arrangements.

Under the law under which we operate, the Chairman of the Commission is authorized to designate two members of the Commission to hold a public hearing, provided both political parties are represented.

In connection with this hearing, I am joined by Commissioner Freeman. Ms. Freeman is a resident of St. Louis. She has served on the U.S. Commission on Civil Rights longer than any other member, having been appointed by President Johnson and having served continuously since then. She is a recognized outstanding trial lawyer from St. Louis. I'm happy to recognize Commissioner Freeman at this time so she can acquaint you with the rules and the procedures which will be followed in connection with this hearing. Commissioner Freeman.

COMMISSIONER FREEMAN. Thank you.

At the outset I should emphasize that the observations I'm about to make on the Commission's rules constitute nothing more than brief summaries of the significant provisions. The rulings themselves should be consulted for a fuller understanding. Staff members will be available to answer questions which arise during the course of the hearing.

In outlining the procedures which will govern the hearing, I think it is important to explain briefly a special Commission procedure for testimony or evidence which may tend to defame, degrade, or incriminate any person. Section 102(e) of our statute provides, and I quote:

If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall receive such evidence or testimony in executive session.



The Commission shall afford any person defamed, degraded, or incriminated by such evidence or testimony an opportunity to appear and be heard in executive session with a reasonable number of additional witnesses requested by him, before deciding to use such evidence or testimony.

When we use the term "executive session," we mean a session in which only the Commissioners are present in contrast to a session such as this one in which the public is invited to be present. In providing for an executive or closed session for testimony which may tend to defame, degrade, or incriminate any person, Congress clearly intended to give the fullest protection to individuals by affording them an opportunity to show why any testimony which might be damaging to them should not be presented in public. Congress also wished to minimize damage to reputations as much as possible and to provide persons an opportunity to rebut unfounded charges before they were well publicized.

Therefore, the Commission, when appropriate, convenes an executive session prior to the receipt of anticipated defamatory testimony. Following the presentation of the testimony in executive session, and any statement in opposition to it, the Commissioners review the significance of the testimony and the merit of the opposition to it. Next, if we find the testimony to be of insufficient credibility, or the opposition to it to be of sufficient merit, we may refuse to hear certain witnesses, even though those witnesses have been subpoenaed to testify in public session.

An executive session is the only portion of any hearing which is not open to the public. The hearing which begins now is open to all, and the public is invited and urged to attend all the open sessions.

All persons who are scheduled to appear who live or work in South Dakota or within 50 miles of the hearing site have been subpoenaed by the Commission. All testimony at the public sessions will be under oath and will be transcribed verbatim by the official reporter. Everyone who testifies or submits data or evidence is entitled to obtain a copy of the transcript on payment of costs. In addition, within 60 days after the close of the hearing, a person may ask to correct errors in the transcript of a hearing of his or her testimony. Such requests will be granted only to make the transcript conform to testimony as presented at the hearing.

All witnesses are entitled to be accompanied and advised by counsel. After the witness has been questioned by the Commission, counsel may subject his or her client to reasonable examination, within the scope of the questions asked by the Commission. He or she also may make objections on the record and argue briefly the basis for such objections.

Should any witness fail or refuse to follow any order made by the Chairman or the Commissioner presiding in his absence, his or her

behavior will be considered disorderly, and the matter will be referred to the U.S. Attorney for enforcement, pursuant to the Commission's statutory powers.

If the Commission determines that any witness' testimony tends to defame, degrade, or incriminate any person, that person, or his or her counsel, may submit questions, which, in the discretion of the Commission, may be put to the witness. Such person also has a right to request that the witnesses be subpoenaed on his or her behalf. All witnesses have the right to submit statements prepared by themselves or others for inclusion in the record, provided they are submitted within the time required by the rules.

Any person who has not been subpoenaed may be permitted, in the discretion of the Commission, to submit a written statement at this public hearing. Such statement will be reviewed by the members of the Commission and made a part of the record.

Witnesses at Commission hearings are protected by the provision of Title 18, U.S. Code, section 1505, which makes it a crime to threaten, intimidate, or injure witnesses on account of their attendance at Government proceedings. The Commission should be immediately informed of any allegations relating to possible intimidation of witnesses. Let me emphasize: We consider this to be a very serious matter, and we will do all in our power to protect witnesses who appear at this hearing.

A copy of the rules which govern this hearing may be secured from a member of the Commission staff. Persons who have been subpoenaed have already been given their copies. Finally, I should point out that these rules were drafted with the intent of ensuring that Commission hearings be conducted in a fair and impartial manner. In many cases, the Commission has gone significantly beyond congressional requirements in providing safeguards for witnesses and other persons. We have done that in the belief that useful facts can be developed best in an atmosphere of calm and objectivity. We hope such an atmosphere will prevail at this hearing.

With respect to the conduct of persons in this hearing room, the Commission wants to make clear that all orders by the Chairman must be obeyed. Failure by any person to obey an order by Dr. Flemming or the Commissioner presiding in his absence will result in the exclusion of the individual from this hearing room and criminal prosecution by the U.S. Attorney when required. The Federal marshals stationed in and around this hearing room have been thoroughly instructed by the Commission on hearing procedures, and their orders also are to be obeyed.

This hearing will be in public session on Thursday and Friday of this week. The sessions will begin at 8:30 a.m. and will continue until 6:15 p.m., with a 1-hour break for lunch. On Friday, the final day of this hearing, the session will begin at 8:30 and continue to 6 p.m. The time between 4 p.m. and 6 p.m. has been set aside for testimony from per-

sons who have not been subpoenaed but wish to testify. As noted by Chairman Flemming, persons wishing to appear at the open session should be in contact with members of the Commission staff in Room 201 throughout today and until 12 o'clock noon Friday. Such persons will be heard in the order in which they signed up. I wish to repeat, the time between 4 p.m. to 6 p.m. has been set aside for testimony from persons who have not been subpoenaed but wish to testify. Persons wishing to appear in the open session should be in contact with members of the Commission staff in Room 201 throughout today and until 12 noon tomorrow.

Thank you.

CHAIRMAN FLEMMING. Thank you, Commissioner Freeman.

At this time, it is my privilege to recognize the Vice Chairperson of the U.S. Commission on Civil Rights' Advisory Committee for the State of South Dakota, Mary Ellen McEldowney. As she comes to the witness table, may I, on behalf of Commissioner Freeman, Mr. Nunez, our Acting Staff Director, and all of our colleagues on the Commission, express our very deep appreciation for the outstanding help and assistance that we have received from the South Dakota Advisory Committee. I want to express in particular our appreciation for the report that has been developed by the South Dakota Advisory Committee dealing with many of the issues that will be under consideration in connection with this hearing. Ms. McEldowney has been joined by Mr. Stanford Adelstein, also a member of the State Advisory Committee. I understand that he will make a brief opening statement in behalf of the Chairperson, Mario Gonzalez, who is unable to be present today. At this time, I'm very happy to recognize Mr. Adelstein.

**WELCOMING STATEMENT OF STANFORD ADELSTEIN, MEMBER, SOUTH DAKOTA ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS**

MR. ADELSTEIN. Good morning, Chairman Flemming, Chairman Freeman, Commission staff, ladies and gentlemen in our audience this morning. I am Stanford Adelstein of the South Dakota Advisory Committee to the U.S. Commission on Civil Rights. On behalf of the Advisory Committee, I would like to welcome each of you to South Dakota, to Rapid City, and to this hearing.

The members of the Advisory Committee who are also present here this morning, as I see them, Dorothy Butler—

CHAIRMAN FLEMMING. As your names are called, we would appreciate your standing, so that we can recognize you.

MR. ADELSTEIN. Barbara Bates Gunderson, Mary McEldowney, in just a moment—David Volk I see is here. William Walsh is here. Robbi Ferron—is Robbi in the room? In addition, of course, we have our Chairman, who is not here this morning, Mario Gonzalez. Robbi Ferron, Grace Kline, Eric J. LaPointe, Hilario Mendoza, Rev. Frank M. Thorburn, all of whom have worked closely together during the period

of our first report, and while we don't always agree, we have a great camaraderie and a sense of purpose.

The Advisory Committee was established by the U.S. Commission on Civil Rights to assist the Commission at the State level in factfinding and the development of appropriate recommendations. Our State Advisory Committee feels strongly about its existence and about the importance of the Advisory Committees at the State level.

More than 3 years ago, our Advisory Committee agreed to begin a study of the quality of justice available to Indians in the State of South Dakota. Our carefully considered and weighed decision to act in this area was based on our individual and group personal observations of the justice system at work in the State, on reports and complaints we received, and on the statistics which were then available. We were convinced they pointed to a wide range of unique problems which appeared to confront Indian persons in the process of administration of justice. We knew our survey might not be universally popular because we were aware that the situation would require that we would be looking and looking hard at the police and the courts and studying their involvement with Indians.

Because of time and resources, we limited our inquiry to two separate geographic areas: Pennington County, where we are today, allowed us to examine criminal justice practices in a largely urban setting, and Charles Mix County, a rural setting.

Members of the Advisory Committee and Commission staff from the Rocky Mountain Regional Office in Denver traveled throughout the State and interviewed more than 130 officials, law enforcement officers, attorneys and prosecutors, members of the judiciary, and citizens. In December 1976 the Committee held a lengthy public discussion and public factfinding in Rapid City. We received unsworn testimony from more than 50 persons, many at great length. Our work resulted in a release of a report entitled *Liberty and Justice for All*. We issued findings and 22 carefully weighed and discussed recommendations for change. These were directed to State and local officials and agencies. Copies of that report are available here today, and we urge you, please, to study the findings and recommendations. They may not be universally accepted. We find they are often not popular. However, we believe strongly in these recommendations.

Governor Kneip and a number of other officials to whom recommendations were directed have responded. Some responses have been positive, some negative. We have been pleased that some of the recommendations have in fact been implemented; others are under study. I personally feel confident our work has led to some serious thinking, even more serious rethinking, and certainly many new and creative approaches to problems. Most important, though, is that we believe the report has led to some alleviation of problems that were outlined in the report.

In a few moments, Mary Ellen McEldowney, Vice Chairman of the South Dakota Advisory Committee, will speak. I understand her remarks will include a discussion of our findings and recommendations. The hearing which begins here today stems at least in part from our requests to the Commission on Civil Rights for further studies of the issues identified in our report. The Commission has responded and is prepared to examine in considerable detail the overall situation of Indians in the State of South Dakota and the consequent impact on the administration of justice. We are very appreciative, really very appreciative of the presence of the Commission here today and the vast amount of staff work that already has been carried out. We believe that the testimony received here today and tomorrow will be of great benefit to the citizens of our State and hopefully to the Nation.

Let me introduce Mary Ellen McEldowney. I must say that she is an attorney, but an attorney of unusual perception, sensitivity.

**STATEMENT OF MARY ELLEN MCELLOWNEY, VICE CHAIRPERSON,  
SOUTH DAKOTA ADVISORY COMMITTEE TO THE  
U.S. COMMISSION ON CIVIL RIGHTS**

Ms. MCELLOWNEY. Thank you, Stan.

Good morning. I am Mary Ellen McEldowney, Vice Chair of the South Dakota Advisory Committee to the U.S. Commission. I am pleased to be here today, but even more pleased the Commission is here today. I look forward with considerable interest to hearing the testimony for the 2 days that you will be here and hope I will be able to spend much of the time with you. Also, I hope the members of the audience will be able to spend the better part of the 2 days so that we will all get a full picture of what you will be hearing.

I believe the hearing which begins today is important to all of us in the State. The hearing will examine how and where Indians and non-Indians are involved in governing, settling disputes, and working cooperatively. The hearing will examine how Indians and non-Indians view each other and will outline the nature of their day-to-day contacts. No doubt there will be evidence of both success and failure. Obviously, there are problems in this State which continue to confront us as Indian and non-Indian peoples. Our recollections of history, our lives as Indians and non-Indians have been different. But there is much of life here that is common to every one of us.

In South Dakota, and I am a native of South Dakota, there still exists a tradition of oral history which lends to our lives a strong sense of contact with the extraordinary events which took place here during the last centuries. In many ways, what we know of history begins with what we learn from our grandparents and great-grandparents when they told us of the days they lived through. That history, then, I believe, is a necessary backdrop to the testimony we will hear today and tomorrow. While I in no means am an expert in the area of Indian history, in this area I will be sharing with you my understanding of, with a brief overview, of where we have come from.

The story of the native peoples on this continent begins before recorded history, but from the time of the first arrivals of Europeans as colonists, expansionist pressures were already building which would eventually be felt halfway across this continent by the Sioux Indians. Almost from the beginning, European settlement began to push westward in search of land, furs, and trade. Inevitably, the presence of whites in Indian country led to tension and conflict. Some Sioux began to move west. By 1750 there were Sioux already living in the Black Hills area and other parts of South Dakota.

The Sioux Nation, as you may know, divided itself into three groups, and they defined the groups by the dialect they spoke; the Lakotas, generally known to have gone west of the Missouri River; the Nakotas and the Dakotas, who remained on the east bank of the Missouri River. The land area in which the Sioux were found at any given time was immense. They traveled and hunted over a territory which ranged all the way from Hudson's Bay to the Gulf of Mexico and between the Alleghenies and the Rockies.

At the end of the War of 1812, various groups of Sioux entered into the first treaties between themselves and the United States. These treaties were sought by the Government in Washington as a means of establishing legal grounds for exploration, trade, and obtaining land. The pressure of white settlement and military action were powerful inducements to the tribes to engage in treaty-making with the United States. Also, since the Sioux culture did not share the European concept of land ownership, often there was no mutual understanding of the full ramifications of the various treaties. While the Western concept was that an individual could own a parcel of land outright, in fee simple, the Sioux concept was that the land was not subject to ownership by individuals or groups; rather it was there for the common use.

Step by step the Sioux land base was eroded. In 1851 the eastern Sioux, under pressure from advancing settlement and treaty negotiators, moved onto reservations and lost to the Government half the present State of Minnesota and much of Iowa for about 6 cents an acre. Meanwhile, in 1851 the Government was dealing with the western Sioux in a different manner and signed the first Treaty of Fort Laramie, declaring it then a Sioux Nation. The treaty outlined the Sioux Nation as occupying vast sections of present-day South and North Dakotas, Montana, Wyoming, and western Nebraska.

During the 1850s the Sioux tried to resist the encroachment of the settlers who were attempting to move through the Indian homelands and hunting grounds. To the east of the Missouri River, the Santee Sioux and others in Minnesota carried out a short-lived rebellion, known as the "Minnesota Uprising," against the Government's failure to provide adequate payments for land and its "let them eat grass" attitude. Army troops moved in and crushed the rebellion and, following the Civil War, the Federal Government pressed the Sioux in the West to yield land for wagon routes and the railroads. The Sioux fought

these plans under Chief Red Cloud and forced the army to the treaty table. The second Treaty of Fort Laramie, known as the "1868 treaty," guaranteed the Sioux a reservation made up of all the western half of South Dakota and added an unceded Indian territory, vast portions of Montana, Wyoming, Nebraska, North Dakota. The Sioux in exchange granted rights of way to the Government. However, the signing of treaties did not establish peace, nor did it guarantee the territory of the Sioux.

The discovery of gold in the Black Hills prompted further conflict as the Government sought to open the hills to prospecting despite treaty assurances to the contrary. The Sioux valued the Black Hills as sacred and resisted the efforts to induce them to sell. Finally, the army simply stepped aside and allowed thousands of armed whites to occupy the Black Hills in the mid-1870s. The Sioux then were forced onto agency reservations to become farmers. The reservations functioned under the authority of a white agent regardless of the power or stature of the individual Sioux chiefs residing therein.

The loss of the buffalo herds had left the Sioux with no alternative to the reservation system. BIA [Bureau of Indian Affairs] rations and farming had become the only means of avoiding starvation. The 1887 Daws Act, also known as the "Allotment Act," cut the reservation lands into individual 160-acre plots for each Indian and declared the rest surplus land available to white settlers. In 1889 Congress passed a law requiring the Sioux to give up almost half of the land remaining in the great Sioux reserve in South Dakota. Smaller reservations were established which confined and limited the travel and hunting of the Sioux.

By 1890 the final efforts by groups of Indians to avoid confinement on the reservations were being played out. Chief Big Foot and a large group of men, women, and children sought to travel to Pine Ridge rather than be arrested and taken by the army to the Cheyenne River Reservation. At Wounded Knee they were surrounded by a large number of troops armed with light artillery and rifles. Fighting broke out, and the army's crossfire of guns, explosives, shells, killed an estimated 340 men, women, and children.

The years following Wounded Knee were marked by unrelenting attempts to acculturate the Sioux to white values and thought. Indian ceremonies and dancing were discouraged or forbidden. Indian languages were forbidden by law. Indian children were taken from their parents and placed in white foster homes or boarding schools. Economic self-sufficiency was never fully supported by the Bureau of Indian Affairs and never achieved. Indian health and life expectancy sunk to one of the worst on this continent.

Indians were encouraged to take up farming and ranching, but the Bureau developed ranching and farming districts which were often arbitrarily drawn and ignored the realities of soil conditions and water availability. Indian lands were leased out in large parcels at minimum rates to non-Indian ranchers and farmers.

In 1934 the Indian Reorganization Act was seen as restoring some measure of self-government and established elected tribal councils. Seven of the nine federally-recognized tribes in South Dakota today are organized pursuant to that act and, therefore, have their own separate constitutions, bylaws, and tribal codes. The act also limited slightly the powers of BIA agents and did away with the allotment system which had the effect of selling off parts of the reservation in a piecemeal fashion. That policy was terminated with the act. In the 1940s and fifties, a massive damming project was carried out in the Missouri River. As a result, vast expanses of lush land on the river terraces were lost by reservations all along the Missouri. To non-Indians, the dams are viewed as progress. Flooding was controlled, power was generated, water for irrigation became available, and the Missouri became a major recreation resource, but to the Indians the dams meant more loss of land and their history. The wild game, the trees, the berries, which were so abundant on the water's edge, were lost as the reservation centers and the whole populations of Indian people were moved and relocated to higher ground. Even today, many of the Sioux look upon the dams as a devastating blow to traditional life.

However, with every change there is some good and some bad. One of the positive things we are seeing today is the irrigation has meant the productivity can be vastly increased and marginal land can be put into use. The distribution of irrigation water now stands as probably the major issue which will determine the economic future of reservation life and non-Indians as well.

During the 1950s, the Eisenhower administration made the decision to terminate the reservations and relocate Indians to the cities. This policy continued up into the sixties. As the Sioux moved to Omaha, Chicago, Denver, Texas, and California, the spirit which had survived Wounded Knee found itself in collision with the realities of urban poverty. Out of the cities, Indian organizations grew in size and influence. A newly determined mood among the Indian people emerged. The National Congress of American Indians, United Sioux Tribes, the American Indian Movement, and other national and international Indian organizations were formed. Years of anger boiled over and the occupation of Alcatraz, the BIA building, and Wounded Knee II took place. Those of us in South Dakota are very much aware of the clashes that followed between Indians and non-Indians. There was a period of special turmoil in Pine Ridge during which a number of shootings and deaths occurred.

For the most part, the years following the occupation have been marked more by litigation than confrontation. The hearing which begins today will, among other areas of inquiry, examine the impact of the *Oliphant* decision on law enforcement in Indian country. We expect, also, that the hearing will cover the diminishment issue: how large are the reservations and what is the size of the reservation? What impact is it going to have on the future development of the individual tribes and non-Indian people?



However, in our State Advisory Committee study, we found there were some aspects of life which have not changed for the better. In the area of administration of justice, I would like to discuss briefly the findings and recommendations of our State Committee with regard to Indians, police, and the courts. During our study in 1976, the Committee found criminal justice recordkeeping by localities in the State is badly lacking in uniformity. We, therefore, recommended the development of a comprehensive, statewide, criminal justice data system which would allow the public to assess law enforcement practices and performance. I suspect this lack of data has provided some problems to your staff in preparing for this hearing.

Secondly, the Committee found Indians seriously underrepresented on the employment rolls of law enforcement agencies and the courts. We found no affirmative action plan adequate to correct this situation. The Committee found the lack of representation of Indians on juries and the attitude of non-Indian jurors prejudiced the opportunities of Indians in some cases to obtain an impartial jury. We recommended the jury selection procedures be broadened to ensure the representation of Indians. Also, we called on the supreme court to commission a study of the attitudes of potential jurors towards Indians.

Fourthly, the Committee found cash bail and the requirement of property for surety bonds often worked special hardships on Indians who are both poor and lacking in community ties. The Committee recommended, therefore, that bail be set at the minimum required to guarantee appearance. Also, we called on the State legislature to enact a law that would foster the use of personal recognizance releases, and we called for the circuit courts in the alternative to assume the bonding functions of a commercial agency and refund the bonding fee where the defendant had satisfactorily appeared.

I save the best for last, because one of our recommendations was passed by the legislature which followed our report, and that was—we asked for the development of a statewide public defender system to provide counsel to indigent persons. This was one of the recommendations that we felt strongly about. In the legislative session following the release of the report, it did pass permissive legislation so counties can now develop their own public defender systems.

As Stan said, the South Dakota Advisory Committee made a total of some 22 recommendations regarding the administration of justice, recommendations going to the Governor, the legislature, the courts, the State bar association, and other agencies. We continue to believe that if the recommendations are carried forward much will have been done to alleviate present inequities in the system of justice in South Dakota. We call on our fellow citizens to join us in supporting the recommendations and the goals of equal justice for all.

CHAIRMAN FLEMMING. Thank you very, very much. I want to express our deep appreciation for both of these presentations, and then want to underline again our gratitude for the work that went into the report

and for the content of the report. It has proved to be of real help to us, and I'm sure will continue to prove to be of real help to us. I'm delighted to have noted in your presentation that there has been not only some positive reaction to some of the recommendations, but that in some instances something has happened. That is always encouraging.

MS. McELDOWNNEY. There is continued work to be done. We intend to pursue it.

CHAIRMAN FLEMMING. We are very, very grateful to both of you for being here this morning and opening our hearing in this way. Thank you very, very much.

Counsel will call our first witness.

MR. ALEXANDER. Frank Fools Crow and Matthew King.

[Chief Fools Crow and Mr. King were sworn.]

TESTIMONY OF CHIEF FRANK FOOLS CROW (EAGLE BEAR) AND MATTHEW KING (NOBLE RED MAN)

CHAIRMAN FLEMMING. We are very happy to have you with us:

MR. ALEXANDER. Mr. King, you are going to serve as interpreter for Chief Frank Fools Crow. Could you ask the chief to identify himself and where he lives for the record? And he is Chief Frank Fools Crow, otherwise known as Eagle Bear?

CHIEF FOOLS CROW. Yes.

I live west, about 8 miles from Kyle.

MR. ALEXANDER. Could you identify yourself for the record?

MR. KING. My name is Matthew King. King is a misinterpretation of my Indian name. My name is Noble Red Man, also a chief.

MR. ALEXANDER. Chief Fools Crow, this hearing today and tomorrow concerns relationships between Indian people and non-Indian people and many of the problems that have developed throughout the years. We are interested in hearing from Chief Fools Crow, in his wisdom, in his years, as to what advice he would have to the United States Government in solving some of the problems and what some of the causes of some of the problems we face today in the State are.

CHIEF FOOLS CROW. I am happy to be here, I hope, among friends. The first time my life I was in Rapid City was in 1916. I got married that year.

MR. ALEXANDER. The chief has lived most of his life on the Pine Ridge Reservation; is that correct?

CHIEF FOOLS CROW. Yes.

MR. ALEXANDER. He is how old now?

CHIEF FOOLS CROW. June 27, I reached the age of 90 this year.

MR. ALEXANDER. Could the chief tell us in his view what it is that the United States Government should be doing today in relations between Indian people and white people that it is not doing?

**CHIEF FOOLS CROW.** In the past we got along with the white man. We helped one another. Many Indian men joined the United States Army during the First World War. There was an agreement between the Government and the Indian people that they will only fight within their own country, in defense. They send him overseas which is contrary to the agreement that was made. It is something unusual for an Indian to fight in a foreign country. The experience that he has gone through during the war, when they come back they are not the same boys. They drink. They destroy themselves. They led the way in using the alcohol, teaching some of the Indian children, both boys and girls, to get involved in drinking and so forth.

Today, we have many towns that sell liquor that are adjacent to the Indian reservation. We have one that sells liquor right on the reservation, Swett at Pine Ridge. It hurts me more than anything else to see this happen.

I remember distinctly the year of 1916 when the relationship between the white man and the Indian was the best, excellent. I still maintain that idea of life today. I will get along with everybody, even the policemen, doctors, other government officials. I never drink beer, whiskey, wine in my life. The reason I want to get along with all the good people on the face of the earth—if this organization had power to act on the things that are a detriment to a good life of the Indian people, I want you to take action that there shall be no liquor on the Indian reservations, Pine Ridge particularly.

Under one of the treaties, the penalty for drinking is 1 year and 1 day in the penitentiary and a \$500 fine. This law has never been rescinded. We want to put it back into force again.

The relationship, as I have said, between the white man and the Indian people—there was a detriment in later years due to the liquor. You're privileged to say anything you want in behalf of the Indian people.

Today we are having a big council meeting at my place. If you could give me an answer today, I will relay that message to my people at this meeting.

**MR. ALEXANDER.** The chief mentioned that this liquor problem is a violation, in his view, of the treaties.

**CHIEF FOOLS CROW.** Yes.

**MR. ALEXANDER.** Are there other things that are outstanding in either of you gentlemen's view in terms of the treaties the United States should live up to?

**CHIEF FOOLS CROW.** One thing, uppermost in my mind, we all know the Black Hills belong to the Indian people. We give permission to the Government to seek gold, whatever he could find, with half of what he found returning to the Indian people, which was never carried out. If the Government meets its obligations, we will be happy because we kept our end of the bargain intact.

We know that the white man's law with reference to credit is most severe; if you do not pay your rent, you are out. The Government owes rent to the Indian people. The Indian have only one oral law, never to tell a lie. They are afraid that the Great Spirit will do something about it because the Great Spirit is true; we cannot lie. We do not understand the President. We have appealed, we called, we wrote, he never gave an answer. We don't know what kind of leader he is. He have many debts to look into—fulfill—in many treaties. If he can pay us, we will be happy.

I am happy that I have this privilege to speak my mind freely to this organization.

MR. ALEXANDER. Thank you.

Mr. King, when we met you had mentioned that you had been on the Longest Walk to Washington.

MR. KING. Yes.

MR. ALEXANDER. Could you briefly tell us from your own experience and perspective, what in your views are the major issues you were petitioning the Government to respond to? How could some of those affect things that go on everyday in South Dakota?

MR. KING. You want me to answer that?

MR. ALEXANDER. Yes.

MR. KING. I have nothing to do with the Longest Walk. Somebody else planned. As a chief, we have an obligation to look into it that they may not get into trouble. The Indian people are a peaceful people. White men are violent men. They do not understand one another. The Indian understand the white man, but the white man does not understand the Indian people. So in protest of the many bills that were introduced in Congress to abrogate treaties so that the white man may own a whole of Indian country—they don't want that. That is one of the reasons why they walked across the country. Cunningham—I'm going to tell you I challenged Cunningham to a worldwide debate on treaty issues. I do not know whether he will accept it or not, but I challenged him when I was in Washington a few days ago. I want the whole world to know the treatment of the Indian people at the hands of a foreign nation.

I'm sorry to say this, but it is the truth. You know it. I think we treat the white man good because the Indian is the most religious man on the face of the earth, the most sympathetic and the most understanding. He doesn't want no one to suffer in his country. So he adopted the white man and gave him land and worked with him. All the treaties that were made—372 different treaties—they kept it intact because God was involved in it and they must not lie, but the white man from the beginning—seems to me like he has the power—priority in everything to do as he please.

One of the greatest thing—an accusation that the Indian people hold against the Government is that he lied, which is a rule, supreme rule of Indian people. They kept their treaty intact while the Government broke treaty after treaty. He broke 372 different treaties.

But this is God's country, ruled by the power of the Great Spirit. The Indian religion says there must not be any evil in God's world because, within the universe God created, he also imbued it with the Holy Spirit of His power. There is no room for evil. They have been afraid to think evil. Always fearing God, when they get together they pray for the peace pipe which was given to them through a beautiful maiden that was sent by God. The peace pipe is still in the hands of the Sioux people. This morning we had a ceremony, peace pipe ceremony. We always begin a day with prayer. The wisdom comes to the Indian people in that way. They heard God's voice. There are signs in heaven which give them wisdom. They are honest people. They are generous people. They are God-fearing people. When things happen to them, they don't know what to think. How can any human not know his Creator, not know why he is in this world, and do things which is contrary to law of nature and the natural law of the universe? Why? They ask that question many times.

So when we got to Washington—I was there, I marched with them only 8 days from Pueblo, Colorado, to Sand Creek where some Indians were massacred. For what reason we do not know. At Wounded Knee, they took all the guns away from—the weapons, hatchets—away from the Indian people. They was slaughtered, most of the women and children. That was in revenge for Custer's defeat at the Little Big Horn. They forget that they made a treaty, '68 treaty, that certain land is Indian territory. No white man should set foot within that territory. Custer went in anyway. So in defense of their country, Custer was wiped out.

Today the people who occupy Black Hills are trespassers according to that treaty. The Government protected the people, protects the evil even though it is an evil, he protected them. There will be a day of reckoning, and before that happens the Indian people—

Before they went to Geneva, I was selected as a spokesman for South, North America, Canada. I was sick, I didn't go. I feel that it is no place for Indians to file a complaint against their own country which is occupied by white men. We made treaties. I said, "Let us give the President a chance to redeem himself on the treaty, take action on the treaty. Give him a chance. If he doesn't, then we will take it to the United Nations court or the world court and sue for the back pay we got coming," but they went anyway.

That was against my wishes because after all, we made the treaties in good faith with the Government. We should resolve it in good faith. So that was the reason I didn't go, and today—a few days ago we were in Washington. We talked to Mr. Mondale. A lot of things that are discussed. The President was waiting for us 45 minutes. We were late. We couldn't get in. They wouldn't let us in. Finally they let us in, but it was too late, the President already left. So we talked to Mr. Mondale and the Secretary of Interior and many of the lawyers. We present our case. I want to tell these people that we didn't lie. Everything we said

was the truth. We have the records to prove what we said was true. Mr. Mondale understood, he understands what we were telling him. He agreed to most of our talk.

Not very many years ago I talked with people, State officials from South Dakota, why couldn't we get together, resolve the differences, the broken treaties, and the things that belong to the Indian people. Let us do it in an official—under God—to resolve this issue. But they used the strong-arm message, the only message the white man know. The Indians will not take that. The Indians believe in God. They can be just as tough as any human on the face of the earth when the time comes. They don't want to do that.

So Wounded Knee was occupied because for 200 years the Government had lied to them. They want the treaties to be resolved by the President after every department of Government has failed to act. The Act of '77, 44th Act of Congress, provision number 6 says, if the '68 treaty—if we have trouble with the '68 treaty, we must get the President to contact all the treatymaking body and resolve the treaties for better understanding. That what's we are doing as a last resort.

If it is a failure, we take it to the world court or the United Nations court. There are 72 lawyers waiting to put that into force.

MR. ALEXANDER. Thank you, Mr. King.

MR. KING. Yes, sir.

MR. ALEXANDER. The other members of the panel, Dr. Flemming and Commissioner Freeman, have some questions for you and Chief Fools Crow.

COMMISSIONER FREEMAN. I have some questions for you. We appreciate your coming.

Chief King, Chief Fools Crow, I want to express my appreciation for the testimony which you have given. I have just one question to follow up on the statement which you made concerning the fact that Government owes rent to the Indian people.

Does your organization have—do you have the amount of this rent—have you made a demand for it? What is the amount of rent that is owed to the Indian people?

MR. KING. We don't demand it, but the Government come and wanted to lease certain land. We do it in good faith. He broke the treaty, so in a nice way, can you pay us for the use of it?

COMMISSIONER FREEMAN. But you don't have a figure. You don't have a sum?

CHIEF FOOLS CROW. I'm going to tell you, this may shock you. Some of the Congressmen who are working for the Indian people, two of them called me, I'm not going to mention—while I was up in Washington. King, we asked how much the Government owe you. The interest alone come up to \$600 billion in interest.

COMMISSIONER FREEMAN. \$600 billion?

MR. KING. Yes, \$600 billion. I want that now.

[Laughter]

COMMISSIONER FREEMAN. Thank you.

MR. KING. All of these different claims could come in different sections. We have 117 different treaties with the Government of the United States. They all involve territory, all involve peace. Indians want peace; white man want peace, so be it. They never carried that part of the bargain.

COMMISSIONER FREEMAN. You stated that the existence of the liquor stores on the reservation is in violation of the treaty.

MR. KING. Yes.

COMMISSIONER FREEMAN. Would you describe, for the record, the process of how a liquor store gets into operation, who is it who has to approve it or is it necessary to have approvals? What is the process?

MR. KING. The Justice Department in Washington, the treaty of 1868, later treaties, all mentioned that Indians must not be given liquor because they did here in the Black Hills. When the Black Hills was negotiated, they gave him liquor and made him sign the papers, but it wasn't three-fourth majority as it says in the paper.

COMMISSIONER FREEMAN. This is not recognized by the State of South Dakota?

MR. KING. I do not know. I do not know. I have nothing—

COMMISSIONER FREEMAN. The liquor store is licensed by the State?

MR. KING. The State of South Dakota. We don't want liquor on the reservation.

COMMISSIONER FREEMAN. I understand that. I'm trying to get at the process by which the liquor store gets the license, who it is specifically with responsibility to enforce the treaty, to recognize the fact that the treaty prohibits the liquor store.

MR. KING. Yes. Today they are going to discuss that. I do not know what course of action they are going to take, but it is on the agenda today. We will know, we will probably put it in a paper, but there is another thing; when we say anything, discuss claims, the paper will not print it. I don't think they let us get on the television to present our case. Those are all suppressed. We are working under a handicap, but we are not going to stop. We are going to do it. We are going to tell the world. That is why I challenged Cunningham to a debate on treaty issues. I told him it has got to be worldwide. What I have to say, I want the world to hear; what he has to say, I want the world to hear. If he is right, if I'm wrong, the people will decide.

COMMISSIONER FREEMAN. Thank you.

CHAIRMAN FLEMMING. Dr. Witt, do you have anything?

DR. WITT. No.

CHAIRMAN FLEMMING. May I join my colleague, Commissioner Freeman, in expressing to both of you our very deep appreciation for your being with us and for the nature of your testimony. It has been very helpful. Thank you very, very much.

MR. KING. We are happy to be here. Thank you.

CHAIRMAN FLEMMING. Thank you very much.

Counsel will call the next witnesses please.

MR. BACA. Eugene Trottier, Neil Long, Ralph Olauson, Thomas De Coteau.

CHAIRMAN FLEMMING. May I ask the four of you to stand and raise your hand?

[Messrs. De Coteau, Long, Olauson, and Trottier were sworn.]

**TESTIMONY OF THOMAS DE COTEAU, CHIEF OF POLICE, SISSETON-WAHPETON SIOUX, SISSETON, SOUTH DAKOTA; NEIL LONG, SHERIFF, ROBERTS COUNTY, SISSETON, SOUTH DAKOTA; RALPH OLAUSON, SHERIFF, MARSHALL COUNTY, SOUTH DAKOTA; AND EUGENE TROTTIER, SPECIAL OFFICER, BUREAU OF INDIAN AFFAIRS, ABERDEEN, SOUTH DAKOTA**

CHAIRMAN FLEMMING. The Chair is very happy to have you with us.

MR. BACA. Beginning with Sheriff Olauson, would each of you identify yourself, giving your correct title and business address, for the record, please?

MR. OLAUSON. Sheriff Ralph Olauson, Marshall County, South Dakota.

MR. LONG. Neil Long, Roberts County, sheriff, Sisseton, South Dakota.

MR. TROTTIER. Eugene Trottier, assistant area special officer, Bureau of Indian Affairs, Aberdeen, South Dakota.

MR. DE COTEAU. Chief of police, Sisseton-Wahpeton Sioux, Sisseton, South Dakota.

MR. BACA. Thank you.

Officer Trottier, you were a special BIA officer for Sisseton in 1976 and 1977. Would you describe your duties there, please?

MR. TROTTIER. Yes, sir, my major duties were the investigation of the major crimes. I also had the duties and responsibilities of providing technical assistance and advise the tribal police, and to try to promote effective interagency cooperation among various law enforcement agencies.

MR. BACA. Was it in that capacity that you called some special meetings on the different law enforcement agencies in the area?

MR. TROTTIER. Yes, that is the reason.

MR. BACA. Tell us about those.

MR. TROTTIER. Yes. Those meetings we term them coffee meetings. We kept them informal. We invited all of the law enforcement agencies as well as the members of tribal, city, and county governments to attend. The first couple of meetings were strictly just little social gatherings. As I recall, Mr. De Coteau and I bought the coffee and the rolls on that day.

As we went along, my initial hope was to promote more efficient, effective law enforcement through cross-deputization which was lacking in that area.

MR. BACA. Excuse me, when you are talking about in that area, describe the law enforcement agencies you are talking about.



MR. TROTTIER. Yes. Of course, the Lake Traverse Reservation was diminished and in its place are approximately 100 parcels of land held in trust and considered to be Indian country, and these are in Day County, Marshall County, Codington County, and Roberts County. So that is the area I'm referring to.

MR. BACA. Thank you. Go ahead, please.

MR. TROTTIER. Based on a law enforcement study conducted by the State of South Dakota that was completed in 1975, I followed their lead and their advice in developing a specific agreement for cross-deputization. Rather than merely giving a man broad general powers of the sheriff, as for an example, this agreement specified ways in which you would give the particular officer only certain amounts of authority at certain times, and mainly our concern at that time, I think, was drunk drivers.

MR. BACA. Your main concern was where, as to drunk drivers?

MR. TROTTIER. Anywhere the officer would happen to encounter them, we felt that drunk drivers should be taken off the roads.

MR. BACA. Checkerboard jurisdiction was creating a problem?

MR. TROTTIER. A very difficult problem. There were many times that in an accident situation it took us a half hour or more, either with the sheriff's department or the highway patrol, trying to determine whose jurisdiction actually it was on. Without cross-deputization, I felt law enforcement officers just couldn't do their jobs.

MR. BACA. How much success did you have in fostering the idea of cross-deputization?

MR. TROTTIER. We were able from these meetings to work out an agreement with Marshall County, although my initial hope had certainly been Roberts County since that is where the tribe had its headquarters.

MR. BACA. Sheriff Olauson, you have now such an agreement as to cross-deputization; do you not?

MR. OLAUSON. Yes, sir.

MR. BACA. When did that go into effect?

MR. OLAUSON. June of last year.

MR. BACA. I believe you were asked to bring a copy of the agreement with you. Do you have it?

MR. OLAUSON. Yes, we have.

MR. BACA. Mr. Chairman, I would like to have this inserted into the record at this point.

CHAIRMAN FLEMMING. Without objection it will be entered in the record as Exhibit No. 2.

MR. BACA. Sheriff Olauson, could you tell us how the agreement works in general terms.

MR. OLAUSON. We are just cross-deputized, the tribal officers are cross-deputized the same as if they were Marshall County deputies, my men cross-deputized the same as if they were tribal police officers.

MR. BACA. Was that an approach that met with immediate acceptance by both people of the tribe and of your county?

MR. OLAUSON. Yes. They both agreed on the agreement we had wrote up; the county commissioners agreed on it, and also the tribal board of directors agreed on it.

MR. BACA. How has it been working?

MR. OLAUSON. So far it has been working all right.

MR. BACA. You had a prior cross-deputization agreement?

MR. OLAUSON. Yes, we did earlier.

MR. BACA. Why was that terminated?

MR. OLAUSON. Well, I guess that time it was—the tribal police were having quite a turnover in officers, and it was terminated through the county commissioners until they got their tribal police force straightened out down there, that they pulled the cross-deputization.

MR. BACA. When exactly was it terminated? Do you remember?

MR. OLAUSON. I couldn't give you the exact date.

MR. BACA. Roughly then?

MR. OLAUSON. I would say it was spring of '75, somewheres around in there.

MR. BACA. Was that after the De Coteau decision? That was March 1975, roughly the same time?

MR. OLAUSON. Approximately the same time if I recall right.

MR. BACA. Sheriff Long, your county does not have such an agreement?

MR. LONG. That is correct.

MR. BACA. Could you describe in general the kind of system that you operate under at present; that is, I know that Sheriff Olauson has what is known as a unified system and yours is not; is that correct? In other words, what I'm asking, are there two different law enforcement agencies in your county, nontribal?

MR. LONG. I recall Ralph Olauson's system, a countywide system is what I refer to it as. In other words, rather than having police officers in the towns, let's get more or less police officers based out of Britton is the way I understand it.

MR. BACA. Could you move closer to the mike?

MR. LONG. I refer to Sheriff Olauson's law enforcement system as countywide law enforcement—our system, Roberts County, is a little unique. All our police officers within the county, with the exception of the tribal police, like the police officers at Effington, Rashalt, Summit, or Wilmot, are all, as soon as they have been certified with the State of South Dakota, become deputy sheriffs. They only take care of calls outside that city limits or their original jurisdiction with a radio message or permission from the sheriff's office. They are reimbursed by the Roberts County Sheriff's Department at the rate of \$3.50 an hour and 16 cents a mile. This all has to be verified by turning in a voucher and so through at the county level.

MR. BACA. What is your county's position on the cross-deputization?

MR. LONG. Well, at the time they had a meeting, I can't give you the date, but there was a meeting some time ago and a decision come

down that they were against it, and they didn't want to consider it at this time.

MR. BACA. Were you a participant in that meeting?

MR. LONG. Yes, I was.

MR. BACA. Did you make a recommendation to the commission?

MR. LONG. It is a very complicated situation, probably take me 10 hours to explain all the things that were discussed. I did make some recommendations, yes.

MR. BACA. Did you recommend for or against cross-deputization?

MR. LONG. I couldn't really say I was strongly against or for it either way. I had some ideas how I thought some things should be done. Everybody wasn't in agreement on it.

MR. BACA. Sheriff, did you attend those meetings that Officer Trotter was talking about that he had organized?

MR. LONG. I tried to attend as many as I could. I know I was at some of them.

MR. BACA. What was your feeling about the purpose of those meetings?

MR. LONG. Well, as the time went by and nothing apparently was being accomplished either way, it kind of seemed to me as if we were talking about the same thing over and over and over and I have to admit it did involve a certain amount of antagonism, and myself, whether it was right or wrong, I began to build up a certain amount of anxiety over it.

MR. BACA. Could you help me understand, is your county also somewhat checkerboarded?

MR. LONG. Absolutely, yes.

MR. BACA. So Officer Trotter was describing some of the problems that might exist in that sort of jurisdiction—that's where the officers would know where their jurisdiction started or stopped or not—is that presently a problem?

MR. LONG. Yes, it is some problem, yes.

MR. BACA. But your feeling was that, on balance, cross-deputization was not the answer?

MR. LONG. I do not know exactly how to answer that. Back some time ago I talked to Gene here, I wanted to deputize and went to the county commissioners, and I wanted to deputize certain tribal police officers to try to get the program going. At the time, Gene came back a couple weeks later and told me it would have to be all or none, so that was out.

I hate to give you plain yes or no on that. I'm really not able to.

MR. BACA. Is there a particular problem since the *Oliphant* decision with enforcement on tribal lands by tribal police, where the person apprehended is a non-Indian? If there is that kind of incident, how is it handled? Are those people turned over to your police force or what?

MR. LONG. As it stands right now, the way I understand it, the white person that commits a minor offense on trust lands or allotments is not subject to arrest by tribal police, which can create some problems.

MR. BACA. Has it created any problems?

MR. LONG. A few, yes.

MR. BACA. There have been incidents where people were arrested or attempted arrest was made?

MR. LONG. Yes, I would have to say there has been.

MR. BACA. There was no prosecution as a result of any of those arrests?

MR. LONG. Well, that is kind of a loaded question because there is—that is the State's attorney's prerogative on whether to prosecute or not. But that is correct; there have been some cases where nobody has been prosecuted.

MR. BACA. Thank you.

Chief De Coteau, could you comment on what you see the problem being in terms of the checkerboard jurisdiction, in terms of arrests by tribal officers of non-Indians on tribal property?

MR. DE COTEAU. My understanding of the *Oliphant* decision is that it said our judicial system could not prosecute non-Indians, but as for lawful arrests, more officers do have arrest powers over anybody on their jurisdiction. Before the *Oliphant* decision, we attempted to file charges against non-Indians in the State court, county court, and they were turned down.

MR. BACA. That would be in which county?

MR. DE COTEAU. Roberts County.

And since there were no charges, we couldn't file charges. We went through the citizen's arrest form that way. We talked to their circuit judge there and she stated that—at that time, Sheriff Long was there—and she stated we could make citizen's arrests. That went for a while. On traffic, if we caught somebody for speeding, we called the sheriff. He would come and we would make out the citizen's arrest form and hand it over to him and he would take it to the clerk of court.

Then on one particular day, I can't remember what day it was, the State's attorney advised me that we could not be making citizen's arrests, we could only make citizen's arrest on major crimes where someone could be sent to the penitentiary.

MR. BACA. What reason did he give for that decision?

MR. DE COTEAU. He said that it was in the State code.

MR. BACA. And he referred to the State penal code?

MR. DE COTEAU. Right.

MR. BACA. Criminal code?

MR. DE COTEAU. Right.

MR. BACA. Prior to *Oliphant*, how had you handled that situation; that is, a person violating the law on tribal property?

MR. DE COTEAU. After we couldn't arrest him on the citizen's arrest, we attempted again to file charges in the State's attorney's office, and he just wouldn't accept our complaints and stated that tribal police officers didn't have authority to be arresting white people, he stated.

And so, after that I met with the chairman of the tribe and he met with the general counsel there, and the tribe at that time stated to us police officers that [inaudible] non-Indians, anybody that violated any laws, it would go to tribal court. That is what we started enforcing.

MR. BACA. That is what you have been doing?

MR. DE COTEAU. No, until the *Oliphant* decision that came down.

MR. BACA. What are you doing now?

MR. DE COTEAU. We ain't doing nothing now. We catch non-Indians violating laws on the trust land, usually for traffic. We usually just stop them and let them go, because we attempted to file charges and the State court—State's attorney wouldn't accept it.

MR. BACA. Is this a frequent occurrence?

MR. DE COTEAU. Yes.

MR. BACA. Can you give us any estimate?

MR. DE COTEAU. Well, say, if the officer is out on 8-hour shift, he stops maybe 10 people, and percentwise, probably 2 out of the 10 would be non-Indians.

MR. BACA. Have you noticed any particular increase or decrease in that sort of incident since the *Oliphant* decision?

MR. DE COTEAU. It has been increasing.

MR. BACA. You keep statistics on the incidents on stopping for speeding violations?

MR. DE COTEAU. They are kept on record, but they are not classified as Indian or non-Indian unless the officer is going to court.

MR. BACA. Mr. Chairman, I have no further questions at this time.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Sheriff Long, I believe you stated a white person who commits a minor offense on trust lands is not subject to arrest. Under what circumstances is a white person who commits an offense, any offense, subject to arrest anywhere in South Dakota?

MR. LONG. I meant to say a white person that commits a minor on trust land wasn't subject to arrest by tribal police. That is what I meant to say.

COMMISSIONER FREEMAN. I'm glad I asked. That is not what you said.

MR. LONG. All right

COMMISSIONER FREEMAN. I was becoming very troubled by the possibility that you were saying that a white man is above the law. Is that what you are saying?

MR. LONG. No. I do not mean that by any means.

COMMISSIONER FREEMAN. Would you have any recommendations for this Commission as to what procedures need to be undertaken or what changes need to be made to assure that the peace of the trust lands will not be violated?

MR. LONG. It appears to me that the cross-deputization is not going to happen in Roberts County any time in the near future. They used to have a system where the sheriff's deputies, State patrol, State police officers in these towns took care of the county with the assistance of

a special officer, BIA officer, as I refer to them. That system did work fairly well. That was quite some time ago. I think that system would probably work quite well.

COMMISSIONER FREEMAN. Would you describe exactly how this system should be undertaken?

MR. LONG. When they used to have a special officer assigned to the Sisseton area, he would take care of these problems on Indian land involving Indian people.

COMMISSIONER FREEMAN. This special officer you are referring to would be an employee of the Bureau of Indian Affairs?

MR. LONG. That is correct.

COMMISSIONER FREEMAN. That is your recommendation?

MR. LONG. It is an idea that I think might work. I don't really know what to tell you to recommend. I haven't got the answer.

COMMISSIONER FREEMAN. You indicated that cross-deputization would not be permitted in Roberts County. Who is it who makes such decisions in Roberts County?

MR. LONG. Okay. Anybody to be deputized in Roberts County for any length of time has to be deputized with the sheriff with the approval of the county commissioners and the State's attorney. In other words, it involves five county commissioners, one State attorney, and the sheriff.

COMMISSIONER FREEMAN. Are all of those individuals white?

MR. LONG. Yes, they are.

COMMISSIONER FREEMAN. Is there any input or any involvement from the representatives of the tribe or representatives of the trust country? Do you seek the advice or counsel of any of the persons who would be concerned, any Indians who would be concerned?

MR. LONG. Are you speaking now for the county commissioners?

COMMISSIONER FREEMAN. Yes.

MR. LONG. I really don't know for sure, not to my knowledge, but I do not know for sure. It is possible.

COMMISSIONER FREEMAN. But the statement, the testimony which you have given concerning what will not happen in Roberts County is based upon your own personal opinion, or is this based upon a decision that was made by the county council?

MR. LONG. From what I know about it, I don't think it is going to happen in the near future. From the attitude of the people I talked to, I don't think it is going to happen in the near future.

COMMISSIONER FREEMAN. Then you are saying the attitude of the people is contrary to law enforcement as it relates to Indian tribe trust lands, if it involves white people?

MR. LONG. No, I couldn't really say that. I don't think that any of the county commissioners, State attorney, or myself are actually anti-law enforcement. I hope I understood your question.

COMMISSIONER FREEMAN. Yes, I'm trying to understand how there can be two kinds of law and order. The way you describe it there must

be two kinds. What then is your perception, how do you define law enforcement and law and order?

MR. LONG. We have a lot of problems in our area about this matter. For instance, in game violations we were trying to enforce the game violations last spring. Indian people were spearing fish on trust land, and there was absolutely nothing could be done about it. Apparently, to my knowledge, there is no tribal code against it. These are some of the problems we have. We have to live with it. These things exist.

If a major crime is committed, there is always somebody that has the power to take care of this offense. But there are some minor offenses, like spearing fish, where apparently there is nothing that can be done about it, or speeding, for instance.

COMMISSIONER FREEMAN. Speeding is considered a minor offense?

MR. LONG. I consider it a minor offense.

COMMISSIONER FREEMAN. Therefore, a person who would be driving 100 miles an hour down a business street may knock over a few people, but that is still a minor offense?

MR. LONG. I would not consider that speeding; I would consider that reckless driving or something, you know, when they are endangering life to that extent. I wouldn't consider that speeding at all. In fact, if somebody was driving 100 miles an hour down some main street, he would end up in jail someplace.

COMMISSIONER FREEMAN. Be he Indian or non-Indian?

MR. LONG. That is the way I feel about it, yes.

COMMISSIONER FREEMAN. Thank you.

MR. NUNEZ. Sheriff Long, you indicated that in the issue of cross-deputization that you are not against deputizing several of the Indian officers, but that the tribe wanted you to deputize them all. What was your personal objection to deputizing them all who were recognized peace officers?

MR. LONG. Well, at that time the county commission, the State's attorneys, and myself, there was no way they were going to deputize them across the board. I thought that would be a way of entering into this and getting this program going and seeing how this program was going, seeing how it worked out. It wasn't necessarily I have anything particularly against any particular officer.

MR. NUNEZ. How many officers are in the tribal police force?

MR. LONG. I just couldn't tell you right offhand how it was back in '76, I believe that we talked about this.

MR. NUNEZ. You saw it as a gradual step forward. You felt it could be done all across the board?

MR. LONG. Eventually, possibly, yes, that is what I had thought.

MR. NUNEZ. I'm not quite clear as to the objections that the county commissioners and the county attorney had specifically for not doing this. Could you elaborate on that point?

MR. LONG. There are several things that have happened that created some problems. I have got a copy of a letter here that the chief judge

from the tribe mailed to our judge, flat out says they will not honor an opinion issued by our circuit court judge. That created some hard feelings. There are several things like this that have happened.

MR. NUNEZ. There was no issue as to the qualifications?

MR. LONG. No.

MR. NUNEZ. Their training? It was kind of a personal animosity?

MR. LONG. No. I'm talking about an order that came down from our judge, our Circuit Court Judge Mildred Ramynke.

MR. NUNEZ. Was there an effort made to talk this out, get together, you are all in one county—

MR. LONG. It is hard to get along with people well when the judge over them writes a letter and tells our judge that they won't honor her decisions; when the judges aren't honoring each other's decisions, there are problems from the top to start with.

MR. BACA. Could we have a copy of that letter?

MR. LONG. You can have this if you want it.

CHAIRMAN FLEMMING. Do you want that entered as an exhibit? You want that entered as an exhibit?

MR. BACA. Yes.

CHAIRMAN FLEMMING. Without objection, the letter referred to will be entered as Exhibit No. 3.

Did you finish?

MR. NUNEZ. Yes, sir.

COMMISSIONER FREEMAN. Do you have a copy of the order of the circuit judge you are referring to?

MR. LONG. No, I haven't.

COMMISSIONER FREEMAN. Mr. Chairman, I would like to ask the staff to obtain a copy of the order to which Sheriff Long was referring and have that also inserted into the record at this point in the hearing.

CHAIRMAN FLEMMING. That will be done and entered as Exhibit No. 4, without objection.

MR. BACA. Mr. Trottier, Sheriff Long has talked about the major crimes having an organized and systematic way of being investigated. Could you describe the system?

MR. TROTTIER. Yes, of course. All of your major crimes would be under the exclusive jurisdiction of the United States. The special officer is generally the first officer to handle those cases jointly with the Federal Bureau of Investigation and Federal court system.

MR. BACA. Who makes the presentation to the U.S. attorney?

MR. TROTTIER. In most instances, the Federal Bureau of Investigation's agents.

MR. BACA. Why is that?

MR. TROTTIER. I believe it is the insistence of the United States district attorney that he will work with those agents whenever possible.

MR. BACA. I'm interested in your opinion. Is it a frequent occurrence that the same incident or set of incidents is investigated both by the BIA and FBI?



MR. TROTTIER. That is a common occurrence.

MR. BACA. Why the redundancy, what is the need for that?

MR. TROTTIER. There is an immediate need to secure the crime scene and to gather and collect evidence. For reasons unknown to me, sometimes the particular prosecutor does not accept the investigation done by the Bureau of Indian Affairs and orders a full scale investigation by the Federal Bureau of Investigation. This is not always the case, however.

MR. BACA. What is the percentage, if you know, or your opinion of cases referred to the U.S. attorneys by the FBI that are accepted or declined?

MR. TROTTIER. I suppose, of the major crime cases on reservations, 99 percent are presented by the FBI and 1 percent by the Bureau of Indian Affairs. Of those presented, I feel there is about 90 percent declination.

MR. BACA. In 90 percent of the cases the U.S. attorney refuses to prosecute?

MR. TROTTIER. Yes.

MR. BACA. Do you have an opinion why that is?

MR. TROTTIER. Yes, I feel that the reason for this is the way the presentation is made by the agent that is presenting it. If I might be allowed to clarify this, in all of my law enforcement experience, I have always had the ability to get an authorization on any person that I ever wanted arrested as long as I had grounds to do so. As far as I know, the FBI has the same working relationship with the prosecutor's office, but I suppose because of the fact that the FBI agent comes in maybe 3 days or 3 weeks or 3 months after the commission of the offense, it is not interesting anymore. He doesn't live in the community to know what the pressures and the feelings of the community are and presents them in a somewhat negative fashion. I'm not criticizing the agents. I feel that if I were in their position I wouldn't be interested in those cases either, and I would probably would present them the same way.

MR. BACA. Could you describe what you mean by that? What is their position?

MR. TROTTIER. For the most part, the agent is located perhaps 100 miles away from the reservation. He does not reside there. In most instances, he is not an Indian person. He doesn't feel the local pressures of the people in the community.

MR. BACA. Have you talked to FBI agents about this problem?

MR. TROTTIER. Yes.

MR. BACA. Can you share with us some of the opinions they might have expressed to you?

MR. TROTTIER. They are somewhat apologetic; that is all I can recall. Of course they have always said to me, "If you feel something should be done, certainly feel free to share that with me. I would be happy to pursue that." For the most part, of course, the agents are very cooperative, very thorough in their work.

MR. BACA. Could you tell us to what extent you share information with them? Do they begin an investigation as though you had never conducted one? Or do they build on what you have done? Could you describe that?

MR. TROTTIER. That kind of depends on the individual agent. Many agents throughout the years have accepted the work that has been accomplished, have taken copies of it and have done only the new things. We have had some agents who insist on doing the full, the complete investigation themselves.

The U.S. attorney doesn't seem to care. In many cases, now when the FBI reduced the manpower somewhat, one interview is conducted by the Bureau of Indian Affairs, the next by the FBI.

MR. BACA. Thank you.

CHAIRMAN FLEMMING. Mr. Trottier, you are still convinced the type of working agreements you developed with Marshall County is at least a partial solution to the problem that confronts you?

MR. TROTTIER. Yes, sir, I am. I am convinced that the only way to have effective law enforcement is for the officer who observes the violation to be able to take the action and to get the successful prosecution.

CHAIRMAN FLEMMING. Mr. Olauson, you were asked the question. I'd just like to pursue it a little. Your experience with the working agreement has been a positive experience. Have you run into any difficulties in connection with it that you would care to identify, the kind of difficulties that may be worked out over a period of time?

MR. OLAUSON. Since this new cross-deputization went into effect, we haven't had any real problems. Most of the arrests that tribal police have made was speeding violations. There has been a few drunken driver violations. There was one question that went to court where the white man they had arrested for drunk driving, he didn't feel they had jurisdiction, and as the State's attorney explained to him, we had cross-deputization and he accepted that. There was no more input on it.

CHAIRMAN FLEMMING. So you don't have any hesitation in recommending this kind of a working agreement as a solution?

MR. OLAUSON. Not at the time. The way we got it drawn up in the agreement, the officer has to be certified by the State before they can be cross-deputized.

CHAIRMAN FLEMMING. Okay. We appreciate very, very much all of the members of the panel being with us and presenting this testimony. Thank you very much.

Counsel will call the next witness.

MR. HARTOG. The Commission calls Jerry Flute, Edward Red Owl, Leslie Stillson, Roger Pearson. Will they please come forward.

[Messrs. Flute, Pearson, Red Owl, and Stillson were sworn.]

**JERRY FLUTE, TRIBAL CHAIRMAN, SISSETON-WAHPETON SIOUX TRIBE; ROGER PEARSON, MAYOR, CITY OF SISSETON; EDWARD RED OWL, PLANNING DIRECTOR, SISSETON-WAHPETON SIOUX TRIBE; AND LESLIE STILLSON, BUSINESSMAN, SISSETON, SOUTH DAKOTA**

CHAIRMAN FLEMMING. We are very happy to have with us.

MR. HARTOG. For purposes of the record, starting with Mayor Pearson, would you please identify yourselves, giving your title, as appropriate, and your business address?

MR. PEARSON. Roger Pearson, mayor, city of Sisseton, South Dakota.

MR. STILLSON. Leslie Stillson, businessman, Sisseton, South Dakota.

MR. FLUTE. Jerry Flute, tribal chairman, Sisseton- Wahpeton Sioux Tribe.

MR. RED OWL. Edward Red Owl, planning director, Sisseton-Wahpeton Sioux Tribe.

MR. HARTOG. As all of you know, many members of the Sisseton-Wahpeton Sioux Tribe live, shop, and work in and around the city of Sisseton. Tribal headquarters in fact are located but a few miles outside the city limits. I would like to ask each of you, starting with Mayor Pearson, as leaders of your communities, if you would briefly characterize the present relations between Indians and non-Indians in the Sisseton area.

MR. PEARSON. I believe the relations at this time are well and as good as they have been in the last 4 or 5 years.

MR. HARTOG. Right now, how would you characterize things at present?

MR. PEARSON. Good.

MR. HARTOG. Mr. Stillson?

MR. STILLSON. I think business relations are very good in our community.

MR. HARTOG. No major problems?

MR. STILLSON. No major problems.

MR. HARTOG. No real tensions?

MR. STILLSON. No, I don't think there is any minor problem.

MR. HARTOG. Could things be improved?

MR. STILLSON. I do not know. Not unless I had a direct salesman working in the country, maybe.

MR. HARTOG. Could they be improved?

MR. PEARSON. I think so.

MR. HARTOG. A lot or just a little?

MR. PEARSON. Well, I suppose a little.

MR. HARTOG. What kinds of things?

MR. PEARSON. I guess the thing that I would like to see happen in our community is a human relations commission organized which we are in the process of doing. We have had some setbacks in getting this ordinance established. I would truly like to see this, that we could have some type of a commission that could be a sounding board for solving problems that may arise.

MR. HARTOG. We will return to that later.

Mr. Flute—the Indian, non-Indian relations in the Sisseton area?

MR. FLUTE. Mr. Chairman, how much time are you going to give me to respond to that?

MR. HARTOG. The question was briefly. Could you take about 2 minutes? And you will have time to amplify—the present relations?

MR. FLUTE. Mr. Chairman, members of the Commission, I appreciate the opportunity to appear before you today. I would like to make one recommendation: that you provide some more comfortable chairs for the witnesses.

I think the climate between the Indian and white community with the Sisseton area, in terms of business relationships, would have to be deemed as excellent because, by later testimony we will show you that because of the tribe's efforts that many millions of dollars are brought into that community, and because of those millions of dollars, the business climate ought to be excellent.

In terms of the social relations between the Indians and the non-Indians, I think, to say the least, there needs to be some major attitudinal changes to see a better relationship between the two communities.

MR. HARTOG. Mr. Red Owl?

MR. RED OWL. I would concur with Chairman Flute's statement. Also, I would like to amplify on that. The relationship is primarily a consumer relationship, the Indians buying goods from the merchants, and in Sisseton, the majority of the merchants are non-Indian.

The social context, interracial, interpersonnal relationships are nonexistent. The two communities are distinct and separate.

MR. HARTOG. Could you amplify on that?

MR. RED OWL. Yes. The two communities stay with their own kind. Socially that is true. Economically that is true. Religiously that is true. There are white churches and Indian churches there. All goods are purchased from the non-Indian.

MR. HARTOG. In amplifying on the economic matters, Mr. Red Owl, you are the tribal planner and are responsible for the tribe's economic development; is that correct?

MR. RED OWL. Yes.

MR. HARTOG. What is the tribe's annual budget?

MR. RED OWL. The Sisseton-Wahpeton Sioux Tribe has a budget of \$8,755,483.

MR. HARTOG. How much of this budget would you estimate is spent in Sisseton?

MR. RED OWL. I would say a good healthy 70 percent of the budget is spent in Sisseton.

MR. HARTOG. The tribe has approximately 400 employees?

MR. RED OWL. That is correct.

MR. HARTOG. How many of them do you know to live, shop, work around the Sisseton area?

MR. RED OWL. I would say safely 60 percent of the employees.

MR. HARTOG. I understand you brought with you a document—

MR. RED OWL. Yes, I have.

MR. HARTOG. —describing the economic background of the tribe. Would you briefly describe that?

MR. RED OWL. Yes. The document that we have for the Commission here is entitled "Fiscal Year 1978." And it provides information regarding the outlay of Federal funds for the benefit of the Sisseton-Wahpeton Sioux. There are three agencies providing funds. First, the Sisseton-Wahpeton Sioux Tribe and they provide Federal funds amounting to \$8,755,483. The second agency providing Federal funds for the benefit of the Sisseton-Wahpeton Sioux is the Sisseton agency of the Bureau of Indian Affairs which contributes \$2,229,292. The third agency is the Sisseton service unit of the Indian Health Service which contributes \$5,021,640 for a total Federal outlay for the current Federal fiscal year amounting to \$16,006,415.

MR. HARTOG. Mr. Chairman, I would like to request that this document be entered into the record with the appropriate exhibit number.

CHAIRMAN FLEMMING. Without objection it will be entered into the record at this point as Exhibit No. 5.

MR. HARTOG. Mr. Stillson, you run a gas station and a service and tire service in Sisseton?

MR. STILLSON. Yes, sir.

MR. HARTOG. Can you estimate roughly how much business you do with the tribal members, small, large, substantial?

MR. STILLSON. Substantial. I do not know the percentages. We don't try and keep track. I know a lot of the people trade with us.

MR. HARTOG. Do Mr. Red Owl's and Mr. Flute's statements about the economic contribution of the tribe to the city's economic well-being come as any surprise to you?

MR. STILLSON. No.

MR. HARTOG. Do you think other business leaders in the community are aware of that?

MR. STILLSON. I'm sure they are.

MR. HARTOG. Do you think the townspeople should look favorably or unfavorably on the growth and the existence of these kinds of economic resources in the tribe?

MR. STILLSON. Favorably, very favorably.

MR. HARTOG. Do you think people in fact do?

MR. STILLSON. As a rule I think they do.

MR. HARTOG. Could you characterize your understanding of those people who don't? How is that segment of the business community which is not sympathetic and favorable to the economic contribution of the tribe? How does that part of the business community feel about the situation?

MR. STILLSON. Well, there are some people once in a while who will kind of ridicule the way the tribe is building up out there at old agency because they are spending a lot of money and they say, "Well, it is our money they are spending." I don't hold with it because what they

are doing out there is employing a lot of people. The people are learning to work and hold jobs and they are good citizens.

MR. HARTOG. Mayor, do you share that view?

MR. PEARSON. Yes.

MR. HARTOG. Do you think the business community is aware of the—supports the economic contribution of the tribe?

MR. PEARSON. Those that do not hold with the view probably are very critical of a lot of other things. I do not know what the word is I would want to use to describe them. Nothing would be right with those other type people.

MR. HARTOG. Is that a small or large percentage?

MR. PEARSON. Very small.

MR. HARTOG. Very small? One or two people?

MR. PEARSON. I won't say that small, no.

MR. HARTOG. But certainly not any consequential part of the community?

MR. PEARSON. I would say not.

MR. HARTOG. It is a consequential amount of people who hold the negative view to the tribe in the community?

MR. PEARSON. Would you repeat that?

MR. HARTOG. There is a substantial amount of people who do hold a negative view towards the tribe?

MR. PEARSON. No, I don't think so.

MR. HARTOG. Mayor, you have been in the city government for a number of years?

MR. PEARSON. Yes.

MR. HARTOG. Ten or 12 years?

MR. PEARSON. Right.

MR. HARTOG. Would you describe how you think the city's relations with the tribe have changed in the past years.

MR. PEARSON. I think we have gotten along much better. We have traded work with each other. The tribe has helped us this last winter; we had tremendous snowfall in our area. Our city just does not have the type of equipment to handle those types of snowstorms. They assisted us many times in snow removal with equipment and with manpower. We have in return done some things; we don't have all that much equipment, but we have done some sweeping with our sweeper for them, allowed them storage space for gravel, and this type of thing. In that area, I think, the working back and forth has been very good.

MR. HARTOG. Roughly what is the city's budget?

MR. PEARSON. We are operating on about \$800,000 per year.

MR. HARTOG. How much of that is by the city's municipal liquor operation?

MR. PEARSON. About \$90,000.

MR. HARTOG. You were talking about some present cooperation. Can you describe for me some of the earlier relations between the tribe and city government, in the early seventies, the beginning of this

decade. You said in your opening, in response to my opening question, things have improved.

MR. PEARSON. Just in the past 4 years I have been mayor. I have been a city councilman for a number of years before this.

It used to be a little hard for any kind of cooperation between not only the tribe but the county and the city in working back and forth together.

MR. HARTOG. Could you amplify on that a little bit?

MR. PEARSON. I do not know if I can or not.

I guess I have become more aware in the last 2 or 3 years because of the mayor's position that I have had to deal more with Chairman Flute and members of his staff. Before that, I guess I wasn't that familiar or that inclined to show that concern.

MR. HARTOG. Why?

MR. PEARSON. I guess, as a new councilman on the council concerned with parks, streets, water improvements, these types of things, I emphasized that more.

MR. HARTOG. There was no need to deal with the tribe in earlier years?

MR. PEARSON. Not in my capacity as councilman.

MR. HARTOG. Mr. Stillson, there is no significant industry, major employers of any consequence, in the city of Sisseton, 30, 40, 50, 100 employees; is that correct?

MR. STILLSON. No, there isn't. Landsberger, seasonally, I guess, produce—and that is getting smaller each year.

MR. HARTOG. You are the president of the Sisseton Development Corporation, a profitmaking enterprise, which is seeking to buy land and build an industrial park to attract developers to Sisseton?

MR. STILLSON. That is right.

MR. HARTOG. Can you tell us a little bit about that corporation and what your objectives are?

MR. STILLSON. Our development corporation is composed of a bunch of businessmen investing some money together to try and develop something, to entice some industries into town that would create employment. Basically, that is what we started some years ago. Still that is what we are trying to do.

MR. HARTOG. Mr. Red Owl, the tribe has for several years had an industrial park which, despite your office's best efforts, still remains unoccupied, is that correct?

MR. RED OWL. That is correct.

MR. HARTOG. Can you tell us a little about that?

MR. RED OWL. The industrial park is located at the agency village, 8-1/2 miles south of Sisseton, South Dakota. The project was funded by the Economic Development Administration [EDA] approximately 3 years ago. The project cost approximately \$260,000 and provides adequate land, water, and sewer facilities and highway facilities to the site.

The tribe has been active since its construction and has had a very intensive effort to attract industry to the site, primarily through solicitation.

MR. HARTOG. Mr. Red Owl, has there been any common communication or cooperation between the two development enterprises?

MR. RED OWL. To my knowledge, there has been no communication.

MR. HARTOG. Mr. Stillson?

MR. STILLSON. In the last 3 years, I'm sure that is right.

MR. HARTOG. Why?

MR. STILLSON. We have been very inactive until about a year ago last March. Then we decided to give it a go again, get some more money in and try and do something. Before that time it was very inactive.

Earlier than the 3-year term Mr. Red Owl talked about, when our development corporation had a meeting, the tribe was there, their employees. I do not know who all it was. I know Chris Johnson, a few of them were there. We were talking with EDA. I suppose part of the upshot of that was that EDA helped them to build their industrial park. Nothing ever came of it as far as we knew, as getting industry in.

MR. HARTOG. Mr. Red Owl, the same question. It's rather anomalous from an outside point of view, to see these two communities which, according to the mayor, have good relations and, according to Mr. Flute, having good economic relations, have side-by-side development corporations?

MR. RED OWL. That is correct. I recall the tribe's officers and specifically Chairman Flute's offer at the time of his inauguration as tribal chairman. This was, I believe, 3-1/2 years ago, wherein an invitation was extended to the counties on the reservation area as well as the city to form a joint economic development consortium for purposes of fostering industrial development. To my knowledge, there have been no responses to that appeal.

MR. HARTOG. Chairman Flute, would you care to comment on this situation?

MR. FLUTE. Sure. I think it was probably a year ago, to the best of my recollection, that I talked to my EDA planner and asked him if he felt that the attitude within the town of Sisseton and those business leaders who were interested in industry would be favorable to where we would host a meeting and to discuss mutual areas of concern, namely industry and jobs, and his response was to me he thought the timing was right, the attitude was right, and that such a meeting should take place.

I asked him to extend the invitations to a number of business leaders to discuss economic development. To my recollection, there were three members of the community that came to a meeting, the editor of the local newspaper and one farmer-rancher and another individual



that I don't recall at this time. We discussed the possibilities of joining forces in economic development, and the sum result of that meeting was that one of the members of the non-Indian community expounded for about an hour and a half on all the failures of industrial development and they got up and thanked me for the meeting and walked out. That was the extent of our session.

From that meeting—I read into that that if we were going to do anything on industrial development that the tribe ought to keep its nose to its own business and proceed as we have been.

MR. HARTOG. Mr. Flute, the mayor earlier was talking about the improvement of the relations between the tribe. Could you give us your historical overview in the change in the relations with the tribe? Of course, the tribe has not always had the resources it currently has. Could you include that in your overview?

MR. FLUTE. The Sisseton-Wahpeton Sioux Tribe was really not organized as any visible form of government until the early seventies. Prior to that time the tribal government, per se, had no credibility within the community with both the Indian or non-Indian. This was primarily due to the fact that Federal funds that were available to the tribe were either not applied for, or the tribal council at that time did not have the experience or expertise available to take advantage of any programs.

There were a number of EDA projects available to the tribe which, to my understanding, the city and the tribe jointly applied for and that included water and sewer expansion for the city of Sisseton, construction of a hospital, airport runway, and a number of other projects.

None of these directly had an impact to the tribe. They were directly advantages to the Sisseton community. It wasn't until 1971 that the tribe began extensively contracting under the 1910 Buy Indian Act and through the Buy Indian Act and up until the Public Law 93-638, the Indian Self-Determination Act, the tribe has steadily increased the number of contracts we have with Federal Government for proper providing services. The tribe itself has virtually no independent income. Through tribal lands, the gross income to the tribe probably averages \$2,000 a year. Through Federal contracts now we have built a very shaky economy, year-to-year economy on the Federal contracts, approximately \$9 million a year business.

During this period of time, the tribe, because of jurisdictional problems, and these were caused primarily by a number of lawsuits that were filed in the State and Federal courts and ultimately resulted in the U.S. Supreme Court decision that ruled the reservation boundaries had been terminated and the reservation was diminished to those parcels of trust land.

When that Supreme Court decision—prior to the Supreme Court decision when the lower courts were ruling on the issue, we went through a period of about 2 months where there was absolutely no law and order for the Indian people on the reservation. The State courts

had ruled and the appeals courts had ruled the State did not have jurisdiction over any Indian people anyplace within the boundaries of the reservation, and this left the tribe and the community in a chaotic situation that the tribe was not prepared financially or manpower-wise to quickly put into effect the judicial system or court system.

The court rulings forced us to do this. It was the long-range plan of the tribe to eventually do this in a staged process. The lower court rulings forced us into this. This caused many problems within the community. When the case was finally resolved by the U.S. Supreme Court and the decision was that the boundaries had been terminated and that the tribe had jurisdiction only over its own members on trust land again, we went through a chaotic period of time when no one really knew who had jurisdiction, where law enforcement started, where somebody else took over, whatever the situation was.

That also caused some economic problems with the tribe in that we had one local bank and a savings and loan institution that began refusing to make loans to Indians. That caused a lot of problems for us. The attitude, I think, within the community at that time as far as the tribe was concerned was extremely poor. The tribal council then made a decision that, even though the town is named after the tribe's namesake, that perhaps it was time to move out of the community. And since the attitudes were not favorable, there didn't seem to be any type of progress, the decision was made that the entire operations of the tribe would be moved to the old home ground, the old agency village, and that any developments through Federal programs would occur only on Indian trust land.

In my mind, had the attitude of the community placed itself in a position for negotiation and if there were room for compromise between the tribe and the non-Indian community, I would estimate that somewhere between \$5 to \$10 million worth of development probably could have taken place right within the Sisseton community. But instead, it was the tribal council's decision to move the operations out of town, and we began a period of isolationism, aside from the economic needs of the tribe in consumer goods, and that is currently the status of the tribe.

MR. HARTOG. Mayor, would you care to comment on that. Do you share that overview and perspective?

MR. PEARSON. Well, to say that our community hasn't gotten along that well or done anything as far as the tribe is concerned, I don't think that is exactly correct. Our council voted in 1968 to approve this Operation Turn Key, which is 80 units of low-income housing. Our council seen a definite need in our community. People were living in housing that wasn't fit to be lived in. Renters were renting homes to people and getting exorbitant rents.

MR. HARTOG. Mr. Flute was talking more in the last few years rather than 1968. In that period of time would you agree with his characterization?

MR. PEARSON. I guess I'm trying to lay a little background. This leads up to, and it isn't a project solely for 1968. We are still involved in the project. It still continues to be a very important part of our program of low-income housing. This resulted in 80 units of housing initially, and the city of Sisseton received a cash sum plus the new garbage compactor to help take care of the additional homes that would be using those services. It also placed a little growing pains on us in that we had to amplify our water system, maintain some streets that we never had before, provide fire protection that we never had before, and it has been of some cost to our community to have this. But we are thankful we do have it. I think the people that live in these homes are thankful this happened also.

MR. HARTOG. Mayor, in the spring of 1977 some AIM [American Indian Movement] members and some tribal members approached the city council regarding a human relations commission.

MR. PEARSON. That is correct.

MR. HARTOG. A series of meetings was had, helped along by the Community Relations Service, Department of Justice.

MR. PEARSON. That is correct.

MR. HARTOG. Was the CRS helpful in moving the commission effort forward?

MR. PEARSON. There was two individuals that were very helpful, Art Montoya of the U.S. Justice Department and Manuel Salinas. There was one, I'm not so sure he was associated with the Department, that was a detriment to the whole community.

MR. HARTOG. What is the status of the efforts to have a human relations commission right now?

MR. PEARSON. Our status right now, at this point, is that we have had the first reading of an ordinance establishing the human relations commission within our city. At this reading of the ordinance we had a very good delegation of people there that indicated they would like to see some changes in the wording, different paragraphs they would like to see added to the ordinance. It was at this time that we found it necessary to get an attorney general's opinion on those things that were wanted to be added. We just recently received that back. We will be proceeding to establish this ordinance.

MR. HARTOG. Have you communicated to the tribe the response to the question by the attorney general?

MR. PEARSON. No, I have not.

I guess the other reason that this ordinance has not been passed, there seems to be a lack of interest from the other two governmental entities in establishing this type of ordinance.

MR. HARTOG. My understanding, you have had that opinion now for well over a month.

MR. PEARSON. That is right.

MR. HARTOG. Have you not brought that to the attention of the tribe?

MR. PEARSON. I have not.

MR. HARTOG. Why?

MR. PEARSON. Our council has decided there should be some effort shown by the tribe to show some interest in this ordinance. I have attended many, many meetings and so have other members of the council and members that are in the employ of the city like our police chief and so on, and it is very rare we see any representation from the tribe at these meetings, and especially now, at this first reading of this ordinance there was no delegation at all from the tribe at that meeting.

This involves three entities of government, but if it is just one entity of government that is concerned about it, we feel there should be some more input from the other two.

MR. HARTOG. Mr. Flute, would you care to respond?

MR. FLUTE. Yes, I am also waiting to see what the attorney general's opinion would be on the request that was made by members of the public during the discussion on the human relations commission. There was some feeling on our part that when both units of government, to my understanding, requested the attorney general's opinion that this was nothing more than a delay tactic, since the language that was proposed giving the commission subpoena power was considered to be standard language in most human relations commissions throughout the country.

If we have not had participation up until now, I would have to take my licks for that, because up until the time that the recommendation was made that the commission have subpoena power, I think we had representation at most of the meetings. I was there at several myself. I have had representation at meetings up until the request for the attorney general's opinion.

MR. HARTOG. I have no further questions at this time, Mr. Chairman.

CHAIRMAN FLEMMING. I ask the chairman of the tribe about the contracts you enter into with the Federal Government for services. Do you in turn, after you enter into these contracts and receive the Federal funds, enter into subcontracts for the delivery of some of these services, or do you assume complete responsibility for the delivery of the services?

MR. FLUTE. Our subcontracts, Mr. Chairman, are very minimal. We do have some, but the majority are carried out by the tribal administration.

CHAIRMAN FLEMMING. Where you do enter into a subcontract, do you make a determination that the subcontractor has an affirmative action program?

MR. FLUTE. That is normally standard language in any of the Federal contracts that we have. The tribe obviously is covered under the Indian preference law which was tested in the Supreme Court and upheld.

CHAIRMAN FLEMMING. Right.

MR. FLUTE. In addition, any of the subcontract forms that accompany major contracts that we have requires the equal opportunity and affirmative action plans; yes, that is standard language in subcontracts.

CHAIRMAN FLEMMING. Have you had any occasion to determine whether or not the affirmative action plan put into effect by the subcontractor has produced results as far as Indian employment is concerned?

MR. FLUTE. I'm satisfied that the subcontracts we have had comply with the provisions. The tribe is sometimes caught in embarrassing situations where, using the Office of the Federal Contract Compliance, we force Federal contractors, highway contractors, manufacturing contractors, into hiring Indian people, and the problem we run into is that many of our Indian people are very reluctant to leave the reservation. We may find jobs for them with contractors that are engaged in Federal contracts that are off the reservation, and our retention rate with the Indian employees is very low. If the employment is on reservation within commuting distance, whether it be standard employment or training, whatever, I think our success ratio has been very high. We have had many graduates, many employees, who stayed with the project to completion. Many times when the employment is off reservation it is not very good.

CHAIRMAN FLEMMING. Could you just give us a picture of the employment situation as far as the members of the tribe are concerned, either on the reservation or off the reservation? You have identified what I recognize as one of the problems, but what is the overall picture? What is the unemployment rate at the present time?

MR. FLUTE. We average, Mr. Chairman, a year around 50 to 55 percent unemployment. And in spite of the tribe's efforts on the contracts we have through the Federal Government, as I stated before, many of these are training contracts and not considered employment. Many are year-to-year contracts; it might be a 3- or 9-month contract. It doesn't lend itself to any type of assurance you are going to have a job for a number of years.

The entire tribal government is premised on the year-to-year contract basis. If for any reason, if the Congress decided that the tribes would be terminated, for example, we would not have an economic base to operate from to provide the same services we have now. But generally, I think 50 to 55 percent is the unemployment average.

CHAIRMAN FLEMMING. Does the tribe have an active counseling, training, placement program designed to decrease the unemployment rate?

MR. FLUTE. We have a manpower staff with—administratively there are probably eight or nine individuals that are involved in placement, training, and counseling. We also work very closely with the South Dakota Employment Service and very closely with the Department of Labor. That doesn't necessarily mean that because of these resources we have high success ratio in employment placement or in training. If it is done on reservation, very close to home, we have very good success. Off reservation, not too good.

CHAIRMAN FLEMMING. As you look to the future, what do you think is the solution in terms of cutting down that very high rate of unemployment?

MR. FLUTE. I don't believe that the solution is going to be a simple one; it is not simple. It is going to be costly.

In the rural area we are located in, from all the economic resource people we have talked to, our chances for any major industry that would employ 25, 30 people year round doesn't look that good. We are really not in a good rail location area. We have got problems with the railroads threatening to close down the line every other week. We have got problems with grain shipment for farmers, getting grain moved out. The major interstate highway is not scheduled for completion until 1980, 1981, possibly longer depending on Federal funds. Transportation-wise we are very weak. The air transportation in South Dakota is very poor, particularly in the northeast area of South Dakota. Generally, the characteristics that would induce industry to move into the area are confined to one thing: we have a readily available labor force. Industries are very reluctant to move into an area that have only that ingredient; they need the rail lines, they got to have a good transportation network to move goods in and out. We don't have that in our area.

CHAIRMAN FLEMMING. That has been the problem as far as your industrial park development is concerned?

MR. FLUTE. Right.

CHAIRMAN FLEMMING. Mayor Pearson, does the city government have an affirmative action plan?

MR. PEARSON. Yes, sir.

CHAIRMAN FLEMMING. As far as employment is concerned?

MR. PEARSON. Yes, sir.

CHAIRMAN FLEMMING. What is your employment of minorities?

MR. PEARSON. I would say we are about 20 percent.

CHAIRMAN FLEMMING. Are a large number of the minorities Indians?

MR. PEARSON. Yes.

CHAIRMAN FLEMMING. What kind of positions are they employed in?

MR. PEARSON. We have Mr. James Yammerino, our police chief, and Elbert Star, highway patrolman for us. He has been with us for many years. Also we have an employee that is the assistant street superintendent. Through the years various positions, not just menial jobs of picking up garbage.

CHAIRMAN FLEMMING. Right.

MR. PEARSON. But as to qualifications, if they meet the qualifications, they are treated like everyone else.

CHAIRMAN FLEMMING. Is there a good working relationship between the manpower activities of the tribe that have just been described and your personnel office?

MR. PEARSON. I think there has, yes.

CHAIRMAN FLEMMING. Would you comment on that, Mr. Flute.

MR. FLUTE. I couldn't give you a positive answer, Mr. Chairman. The tribe's employment branch, as I described to you before, is in the branch of administration which is not my day-to-day responsibility, so I'm sure there has been some interrelationship. Whether it is good, bad, I can't tell you.

CHAIRMAN FLEMMING. Mr. Stillson, what is the picture as far as private employment is concerned in the community in terms of the employment of minorities?

MR. STILLSON. Well, I do not know what percentage it would be. At the present time, I do not employ any Indians. I have—I would if they were qualified, no problem.

A lot of the businesses in Sisseton are family-owned businesses where the family itself works the business predominantly. I believe right now I have—I have three of my own children in my business with me, two sons and a daughter in my business with me. That fills part of the slots. A lot of other businesses are the same.

CHAIRMAN FLEMMING. Mr. Flute, what is the experience of the tribe as far as employment of Indians in the private sector in the community is concerned?

MR. FLUTE. I don't believe that the tribe has ever made a strong effort within the community itself. We experienced a situation a few years ago where the wages within those areas of employment were less than what an individual could draw on welfare and, as a result, it was very difficult to get an Indian who was, say, with a family of five drawing \$550, \$600 a month on welfare to go to work for \$400 a month. As a result, there were a few efforts made to place Indians in jobs within the community, but the wages were lower than what they could draw on welfare. As a result, we have never done that again.

CHAIRMAN FLEMMING. Are there any members of the Indian community serving on the city council at the time?

MR. PEARSON. No, sir.

CHAIRMAN FLEMMING. I assume that all of the witnesses on this panel would state that the kind of issues that were described by the previous panel are issues that do create real problems, real tensions as between or within the community. We haven't pursued that. You have listened? I do not know whether you were here at the time that testimony was being presented or not. If you have anything to add to that, I know we would be glad to hear from you on it.

COMMISSIONER FREEMAN. Mr. Flute, how much land is owned by the tribe?

MR. FLUTE. Corporately, the tribe owns approximately 12,000 acres. Individually, there are approximately 100,000 acres that are owned by individual members of the tribe.

COMMISSIONER FREEMAN. Is this land from which you receive income of less than \$2,000 a year?

MR. FLUTE. From the 12,000 acres?

COMMISSIONER FREEMAN. Yes.

MR. FLUTE. Most of that land is mortgaged to FHA at this point. We don't receive a large income from that, aside from making the payments. Prior to the tribe's loan with FHA for land purchased, we owned approximately 900 acres of land to the corporate tribe itself. That is where the estimated \$2,000 a year income is derived from.

COMMISSIONER FREEMAN. Would you describe for the Commission the present use which is being made of that land.

MR. FLUTE. The present use is primarily agriculture. It is being leased to non-Indians as well as Indian farm-ranch operators. A small percentage of the land is used for low-rent housing and HUD's [Department of Housing and Urban Development] mutual self-help home ownership program. The tribe makes land available to individual members of the tribe that do not own land for the purpose of qualifying for the HUD program.

COMMISSIONER FREEMAN. Would you have an opinion as to whether the present use is the maximum utilization or if there is another potential for greater utilization of the land?

MR. FLUTE. In our opinion, the maximum utilization of this land would be made by the tribe's farm operation. We currently have a farm operation that utilizes approximately 2,500 acres of cropland. The current plan is to expand this operation, and the goal is set where the tribal farm itself will farm an estimated 20,000 acres of cropland.

COMMISSIONER FREEMAN. What is the status of the plan of that operation?

MR. FLUTE. It is progressing slowly. We did see some improvement this year. We have increased our acreage by about 30 percent from last year.

COMMISSIONER FREEMAN. What needs to be done for the tribe to obtain the potential or maximum utilization of the land?

MR. FLUTE. First thing, we need good weather. We have gone through severe drought and this had caused an impact on the entire area of all agriculture. We also went through some rocky times on cattle production with the prices, and those prices have just recently been on an increase and are at least stabilizing now. The tribe would need to have at least three or four good productive years to begin expansion of the farm operation as rapidly as we would like to see it expand. If not from the income derived from the farm, then we would need to capitalize the expansion either through loans or some other Federal grant program.

COMMISSIONER FREEMAN. If there could be expansion of the farm operation, is it your opinion that it would have any impact on the present unemployment rate? If so, how much?

MR. FLUTE. The tribal farm operation is very low in labor. With the type of machinery available now, we have a three-man operation that farms the estimated 2,500 acres of land. What we hope to accomplish by the farm operation is to encourage more of our younger people to get into agriculture. Agriculture is the economy in our area. We have



many acres of land that are in tribal or individual ownership. A lot of this land is good productive cropland. We have seen an expansion of individual operators since the beginning of the tribal farm operation.

We have a training program in agriculture right now, and we have 16 members of the tribe who are participating in this training and these members are either making their sole livelihood from a farm operation or they are working at a farm operation part time. They are enrolled in the training program which gives them academic training in all phases of agriculture—livestock production, crop rotation, pesticides, herbicides. We hope to see this type of program increase utilizing the tribal farm as the nucleus for experience, expertise, possibly utilization of the tribe's farm machinery, and this year we are doing exploratory well-drilling for irrigation. I hope that possibly the next growing season the tribe will have 6 to 10 center-pivot units in operation in irrigating farms. If that happens I'm sure we are going to see more Indian young people interested in agriculture.

The philosophy we have is that because of a high rate of alcoholism on the reservation which is due to poverty conditions that there has been a complete dismemberment of the family unit, and when you look at a farm operation, a family farm operation, you see a very strong cohesiveness within the family. Each of the members of the family are dependent on each other to carry out certain responsibilities in the farm operation. It is our theory that if we can induce this type of thinking and demonstrate that the family farms are still capable of supporting a family, that perhaps this will bring some form of family cohesiveness back as we knew it years ago.

COMMISSIONER FREEMAN. How long would it take this program to become operational?

MR. FLUTE. I would estimate this type of transition would probably take 15 to 20 years.

COMMISSIONER FREEMAN. So that what you are saying is even under a program which you have outlined, there would be one generation that would be completely lost.

MR. FLUTE. Yes, that is an accurate statement.

COMMISSIONER FREEMAN. Thank you.

MR. NUNEZ. Just one question on the economic development of the area, as I understand the problem, the reservation had this industrial park developed and they invested approximately a quarter-million dollars. The town or the town merchants are working along developing a private economic development center in the town area. The question that comes to my mind, perhaps all of you could respond to it briefly, I think Chairman Flute responded they made an effort to work together. It would seem to me that this would have been a natural—the tribe has access to Federal funds, the private merchants have a certain amount of expertise in this area, there is an enormous need for employment. Why wasn't there a more aggressive affirmative effort made to work together to see if a joint industrial development effort

could have gotten off the ground in this area that so badly needs it? Perhaps you could all respond to this question.

MR. STILLSON. I might make a statement there. I don't recall who drew up the articles. I guess I was one of the businessmen that formed it. I don't recall. It has been about 11 years ago, I think now, 9 years, something like that.

This corporation we have is set up as a profitmaking corporation. Looking at it from a business standpoint, I guess first of all, if we have an opportunity to talk to industry about coming into Sisseton as a profitmaking standpoint, we want to try to develop it. If there is any question or wish to desire to look someplace else, I'm sure we would help them, just like we do in our own businesses. If somebody doesn't want to trade with me or I can't help them, I send them across the street. But our corporation has been set up as a profitmaking corporation.

MR. NUNEZ. Would anyone care to make any further comments on this question?

MR. FLUTE. I think probably the basis of that particular problem lies in the fact that we still have these underlying racial problems within the community, and I can certainly appreciate the comments coming from Mr. Stillson and Mayor Pearson that perhaps there are a small number of people within the community that object to everything. There are a small number of people who probably have discriminatory attitudes towards Indians. But by and large, I think it has been our experience that because of much publicity on land claims, because of American Indian Movement activities, and many things involving jurisdiction—school board problems, Johnson-O'Malley, funding problems—that I can't honestly in my own opinion believe that the hostility towards Indian people is not very high within that community. I can't honestly believe that at this particular time, in view of these problems, that any type of successful joint venture could be accomplished. I believe that within the community there are many, many problems because of race.

It has been my own personal attitude that we do our thing, they do theirs. We don't get into any hassles with anybody. If the community of Sisseton is fortunate to get an industry, I'm sure that somewhere down the line there will be Indians employed in that industry. If the tribe is fortunate in securing an industry, somewhere down the line there will be white people employed by the industry, but I think for contemporary purposes until attitudinal changes take place, we continue as we are.

CHAIRMAN FLEMMING. Is there any regular mechanism within the community whereby regularly you sit down and talk with one another; that is, leaders in the business community, the city government, and leaders of the tribe?

MR. FLUTE. I would like to make one comment to that, Mr. Chairman.

I guess I have been around the horn long enough in tribal government. I have been knocked around by people that are discriminatory as much as any other minority. I know what it is to be on the receiving and the giving end. I have taken an attitude upon myself, try something once and if it doesn't work and I have no response, then I'm not going to do it again. When I was inaugurated as tribal chairman 3-1/2 years ago, I extended an invitation to the city council of Sisseton for a joint meeting with the tribal council. I had no response whatsoever. I extended a written invitation to the county commissioners of Roberts County. I did have a response. We had one meeting. That meeting was more or less an informal get-together. It wasn't to discuss any problems in depth. It was generally to get acquainted. We left the door open; the tribal council was open to the county's invitation for the next meeting. Then we would start getting into a format of discussing common problems. We have never had that invitation in return.

With absolutely no disrespect to the current mayor, I do not know if he was on the city council at that time. I know he wasn't mayor at the time of the invitation. We have not had a meeting nor have I ever extended another invitation to the city council or the county commissioners.

CHAIRMAN FLEMMING. I think I interrupted Mr. Red Owl, who was about to respond to Mr. Nuñez.

MR. RED OWL. The question as I recall dealt with joint cooperative ventures in economic development.

The Sisseton-Wahpeton Sioux Tribe has contributed Federal funds to the city of Sisseton in rather sizable quantities. The mayor's earlier statements alluded to those contributions. We have included in the handout here a listing of the contributions, specifically \$11,066,750 contribution which includes a Bureau of Indian Affairs high school in Sisseton, airport, water and sewer lagoons, 83 units of HUD housing, costing in excess of \$5 to \$6 million.

Now, the point of this is, as we talk or at least I talk to the people in the tribe, I'm their employee with an outlay of Federal funds. These funds are not simply the taxpayers' funds. These are obligations of the United States to a federally-recognized Indian tribe, pursuant to statute and treaty. These are not handouts to a poverty group. These are legally binding obligations.

Now, whenever such a thing occurs, there must correspond an equal part; that is, control of those funds and participation in those intras-structure elements in the community. That hasn't happened. I can't explain why not.

CHAIRMAN FLEMMING. Do you have anything else?

MR. NUNEZ. No.

DR. WITT. Mayor Pearson, you stated earlier that there is not now an Indian as a city commissioner. My question for you, has there ever been an Indian as a city commissioner?

MR. PEARSON. In my 10 to 12 years involved in the city government there has not.

DR. WITT. Mr. Red Owl, my question is in the context of your statement earlier about the noncontact between Indians and non-Indians on the social level. We are aware of the cultural difference between Indians and non-Indians, different customs, points of view, lifestyles, and the like. Do these cultural factors count in any way or to what extent for differences in Sisseton?

MR. RED OWL. No. I don't think the cultural uniqueness of the Sisseton-Wahpeton Sioux contribute to the differences. The mother tongue for the Sisseton-Wahpeton is English. Very few of the Sisseton speak their native tongue anymore.

The educational system occurs there. We have a very high educational level as Sisseton-Wahpeton. So the separateness cannot be attributed to cultural or language differences.

DR. WITT. That is all.

CHAIRMAN FLEMMING. I would like to ask Mayor Pearson whether he would like to comment on Mr. Red Owl's reference to the Federal funds—what he feels should be the relationship, the connection with the expenditure and administration of those funds.

MR. PEARSON. There is no question that the city of Sisseton has enjoyed a lot of Federal money through the years. I guess the thing that I don't quite see is the disassociation. I feel we are, all citizens of our community, and whether you are Indian or non-Indian, you enjoy the same services if you are a resident of the city of Sisseton. The airport benefits everyone, just as we received a grant for economic development, LPW [local public works] project, for additional water storage and transmission lines through our community, and this in fact helps everybody, members of our community. I guess through the years I have never made the distinction between Indian and non-Indian, but all are citizens of our community.

CHAIRMAN FLEMMING. On the airport, who administers the airport? Is there a board or commission?

MR. PEARSON. It is the chairman, it is the board within the city council.

CHAIRMAN FLEMMING. It is a committee of the city council?

MR. PEARSON. That is correct.

CHAIRMAN FLEMMING. Does it have any advisory committees of any kind?

MR. PEARSON. No, sir, it does not.

CHAIRMAN FLEMMING. In view of the fact there isn't a member of the Indian community on the city council, that means there is no member of the Indian community that participates in any way in the administration of the airport.

MR. PEARSON. Only with the exception that the city council meetings are open to the public. This information could be disseminated.

CHAIRMAN FLEMMING. Is any member of the Indian community employed at the airport?

MR. PEARSON. We don't have any employees.

CHAIRMAN FLEMMING. You don't have any. Right. It is serviced by one of your regular departments of city government?

MR. PEARSON. We do have a part-time girl. This has only been recently within the last 2 months, just to sit and answer the phone. Otherwise, the mowing of the runway and the maintenance is taken care of by our street departments.

CHAIRMAN FLEMMING. Ms. Freeman, any additional questions?

If not, thank you very, very much. We appreciate your testimony.

MR. FLUTE. I would like to make one parting comment, Mr. Chairman, if you don't mind.

CHAIRMAN FLEMMING. Certainly.

MR. FLUTE. It seems that chairmen always want to get the last word.

In looking at the past work of this Commission, I have seen some public things where you have had rebuttal with the attorney general of the State of South Dakota, and I am sure you have had it with other officials within other States. When you begin to analyze our particular area of South Dakota, the relationship between the tribe and the non-Indians up there, this committee and this Commission may have authority to recommend legislation. You may have the authority to change administrative policy and statutes. That is all well and good, but I don't think that this Commission, the tribe, the city, anybody has got it together to change attitudes. And until attitudes are changed within the community, the tribe and the white community are going to be this far apart [indicating] and it will stay this way. And I think this holds true for minorities across the country. And I don't know whether any kind of public information type of things do any good.

When your attitude is set, that is it. I'm that way many times. It doesn't make any difference who it is; to convince me to do otherwise, if my attitude is that way, I want to stay that way. And I am sure that many of our people in the community, within the State of South Dakota, that have an attitude of discrimination against Indians are not going to change. I guess what I am saying is I appreciate the fact of your coming here, but I don't think you're going to do anything.

COMMISSIONER FREEMAN. Mr. Flute, I would like to respond; you will not have the last word. First of all, this Commission recognizes its limitations with respect to changing of attitudes. However, this Commission does have the authority to make recommendations to the President and the Congress which may have the effect of changing the conduct.

Now, if I may give you an example of—at least with respect to what happened to the public accommodation laws in those States where blacks were relegated to the back of the bus, and actually the person who was the victim of such discrimination couldn't care less about the attitude as long as that person was not denied the opportunity to sit where he or she wanted to sit on the bus. I think that it is important to recognize the difference between conduct and attitude. If the con-

duct can be changed so that the practice will mean a better job, then at least we could hope that the attitude will change at some other time. But the job is what will give you the right, the opportunity to improve the quality of life.

So that we do have recommendations and we do have the authority to make recommendations that may, we hope, change the conduct, change the practice, and this is very important.

CHAIRMAN FLEMMING. I would also like to add to that.

MR. FLUTE. See, you didn't get the last word.

CHAIRMAN FLEMMING. I didn't follow up on the discussion that took place relative to the possibility of a human rights commission, but I certainly hope that that concept is going to be pursued, and I certainly hope that on that commission that representatives of the Indian community and the white community will have the opportunity of working together to deal with some of those problems, because certainly it has been my observation over a lifetime that where members of minority groups and the white community are put in a position where they are called upon to work together in the discharge of responsibilities looking toward a common objective, that attitudes do begin to change because they do begin to understand one another, understand one another's culture, and so on, and that was what goes back to my question as to whether or not within this community arrangements have been made for a regular sitting down together to take a look at the common problems that come up, I am sure, on a day-to-day and a week-to-week basis. Certainly they exist in the law enforcement area, as well as in the industrial park area, and in the other areas that you have identified.

MR. FLUTE. Ms. Freeman, in view of the fact that the Sisseton-Wahpeton Sioux Tribe has begun to get very sophisticated in learning the ropes of the Federal Government and securing Federal funds and earning money on our own, if you are ever asked to sit in the back of a bus again, let us know and we will buy the damn bus for you.

CHAIRMAN FLEMMING. Thank you all very much. Counsel will call the next witnesses.

MR. SCHWARTZ. Ruth Potter, Ronald Goldsmith, Robert C. Philbrick, Michael Jandreau.

[Messrs. Goldsmith, Jandreau, and Philbrick and Ms. Potter were sworn.]

**RONALD GOLDSMITH, DIRECTOR, DAKOTA MENTAL HEALTH CENTER;  
MICHAEL JANDREAU, COUNCILMAN, LOWER BRUIE TRIBE; ROBERT  
PHILBRICK, CHAIRMAN, CROW CREEK TRIBE; AND RUTH POTTER,  
DIRECTOR, TITLE I PROGRAM, CHAMBERLAIN PUBLIC SCHOOL SYSTEM**

MR. SCHWARTZ. May I ask each of you please to state your name, address, and occupation for the record, starting with Mrs. Potter?

Ms. POTTER. My name is Ruth Potter. My address is 1107 South Main, Chamberlain, South Dakota, and I am a schoolteacher and Title I director in the Chamberlain Public School System.

MR. SCHWARTZ. Mr. Goldsmith?

MR. GOLDSMITH. My name is Ronald Goldsmith, Box 372, Chamberlain, South Dakota. I am director of the Dakota Mental Health Center.

MR. SCHWARTZ. Mr. Philbrick?

MR. PHILBRICK. Yes, I am Robert Philbrick, and I am the chairman of the Crow Creek Tribe. What else do you need?

MR. SCHWARTZ. I think that will be fine. Mr. Jandreau?

MR. JANDREAU. My name is Michael Jandreau. I am a councilman for the Lower Brule Tribe.

MR. SCHWARTZ. Mr. Philbrick, I would like to start the questioning with you this morning and I understand that you have a statement to submit to the record which has been given to the Chairman.

CHAIRMAN FLEMMING. Without objection, this will be accepted and will be entered as Exhibit 6.

MR. SCHWARTZ. Mr. Philbrick, it is my understanding you have been on the Crow Creek Reservation in the central part of the State of South Dakota for all your life. Although your statement addresses some of these points in detail, I would like you to just give us a very brief, if you would, recent history of the Crow Creek people and their existence in the midst of the State, which will give us a brief historical perspective from which we can go on with some more questions, interaction between the governments and the people in the central part of the State.

MR. PHILBRICK. Yes, I would like to start by saying that since I was born and raised there on the reservation and I got acquainted with the older people, I learned all the history from them, and I talked to the people that talked the Dakota language, and I found out that throughout the years that the Dakota language was a lot easier to understand than the English language because the English language seems to get you in a lot of trouble, and that is why you have so many court systems and lawyers and it takes a long time to translate whatever you want to say and people have a hard time understanding each other. But the Indian language was easy to understand and I learned a lot from the older people that were there and they're gone, passed away now, but a lot of the history since the beginning of the tribe on the Crow Creek Indian Reservation has been very bad to some of the members, in fact all of the members.

First of all, they enjoyed their life along the Missouri River, and this is where their headquarters were and in fact Fort Thompson was started in 1864, as I remember being told, and since that time all the people relied on the Missouri River and its woodland for their income, their livelihood.

And back in 1951 the Corps of Engineers had taken steps to condemn reservation land which took all of Fort Thompson and maybe

some 10,000 to 12,000 acres of land, their choice land of woodland and berries and where they also got trees for building homes and corals and so forth to live in.

And before that time—I should have went back to the time that I went to school, 1 year with the Indian school at Fort Thompson—I didn't start until I was about 9 or 10 years old and the next 2 years I went to white schools where there were all whites. And I know what I had to go through in those years. Maybe it was new to them that they seen an Indian, but I was told I was an Indian every day and I got used to that. But it wasn't too long until I got acquainted to the point where we made friends.

But it was only to a degree that I would understand, in the later years, that the United States Government never intended to do what the treaties told them they were to do. In fact, they never intended to uphold the treaties. They didn't intend to pay the Indian people the land that they had lost in the beginning. And another thing, because if the United States Government would fulfill their treaty right, then we wouldn't be having the problems that we have today, but due to the fact that the United States didn't want to do these things we have run into different kinds of law.

First, we were made citizens back in 1924 when I was 13 years old and, I don't know, nobody asked me if I wanted to be a citizen and I don't think they even told the Indians that they were citizens. Congress just pased a law and I feel that some of these Senators and Congressmen are not aware of some of these things. And then they go to work and pass another law back in 1934 which said that—they called, it is the Wheeler and Howard bill. Now they said the Indians were going to be back like they used to be in 1868 or in the sixties so that they can enjoy the life they used to. But what really happened was it set the Indian people back because some of us didn't accept the rule, the law. So right now the Wheeler and Howard bill is practically a dead issue; the government don't follow this rule. The only time they follow it is when they go back to the Code of Federal Regulations and say the Indian reservations are governed by this law which was passed probably way back when the Bureau of Indian Affairs first started. And some of the laws didn't apply to the modern times.

So we were wondering what is going to become of things, because the laws were so old and we needed some updated laws. Then they go and pass your civil rights law which didn't interpret for the Indian people their civil rights. It was mostly—I think it helped mostly the colored people as far as their rights were concerned, but the Indian rights are still being violated and they are violated right now on the reservations. And so I think something should be done in this respect.

The last thing I want to say is that I hope the Commission can help the tribe. And each tribe has a different treaty to go by, and I feel that if we can sit down with the Government and rewrite these treaties instead of talking about them, rewrite them so that we can both un-



derstand each other, then I think we will have a better working relationship. Because I lived 60 some years now on the reservation there and I know there is lots of improvement can be made.

MR. SCHWARTZ. Mr. Philbrick, what are some of the obligations of the treaty with the Crow Creek Indians that you feel the Federal Government has not lived up to? Can you be somewhat specific on that?

MR. PHILBRICK. Well, one of the things was paying for the land that they had lost due to the Black Hills claim and all the gold that was in these hills and all the trees and all the animals plus all the intangibles. And now on the reservations there isn't any of these things. And we feel that we are badly neglected to progress so we can be in the same stream with the white man.

MR. SCHWARTZ. Mr. Jandreau, you live across the river from the Crow Creek on the Lower Brule Reservation, and I was wondering if the Lower Brule have had a similar or somewhat different experience with the Federal Government in its obligations, particularly around the construction of the dam.

MR. JANDREAU. Which dam?

MR. SCHWARTZ. That would be the Big Bend Dam, I believe.

MR. JANDREAU. Both with the Big Bend Dam and the Fort Randall Dam?

MR. SCHWARTZ. Would you explain what impact those projects had on your tribe?

MR. JANDREAU. Well, the two dams took approximately 30,000 acres of the most fertile, productive lands that were available anywhere in the State for a number of approximately \$2 million or \$1.7 million. And, you know, there is no way that you can replace that type of land for those types of dollars. It also set us back economically, from the standpoint that the ability to develop was hindered and hindered greatly.

MR. SCHWARTZ. Was a movement of people living on the reservation also required by the construction?

MR. JANDREAU. Yes, it was. Approximately 75 percent of the people were moved.

MR. SCHWARTZ. Can you tell us what impact that had on reservation life there?

MR. JANDREAU. That has had tremendous social and economic impact on the people. The people were forced together because of the need to provide cheap housing within the monies that were available. The people were forced together in a very small initial community. However, that community has broadened and become quite large, but it was primarily through the efforts of the tribe that this was done.

The Corps of Engineers and the Bureau of Indian Affairs, in my estimation, greatly neglected their responsibility in helping the tribes to plan, adequately plan and project development for a period of years. It seemed as though they were so intent on getting them the hell out of their hair.

MR. SCHWARTZ. Mr. Philbrick, a moment ago you mentioned some of the problems that exist in the Chamberlain-Crow Creek area, that community today, some of which may have to do with the treaties and some not. Could you go into, on the basis of the present day, what problems you see between Indians and non-Indians in the Chamberlain-Crow Creek area?

MR. PHILBRICK. Well, I have to go back to when the Corps condemned Fort Thompson and all this land. Fort Thompson had a hospital there and nurses and doctors. Well, they could perform some operations there, they had the equipment, and they had a complete high school there. And things seemed to be going pretty good for the Indian people at the time and it wasn't probably a few years in operation.

However, when the Corps condemned all these things, then the Chamberlain hospital had negotiated with the tribe to take their facilities over there to Chamberlain. When I say facilities, I mean things they used to operate with, all the things they had within the hospital at Fort Thompson. And in return they were going to give the services to the Indian people and even was guaranteed so many beds that were going to be in this hospital would be reserved for Indians. And the Indian people then would have to travel to Chamberlain to get these services.

But when these took place there were complaints right away from some of the patients that were there that they were neglected to the point that—not the doctors who are still there today, Drs. Holland and Bender, it wasn't their negligence, but it was the people that were running the hospital like the nurses and the personnel. And the Indians were not given the kind of care they give the other patients and they weren't admitted to the rooms unless the person that was in the room accepted to be in the room with an Indian. And that is all I can say because the hospital was the only thing that we made a deal with, with Chamberlain.

MR. SCHWARTZ. Mrs. Potter, it's also my understanding that you have lived in the Chamberlain area for a long time and that you're also a member of the Crow Creek Tribe and that you have lived among the white community as well. So you have sort of a double vantage point from which to view that community.

I would like you to comment, if you could, on what Mr. Philbrick has said and to add whatever you can about the interaction of Indians and non-Indians in the Chamberlain community.

MS. POTTER. What Mr. Philbrick has said is very true, and the agreement with the hospital—we'll all talk about the hospital there for a minute. The agreement was just as he said it would be and we'll all go back to what was said a little bit earlier on attitudes. So when the hospital then agreed to take all the Indian patients from Crow Creek, they were compensated for it, of course. But there were many in the community who did not wish to be in a room with an Indian patient.

And so, therefore, some of the white community were seeking hospitalization in other places and the hospital in Chamberlain more or less became a hospital for the Indian people. However, that attitude is changing and we are finding that local patients don't mind being roomed in the same room with an Indian patient.

I think probably the thing that was the greatest stumbling block to the Indian people, when they were forced to come to Chamberlain to the hospital, was the fact that if you are Indian you take care of your sick people and you support them emotionally and physically whenever anyone is ill. And of course, with the hospital rules in a white community, it says you will visit between 2 and 4 in the afternoon and you will visit between 7:30 and 9 at night. And this is not the Indian way of doing it. If you are ill, anyone in your family should be allowed to be with you. And so this was where the first friction began over the visiting hours. And then lack of understanding in that area caused attitudes to not be as pleasant as they should.

But it is true when the dam went in, Fort Thompson lost everything. The whole area was inundated. And of course they lost the hospital and they lost their high school. The educational system has not been the same on the Crow Creek Reservation since they lost that beautiful school. There hasn't been a pride in the education of their children the way there should have been.

In going back to what Mr. Jandreau said about Lower Brule, probably the worst thing that could happen at Lower Brule, psychologically, was that all their dead had to be reburied and you had to disturb the resting ground of the dead. The whole cemetery had to be relocated, in other words.

Well, now, those are just inner problems. Those are things that Indian people think about and worry about and are concerned about.

But let's go back to different attitude. There was a breakdown in the educational system because of the loss of the school. They did have good staffing at that time. They had an excellent school. They had an excellent athletic program in which they competed highly with Chamberlain and with other schools in the State. In fact, the Fort Thompson boys had a team that went to the State tournament. And there was great pride. And then when the school system fell apart, the children were not being educated the way they should. Something has happened.

But now there is a turnaround and many parents in Fort Thompson and on the Crow Creek in the rural area are busing their children to Chamberlain in which the children are getting a good education. There isn't any discrimination that I can see in the school system. However, we do find that when the Indian children come down they are a year to a year and a half behind. And so therefore, they have to be put in remedial situations and those in elementary—a lot of them go through the Title I room and as soon as they are caught up to their grade level they are put with their regular class and they go right along.

Children don't have any trouble with discrimination in school; they really don't.

MR. SCHWARTZ. You mentioned that many children are being bused from the Crow Creek Reservation to the school in Chamberlain. How far away is that?

MS. POTTER. It is 20 miles to Fort Thompson and that would be the longest way that they would have to be bused. Maybe 25 miles would be the farthest anyone would have to ride, I would assume.

MR. SCHWARTZ. That is one way?

MS. POTTER. Yes.

MR. SCHWARTZ. And how many children would be doing this and how big is the school population?

MS. POTTER. Well, I did a revamp on that after speaking with you earlier and mentally calculated the Indian children from various classes. Out of a school population of 1,150 students—K through 12—we probably have 150 Indian students.

MR. SCHWARTZ. And that is out of a school population of how many?

MS. POTTER. 1,150.

MR. SCHWARTZ. Thank you.

MS. POTTER. And we anticipate more because at the last board meeting the bus routes were being rerouted, and they had to purchase another bus to transport reservation children. So we are anticipating more.

MR. SCHWARTZ. Mr. Goldsmith, I don't want to leave you out over there. I understand you're the director of the Dakota Mental Health Center in Chamberlain; is that correct?

MR. GOLDSMITH. Correct.

MR. SCHWARTZ. Can you tell us just a little bit about the center and what its purpose is, what it does?

MR. GOLDSMITH. The mental health center is essentially a professional, psychology, counseling service providing family, marriage, child, adult, and group therapy counseling services.

MR. SCHWARTZ. How long have you been in the Chamberlain area?

MR. GOLDSMITH. A year and a half.

MR. SCHWARTZ. In that time have you had an opportunity to observe the community, the interactions that exist between people in the community, both within Indian and non-Indian communities and then also cross culturally?

MR. GOLDSMITH. To some extent, I would say.

MR. SCHWARTZ. Have you been able to draw any conclusions or could you share with us your observations about communication among people in the area?

MR. GOLDSMITH. Well, to start I would say that the reservations are more, much more willing to accept non-Indian professionals than vice versa. For example, I have been invited to participate in a number of committees and commissions on both Lower Brule and Fort Thomp-

son. For example, the school committee at Lower Brule Alcohol Treatment Center and the child protection team at Fort Thompson. I don't see that reciprocated in Chamberlain.

I do so, in other words, professionally, and as Mr. Philbrick mentioned, also in terms of the hospital and also businesses, the reservations have a fair degree of dependence on the Chamberlain community for professional and medical services, education, and also economically as Chamberlain is a trade center. That isn't the case as perceived by the Chamberlain people in a reciprocating way. However, Chamberlain is dependent to, I think, a larger extent than I think is generally recognized economically on the reservations, for the income because of commercial transactions and so on. I think that is probably highly underestimated.

MR. SCHWARTZ. Mr. Jandreau, have you had an opportunity to estimate the economic impact that Lower Brule has had on the Chamberlain area?

MR. JANDREAU. Approximately a million and a half a year.

MR. SCHWARTZ. When you say that what are you talking about? That is money coming from the reservation?

MR. JANDREAU. Yes, that is salaries coming from the reservation to the Chamberlain community which is probably 75 percent of the total income of the reservation through Federal programs.

MR. SCHWARTZ. What about such things as spending by tribal residents within the Chamberlain community?

MR. JANDREAU. We don't really have that many residents in Chamberlain from Lower Brule.

MR. SCHWARTZ. So most of the impact comes from professional salaries?

MR. JANDREAU. Yes.

MR. SCHWARTZ. Mr. Philbrick, have you had an opportunity to look and see what economic impact the Crow Creek Reservation might be having on Chamberlain?

MR. PHILBRICK. On Chamberlain?

MR. SCHWARTZ. Yes.

MR. PHILBRICK. Yes, it would have had a larger impact than it has now, but I would say it's not a million, it's several million dollars that goes into Chamberlain from our reservation. We get right around \$4 million in Government programs and all that money is spent and most of it is spent in Chamberlain.

I wanted to say one thing here before I say too much about the money going in there, is that in the first place the agency when it was flooded out was going to be moved to Chamberlain and the people in Chamberlain opposed it, the commission. They took up a petition and they said they didn't want any Indians around there, so the agency wasn't moved there. It was moved to Pierre which is 60 some miles away. And that created a big hardship on our people because the Chamberlain—I don't say all of the people in Chamberlain would have

felt this way—but the people that were on the committee didn't want the Indian agency there or whatever.

And I want to go a little further and say something about this law and order system down there. I don't think it's the kind of system that the Indian would like to accept because in recent years there have been several Indian people that got run over by automobiles in the Chamberlain area and they never have been solved up to this time. Whether they took action I don't know, but they say they did, but nobody got arrested for these people getting killed.

And another thing that I noticed that it depends on who you are as far as if you are going to break the law or if you get caught at breaking the law. The first thing when an Indian gets in an accident down there in Brule County or in Lyman County—they are adjoining, the reservation—why the first thing they do is take you to the police station and make you take a blood test so that they can determine whether you are drunk or not. They don't care how badly you're hurt; they do that first.

And also some people get arrested for drunken driving and it doesn't come up, I mean the State's attorney doesn't do nothing about it because he might be the superintendent of the Crow Creek Indian agency so they don't want to prosecute. But if somebody else gets in this place, they take a lot of effort and time to prosecute. And we feel that we all got to be treated alike as far as law and order is concerned.

MR. SCHWARTZ. Has the tribe followed up with the local law enforcement authorities to determine what, if anything, has been done to investigate these traffic deaths that you mentioned or the change in their system of enforcing the law so that it would at least appear to be more fair toward both the Indian and non-Indian in the community?

MR. PHILBRICK. Well, we have been talking to them. In fact, I have talked myself to State's attorneys and some of the city commission, and that's as far as we can ever get, as far as trying to get better working relations, better law enforcement equal to everybody.

MR. SCHWARTZ. Mr. Jandreau, as long as we are on the subject of talking to officials, other authorities outside of the Indian tribe, I was wondering if you could characterize for us the mechanisms that exist at the State and at the local level through which the tribes, like the Lower Brule, can manage to work out problems if they feel that there are some.

MR. JANDREAU. Well, there are probably several different ways. One way that was established several years back by the legislature was the South Dakota Indian task force. The purpose of this was to help generate legislation that would be beneficial both to the State and to Indian tribes in living in some sort of harmony. This had a life of approximately a year or I believe it was extended to about 18 months and worked real well. There were seven major bills that came through the State legislature that were very beneficial to creating an atmosphere whereby State and Indian tribes could enter into monetary

and cross-deputization agreements. That seemed to have run its life after it did these things.

The tribes, in discussing with the Governor and with members of the legislature, requested to go on with a similar situation or the same if possible. However, because of the positive effect, in our estimation, that it had, the legislature chose not to continue this. They put in its place an organization called the State negotiating committee. The State negotiating committee has been very ineffective, in my estimation, in producing anything that would have a positive bearing on relationships between Indians and non-Indians, both at the State and local governmental areas.

MR. SCHWARTZ. Can you tell us why it appears that the first task force that you mentioned was somewhat successful and the negotiating committee doesn't seem to be?

MR. JANDREAU. To me the task force was successful in that all the reservations in the State were represented on this. There were some legislators that worked also with this, but there seemed to be a real positive attitude of trying to come to an agreement on things that were in question, whether it be jurisdiction, whether it be collection of taxes, or whatever the problem may be. And with the other organization there was no Indian representation. Primarily, the object seemingly was to go to these people and to help them help you solve your problem. You really weren't required to be that active in the process. I think that this had a lot to do with the failure of it.

MR. SCHWARTZ. If a legislative proposal were made to reorganize that State negotiating committee so that it would be successful, what elements would you consider to be crucial in doing it?

MR. JANDREAU. Positive or negative?

MR. SCHWARTZ. Well, towards a positive result, I guess it would be positive change to be made.

MR. JANDREAU. I don't really understand how you're stating that.

MR. SCHWARTZ. What you're saying is that the State negotiating committee has not done as well as that task force that you mentioned earlier, that there are some problems that exist with the organization of that State negotiating committee. And I am wondering what you would suggest as changes in the way that that State negotiating committee is set up so that there could again be an effective State mechanism for working out community problems.

MR. JANDREAU. I would say very definitely there would need to be appointed to this negotiating committee Indian tribal representatives and representatives from every tribe within the State. Also, I would see that the attitude of really respecting the rights and the sovereignty of those tribal governments is a key in coming to any type of agreement that may know be discussed or may arise.

MR. SCHWARTZ. Thank you.

MR. Chairman, I have no further questions at this time. Let me ask just a few more questions since we do have more time.

Mrs. Potter, I would like to know since the Chamberlain school system has a number of Indian children coming from particularly the Crow Creek Reservation into it, I would like to know what special arrangements it has made, what programs it has established or pursued, what things it had done to account for Indian culture in that school system?

MS. POTTER. Well, about 3 years ago I was approached by the administration and asked to write a curriculum on Indian culture and Indian studies for the school. And I volunteered most gladly to do it. And then after I collected material and started I was later told that I—no. Then I was told that—I assumed I was writing curriculum that would teach 30 youngsters in a class, maybe 5 of them would be Indian or 40 in a class or 20. But I was later told that no, the curriculum that I was devising and putting together was for Indian children only. And so I said, “I just don’t see the purpose of this whatsoever.” And they said, “Well, it’s that way or we don’t get the grant.” And I said, “Well, then we just better forget it,” because no way can you, when you’re trying to build a relationship and an understanding between people that live 20 miles north of you and people in your own community, you don’t write a curriculum and say I want the six Indian kids in this class to come to the all-purpose room because we’re going to have Indian culture for you today. If they were to have their Indian culture studies, their parents or their grandparent should be teaching it. What we should be teaching in a curriculum is how to understand one another and how to break down attitudes and how to conduct ourselves in such a way that we respect each other and what we believe and what we feel. And then we can begin to practice a better way of living in our community and with the community at Crow Creek.

So the whole thing was dropped and I believe that this was just Johnson-O’Malley money that was to give me a grant to write this, but when it was all printed it had to be given to the Indian children only. So what purpose do you serve if you write a curriculum and the Indian children already know their culture or they should. It’s the other people that need to have some understanding.

MR. SCHWARTZ. What do you see as the need for this understanding? What are the attitudes that exist?

MS. POTTER. Well, the administration is doing what they can to create a togetherness of understanding, and they are trying to do it through the arts and through the social studies courses and through athletics.

MR. SCHWARTZ. Mr. Goldsmith, it’s my understanding that you are also doing something in the area of a speaker’s program which is having a similar effect among the adult community. Could you describe that for us, tell us what it’s doing?

MR. GOLDSMITH. I would like to first give a little background that I didn’t mention before; that is that the Dakota Mental Health Center is somewhat unusual in that it’s a private mental health center. Much



of the funds come through State contracts, and also, we are funded by the Dakota Indian Foundation, but we are not a governmental body and that sets a different tone, I think.

One of the needs that I saw, and again I speak with a certain humbleness about trying to speak on the area of Chamberlain, Lower Brule, and Fort Thompson only living there a year and a half, but perhaps sometimes coming from another area certain things become more apparent.

One of the needs that I saw was, as Mrs. Potter described it, a need for bicultural interaction. And I see that lacking. It's been discussed earlier today about the need to have attitudinal changes and that there is separate, really—the perception is two separate or three separate communities. My perception is that there is an interdependence between and among the three communities. They have actually formed social and culturally and economically, at least in my view, a cluster community.

So what we attempted to do is to form a small informal planning committee as a preventative mental health measure, and that committee consists of people from those three areas to try to find areas of interest that were mutual among the people regardless of and respectful of each other's differing cultural backgrounds. And the committee met several times and decided the area of the family was really a common denominator. And we applied for a small grant through the South Dakota Committee on Humanities, which is a State division or agency of the National Endowment for the Humanities, for funds to bring speakers. This was an excellent speaker, highly educated, well regarded with family ties in those two reservations, although he came from another one. And he spoke at those three locations in March after a couple of months of planning on different areas related to the family, bicultural viewpoint of the family, and that program that weekend was highly successful. In an area where the PTA [Parent-Teachers Association], for example, feels fortunate to get maybe a dozen parents to a meeting in Chamberlain, for example, we had about 140 people from all ages attend this program. And it was well balanced in terms of both Indian and non-Indian participation.

We see this as a small start in helping people to find the mechanisms to rub shoulders with and to have a dialogue with one another in a safe and structured way. We have a planning committee making a proposal for the next year to have speakers on a regular basis related to issues regarding the family, an oral history project, and providing training in parenting skills for people from the reservations throughout South Dakota to become trained in skills and also make the material relevant as a child abuse prevention project.

MR. SCHWARTZ. So both Indians and non-Indians serve on that planning committee?

MR. GOLDSMITH. Yes, they do.

MR. SCHWARTZ. How are those people chosen?

MR. GOLDSMITH. Well, again this was very informal, and it was essentially people who expressed an interest after sitting down over coffee and getting some ideas back and forth. I knew of some people, they knew of some people, and it kind of grew naturally so that there is no formal selection process. People volunteer and we hope to continue growing in that manner. We have 9, 10 members and we meet approximately every month.

MR. SCHWARTZ. Are there any positive aftereffects that you have been able to detect either among the members of the planning committee who got together in the first place or among the communities that were involved in attending these functions?

MR. GOLDSMITH. I think the response has been highly favorable. The evaluations after the program were very favorable. This was the first time in our area, to my knowledge and to the knowledge of other people on the committee, that anything of a bicultural nature regarding a humanities concept had been attempted. And of about 90 questionnaires, over 80 people wanted to have regular programs such as this.

And then at other public meetings that I have had the opportunity to attend, I have heard other spinoff types of positive comments, like there is one or two Indian people who I know who commented on the change in the feeling, tone when they are in town or working on a committee or something of that sort. These are rather intangible, I admit, but we don't deal that much with hard core statistics in the matter of attitudinal changes, and I have sensed a positive change.

Also for example, in Chamberlain there is an arts council which had originally attempted to have more interaction with people on the reservations several years ago when it formed, and there is renewed interest now in having programs go to each of the reservations as well as Chamberlain, and the money involved is rather minimal for our project. For example, it is approximately \$450, and yet we have been a good positive spinoff.

I think also I might mention in terms of our mental health center that about half of our clients—this is in relation to the clients that we serve—it's about half Indian and half non-Indian which is about five times the State average for mental health centers. The average is about 10 percent, and we feel fortunate that somehow we hit on a formula that seems to make our services available and comfortable for both Indian and non-Indian people to avail themselves of.

MR. SCHWARTZ. Thank you, Mr. Goldsmith.

CHAIRMAN FLEMMING. Dr. Witt?

DR. WITT. Thank you.

My question is for Mrs. Potter.

It is my understanding that you are a member of the board of directors of the Dakota Indian Foundation. I wonder if you would describe for us its membership and its functions.

MS. POTTER. The Dakota Indian Foundation was conceived by a deceased friend of mine, John Frank Lindley, several years ago. His

primary idea was that the Dakota Indian Foundation would preserve and protect and continue the Indian culture and artifacts from the Indian culture and the Indian language. Many of us saw this slipping away, and precious artifacts from the Crow Creek and Sioux Tribes and Lower Brule, anyplace, were being sold to antique and art collectors as they would come through the State. So Frank's idea was that we should preserve and protect some way for the Indian people of South Dakota that which was rightfully theirs. So the Dakota Indian Foundation, at this time, funds what is known as the Ella de Lauriat Chair at the University and Dr. Piquot is there working now in that position since we began, and she is putting together the Indian language in a form that it can be taught, in a preserved form, with all of the various dialects. So that's one thing we are doing.

And we are funding Mr. Goldsmith in the mental health area because we thought that there was a dire need for young people to find a direction in this mixed-up society. And if we can help the young people find a direction and to set themselves right, then they in turn can lead others. Because we all know that we all need models and the Indian young people need some good models at this time because they have had some people who are not such good models to pattern after.

All right. What else do we do? The Dakota Indian Foundation has purchased Indian artifacts that would slipped out of the fingers of South Dakota, and these are on display, some of them are on display at the Corps of Engineers' Research Center in Crow Creek in Fort Thompson.

Now, another thing that we are involved in is called the Great Plains Resource Center. And when this dream is done, the Great Plains Resource Center will have a room which will be devoted to Indian culture and Indian studies. And if any of you would like to, 10 years from now, maybe come out, I will teach you Indian culture in a 2-week course or a 6-week course or whatever, providing the board of directors decides that that will be my job after I retire. See, I have thrown that out.

Now on the board we have doctors and teachers and bankers and attorneys and farmers—who else do we have? I can't remember anybody else, but we are represented by Indian people, members of the tribes, and so forth.

DR. WITT. Thank you.

MS. POTTER. We think it's great.

DR. WITT. Clarification. Indian people and non-Indian people?

MS. POTTER. Yes, right.

CHAIRMAN FLEMMING. Counsel has one additional question.

MR. SCHWARTZ. Mr. Jandreau, recently some legislation has been introduced, several pieces of Indian legislation have been introduced in the Congress nationally, the Meeds bills, one in particular, one or two particular ones. I was wondering if you could comment on what effect some of the recent legislation introduced in Congress would have on the Lower Brule Tribe.

MR. JANDREAU. Well, it wouldn't have any effect right now because hopefully it will be defeated. But if it makes it, it will have probably some very drastic effects. We have legislation presently that would—many of us look at it as a godsend in being able to contract for services that we weren't able to get before. However, in studying this legislation we find that it's only developed to slaughter us in the end. It's kind of like Custer's Last Stand with a little subtlety thrown in. The legislation I am talking about or law I am talking about is 93-638 that gives us the opportunity to contract for any and all services available through not only the Bureau of Indian Affairs but any other Federal agency that so recognizes it.

However, you find within this law, built-in traps, destruct mechanisms, and we really got no way out of it. Anytime that services are provided to us by particularly the Bureau of Indian Affairs, and we're critical of the quality, the first thing that is thrown at us is, "Well, if you don't like it, contract it." You know, the funds aren't there—available now to provide adequate services and we are flatly being told by the Government through mechanism that that is tough, that is the way it's going to be. So I guess it is, you know, with this idea in mind that you look at Meeds' legislation and you can't really get that frustrated about it because you have learned to expect it, and we have learned to expect that kind of attitude from Congress because they do not really realize and respect those decisions made through the treaties many years ago.

You know, the Indians have got to have those opportunities in order to develop for themselves a lifestyle by which they can survive. I sincerely believe that if the attitude and the subtle pressures that are constantly being applied to Indian tribes continue, that the Indians will react in a way that will show very adverse aggression to the non-Indian communities in and around them. I think that it behooves this Commission to look with a great deal of intensity at the programs, the Federal programs that are currently being funded to Indian tribes. And in them you will find mechanisms of funding that allow tribes to only go so far and seemingly build in failure in the granting system. And I think there is a real problem.

I think we can, you know, hope that we can preserve that. But I think we have to really realize where we are at. We are in the last part of the 20th century, and how we develop economically is really how we are going to survive and being able to maintain our land base, being able to develop structures, whether it be through agriculture, manufacturing, or what it be through, to come to the point where we can become self-sufficient. And those Federal agencies dealing with us, I think you have to look at them, the requests that we make and to evaluate them on that basis. I think failure to do so will only drag out the same problems that we have talked about for the last hundred years.

CHAIRMAN FLEMMING. You feel that the basic problem you are putting your finger on is illustrated by the bill that has been introduced by Congressman Meeds; is that correct?

MR. JANDREAU. Yes, I do.

CHAIRMAN FLEMMING. You don't happen to have the number of that bill?

MR. JANDREAU. Not right off.

CHAIRMAN FLEMMING. That is sufficient identification. I think that should be called to the attention of the Commission by the staff, but you feel that it's a good illustration of what you feel is the basic problem in terms of the Government's relationship with the tribes?

MR. JANDREAU. Yes.

CHAIRMAN FLEMMING. All right. Could I go back? I was very much interested, Mrs. Potter, in your proposal, at least they gave you the opportunity to start work on the proposal, for a course which would provide both Indian children and non-Indian children with the opportunity of learning something about the Indian culture. Do I understand correctly that they told you that you couldn't do that because that couldn't be funded under Johnson-O'Malley?

MS. POTTER. It came down to the statement that this curriculum that I would be writing which would cover maybe a 6-week or 9-week period would be for Indian students only.

CHAIRMAN FLEMMING. And it had to be that way under Johnson-O'Malley?

MS. POTTER. Right. I don't know what act the money was coming from, but wherever the grant money was coming from it had a finger on it that said this is for Indian children only, don't let anybody else hear what you have written or read what you have written, I guess. I don't know. But anyway, so the whole thing was dropped. So the school system then continues with its own little curriculums in each classroom, you know, each grade, and the Indian children—there is a need for interaction with the children. We had a group of children that wanted to do an Indian dance and explain it. So we have a nice principal that said, "Okay, this afternoon John Bird and so on and so forth are going to dress up and we are going outside and we are going to watch them do Indian dances." They brought their tape of the music that was recorded on it, I presume up at some powwow in Fort Thompson, and they did their dancing in their costumes. The kids loved it.

CHAIRMAN FLEMMING. The only reason I was pursuing that, I was interested if there was that kind of a ruling under Johnson-O'Malley. I was just wondering whether it was a provision of the law or whether it was somebody's idea of a regulation, and I would kind of like to have that pursued a little bit so we can see whether or not there is some kind of a regulation that has been worked into it.

How many Indian teachers are there on the faculty of your school?

MS. POTTER. I'm the only one that has a drop of Indian blood.

CHAIRMAN FLEMMING. Are you ever given any opportunity of working with the other teachers in terms of helping them to develop a better understanding of the Indian culture?

MS. POTTER. I have had inservice sessions with them, or, if they are stuck up a tree with some particular thing, they will come and ask.

CHAIRMAN FLEMMING. All right. But those responsible for the school do not feel that they are in a position where, without this additional help from the outside, that they could make it possible for you to offer this kind of 6- to 9-week course?

MS. POTTER. Yes, I'm not going to say that that's not possible. The thing is, yes, I think the school would like to have someone volunteer to go ahead and do it.

CHAIRMAN FLEMMING. I see.

MS. POTTER. But no one has said, "We are going to have a curriculum meeting," like they do on science or math or English. They just don't call a special staff meeting and say, "We are going to have a curriculum meeting on Indian studies, on Indian cultures, whatever." That hasn't been done. But we get the word passed around.

CHAIRMAN FLEMMING. Mr. Goldsmith, did I catch one figure that you gave correctly that you said, as far as your mental health program was concerned, approximately 50 percent of those that you serve are from the Indian community?

MR. GOLDSMITH. That's correct.

CHAIRMAN FLEMMING. Whereas you said statewide, you're referring to the mental health clinics and so on, statewide it was 10 percent or less?

MR. GOLDSMITH. That's correct.

CHAIRMAN FLEMMING. What is the percentage of Indian population in the State of South Dakota?

MR. GOLDSMITH. About 5 percent.

CHAIRMAN FLEMMING. Personally, I am very much interested in what you're doing in terms of trying to bring people in terms of talking about some common objectives of families being the approach that you have seized on, but the idea that you are actually bringing people together from both the Indian and non-Indian community and you feel that you're getting results?

MR. GOLDSMITH. Well, I don't think it would be possible unless there were significant numbers of people with the significant interest to go ahead and explore these topics. I don't find most people overtly hostile toward one another, but there are very few opportunities to pursue things together within our clustered community and perhaps this is one opportunity to do that.

CHAIRMAN FLEMMING. We are very grateful to all the members of this panel for coming here this morning and sharing your insights and your convictions with us. It will be very, very helpful to us as we evaluate the record of this hearing.

Thank you very, very much.

The hearing is in recess until 1:30.

## AFTERNOON SESSION

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CHAIRMAN FLEMMING. The hearing will come to order. Counsel will call the next witnesses.

MR. SCHWARTZ. Boyd L. McMurchie, William Shields, Vernon Grady Collins, Leonard Andera, please come forward and remain standing to be sworn.

[Messrs. Andera, Collins, McMurchie, and Shields were sworn.]

TESTIMONY OF LEONARD ANDERA, STATE'S ATTORNEY, BRULE COUNTY;  
VERNON G. COLLINS, CHIEF DEPUTY, SHERIFF'S OFFICE, BRULE COUNTY;  
BOYD L. McMURCHIE, JUDGE, CIRCUIT COURT FOR THE FOURTH JUDICIAL  
DISTRICT; AND WILLIAM SHIELDS, JR., POLICE CAPTAIN, FORT THOMPSON,  
CROW CREEK RESERVATION

CHAIRMAN FLEMMING. We appreciate your being here.

MR. SCHWARTZ. Would you each please state your name, address, and occupation for the record, starting with Mr. Collins.

MR. COLLINS. My name is Vernon G. Collins, and I'm chief deputy from Brule County Sheriff's Office, Chamberlain, South Dakota.

MR. McMURCHIE. My name is Boyd L. McMurchie. I am a circuit court judge for the fourth judicial district, and I reside in Chamberlain, South Dakota.

MR. SHIELDS. William Shields, Jr., captain of police, Fort Thompson, South Dakota, Crow Creek Reservation.

MR. ANDERA. I am Leonard Andera. I am the State's attorney in Brule County. I live at Chamberlain, South Dakota.

MR. SCHWARTZ. Mr. Andera, it's my understanding that you're the State's attorney in Brule County; is that correct?

MR. ANDERA. Yes, sir.

MR. SCHWARTZ. And that you also have experience as a tribal judge at the Crow Creek Indian Reservation; is that correct?

MR. ANDERA. That's correct. Three and a half years.

MR. SCHWARTZ. Mr. Andera, as a former tribal judge, would you please describe the practical impact of the recent *Oliphant* decision by the United States Supreme Court, the effect that you would see it having on the Crow Creek Reservation?

MR. ANDERA. Well, *Oliphant*, I personally feel, has created as many problems as it purports to solve. And I say that in spite of the fact that the State of South Dakota appeared in the case as a friend of the Court. For one thing, the Court very carefully pointed out that it dealt

only with tribal courts. It also very carefully pointed out that it dealt with only criminal jurisdiction, and I think those two things are sufficient to start with some of the problems.

I believe that the Court, in a footnote, has spelled out the ratio of the types of courts on the reservations of the United States. I believe there are 127 courts functioning on Indian reservations. Of these 127 there are 71 tribal courts, 30 CFR courts or Code of Federal Regulation courts, 16 of the traditional Pueblo courts, and 10 conservation courts. The CFR courts, of course, are by regulation, I think, BIA regulation I believe, limited to offenses committed by Indians within the boundaries of reservation.

MR. SCHWARTZ. Can you tell me what kind of court it was that you are presiding over at Crow Creek?

MR. ANDERA. Yes, tribal court. So I think the next question, if these do not apply to the traditional courts nor to the conservation court, whether or not a tribe could then, by changing its court format which it apparently has the power to do, once more raise the same issue that *Oliphant* purported to settle.

The difficulty that arises as a practical matter is that if the tribal court does not have "criminal" jurisdiction over non-Indians within the boundaries, then who does? And I can go along with the concept that the Federal Government may have jurisdiction for Federal offenses within the reservation boundaries, but the thing that the tribe will deal with from day to day are not Federal crimes. They are not major crimes; they are not the assimilated crimes, but they are instead traffic violations, intoxication violations, disturbing the peace, criminal destruction of private property, simple assaults—these are the types of things that they deal with. And in most instances, all the instances that I am aware of, these would be violations of State law. Now, we have the question then as to whether the State has jurisdiction to do anything within the exterior boundaries of an Indian reservation. If these offenses take place off a State highway, for example, if they take place on the Indian trust land does the State have jurisdiction to say you have violated a section of the State code? My own personal feeling is that they do not, for a number of reasons which are probably too lengthy to enumerate.

MR. SCHWARTZ. Well, I would like to understand some of them because it is at least very important to know who has jurisdiction.

MR. ANDERA. All right. It goes back to the old issue then of where does the Indian community stand in relationship to the total concept of jurisdiction and power. In many areas they are convinced, and I think rightly so, that they have a certain amount of sovereignty. Many cases tribal governments feel, and again I have no quarrel with this, that they are in effect sovereign nations, that their boundaries are almost international boundaries.

The State of South Dakota, for example, did vote on whether they would assume jurisdiction of the reservations or not at one point in our



history. It was turned down by the voters. They have now said we do not have jurisdiction within the boundaries, all right? If that then is the situation, if I'm driving on a Bureau road, a road built by the Bureau of Indian Affairs across Indian trust land, and I am violating the posted speed limit, which again is the common offense, and it's posted there presumably for the protection of that community, and in this case an Indian community, and I'm stopped by the tribal police for that violation. I'm a non-Indian. So what does he do? Let's assume that all of the desires that have been expressed on the part of many Indian people and non-Indian people alike in this State, there is a cross-deputization program, he is also a deputy sheriff of that county. Can he then write me a ticket for violating the State speeding law? The State did not establish that speed limit. It is not on land or roads maintained by the State or over which the State exercises any care, any maintenance, any control. It is not part of the highway system, it is not—

MR. SCHWARTZ. Well, there are a number of alternative possibilities as to how the jurisdiction might be asserted, assuming the tribe cannot directly assert it in tribal court. For example, the Assimilative Crimes Act makes some State crimes—it takes a State law and applies it to a Federal enclave, in this case an Indian reservation, and it will make that State law a violation of Federal law for purposes of enforcement within that boundary. Is that a possibility for the speeding situation?

MR. ANDERA. Okay. I think that's a possibility. But the problem that I foresee is that it is not there now. The kinds of violations I do not believe are not covered by the acts that we have available now. In other words, what I'm saying, it's going to take congressional action and I think, in effect, that's what the Supreme Court was saying is that somewhere Congress is going to have act now. They are going to have to take some affirmative action here. Whether they will or not, I don't know.

MR. SCHWARTZ. Can this also be done on a State level, in your opinion?

MR. ANDERA. I don't think it can. I don't think that the State can assume that jurisdiction.

MR. SCHWARTZ. So there would then be a problem with the State posting its own speed limit on a road over which it has no jurisdiction in the example that you gave.

MR. ANDERA. That's my belief.

MR. SCHWARTZ. Would it be possible, do you think, at the State level, under something like the joint powers agreements that have been established as possibilities by legislative action of this State's legislature, that an agreement could be entered into or further enabling legislation could be passed which would allow an agreement to be entered into where the State could post such a speed limit?

MR. ANDERA. I'm not certain that under present legislation in existence at this time that a tribe in the State of South Dakota could agree formally by a quasi-treaty type document that they could

exchange jurisdiction in these areas. I do believe that was the proper and appropriate State legislation and legislation by the tribal legislature, whether it's tribal council or however the particular reservation might be operated, that could be accomplished. But under the present situation I'm skeptical.

MR. SCHWARTZ. Would congressional enabling legislation be necessary to—that is the Federal level, in order to allow the two parties even if they wanted to, to agree to that arrangement?

MR. ANDERA. You're asking a question which should properly be put to an expert and I would like to point out I haven't reached that point and probably never will. Again, my own opinion is that that would certainly be desirable. Whether it would be absolutely necessary or not, I'm uncertain.

MR. SCHWARTZ. All right. I began by asking you the question about your experiences as a tribal judge and what other problems you think might be posed by *Oliphant* and I don't know that I got your complete answer.

MR. ANDERA. Okay. I think basically that is, you know, covers the majority of the problems that I foresee. In other words, I see a great number of violations of tribal law which do not violate State law. Public intoxication would be a good example. The tribe, Crow Creek Tribe, for example, has a public intoxication ordinance which is an offense for which they can be arrested and fined and jailed, as far as that goes. The State of South Dakota has no such statute. So what you do is you stand there and even the cross-deputization, you arrest the Indian members of a group and you, I guess, pat the others on the head and say, you know, "Please go home, but if you don't want to, you don't have to." I think that's a problem.

MR. SCHWARTZ. Why with cross-deputization would that be the case? Couldn't the tribal officers cite the—oh, I see, it's the public intoxication statute not existing elsewhere?

MR. ANDERA. Right. It's not a violation of State law.

MR. SCHWARTZ. Is it your understanding that if it's a violation of State law also being committed that the cross-deputization agreement would in effect enable the tribal officer to cite the non-Indian into the State court?

MR. ANDERA. I think that goes back to what I mentioned earlier, that it depends on where it's located and whether the State can even exercise its jurisdiction in that area. And there is a lot of controversy within the State on that.

I'm in a minority here on this point. I think our attorney general says they can. I'm not as convinced as he is.

MR. SCHWARTZ. Captain Shields, you're the captain of the Crow Creek Reservation Police Force; is that correct?

MR. SHIELDS. Yes, sir.

MR. SCHWARTZ. Could you describe the size of that police force, how many officers there are?

MR. SHIELDS. Well, I have about seven officers. About a week ago I had 10 and before that it was even less than that.

MR. SCHWARTZ. Can you describe the training that the officers receive before they become tribal police officers?

MR. SHIELDS. It all depends on where they go to school. If they are Bureau officers they will go to Brigham City, Utah, and attend the U.S. Indian Police Academy. And tribal officers generally go to the State school located in Pierre.

MR. SCHWARTZ. Is your current force a mixture of tribal and BIA employees?

MR. SHIELDS. Yes, it is.

MR. SCHWARTZ. But you have command of the entire force?

MR. SHIELDS. Yes.

MR. SCHWARTZ. I understand that the outer boundaries of the Crow Creek Reservation contain within them parts or all of a number of counties; is that correct?

MR. SHIELDS. Yes, sir.

MR. SCHWARTZ. What are the counties that are contained within this reservation?

MR. SHIELDS. There is Hughes County, Hyde County, Hand County, Buffalo County. Really it's just three counties on the reservation, but the other one does border it.

MR. SCHWARTZ. Are you talking about Brule County?

MR. SHIELDS. I think it's Hand County.

MR. SCHWARTZ. Do you have a cross-deputization agreement with any of those counties?

MR. SHIELDS. None besides Buffalo.

MR. SCHWARTZ. So in Buffalo you do?

MR. SHIELDS. Yes.

MR. SCHWARTZ. What difference does that cross-deputization agreement with Buffalo—well, let's backtrack a minute. The first question should be the nature of the cross-deputization agreement. What does that provide?

MR. SHIELDS. Well, it gives us the authority to arrest non-Indians in Buffalo County on the reservation.

MR. SCHWARTZ. Does that apply to every member of your force?

MR. SHIELDS. Yes, it does.

MR. SCHWARTZ. When you're faced with the problem of a non-Indian committing a misdemeanor on the reservation within Buffalo County in that area of the reservation, what is the procedure that you follow?

MR. SHIELDS. Well, if he is committing a misdemeanor, he is normally arrested and brought to our jail and put in jail and the sheriff is notified. Well, it all depends. If it's a traffic violation, probably he will be issued a citation. If it's drunken driving, he is probably put in jail until the sheriff arrives and takes him to the magistrate or whatever.

MR. SCHWARTZ. And then what happens in the court procedure later on?

MR. SHIELDS. That I do not know.

MR. SCHWARTZ. Have you never been involved in that?

MR. SHIELDS. Very rarely.

MR. SCHWARTZ. Do you know what the procedure is supposed to be in that case?

MR. SHIELDS. Well, he is supposed to be brought to trial as fast as he can, I guess.

MR. SCHWARTZ. And then would the police officer from your reservation from your police force participate in that proceeding?

MR. SHIELDS. Not normally, unless he has pled not guilty and has asked for a trial.

MR. SCHWARTZ. And then what would happen?

MR. SHIELDS. Then they are issued a subpoena and a trial date is set and they go to court.

MR. SCHWARTZ. Has that ever occurred?

MR. SHIELDS. Yes, it has.

MR. SCHWARTZ. In the other counties, let's take Hughes County for example, what would be the procedure for someone committing a misdemeanor there who is a non-Indian?

MR. SHIELDS. Again, we are not cross-deputized with Hughes County so, if he is speeding or something on the reservation, we would probably just stop him and give him a warning and tell him to slow it down. That is it.

MR. SCHWARTZ. What about the possibility of making a citizen's arrest of this person? Has that ever been tried?

MR. SHIELDS. No, it hasn't.

MR. SCHWARTZ. Is that something that could be done, in your opinion?

MR. SHIELDS. Yes, I believe so.

MR. SCHWARTZ. Can you give us a reason why that hasn't been done?

MR. SHIELDS. You got to be a cop for all seasons, you know.

MR. SCHWARTZ. I don't understand what that means.

MR. SHIELDS. A cop should be able to do his job no matter where he is at.

MR. SCHWARTZ. No, what I was asking is you had said that in Hughes County your officers were not making citizen's arrests of persons committing misdemeanors and I was wondering why that procedure hadn't been followed.

MR. SHIELDS. I don't know.

MR. SCHWARTZ. Are there violations of the law occurring in that section of the reservation?

MR. SHIELDS. Yes.

MR. SCHWARTZ. Does that create a problem for law enforcement generally?

MR. SHIELDS. Yes.

MR. SCHWARTZ. Would cross-deputization in these other counties, like Hughes, be useful for the tribal police, do you think?

MR. SHIELDS. I would think so.

MR. SCHWARTZ. Mr. Collins, you are a member of the Crow Creek Tribe, and it's also my understanding that you are a deputy sheriff in the Brule County Sheriff's Office; is that correct?

MR. COLLINS. Yes, sir, that's correct.

MR. SCHWARTZ. I would like you to explain for this Commission the kinds of law enforcement problems that are faced by the Brule County Sheriff's Office, particularly those with respect to bordering on Indian reservations.

MR. COLLINS. Basic law enforcement problems. Big problem we have like anywhere else is alcohol. Most of our problems are alcohol related. We don't have many problems. Crow Creek does not have extradition, but that is not really a problem either unless we want somebody for a violent act or something where it is essential that you get him into court before the momentum and everything goes out of the case. But as far as checks and your normal charges, everybody comes off the reservation sooner or later and there is nothing I can do about it but work with it, try to get along with it.

MR. SCHWARTZ. Do you have any kind of cooperative working arrangement with the police force at either Crow Creek or Lower Brule?

MR. COLLINS. Yes, sir, I do. I work with both Lower Brule and Crow Creek as a dispatcher, as a jailer, and as a police officer.

MR. SCHWARTZ. But that is your prior employment. I am talking about now as a—

MR. COLLINS. Well, I do have contacts from my prior employment, and I do work with them very well.

MR. SCHWARTZ. Can you give us an example of what that enables you to do?

MR. COLLINS. It enables me to call Fort Thompson or Lower Brule, if I want to, and I can investigate on a reservation. If I want to interview a suspect, normally they will ask him to come in when I arrive at Fort Thompson, and he is usually there for me to talk to. The captain in Lower Brule gave me a man at my disposal to drive me around Lower Brule one time. It's been a real good working relationship. There are no problems as far as that goes.

MR. SCHWARTZ. Has your membership on the force as an Indian changed that relationship in any way?

MR. COLLINS. Personally, I suppose I would like to think so.

MR. SCHWARTZ. How has it changed?

MR. COLLINS. It's a personal relationship between our office and the Fort Thompson Police Department and the Lower Brule Police Department because I know these guys, I have worked with them. I have come up through the ranks with them and it is just more personal. Nobody's uncomfortable when they come down to the sheriff's office because I am there. They know me and it has solved a lot of problems.

MR. SCHWARTZ. Now, Brule County is one of the counties for which there is no cross-deputization agreement with Crow Creek, as I understand it?

MR. COLLINS. Yes, sir, that's correct. I don't see much need for it.

MR. SCHWARTZ. You don't think that that would make law enforcement an easier matter if there were?

MR. COLLINS. Well, we don't have any reservation in our county. We are right on the border there, but we have done fine in the past and there really isn't a problem as far as deputizing our officers. As far as I am concerned, if I needed help and I called these guys, they would come to help me and they would probably, basically, be obligated to help me.

MR. SCHWARTZ. Judge McMurchie, you have served as a circuit court judge, I believe it is in Brule County, the fourth judicial circuit, is it?

MR. MCMURCHIE. Yes, there are 10 counties in the circuit. We extend on the northern tier of counties from Hand through Buffalo County and from Sioux Falls through Brule County.

MR. SCHWARTZ. Which reservations would that circuit include?

MR. MCMURCHIE. The reservations would be Crow Creek as far as Buffalo County is concerned, and I'm not too sure what Moody County would encompass. I do not know the boundaries of Moody County. That's on the Minnesota line. Moody County could have some reservation land, but I don't know.

MR. SCHWARTZ. Where does your court sit? Where do you preside?

MR. MCMURCHIE. Well, I reside in Chamberlain. I'm primarily responsible for Buffalo, Brule, Aurora, and Jerauld County. I sit in all 10 counties.

MR. SCHWARTZ. Can you tell this Commission the kinds, if you can characterize, the kinds of criminal offenses that you have to deal with on a day-to-day basis as a circuit judge there and what impact, if any, the reservation communities have on the jurisdiction process?

MR. MCMURCHIE. That is kind of a mouthful.

MR. SCHWARTZ. I guess it is. Perhaps we can break it up. Let's try the first part, which is the types of crimes that you deal with on a day-to-day basis?

MR. MCMURCHIE. It would consist of about everything from murder to spitting on the sidewalk, from the \$5 small claims court hearing to a multimillion dollar lawsuit. It's very diverse. It's quite, frankly, very interesting.

As far as Indian people are concerned, I have very few in court. I believe I had the clerk check on it—it's difficult to define Indian people to begin with within that area because you have a number of people that you may not be acquainted with as Indians that are in fact though they are not recognized as such within the community. I think we have had five felony cases in the last 3-1/2 years involving Indian people. The misdemeanors would run from an assault once in a while

to a DWI [driving while intoxicated] once in a while to a reckless driving once in a while. I have no idea about the speeding or traffic violations from that standpoint. We have very few cases quite frankly.

MR. SCHWARTZ. Does the State court system have any interrelationships or interaction with the tribal court system existing there?

MR. MCMURCHIE. Do you mean by law do we, or do we in actuality?

MR. SCHWARTZ. I would like the answer to both of those.

MR. MCMURCHIE. By law we do not. It's like dealing with New York State. I am not bound by New York State decisions. You can study the conflict of laws which of course I am sure all the attorneys are well aware of. It's a very confusing field. The law says that you do, but in actuality we all realize that you make your own independent decision as you sit on those.

In practicality, in some areas we do have a relationship. Let us take the case where you have an Indian family and you have a charge brought before the court, neglect of children, dependency, something of this nature where it involves the possible removal of a child from the home. Many times you will find that they are under the order of a tribal court as far as the custody is concerned. And I request in those cases that that matter be made an exhibit and a portion of the evidence either at the dispositional hearing or the adjudicatory hearing, usually the dispositional. So there is that type of relationship.

Other than that I can't offhand think of any.

MR. SCHWARTZ. Do you in your court recognize tribal process or any form of tribal judgment that may be issued?

MR. MCMURCHIE. Quite frankly I have never had it placed before my court.

MR. SCHWARTZ. There are some situations existing where—let's take the situation of a warrant, a criminal arrest warrant may be issued by one court and, it's my understanding, and I don't know the extent to which it occurs in the State, but it's my understanding that in some cases the State arrest warrant will be given effect in a tribal court and then that suspect will be picked up pursuant to that arrest warrant. Sometimes it goes the other way. Is there any such arrangement that exists?

MR. MCMURCHIE. You mean as far as extradition on a State warrant where the defendant is confined within the boundary of the reservation?

MR. SCHWARTZ. Yes.

MR. MCMURCHIE. Lower Brule has an extradition proceeding. I do not become involved in that to any degree. I understand that it functions very well. Crow Creek, as I understand it, does not. The proceedings themselves would be held in tribal court and, in practicality, you would either go through your extradition proceedings in tribal court through the State's attorney's office or you can sit and wait.

MR. SCHWARTZ. What about the matter of executions on civil process? There must be a number of circumstances where a party will be in one jurisdictional area and assets will be in another or some such thing.

MR. MCMURCHIE. I don't understand your question.

MR. SCHWARTZ. In civil matters there may be a judgment that may be issued, let's say, out of your court. Is there any kind of arrangement which would enable assets located within the reservation area to be levied upon?

MR. MCMURCHIE. Not to my knowledge. That would depend on each tribal code. There are some reservations that have provisions for that that I'm personally aware of. I have been on the bench for going on 4 years. I don't know the changes within that 4-year period. But I don't believe that Lower Brule or Crow Creek have any provisions within their code for that type of situation.

MR. SCHWARTZ. Does this have an effect on commerce existing in Chamberlain for reservation residents.

MR. MCMURCHIE. You mean the jurisdictional issue?

MR. SCHWARTZ. Yes.

MR. MCMURCHIE. I would say very definitely. The system is created in such a fashion. I believe Leonard touched upon it. It's a quasi-sovereignty. If you want to read the Supreme Court decisions, it is the same, the extent to which we don't quite know yet.

Take the example of lending institutions. You have Federal and State regulations pertaining to how much money an institution may loan on a signature loan. And beyond that point certain collateral is necessary. Now, you take the example of an Indian rancher, let's say, and he is no different than anyone else in today's society. He must function with liquidity, and you gain that liquidity by borrowing money. It puts a lending institution, if it's a State institution, in a very serious position. You can get a note, you can sign the mortgage or the security agreement, and everything is valid. But you understand in the event of default there is no way that that can be enforced for purposes of collection against the securities, as the State courts have no jurisdiction over an independent person or his property within the confines of the reservation. So what it amounts to is that type of loan is consequently a signature loan.

MR. SCHWARTZ. Mr. Andera, as a former tribal court judge, would you agree with that analysis that there is nothing available for the—

MR. ANDERA. Yes, as a matter of fact, you may be interested to know that there is no execution provision for a judgment in tribal court between the Indian parties in Crow Creek. There is no way in which you can actually enforce a judgment except under a criminal statute which provides that you have violated a lawful order of the tribal courts. And that's the only method by which you can legally enforce a judgment even in tribal courts.



MR. SCHWARTZ. That means that you would have to execute with respect to the criminal law what you would normally handle as a civil case elsewhere?

MR. ANDERA. What you would do in connection with the judgment, you would include in that an order to pay over to the prevailing party  $X$  number of dollars within  $X$  number of days, and if the losing party failed to do so, you would then charge him by a criminal complaint with failing to obey a lawful order of the tribal court. And he might then be subject to the criminal provisions. I have some question about the constitutionality of that, of imprisoning him for failure to obey a civil order, but that's all that's there.

MR. SCHWARTZ. Is there any legal impediment to changing that law so that a tribal court could execute on civil matters in a similar manner, let's say, to the State court system?

MR. ANDERA. No, I don't think so. There are reservations, one that immediately strikes me is Cheyenne River which does have quite a good civil procedure code.

MR. SCHWARTZ. Thank you. Mr. Chairman, I have no further questions at this time.

CHAIRMAN FLEMMING. Mr. Andera, I was very much interested in your response to questions relevant to the impact of the *Olipphant* decision. We have only been at this a few hours, but we have heard quite a little about that *Olipphant* decision already. And after listening to your testimony I gather you feel that possibly the only way out of the present rather confusing situation is through action on the part of the Congress; is that the point?

MR. ANDERA. Yes, sir, it is. I think there is something that might help clarify my feeling on this. As near as I can determine at least, the problem is also inseparable with the problem of what actually constitutes an Indian person. We have again, as I understand it, a case law which in effect says that there is a two-pronged test: first, is there a recognizable amount of Indian blood, and second, is he acknowledged as an Indian in the community in which he lives?

Now this is great if you have several months and a lot of time and a lot of witnesses and the usual appellate procedures available to you. But it doesn't really give any guidance to the police who are charged with enforcing this, and I don't know, it's part of the whole overriding problem here. How do you determine what happens? Does the State really have any jurisdiction at all? In answer to your basic question, yes. One, we need congressional action. I think we need to answer the sovereignty question.

Secondly, I think we need to have continued State and tribal agreements, treaties, if you will, whatever. I think there needs to be an overhaul of a lot of tribal codes. I think you need to open tribal courts to non-Indians in the civil arena to clear up a lot of this. I think you need to place a money limit on civil actions in tribal courts and invest the rest of it between Indian and non-Indian in the Federal courts.

During my time as tribal judge we had a civil action in which the money amount was \$1 million. Frankly, that has no business being in tribal court. Number one, most tribal judges, including myself, just aren't up to it. The code and the body of law is not sufficient on tribal level to settle matters of this nature. I think the tribal court ought to be limited to something similar to small claims. And then if there is a diversity or if there is an excessive dollar amount, let it be handled in either State or Federal—and now I think it would have to be Federal. I think those are the things that would have to be done at the minimum.

CHAIRMAN FLEMMING. Have you seen any or have you learned of any move in the direction of getting congressional action going on the *Oliphant* decision?

MR. ANDERA. I'm not familiar with any. No, I'm not aware of any.

CHAIRMAN FLEMMING: Judge McMurchie, you have listened to this discussion on the impact of the *Oliphant* decision. I'm wondering if there are any observations that you would care to make relative to the problem that has been created growing out of the experiences that you have had.

MR. McMURCHIE. I quite frankly don't believe that it's created any additional problems that weren't already there. It has not been the solution to many of the questions that we had in our minds 5 years ago. In fact, if you want to read it very closely, and I have not read that closely, I have read it five times, but it's going to take more than that. It may create a few more problems.

CHAIRMAN FLEMMING. Little bit like the *Bakkē* decision.

In other words, you sum it up by saying that it really didn't resolve some of the basic problems that need to be resolved; it possibly may have created one or two additional ones?

MR. McMURCHIE. It may have resolved some. It may have created some additional ones. It's not all that positive depending on how you wish to argue or present it.

CHAIRMAN FLEMMING. Do you have any reaction to the suggestion that it may take action on the part of Congress to clear up the matter?

MR. McMURCHIE. Well, in reality from the standpoint of the law, it's like a tool. You only have those tools to work with that your Congress or your legislature gives you. And obviously within this area we're lacking in tools. So I think it has to be affirmative action from a legislative standpoint if that in fact can be done within the framework of the Constitution.

CHAIRMAN FLEMMING. I would like to shift to another area. As you probably know, our State Advisory Committee conducted an investigation into this whole criminal area, held some hearings, and developed a report which of course was made available to us which we have read with a great deal of interest. I notice that in the report they put a good deal of emphasis on the process that is followed in the State in impaneling a jury and put quite a little emphasis on the fact that under

existing law it would be very difficult for an Indian to become a member of jury because of its relationship to the voting.

Am I correct that there is a relationship between the exercise of voting rights and a person actually being drawn for jury duty, his name being drawn for jury duty?

MR. McMURCHIE. As I understand it, that is your conclusion. As to the same, I would not agree on, however; but I did take the time to check Brule County and I believe that every resident of Brule County of Indian extraction has at one time or another served on a jury.

CHAIRMAN FLEMMING. Right. So that you don't see the existing law as maybe a serious obstacle to the involvement of the members of the Indian community in the jury system?

MR. McMURCHIE. Well, obviously it's the same as selected from your jury list, your master panel is selected from voter registration. It would reflect only those who have §õ registered. And this again is within the legislative area, you see. But in both Buffalo and Brule County your Indian people have been consistently on your panels.

CHAIRMAN FLEMMING. Right. And in connection with the trials over which you have presided, is it rather common for members of the Indian community to be on the trial jury themselves?

MR. McMURCHIE. In Brule County, I don't believe we had over 25 to 50 families. It is common that they would be on a jury to my knowledge. In Buffalo County I have only had one jury trial and I'm going on 4 years. I believe that either three or four members of the panel were enrolled members of the Crow Creek Tribe. There may have been another two or three, but I'm not sure whether they are entitled to enrollment or not. In other words, I don't know whether they are Indian people or not.

CHAIRMAN FLEMMING. In the report of our State Advisory Committee there was a good deal of emphasis placed on the fact that there was good deal of plea bargaining which would result in cases being settled short of a trial before a jury. Would you care to comment on that particular issue?

MR. McMURCHIE. First of all, you would have to define plea bargaining because I think you have about 50 definitions floating around the United States. Generally, I would say in the fourth judicial district we do not have plea bargaining. That does not mean, however, that an offense charged in multiple counts will not be considered by the court for dismissal of some counts as opposed to taking a plea on another. However, prior to doing so the arraignment proceedings which this court, the fourth circuit, uses, myself specifically, requires the State's attorney to make the motion and then to explain why factually it is being done. I will not grant the motion until after I have accepted the plea, which basically means after I have discussed the matter with the defendant on the record to determine his version of the facts. And if that version of the facts is consistent with the State's motion for the dismissal of the remaining plea or the remaining counts,

then I will accept a portion of it. If it does not, I will enter a plea of not guilty for and on behalf of the defendant and will schedule the matter for trial.

Now with regards to reduction of charges, the same way. We will accept no pleas conditioned upon any specific sentence. In other words, all four of us are in agreement that the Constitution places the responsibility of sentencing upon court. And to allow the State or the defense to do your sentencing for you is obviously not doing your job is the way I feel about it personally. So plea bargaining, as such, is probably not done except, obviously, if he is overcharged, which can occur very legitimately because if the initial investigation shows first degree robbery and later, after full investigation, it's obvious that first degree is not the proper charge, I don't really consider that as plea bargaining.

CHAIRMAN FLEMMING. Overcharging can occur legitimately, and then I suppose there are circumstances under which it would not be regarded as—

MR. MCMURCHIE. It can be abused.

CHAIRMAN FLEMMING. Mr. Andera, do you care to comment on extradition from the standpoint of your present position?

MR. ANDERA. As far as plea bargaining is concerned?

CHAIRMAN FLEMMING. Either one of the issues that I raised with the judge.

MR. ANDERA. I have to agree with the judge that it depends on how you define plea bargaining. There is a lot of discussion about pleas. You would be ridiculous to claim otherwise.

The question of racial balance of juries, as the judge pointed out—those who are eligible by virtue of their residence within Brule County and who are also of Indian blood is very, very small in comparison to total population. And also, it's been my experience as prosecutor since 1973 that on the occasions when an Indian is seated on the jury panel and there is an Indian defendant the defense preempts him. And somebody else is going to have to explain that, but it's happened to me three times. I don't know why. So I have had very few trials in which there have been members on the actual jury. They have been on the panel but never gotten on the jury.

CHAIRMAN FLEMMING. I don't know whether Mr. Shields would like to comment on either one of those issues or not from the standpoint of his experience.

MR. SHIELDS. Well, I really don't have—really don't pay attention to it that much, I mean as far as in Brule County.

CHAIRMAN FLEMMING. Mr. Collins, do you have any comments you would like to make?

MR. COLLINS. That basically is attorney's work. My job's hard enough.

CHAIRMAN FLEMMING. That's right, that's right.

MR. ANDERA. Mr. Chairman, if I could—there was one thing that Judge McMurchie mentioned which I don't think he is aware of a change and it may possibly make a difference, and that is he mentioned Lower Brule Reservation does have an extradition ordinance. It's my understanding that just within the last few days that that has either been repealed or something has been done with it and it is now closed; is that correct?

MR. COLLINS. Yes, sir.

MR. MCMURCHIE. I would add something to the record as far as Brule Reservation is concerned. In this State the court services offices are directly under the authority of the court, and the cooperation that I have received in Lower Brule has been exceptional. They assign an officer to him and make his contacts, give him facilities to use and everything else, and the cooperation with Crow Creek has been good. This is very much appreciated from my standpoint because your sentence is no better than the followup in the event that you suspend a balance of jail time or suspend imposition of the same.

CHAIRMAN FLEMMING. Thank you.

Mr. Nunez?

MR. NUNEZ. Nothing.

CHAIRMAN FLEMMING. Do you have another question?

MR. SCHWARTZ. Mr. Andera, how long has the tribal court system existed at Crow Creek? Are you aware of that?

MR. ANDERA. Can't answer that, I'm sorry. I don't know.

MR. SCHWARTZ. One of the things you suggested in earlier testimony was possibly placing a limitation on the amount in civil actions that can be brought before the tribal courts. I wonder if another alternative would be to develop the tribal court system so that it could better handle the civil matters that may come before it.

MR. ANDERA. Absolutely, yes. Again, you have to understand that for many, many years, and I don't know how long, maybe Mr. Shields or Mr. Philbrick can answer this, the tribal judge had no legal background of any kind. I believe that I was only the second tribal judge in the history of that court with any legal background of any kind. And the previous judge lasted through the first jury trial. And I don't know if he ran from the scene or was driven from the scene, but in either event he didn't last long. And that's a tremendous burden to place on a layman and it's amazing that the court has functioned as well as it has over the years.

So, I'm not being that critical of the tribal court. I think it's done a fantastic job with the tools it had.

MR. SCHWARTZ. Thank you.

Captain Shields, one last question for you. I would like to know the role that BIA police, with whom you operate, plays in the investigation of major crimes committed in the reservation.

MR. SHIELDS. Well, our police department is probably the first on the scene. This is in relationship with the FBI?

MR. SCHWARTZ. Yes, we can get to that.

MR. SHIELDS. Well, when we determine that a major crime has been committed, we notify the FBI. And whether they come right now or 2 weeks from now, we usually have a suspect or know who did it and can generally put it together for them and preserve evidence.

MR. SCHWARTZ. Which police force, the FBI or your own, does the investigation of the crime scene usually?

MR. SHIELDS. We do first. We are the first officers there.

MR. SCHWARTZ. And then what role will the FBI play when they arrive? Will they repeat what you have done or will they go from there or what will they do?

MR. SHIELDS. Essentially, they will do the interviews after we do it. They will do them again.

MR. SCHWARTZ. They will do the same things?

MR. SHIELDS. We don't do a lot of interviews. We do most of the legwork for them. We preserve the crime scene, identify the suspect, the victims, get the description of the land, whether it's Corps land or Indian land, trust land or whatever. They pretty much take it from there.

MR. SCHWARTZ. From your view as a BIA police officer, what are the elements that the FBI provides in the investigation that you can't provide as a BIA police force?

MR. SHIELDS. Probably their professionalism. They really know how to do a job.

MR. SCHWARTZ. Do you consider them to be of assistance then?

MR. SHIELDS. Yes, sure do.

MR. SCHWARTZ. Thank you very much.

CHAIRMAN FLEMMING. We appreciate very, very much your coming here and providing us with this testimony. It will be very helpful to us. Thank you.

Counsel will call the next panel of witnesses.

MR. BACA. Elijah Whirlwind Horse, Art Brown, Francis Horacek, Philip Hogen, please come forward and be sworn.

[Messrs. Brown, Hogen, Horacek, and Whirlwind Horse were sworn.]

**TESTIMONY OF ART BROWN, COMMUNITY ACTION PROGRAM DIRECTOR, EAGLE NEST DISTRICT; PHILIP HOGEN, STATE'S ATTORNEY, JACKSON COUNTY; FRANCIS HORACEK, BUSINESSMAN, KADOKA, SOUTH DAKOTA; AND ELIJAH WHIRLWIND HORSE, CHAIRMAN, OGALA SIOUX TRIBE, WANBLEE, SOUTH DAKOTA**

CHAIRMAN FLEMMING. Thank you. Nice to have you with us.

MR. BACA. Would you please each identify yourself, give your title if appropriate, and your business address for the record.

MR. WHIRLWIND HORSE. My name is Elijah Whirlwind Horse, chairman of the Oglala Sioux Tribe, Wanblee, South Dakota.

MR. BROWN. I am Art Brown, community action program director for the Eagle Nest District. My address is Wanblee, South Dakota.

MR. HORACEK. Francis Horacek, I own and operate a general merchandise store in Kodoka, South Dakota. That is my mailing address.

MR. HOGEN. Philip Hogen, Jackson County State attorney; I live at Kadoka.

MR. BACA. Mr. Whirlwind Horse, could you tell us approximately how many people reside on your reservation?

MR. WHIRLWIND HORSE. I would say approximately 13,000.

MR. BACA. Are those all enrolled members of the tribe?

MR. WHIRLWIND HORSE. Yes, sir.

MR. BACA. Can you tell us what the annual budget is for the tribe?

MR. WHIRLWIND HORSE. I would say approximately \$20 million.

MR. BACA. Are there facilities within the boundaries of the reservation where persons can buy the things they need, groceries, such as that?

MR. WHIRLWIND HORSE. Yes, in some areas there are. Other areas there are not.

MR. BACA. Could you tell us roughly, if it is possible, what area yes, what areas no?

MR. WHIRLWIND HORSE. We have facilities at Pine Ridge and Kyle and a small grocery store in Porcupine, Manderson, Wanblee, and Sharp's Corner.

MR. BACA. Do residents of Wanblee have to leave the reservation for other kinds of purchases?

MR. WHIRLWIND HORSE. Yes, sir.

MR. BACA. Where do they go for that?

MR. WHIRLWIND HORSE. Kadoka and Rapid City.

MR. BACA. Mr. Horacek, could you tell us, at least as far as you are able to form an impression, what percentage of your business is done with persons from the reservation?

MR. HORACEK. I won't be able to tell you the exact percentage, but I do know that we do a considerable amount of business with the people from Wanblee or from the reservation area.

MR. BACA. Mr. Whirlwind Horse, can you tell us, in your experience, whether the relations between the persons in Kadoka and the reservation have improved over the last several years?

MR. WHIRLWIND HORSE. I would say just recently there has been an improvement, but it has been rather slow, just been very recent that there has been some improvement.

MR. BACA. Can you describe that? I'm particularly interested in the area of law enforcement.

MR. WHIRLWIND HORSE. Well, there has been a considerable amount of police brutality toward the Indian people from the Kadoka Police Department throughout the years.

MR. BACA. Does this continue?

MR. WHIRLWIND HORSE. I haven't had any reports of late.

MR. BACA. What about treatment generally speaking; that is, by people in stores as they conduct their business in town?

MR. WHIRLWIND HORSE. I think that the consumer-business relationship there has improved quite a bit. There are indications that Indian people are receiving credit, and I do not know how extensive that is, but I know several of the merchants there have had a change.

MR. BACA. Mr. Horacek, was there some problem prior to this time to granting credit for people from the reservation?

MR. HORACEK. I would like to point out I moved to Kadoka 2 years ago, so I'm not familiar with anything prior to that time. I know that in my situation I have extended credit to the Indian people, and I also extended credit to the white people. What it was prior to that time I have no idea, except I have talked with other people who have indicated to me that there has been more of it recently than there was prior. I don't want this to indicate I'm the reason that it happened. I speak only again that in the time that I have been there. Prior to that time I guess it was tight. I have no idea.

MR. BACA. If you are not the reason that it happened, is the organization that you helped to form one of the reasons that it happened?

MR. HORACEK. Well, I think in discussing this matter with other people in the organization I feel or sense there is a change of attitude in the thing. The feeling is that you have only so much business that you can do, and it is senseless to drive it away. Whether they be black, white, Indian, whatever they might happen to be.

I see things or ideas that I have encountered in the eastern part of the State slowly taking place. They have given it some thought, and I would have to say that I think there is a change of heart, yes.

MR. BACA. What was the original purpose in organizing the merchants' association?

MR. HORACEK. There again, I really have no idea except that I suppose someone that had been there longer than I could tell you. It is similar to a chamber of commerce, anything you can do to prompt the businesses, services you have to offer to the community or to people that would make themselves available and the services you have to offer.

MR. BACA. In your discussions with other members of the association, can you tell us some of the reasons given why the credit was refused in the past?

MR. HORACEK. Well, the gentlemen here prior to our being seated had mentioned, I think, that the roughest thing, the thing that I find hard is the ability to collect a bad debt. I don't care whether it be white or Indian, I'm not leaning on the Indians, but I think this is the problem that we have. You can't, because of the jurisdiction situation, you have no recourse if they choose not to pay. You simply have to hope that they will have a change of heart, come back, pay the debt that is long overdue. I would feel that possibly this one matter is the thing that maybe is the worst towards not extending credit.

MR. BACA. That continues to this day?



MR. HORACEK. Yes, I have the situation right now. It bugs me, but I do not know what recourse I have or whether or not I can follow to alleviate the situation.

MR. BACA. Have you or other merchants attempted to use the tribal court?

MR. HORACEK. Well, just recently—I have checked through another man—I found the tribal court now is supposedly getting themselves into the situation where they can handle these and hopefully can have a solution as to how we might be able to go about collecting the debt that might be bad or overdue or something like that. That is as far as I have gone with it.

I would say if this is the situation, definitely it should be a step forward that would help the feeling on both sides.

MR. BACA. I realize you have only been there a short time, but can you to the extent, or perhaps Mr. Hogen could help you, tell us whether earlier attempts were made to use the tribal courts and, if so, with what results?

MR. HORACEK. I have no idea.

MR. BACA. Mr. Hogen?

MR. HOGEN. I was born and raised in Kadoka, although I just moved back in '74. To my knowledge, no Kadoka merchant has ever gone into tribal court to collect a debt. Now, it is also my understanding, as Mr. Horacek summarized here, that more utilization is being made of the tribal court by individuals, including non-Indian businessmen who live off the reservation, for collection action. As the Jackson County State's attorney—that is a part-time position and I also have a private law practice—merchants have retained me to make collections. In my practice to date I have not gone to tribal court, although with the developments I have been advised of, we will explore that as a possibility. Hopefully, that would promote the ability of Indian customers to be able to buy on credit from off-reservation merchants and help merchants to maintain a business relationship with them by being able to enforce credit sales.

MR. BACA. Mr. Whirlwind Horse, two members of the panel referred to recent developments. You, as chairman of the tribe, could perhaps can help us understand what the developments are.

MR. WHIRLWIND HORSE. As far as the courts?

MR. BACA. Yes.

MR. WHIRLWIND HORSE. The court is now assisting bill collection. There are instances of repossessing cars, trailer houses, etc. I think the merchants of Nebraska have moved on this a lot sooner and are utilizing the courts quite readily to settle these problems, and I understand it is going quite well. I have a personal friend that collected—repossessed a car the other day. I thought the hearing was conducted very formally, very fairly. He was awarded what he came after. They did consider the individual's ability to get the payment up to snuff; the person had refused to pay. Then they awarded the car back to the dealer. That has been the case in several instances.

MR. BACA. Are these accurately described as recent changes or was the court always available to merchants?

MR. WHIRLWIND HORSE. The court has always been available to the merchants.

MR. BACA. Moving to the area of law enforcement, we have heard a great deal about checkerboard jurisdiction and about non-Indians and the problems that perhaps the tribes might have in effecting arrests on tribal lands.

Mr. Hogen, could you describe the kinds of jurisdiction that exists in and around the Pine Ridge Reservation?

MR. HOGEN. The jurisdiction, as I understand it, as Jackson County attorney, would be this: first, Jackson County is an organized county and Washabaugh unorganized. Washabaugh County makes up the northern portion of the Pine Ridge Reservation. Washabaugh County is attached to Jackson for judicial purposes, so consequently, as the Jackson County officer I serve that area as well as Jackson County.

In Jackson County, I consider that my office, the State attorney's office, and therefore, the State of South Dakota has jurisdiction over everyone that is there.

There are some exceptions. That would be the Bad Lands National Monument which is served by the Park Service, which lies within Jackson County and so is under Federal jurisdiction. Within Washabaugh County, I do not consider that the State of South Dakota has jurisdiction over anyone that is an Indian. I consider that, pursuant to the *Oliphant* decision and the law that went before that, the State of South Dakota has jurisdiction over everyone not an Indian. I think the *Oliphant* decision said we solely would have that jurisdiction.

Now, I have heard earlier discussion here about *Oliphant*. I think that answers the question. I think that helped us solve some of the problems.

Certainly, there are other unanswered problems, but I viewed that as a solution. This implementation of these jurisdictions does present some problems, as the speaker before said, deciding who is an Indian. That question might have to be answered before you can decide who has jurisdiction.

MR. BACA. First, is each State's attorney free to interpret the *Oliphant* decision as he or she reads it?

MR. HOGEN. Yes.

MR. BACA. Let me ask the question in a different way. I heard some State's attorneys earlier in the day say that their reading is that a non-Indian cannot even be arrested by tribal police on trust lands. I have heard others say, yes, an arrest could be made by tribal police of a non-Indian, but the person could not be tried in tribal court. What is your reading?

MR. HOGEN. My view would be that there is no jurisdiction by the tribal police or the tribal courts over non-Indians in Indian country, including the right to arrest. I do not believe an Indian law enforcement

officer, clothed with some legal tribal authority, would have authority to exercise that authority on a non-Indian. I think, at the same time, they would be fully clothed with all the rights and obligations as any other citizen. They could do what an Indian or non-Indian might do. I'm not saying that individual who might be an Indian officer wouldn't have the right to make a citizen's arrest. I would not view that as an arrest by a law enforcement officer.

MR. BACA. Are there any cross-deputization agreements between Jackson County and the Pine Ridge Reservations?

MR. HOGEN. No.

MR. BACA. Could you tell us why?

MR. HOGEN. I really can't tell you why because I have only been there for a few years in this present capacity.

There have been some changes recently that I view as positive changes in law enforcement on the reservation. Recently a change was made from what I term BIA law enforcement to tribal law enforcement. I don't have much experience in the area of BIA law enforcement, but my experience in the last year or year and a half with tribal law enforcement has been very positive. There is a very good working relationship between the tribal police force and the Jackson County Sheriff's Department, and lines of communication are open. And we have never run into a situation in my experience wherein we might have been better served with cross-deputization than we are now with this open line of communication we have. So I can't give you a specific answer why we have not done that.

I think there is one problem that would have to be addressed before we could enter into such an agreement. That would be the liability that the county and likewise the tribe would have for these cross-deputized officials. For example, if we did have a cross-deputization agreement, wherein we said the Jackson County Sheriff's Department would have jurisdiction or would have the authority that a tribal officer would have to arrest and take an Indian to tribal court in Indian country, and then likewise, the tribal officer would have authority over non-Indians in the Washabaugh County area, if something was done by that Indian officer while he was acting as a Jackson County deputy and an action was brought against that officer in his capacity as a Jackson County deputy, then Jackson County would be responsible to answer for that. We would not have recourse against that officer, if in fact it was the officer's wrongdoing, and he personally in the county's view should be liable, but we have no jurisdiction over him because we have no State jurisdiction over that individual in Indian country.

MR. BACA. You don't think that if both the tribe and the county agreed that a person in that situation would have to surrender themselves to the jurisdiction of the county and that could be integrated into the agreement, that that problem would be taken care of?

MR. HOGEN. I think that would be a very worthwhile avenue to explore. I do not know how binding it might be on the individual officer.

That is a question to be answered to get a workable cross-deputization situation.

MR. BACA. Let me ask you another question. I do not know the answer. That is, if tribal police can make only citizen's arrests, can they, if a suit is filed for alleging some misconduct during the arrest, can they clothe themselves with whatever immunities other police officers can under the same circumstances?

MR. HOGEN. My initial reaction off the top of my head would be no, they cannot, they would not be a law enforcement officer in that situation. I have not researched the question and certainly don't know the answer.

MR. BACA. What is done by your office when you receive a citizen's arrest, when you receive a person under citizen's arrest? If the circumstances and evidence warrants, do you prosecute?

MR. HOGEN. Yes, we do and have in the past. It certainly is a much more effective situation than when we have a citizen's arrest in Jackson County because the tribal law enforcement people are well trained and they are handling the situation as a law enforcement officer should. We get a case and we go to trial and we subpoena the tribal officer if necessary. We don't subpoena him because he wouldn't come voluntarily, but that permits us to pay fees, so forth, and it has worked well in the past. We haven't had a great number of incidents like that. But when we have, we have prosecuted them just as we would an arrest made by a law enforcement officer or by a citizen in Jackson.

MR. BACA. Mr. Whirlwind Horse, can you tell us if, since the *Oliphant* decision, you have seen an increase or any particular significant change in the number of incidents of violation of misdemeanor laws on the reservation by non-Indians?

MR. WHIRLWIND HORSE. I don't have any statistics to base my opinion on, but I feel that it is very negligible. We don't have that much trouble with non-Indians on the reservation anyhow.

MR. BACA. Why is that?

MR. WHIRLWIND HORSE. We have some good friends on the reservation. Not all white people are bad, but you know, we have Indians that look like white people too, blond hair, blue eyes, so it would be our opinion, since the *Oliphant* thing, is to make the arrest and bring them in to a tribal hearing to determine whether they are Indian or non-Indian. I think that for most of the major crimes that are committed by non-Indians the FBI is quite available, and our officers probably have the situation worked out, but the population that lives there, we don't have that much problem with them.

MR. BACA. One other thing that I would like to follow up with, Mr. Whirlwind Horse, is that Mr. Hogen has referred to again recent changes in the tribal police force. Could you comment on those recent changes, tell us what they are?

MR. WHIRLWIND HORSE. I suppose it takes advocacy on both sides to make these changes that have happened or taken place between Washabaugh County tribal policemen and Jackson County police officers. I think it is a matter that those people were willing to get together to work things out.

MR. BACA. I guess the thrust of my question was whether there had been some improvement in the tribal police force that would lead to a new era of trust?

MR. WHIRLWIND HORSE. Well, the tribe did contract the law enforcement agency from the Bureau of Indian Affairs. We do have internal problems we are working on that tend to make it better. We are quite satisfied with what we are doing, and it does have an effect on how police officers do operate.

MR. BACA. Mr. Brown, I know that you were particularly concerned with what was previously a centralized police department on the reservation. I understand there has been a decentralization of the police on the reservation; is that correct?

MR. BROWN. Yes, there has been. Before if we needed any police in Wanblee, we had to wait for them to respond to whatever need was from the agency. Then, usually it took several hours or a day, but now we have the officers there available to cover whatever happens right there.

MR. BACA. When did that change take place?

MR. BROWN. Last year, I believe, when the tribe contracted the police services from the BIA.

MR. BACA. Mr. Chairman, I have no further questions at this time.

CHAIRMAN FLEMMING. Mr. Brown, I notice that you are the director of the community action program. Could you describe for the Commission the nature of that program?

MR. BROWN. We coordinate all efforts of the different programs going on, Federal and tribal programs, within the district. We are only part of the CAP program on the reservation. There are nine coordinators. They each take care of the programs within their districts.

CHAIRMAN FLEMMING. Nine others?

MR. BROWN. There are eight others. Nine of us altogether.

CHAIRMAN FLEMMING. Your program is one of nine.

MR. BROWN. Yes, sir.

CHAIRMAN FLEMMING. How do you go about the coordination process?

MR. BROWN. We find out what each person and each program is supposed to be doing and find out if there is any overlap in services or if there is any duplication of effort. We try to minimize this.

CHAIRMAN FLEMMING. It is kind of a management job to try to avoid duplication?

MR. BROWN. Yes, sir.

CHAIRMAN FLEMMING. Thank you. Commissioner?

COMMISSIONER FREEMAN. Mr. Whirlwind Horse, you indicated that the tribal courts have always been open to non-Indians. Will you state what provisions of the tribal code defines the jurisdiction of the tribal court?

MR. WHIRLWIND HORSE. I can't do that, ma'am.

MR. HOGEN. Ma'am, I have a copy of the tribal constitution that might assist you.

COMMISSIONER FREEMAN. Could you answer that, Mr. Hogen?

MR. HOGEN. Article 5, section 2, entitled the "Articles of Judicial Powers," states, "Judicial power shall extend to all cases involving only members of the tribe rising under the constitution, bylaws, or ordinances of the tribe and to others in which all parties consent to jurisdiction."

COMMISSIONER FREEMAN. The question then is, has the tribe announced or have you advertised or made known the information about the availability of the fact the courts are open to the merchants in the various communities?

MR. WHIRLWIND HORSE. Not since I have been in office. It has been only about 3 or 4 months.

COMMISSIONER FREEMAN. Is it possible then the fact that the merchants have not used the tribal courts is because they were unaware of its availability?

MR. WHIRLWIND HORSE. Perhaps, yes.

COMMISSIONER FREEMAN. Mr. Hogen, you as an attorney, you have indicated now that you know that the courts are open, that this is an area that you could use in representing your clients?

MR. HOGEN. I have been familiar with this provision for some time, and the experience that I was familiar with in tribal court was it was not utilized for various reasons. All the parties that come into that court either have to be members of the tribe or have to consent to the jurisdiction of the tribe. I think there might be some merchants that would be reluctant to consent to jurisdiction of the tribe.

COMMISSIONER FREEMAN. If the merchant would at least file a petition in the court, would that not itself be consent to jurisdiction?

MR. HOGEN. It certainly would, but then I think they might be concerned. Based on some of the reasoning you find in the *Oliphant* decision, they would then be in court wherein they, if they were a non-Indian, would be denied to have members of their race sitting on the jury, for example.

COMMISSIONER FREEMAN. Of course, this has been a problem of minorities in American jurisprudence at all times.

MR. HOGEN. It certainly has. In this case, the off-reservation majority would find itself in the minority, I guess, when it went into the tribal court.

COMMISSIONER FREEMAN. The off-reservation majority?

MR. HOGEN. The non-Indian.

COMMISSIONER FREEMAN. Meaning the white?

MR. HOGEN. Right.

COMMISSIONER FREEMAN. The white merchant would find itself in a minority. It would hesitate to seek the jurisdiction of a court in which it would be a minority?

MR. HOGEN. I'm saying that is a possible reason why a merchant might not consent to go into tribal court. I'm not saying that would be everybody's position or that is not the reason why everybody that I represented hasn't done that. I have heard that concern expressed.

COMMISSIONER FREEMAN. If a contract—if the credit contract is a fair contract, then would not the merchant then receive the same kind of treatment in the tribal court that he would receive in any other court?

MR. HOGEN. I would certainly hope so. The report the Chairman referred to earlier, when he was interrogating Judge McMurchie, referred to the jury selection process in State court. There was in that report suggestions that you could not get a fair and impartial trial if you were an Indian in South Dakota because of the exclusion of Indians from juries or jury panels. I think that kind of thinking might also be present regardless whether you thought you had a fair contract or not. If you go into the court, and you see the jury has no members of your race, you are going to have a question.

COMMISSIONER FREEMAN. Certainly, there are many cases that have proven the minorities have not gotten a fair and impartial trial because of the exclusion of the minority from the jury system. This is very well established in many, many cases.

The next point that I wanted to pursue is with Mr. Whirlwind Horse, with respect to a statement you made that a person who has been arrested then is brought in for a hearing to determine whether that person is an Indian or not. Will you explain or describe for this Commission how you make that determination?

MR. WHIRLWIND HORSE. By the census rolls and enrollment.

COMMISSIONER FREEMAN. The census of the tribe?

MR. WHIRLWIND HORSE. Yes. The enrollments.

COMMISSIONER FREEMAN. If the person is enrolled, then that individual will be determined to be an Indian?

MR. WHIRLWIND HORSE. Yes.

COMMISSIONER FREEMAN. If that person is not enrolled, whether that person is Indian or not, he will not be determined to be an Indian?

MR. WHIRLWIND HORSE. Yes.

COMMISSIONER FREEMAN. Thank you.

CHAIRMAN FLEMMING. Anything further?

MR. NUNEZ. Mr. Whirlwind Horse, you are the head of the Pine Ridge Reservation, the elected head of the Oglala Sioux Tribe. Is that correct?

MR. WHIRLWIND HORSE. Yes, sir.

MR. NUNEZ. The Pine Ridge Reservation has been in the news over the last few years as a place of great violence and confrontation between the police authority and the tribe. In the last year have you

been able to ascertain whether that situation is correct or is it just an imagination of the media or has the situation been alleviated? Has it calmed down? What would be your opinion on that at this point in time?

MR. WHIRLWIND HORSE. Well, my opinion is that the number of violent crimes has decreased. The atmosphere on the reservation is a lot better and it is improving. We are getting to a point of unifying the people. It is a slow process, but we are working on it very hard, and I think those efforts by other leaders in other districts—also the law enforcement picture being changed. I think it leaves less violence.

CHAIRMAN FLEMMING. What specific steps were taken, in your opinion, to lessen the tensions and alleviate the violence that occurred several years ago?

MR. WHIRLWIND HORSE. Well, the Federal Government has been a little more attentive to some of our demands, to some of our needs, and I think probably some of the changes in the political scene have contributed to this factor too.

You have a good set of leaders now—I'm talking about the tribal council, the people in the different districts. They have a different look at things. I think there is a mood on behalf of the Indian to become unified. The individual himself is trying to be united.

MR. NUNEZ. You feel that the tribal police is now doing an effective job and doesn't really require that much assistance from the Federal police, the FBI, the Bureau of Indian Affairs police? You think that your own internal police system has the capability of doing the job right now or in the future?

MR. WHIRLWIND HORSE. Well, there is room for improvement, but I think the morale of the patrolmen out in the districts is a lot better. I feel that we have more police officers—at times at Wanblee we went 2 or 3 years without a police officer. We didn't have any relationship with the police and law enforcement agencies, but we now have more police officers and a better attitude. We do lack some investigative capabilities and probably some administrative capabilities, but I'm sure we can rectify those shortly.

MR. NUNEZ. Thank you.

CHAIRMAN FLEMMING. First of all, may I ask this question? Is the presiding officer of your tribal court now a lawyer or a person with legal training?

MR. WHIRLWIND HORSE. Yes.

CHAIRMAN FLEMMING. You heard the discussion that I had with the previous panel relative to Indian representation on trial juries. As a leader in the Indian community, what is your feeling relative to that particular issue? Do you feel that Indians do or do not have adequate opportunity to serve as members of trial juries?

MR. WHIRLWIND HORSE. I feel they don't have the equal opportunity to serve as jurors.

CHAIRMAN FLEMMING. Mr. Hogen, I would be very glad to have your comment. You listened to that discussion.



MR. HOGEN. Yes, sir, I do have a point of view on that.

With respect to Jackson County, the population is largely non-Indian. Ninety percent or more would be non-Indian, and the other would be Indian population. As Mr. Whirlwind Horse indicated earlier, most of the larger trade centers around the reservation are off the reservation. Kadoka is one of those trade centers. Consequently, Indian people necessarily come to Kadoka to do business, etc., and offenses occur there. They occur in the trade centers that wouldn't occur on the reservation.

When we have an offense involving an Indian, he is going to be tried within Jackson County where the population is 90 percent non-Indian. Consequently, the jury panel he's going to get is 90 percent non-Indian. In the last general election, the voters of Jackson and Washabaugh Counties voted to merge the two counties in one area. That would mean Jackson and Washabaugh would then be one county from which a jury panel would then be drawn. This would completely change the makeup, the racial makeup of the jury panel, so in the future, after January 1, 1979, a jury would no longer be drawn from a jury panel 90 percent non-Indian and 10 percent Indian. It would rather be made up of that large Indian population of Washabaugh County mixed in with the Jackson County population.

So I think when we hear about all-white juries trying Indians, one of the reasons is that the Indian necessarily has to travel to a geographical area that is a political unit, where there isn't a large concentration of Indians. I don't think it would be consistent with our system of jurisprudence to go out of the political subdivision to select jurors or jury panel members. I think perhaps broadening the units of government, such as has been done in Jackson and Washabaugh Counties, is a step to solve some of these problems.

The other objection that I have heard is that jurors or members of jury panels are drawn from voter registration lists. Now, I think that is the way it should be done. I think that is a good policy. I do not know where else you might look. In Washabaugh County, for example, prior to what is known as the *Little Thunder* decision, people in Washabaugh County could not vote for county officials that served them, that being because they were in an unorganized county. That case, the *Little Thunder* case, ruled that that was a constitutional denial of their right to vote. So consequently, now people in Washabaugh County can and do vote for county officials.

I think that fact will increase the interest that people in Washabaugh County would have in becoming a registered voter. Consequently, I think we will see a larger Indian representation, at least in the Washabaugh County area, on the voter registration list because they can now vote for local as well as State and national offices.

I think it would be fair to say that while it was approved by the voters and the Governor of South Dakota issued the proclamation it would take effect, an action is pending in Federal court brought by the

Oglala Sioux Tribe to enjoin that merger. I do think at least locally, if the merger is successful, we will better deal with the problem of avoiding an all-white jury.

MR. BACA. In that regard, Mr. Whirlwind Horse, can you tell us the basis for the objection of the tribe to the merger?

MR. WHIRLWIND HORSE. Yes. It is our opinion that the Jackson-Washabaugh County merger is the biggest farce ever pulled off on the Indian people. I personally fought it and continue to fight it and so will the tribe. I said there are a lot of good white people, but this little bunch of people that keep picking away at us are responsible for this farce. We were not represented on any of these boards. The Indian input was not solicited. We were against it from the start. Like the man said, there is 90 percent of the people in Jackson County are white. When they vote on it, regardless if we had 100 percent of our Indian vote against it, it still would have carried. I think it is a farce. I know it is a farce.

MR. BACA. When you say a farce, I'm not sure exactly what you mean. Do you mean it was represented to be something that it is not?

MR. WHIRLWIND HORSE. Right. They say we had Indian representation. We didn't have representation. The meetings were held in Kadoka. Several members of the tribe were asked to be on the committee. I was one of them. I refused to be on that committee, but it went through anyway. We didn't want it on the ballot or anything else, but it was put on there. I suppose by outward appearance, it looks like we have been involved in it, but we haven't.

MR. BACA. The basis of the tribe's objection then is the lack of involvement by the tribe or by Indians within the county?

MR. WHIRLWIND HORSE. By the tribe and by Indians within the county.

MR. BACA. Mr. Hogen, I just want to follow up one thing with you. I know the city of Kadoka has a human relations commission. Is that correct?

MR. HOGEN. Yes, sir, I know that pursuant to my status as attorney for the city of Kadoka. I was involved in the drafting of the ordinance.

MR. BACA. Can you tell us what led to the creation of the commission and what some of its activities have been?

MR. HOGEN. I think the thing that led to it was generally awareness, not only in Kadoka but throughout the State of South Dakota, of the fact that there were problems, racial problems and social problems, and commissions were being created elsewhere and Kadoka requested and received a copy of the ordinance that Rapid City, South Dakota, had enacted. I think the thing that precipitated that enactment—we did have a law enforcement incident—an incident wherein a group of non-Indians attacked some Indian victims. There was a lot of publicity and animosity related to that incident. These individuals, the non-Indians, were subsequently charged and sentenced. But because of the strong feelings that surrounded that incident, there was an urgency felt within the city government that something like this should be done.

The ordinance was adopted, and hopefully it will help to address problems like that, and the commission could convene should a similar situation occur to just clear the air.

MR. BACA. Do you have a copy of the ordinance with you?

MR. HOGEN. Yes, I do.

MR. BACA. Could we have that for the record?

MR. HOGEN. Yes, I would be happy to.

MR. BACA. Mr. Chairman, I would like that entered into the record with the appropriate number.

CHAIRMAN FLEMMING. Without objection, it will be marked as Exhibit No. 7.

MR. BACA. You say, Mr. Hogen, the commission could be called into action or something like that. Does it not exist as an ongoing commission?

MR. HOGEN. Yes, members have been appointed, but one of the functions it would serve would be to meet in response to any emergencies that might exist as well.

MR. BACA. As sort of conflict resolution?

MR. HOGEN. Yes.

MR. BACA. Does it accept complaints of discrimination?

MR. HOGEN. Yes, and that would not be only in regard to race but anything within the human relations area.

MR. BACA. Has it received such complaints?

MR. HOGEN. Not to my knowledge. I'm not a member of the commission, but it has not come to my attention.

MR. BACA. Can you tell us how many members there are?

MR. HOGEN. The resolution—the ordinance says that it shall be composed of six members: four members would be legal residents of the city who serve without pay, shall be appointed pursuant to section 3. Minority races should be represented to the extent of not less than the percent of population, such group reflected by the most recent census of the city.

MR. BACA. Ten percent?

MR. HOGEN. I believe that would be close, but I don't know the exact figures.

MR. BACA. So that out of the four?

MR. HOGEN. There are six, and four have to reside within Kadoka. Someone from Wanblee could become a member of the commission.

CHAIRMAN FLEMMING. Have the members of the commission been appointed?

MR. HOGEN. Yes, I do not know who all they are. I have heard, but I can't recall who they are.

CHAIRMAN FLEMMING. Are there members of the Indian community on the commission?

MR. HOGEN. Yes, there are.

MR. BACA. To the best of your knowledge, have they engaged in prosecution of any complaints of discrimination?

MR. HOGEN. Not that I know of.

MR. BACA. Have they assisted in the resolution of any conflicts?

MR. HOGEN. Not that I know of. I do not know of any conflicts or any emergencies that have arisen since the creation of the commission.

MR. BACA. Were they active during the development of the merger concept?

MR. HOGEN. No.

MR. BACA. I have no further questions.

CHAIRMAN FLEMMING. Mr. Whirlwind Horse, I would like to go back to this merger. Let's assume that it goes into effect. I understand you have got a court proceeding which might result in its not going into effect. Assume it goes into effect, would the members of your tribe become active participants in terms of voting for local offices?

MR. WHIRLWIND HORSE. I don't think so. He mentioned Indians on this board. We don't even know about it.

CHAIRMAN FLEMMING. The human relations commission?

MR. WHIRLWIND HORSE. Right. This board he is talking about, the commission.

CHAIRMAN FLEMMING. You haven't heard of any Indians being appointed?

MR. WHIRLWIND HORSE. No. Art works there on a daily basis and is involved with every aspect in the district and still doesn't know who those people are.

MR. HORACEK. Mr. Chairman, I have been asked to serve on this board. I'm not trying to contradict or make anyone look bad here, but I know they have contacted two or three people in Wanblee to try to get them to serve. They want the thing to work, so I know they have contacted people. But they were hesitant for things that have happened in the past down there, they didn't want to be the guy, you know, to get downgraded or anything else. It is probably in the situation of a state of limbo at this particular time, but I was asked to serve on it. I told them that I would. I do not know what the balance of the committee is made up at this time or where it stands. I would also like to say one other thing in reply to Mr. Whirlwind Horse here.

Very definitely, I served on the voting board at the last election that was held. There were several people, Indian people, that live in town, but they did not exercise their opportunity to vote. This is how juries are made up. If they want to be on juries if the thing takes place, they are going to have to take part in other things whether they dislike them or not. Voting is one of the ways.

It is a shame to feel if I don't vote I don't get to serve on the jury, but that is exactly the way the jury lists are made up. They do have to take part in some of these things and become part of the community. I realize there is a great deal of bitterness in the situation. I don't understand all the things that took place way back. I do know this commission is being set up. They are trying to get at least two people from Wanblee to serve. I think it can work.

You can't do it with the idea it is not going to work. I think there is a place for it, and it can be made to work.

CHAIRMAN FLEMMING. In other words, there are probably some offers out but not accepted yet, as far as the minority community is concerned.

MR. HORACEK. I would feel that, yes.

CHAIRMAN FLEMMING. All right.

Well, we certainly have been helped by this testimony. We appreciate the way in which you have responded to our questions and the kind of information that you have brought here. We have a much better understanding of the situation than we could possibly obtain in any other way. Thank you very, very much, all of you.

Counsel will call the next witnesses.

MS. HUBER. Lorelei Means, Alice Flye, Bruce Hodson, Harold Larson.

[Ms. Flye, Mr. Hodson, Mr. Larson, and Ms. Means were sworn.]

**TESTIMONY OF ALICE FLYE, COMMUNITY SERVICE REPRESENTATIVE,  
OGLALA SIOUX TRIBE; BRUCE HODSON, BANKER; HAROLD LARSON,  
BENNETT COUNTY COMMISSIONER; AND LORELEI MEANS, AMERICAN  
INDIAN MOVEMENT SURVIVAL SCHOOL**

CHAIRMAN FLEMMING. Thank you. We appreciate your being here.

MS. HUBER. Beginning on the left with Mr. Hodson, would each of you please state your name and address and occupation?

MR. HODSON. Bruce Hodson, banker, Martin, South Dakota.

MS. HUBER. What is the name of your bank?

MR. HODSON. Blackpipe State Bank.

MS. HUBER. Mr. Larson?

MR. LARSON. My name is Harold Larson, county commissioner, Bennett County, Martin, South Dakota.

MS. HUBER. Yes, ma'am?

MS. MEANS. Lorelei Means, Porcupine, South Dakota. I'm with the AIM Survival School.

MS. HUBER. Yes, ma'am?

MS. FLYE. Alice Flye, I'm the community service representative from the CAP office of the La Creek District of the Oglala Sioux Tribe in Martin.

MS. HUBER. All right. Ms. Flye, please tell us where you live in Martin?

MS. FLYE. Sunrise Lakota Housing in Martin.

MS. HUBER. Could you tell us a little bit about what the housing is?

MS. FLYE. It is cluster housing located about a mile and a half east of the city of Martin. There is 35 families living in that housing area.

MS. HUBER. Indians or non-Indians?

MS. FLYE. Indians.

MS. HUBER. What kind of land is the housing located on?

MS. FLYE. On tribal land.

MS. HUBER. Is it correct that Bennett is checkerboarded and that tribal land is interspersed with land under State jurisdiction?

Ms. FLYE. Yes, that is correct.

Ms. HUBER. The city of Martin is under State jurisdiction, but the land where the Lakota Housing project—

Ms. FLYE. Is tribal.

Ms. HUBER. Tribal jurisdiction. For those Indian families living in the Sunrise Lakota project, where would they go to buy groceries or other necessary items or to transact business?

Ms. FLYE. To Martin.

Ms. HUBER. Can you tell us a bit about your duties working for the La Creek District of the tribe?

Ms. FLYE. I go and make home visits to the district people, tribal members, and I find out their needs and their wants and we try to help them.

Ms. HUBER. In the course of your duties on your job, have you become familiar with the situation of people in the Indian community in Bennett County?

Ms. FLYE. Yes, sir.

Ms. HUBER. Have you talked to many members of that community?

Ms. FLYE. Yes.

Ms. HUBER. Can you tell us, in your perception and in the perception of the members of the Indian community that you deal with, how are Indians treated in Martin's commercial establishments when they go into Martin?

Ms. FLYE. I think the general opinion of the Indian people is that there is some discrimination from some of the merchants.

Ms. HUBER. Can you tell us more about what the Indians see as discrimination?

Ms. FLYE. Well, for instance, it happens more to the older people who sometimes don't speak fluent English. They might go into a store and some of the clerks might talk down to them as they would talk to a child. I have noticed that on several occasions. I have seen it happen.

And my family and I went to a cafe one time. We sat there for a good half-hour waiting to be waited on. The waitress was busy, it was during the noon hour, but she ignored us. Then a family of white people came in and sat down at the table next to us. She was there right now, waiting to take their order.

Ms. HUBER. Have you heard of any other similar kind of incidents from other Indian people?

Ms. FLYE. Yes, there have been some complaints.

Ms. HUBER. Ms. Means, you live in Porcupine, South Dakota?

Ms. MEANS. Yes, I do.

Ms. HUBER. Approximately how many miles or how long a drive is that from Porcupine to Martin?

Ms. MEANS. About 40 miles.

Ms. HUBER. For what reasons would Indians who live in Porcupine travel to Martin?

Ms. MEANS. Well, where we get our electric service is located in Martin, La Creek Electric.

Ms. HUBER. Can you get electric service out of the Pine Ridge Reservation?

Ms. MEANS. No, we go through Martin.

Ms. HUBER. Is there a company on Pine Ridge you could use instead?

Ms. MEANS. No.

Ms. HUBER. For what other reasons?

Ms. MEANS. Shopping, the bank. We bank at Martin, at Blackpipe.

Ms. HUBER. Is there a bank on the Pine Ridge Reservation?

Ms. MEANS. No.

Ms. HUBER. Can you shop for most items on the Pine Ridge Reservation?

Ms. MEANS. Not really like you could in Martin or any off-reservation town, although the prices—there is a big difference in prices on and off the reservation.

Ms. HUBER. What is the difference?

Ms. MEANS. Prices are a little lower off the reservation than you find on the reservation.

Ms. HUBER. So that Indians in Porcupine, for economic reasons, see a need to go to Martin on occasion?

Ms. MEANS. There is a better variety of whatever you can buy.

Ms. HUBER. In your perception and from what you have heard from other members of your community, how are Indians from Porcupine treated in Martin commercial establishments when they travel to Martin to conduct their business?

Ms. MEANS. From my own experience, there is discrimination, I feel—a feeling of hostility when you would walk into an establishment in Martin. I feel it myself.

Ms. HUBER. Can you tell us some examples to give us some feeling for what experiences you have had?

Ms. MEANS. When I go into a store in Martin, usually I'm followed around. It looks like they think I'm going to be stealing or whatever they are afraid of. If a non-Indian walked in at the same time I did, that non-Indian would be free to go throughout the store and the clerk wouldn't be following that person around like I would be getting followed around in a store. That makes me feel I'm being discriminated against.

Ms. MEANS. Ms. Flye, how in general would you characterize the relations between the Indians and the non-Indians living in Bennett County?

Ms. FLYE. Well, there are a lot of white people who don't discriminate. I have a lot of white friends myself. But there is still some discrimination.

Ms. HUBER. I know we are talking about subtle things like attitudes and sometimes that is hard to explain. Can you give us some idea of what you have on your mind when you say that?

Ms. FLYE. Can you ask me again, I forgot?

Ms. HUBER. You said that with many white people that are your friends you don't have a feeling of discrimination, but you think in some cases there is discrimination. Can you tell us what makes you think this attitude exists?

Ms. FLYE. Well, you can go in a store and the clerk might frown when she is talking to the Indian, she might frown. The white person next to the Indians, she will smile at them and talk, visit with them. It is just little things that you can't really put your finger on it.

Ms. HUBER. Do Indians and non-Indians who live in Bennett County as a general rule socialize with each other, visit in each other's homes?

Ms. FLYE. No.

Ms. HUBER. I think you mentioned to one of our staff members in an interview customs as to funerals in Martin. Could you tell us about that?

Ms. FLYE. When a white person dies, most of the businesses close for the funeral. That is standard practice. But when an Indian dies, business goes on as usual. They don't close up or anything.

Ms. HUBER. What can you tell us about how the Indian community believes they are treated by law enforcement, by the county sheriff's office?

Ms. FLYE. There is bad feelings between the Indian community and the law enforcement people because of the way the deputy sheriffs act towards the Indian people. It is a thing of attitude. They never smile at the Indians. They laugh and talk with the white people but not the Indians.

MR. HUBER. Can you tell us anything else about how the Indians in Martin feel about the law enforcement in the county?

Ms. FLYE. We feel that we are more closely watched by the sheriff and his deputies. It seems that way because every week when you pick up the local paper you will see most of those people's names in there are Indians.

Ms. HUBER. The names of people who have gone through the court?

Ms. FLYE. Through the court. And the white people that are picked up are mostly for speeding and they are mostly from out of town, even out of State.

Ms. HUBER. How does reading these statistics in the paper make the people in the Indian community feel?

Ms. FLYE. Well, it makes us feel we are being treated differently.

Ms. HUBER. How about the young Indian people who live at the Sunrise Housing? What is their relationship with the law enforcement system in Bennett County?

Ms. FLYE. They don't get along with them at all.

Ms. HUBER. How so? In what way they don't get along?

Ms. FLYE. They have a defiant attitude towards the law enforcement authority. They would rather not have anything to do with them.

Ms. HUBER. Do you know why that is?

Ms. FLYE. I think it is because of the way they treat them, treat us.



Ms. HUBER. What sort of treatment are you talking about, specifically, in relationship to the teenagers?

Ms. FLYE. They watch them closer.

I have seen the police watch kids riding on bicycles to see what they are doing, and it is just—they watch them more.

Ms. HUBER. Do you have any specific instances in regard to your own family that you would like to share with us?

Ms. FLYE. Yes.

This happened in, I think in March about 1 o'clock, my son came home from uptown and he told me he had just gotten out of jail. I asked him what for. He said one of the deputies stopped him and called him over because he wanted to talk to him, but my son got scared; instead of going over there, he ran away from him. So the deputy got out of the cop car and he chased him and, when he caught him, he grapped him by the hair, threw him down on the sidewalk and, in the process of grabbing him, he jerked out a bunch of his hair from his head.

Then they took him to the jail. My son was 14 at the time. He took him to the jail and kind of threatened him. It was in connection with a break-in at one of the bars, and they threatened him with a jail term if he didn't confess to this break-in. So he confessed. When he came home and told me about it, I asked him if he did break in. He said, no, he didn't. I said, "What did you confess for then?" He said, "Because I was scared of them."

Ms. HUBER. Do the young people in Martin have any different attitude toward the tribal police than they do for the sheriff?

Ms. FLYE. Yes, they have a much better attitude toward the tribal police.

Ms. HUBER. Why is that?

Ms. FLYE. It is because the police in our district know the younger people. They respect their feelings. They might chew them out, but they don't make them feel like they don't amount to anything. They have respect for them, and so in return they have respect for the police, too.

Ms. HUBER. Ms. Means, is there anything you want to add to what Ms. Flye said about law enforcement in Bennett County, in the perception of the Indians from Porcupine who travel to Martin?

Ms. MEANS. I am not an Oglala Sioux. I am Winnebago, but I moved to the reservation after I was married in '73. The first thing I noticed going through Martin was the fact that Indian people, especially those who had long hair, were stopped by the deputy sheriff. I have seen that happen where going right behind somebody driving a car that had long hair would be non-Indian with a couple of rifles in the back of his pickup. I do not know what the reason for the deputy sheriff stopping the Indian, but what it looked to me was that he had pulled them over because they had long hair or for whatever reason, but a non-Indian going by with a couple rifles also in his back window with a rifle rack,

to me that looked like outright discrimination. I have experienced it. I have been stopped on several occasions in Martin.

I believe, I really agree with her, discrimination exists with the law enforcement agency in Martin, Bennett County.

MS. HUBER. Mr. Hodson, we understand that you have lived in Bennett County all your life. Is that right?

MR. HODSON. No, that is not quite correct. True, I lived on the Rosebud Reservation for the first 15 years of my life.

MS. HUBER. Since you were a teenager you have lived in Bennett County?

MR. HODSON. Yes.

MS. HUBER. You manage the bank in Bennett County which was founded by your father?

MR. HODSON. That is correct.

MS. HUBER. Is it fair to say you have a pretty deep knowledge of Bennett County through your own and your family ties?

MR. HODSON. It is possible.

MS. HUBER. Based on your knowledge of the community, from being there, how would you characterize the relations between Indians and non-Indians in Bennett County in an earlier period than we have now; for example, in the 1960s and earlier?

MR. HODSON. I think it was considerably better than now. I would agree with the girls that it is not as good as it should be or as good as maybe it used to be.

MS. HUBER. Could you tell us how it was at that time?

MR. HODSON. Well, there was a time when there was considerable emphasis on assimilation, and the color line wasn't drawn by the Government as strictly as it is today.

What I'm saying, the Government didn't start institutionalizing them with hospitals of their own, schools of their own, community projects, movements more or less directed—probably it was well intended, I don't know—promoting or re-promoting or re-creating the ethnic thinking of the American Indian. But in doing so, you see, what they have done is communitize them, move them into their own sections, their own groups, surrounded with their own culture almost day and night, their own government, their own police, and their society was more or less legislated or dictated by economics and by Government edict.

I think that the communication between any two groups of people is directly related to their association on the social level. And when you eliminate, when you start segregating, as the Government is doing, their educational system, starting from the youngest children in the BIA schools, and the contact that they have is limited to the people of their own group, it wouldn't be unusual with any separated ethnic group of people.

If the Government decided to separate in any city a school system directed only at any particular people, the Lower Slobovians, for example, separated in New York, if it wasn't a good thing to intermix

them on that level, which is the most formative level, why is the Government busing people back and forth all over the United States except the reservation? You have got to get communication going between people. The Government is the worst offender.

MS. HUBER. How do you think the Government is fostering this?

MR. HODSON. A white Indian rancher farmer can live across the road from one of the finest Indian schools in the reservation and must farm his children out to a public school elsewhere. That's too bad, because they are living as next-door neighbors. The children should start associating with each other at that level.

MS. HUBER. So, as I understand what you are saying, a growing tendency toward Indians moving to a separate ethnic culture as opposed to an assimilationist posture has affected the relations between Indians and non-Indians as you see it in Bennett County?

MR. HODSON. True. Look at the housing. They built the housing, but they—I do not know who is they—I guess it is the Government—seem to think it is best they build separated housing; then you wonder why the lack of association. Why anybody you don't know, you don't meet on a social level, becomes a stranger. I would feel ill at ease with a Frenchman, because I don't assimilate, I don't socialize—

If this was more possible, and more of a daily event—we found that during the war, troops placed side by side with natives didn't have any great problem, after they began to socialize, of communicating with each other.

MS. HUBER. Ms. Flye and Ms. Means, I believe you told our staff that last year some Indians in Martin and on Pine Ridge called for a boycott of some businesses in Martin. Could either or both of you tell us what concerns led to that, what that was all about?

MS. FLYE. It was a feeling of, I would say, bitterness on the part of the Indians toward some of these shopkeepers. Some of them that were boycotted were because Indians worked there, and this one service station, this Indian boy worked at the service station, and when an Indian pulled up to have his gas tank filled, whatever, the people inside the service station would make fun of him before they went out to wait on him. It was things like this, little things that led to this boycotting.

MS. HUBER. Ms. Means, can you add to that from the perspective of Indians from Porcupine or Pine Ridge who travel to Martin?

MS. MEANS. Well, it is my personal belief, and I lived on Winnebago Reservation and then living here on the Pine Ridge Reservation, that in order to bring social change, create change for Indian people in a off-reservation town, the only way you are going to bring somebody in to see that change is needed is to hit them in the pocket because—I don't care—it has been my experience, as an Indian person, to bring a non-Indian around that is living off the reservation, like an off-reservation town, you got to directly hit them in the pocket to make them open their eyes.

We did a similar boycott on our reservation with an off-reservation town, Knobb Hill, Nebraska. With full tribal backing we pulled off a successful boycott where the citizens of Knobb Hill, Nebraska, came around and created a human relations board. There was better treatment of Indian people in the businesses. The law enforcement people straightened up their act. This was brought about by an economic boycott.

MS. HUBER. What came of the boycott that was called of some of the businesses in Martin?

MS. FLYE. Well, not much because it wasn't too well organized. It went for a little while, but it sort of fizzled out.

MS. HUBER. Mr. Larson, you are one of the county commissioners in Bennett County?

MR. LARSON. That is right.

MS. HUBER. You formerly owned the Coast to Coast Store in Martin before your retirement?

MR. LARSON. Thirty-one years.

MS. HUBER. So you are well familiar with the Martin business community as well?

MR. LARSON. I think I am.

MS. HUBER. What was the response of the business community in Martin when they heard about this boycott?

MR. LARSON. Well, that was after I had retired. I can't tell you too much about it, but to highlight it is like Alice said, nothing much come of it. They just couldn't get themselves coordinated, and I might add this, many thought they could go elsewhere to get credit and there was no credit for them. I think that is one of the reasons it broke up.

MS. HUBER. There was no credit in other off-reservation towns either?

MR. LARSON. That is what I believe.

MS. FLYE. I will correct Mr. Larson on that. We did get credit down at Allen at the May's Grocery Store.

MS. HUBER. Mr. Larson, did you or your fellow businessmen or former businessmen think there was any merit to the allegations of the boycott that there was unfair treatment of Indians in the Martin businesses?

MR. LARSON. I do not know what their feeling was, but in this meeting we had with the Indian people in February 28, I believe—

MS. HUBER. That was some months after the boycott?

MR. LARSON. I do not know. I think probably about that time.

The allegations were at this meeting they weren't being given credit and they weren't treated properly in town. I don't believe it was any justification to that whatsoever.

MS. HUBER. If there was no justification, what do you think led to some Indians calling for the boycott?

MR. LARSON. They just don't want to have law and order anywhere. It is a group of people that are a minority of the minority. I don't think I have to go any farther than that. I won't.

Ms. HUBER. Would you care to comment on that, Mr. Hodson?

Mr. HODSON. We seem to have gotten into this field of credit. I have been at it 41 years and don't know anything about it, but I'm saying it is news to me that there is an availability of the tribal court system to off-reservation creditors. I heard the last panel. I have a file of considerable number of letters that I have directed over the last many years to every official that I could reach, pleading this problem as being a potential danger and a potential personality clash between the groups if it wasn't worked out and offered to meet at any time with any panel we could work up to try to solve it.

Ms. HUBER. When did you make this offer?

Mr. HODSON. Oh, over the last 10 years.

Ms. HUBER. How did you communicate this offer and to whom?

Mr. HODSON. Writing, I have written Washington.

Ms. HUBER. Who did you write in Washington?

Mr. HODSON. If you had indicated you needed the file on that, I would have brought it along to give you dates and names.

Ms. HUBER. Can you tell me what agencies? Washington is quite a broad range—

Mr. HODSON. To the FDIC [Federal Deposit Insurance Corporation], Federal Reserve System, to the BIA. I have written to tribal chairmen, tribal judge, tribal council.

Ms. HUBER. In essence, what was it you were seeking?

Mr. HODSON. Well, I was pleading the case that we were going to have to approach this problem.

Ms. HUBER. The problem of credit?

Mr. HODSON. Of credit, because everybody needs credit. There are times when anybody and everybody feels the need for credit, whether at the local bank or the legitimate lending agencies, whatever. So this was good news to me that the tribe had worked out something.

At the time we are speaking of here, our business people were giving and continue to give a considerable amount of credit to the Indian and white alike.

You have got to assume, you see, here, the wisdom of Solomon. When you stop to think about it, available to them in their court, in there, they do have an enrollment system, they do have their membership immediately available to them. You see, the shopkeeper and the business person off the reservation are at quite a loss to say to a person, "Are you or are you not an enrolled tribal member?" I think it is an illegal question under the new law of lending. Yet, there was an awful lot of credit given, still is, by our business people.

Ms. HUBER. In view of what you have said, why do you think that some Indians called for a boycott of some businesses in Martin? Why do you think that happened at this particular time?

Mr. HODSON. Well, I'm just really not sure. I wasn't one of the businesses they thought they should boycott. We are proud of that fact.

I'm sure that if you would check into the filling station matter, it could be—

Ms. HUBER. We would just as soon not get into the names of specific businesses here. We are talking about the situation in general.

Mr. HODSON. We had about a 25 percent Indian population in town. About the same ratio of business places in town are people of Indian enrollment, so some of those people work at white outlets. Yes, I want to clear up the fact that the boycott, it wasn't a boycott from Indians to white, because some of the business people on the boycott list were people of enrolled tribal status membership.

Ms. HUBER. Ms. Means, we have heard also that last year there was a caravan of members of the Indian community who traveled from the Pine Ridge Reservation, from Porcupine to Martin to register some concerns with the officials of Bennett County. Is that right?

Ms. MEANS. Yes, it is.

Ms. HUBER. Would you tell us about that caravan that happened in February '78 and what concerns people in the Indian community had that they wanted to bring Martin?

Ms. MEANS. What spearheaded that was the initial boycott that was started in Martin by a man I have a lot of respect for, Mr. Ron Two Bulls. At the time of the caravan he was incarcerated in the Bennett County Jail. We had been getting reports, we received letters from him of his treatment while in the Bennett County Jail. We were concerned about this kind of treatment he was receiving. He was an Indian. We felt we could go and meet with the Bennett County commissioners to try to bring out some type of change for this type of situation for Indians in general in the Bennett County Jail and living in Bennett County.

Ms. HUBER. What issues in addition to law enforcement issues were of concern to your group in taking this action?

Ms. MEANS. The treatment of youth, like Ms. Flye was saying here, juveniles in the Bennett County Jail. Treatment of Indian people in stores in Bennett County, law enforcement treatment of Indian people in Bennett County in general, and specifically, Mr. Two Bulls' case.

Ms. HUBER. What did you want to do with those concerns? What sort of discussion did you want to have and with whom?

Ms. MEANS. We hoped to have a meeting with different representatives of our group with the Bennett County commissioners. That meeting did take place once the caravan arrived in Martin.

Ms. HUBER. Could you tell us about that meeting?

Ms. MEANS. Okay. I wasn't in the meeting myself, personally. I was outside with the majority of the people in the caravan, but we had different people that were in the meeting who would come out at different times while the meeting was taking place to inform us what was just said in the meeting and what was going on. But I didn't feel too good about the meeting myself personally because, where I was parked outside of the building where the meeting was going on, it was a cold day, and we went to Martin feeling that sitting down over the table and talking with the commissioners and trying to figure out a way to work out these problems, it was our reason for going there. Right

across the street from the building where the meeting was taking place there was a church, a Christian church. Inside that church was full of police officers with riot gear, hidden out of view.

Ms. HUBER. How did you and the other people outside the meeting feel when you saw that?

Ms. MEANS. We felt Bennett County apparently wanted a confrontation or were hoping for one, so they had their law enforcement people ready.

Ms. HUBER. Did any sort of confrontation take place?

Ms. MEANS. No, it didn't.

Ms. HUBER. Mr. Larson, you were a county commissioner at the time of this incident, were you not?

Mr. LARSON. Yes.

Ms. HUBER. Did you participate in this meeting?

Mr. LARSON. Yes, I did.

Ms. HUBER. Could you tell us about that meeting from your perspective, please?

Mr. LARSON. Well, there were two or three people, I believe one was Mr. Yellow Bird and Mr. Means. They were the main spokesmen for the group. Mr. Means was very—he was a real gentleman, surprised me. I will say that. He spoke real low. He wasn't excited. He didn't make any demands. He didn't get mean or—he was demanding, I will say that.

Ms. HUBER. What sort of demands were raised or what were these people bringing to your attention?

Mr. LARSON. Just the fact they felt they weren't being recognized as people. That was my feeling about it. And of course, then when we started—

Ms. HUBER. What was your reaction to hearing that?

Mr. LARSON. Well, I didn't go along with it. I never did feel that way about people as a whole. You can't do that.

Ms. HUBER. I understand that coming out of this meeting there was some discussion of forming a human relations commission?

Mr. LARSON. May I read this letter that I have with me? This pertains to this particular thing.

Ms. HUBER. Could you summarize it and introduce it in our record? Is that the letter from the State's attorney?

Mr. LARSON. Yes. I asked him if he would summarize the meeting, because he was to head this group.

CHAIRMAN FLEMMING. If it isn't too long—

Ms. HUBER. Very well.

Mr. LARSON. I will read. It is to be presented for your minutes anyway. I read it the other day to the other group down in Martin.

CHAIRMAN FLEMMING. Without objection we will accept the full text of it for the record and mark it as Exhibit No. 8. But if you would like at this time to give us at least the high points of the letter, we would appreciate it very much.

MR. LARSON. It had to do with forming a group like Mr. Hogen was talking about. We had offered to have a group like this. There were to be seven Indian people and seven non-Indian people. And Mr. Baptiste Dubray, Alice Flye, Bob Yellow Bird, Charlie Bettleyoun, and Al Trimble were the individuals representing the local Indian community. They were to pick seven people. Our people were to have seven people. There were supposed to seven people from the opposite side. And Mr. Dubray was supposed to pick up the copies, and of course, it is still in the making here.

Alice, you are aware of this, aren't you?

[Ms. Flye indicates no.]

MR. LARSON. I read it at the other meeting.

MS. HUBER. Mrs. Flye, what is your understanding as to the current status of any discussions for the forming of a human relations committee?

MS. FLYE. It is still in the discussion stage, I guess. We didn't hear anything more after that first meeting.

MS. HUBER. Last February?

MS. FLYE. That one meeting, yes.

MR. LARSON. May I read this paragraph here:

It appears to me that there is a substantial degree of interest from the Indian community in organizing some type of human relations commission. The city council representatives that I have discussed the matter with seem to be generally favorably inclined with regards to considering such an ordinance.

Now, they are waiting to get a copy of the ordinance from Kadoka and from Rapid City. They are to coordinate this with this group. So far as the State attorney's office is concerned that is as much progress as I am aware of.

I hope this letter will answer your question regarding the current status of the development of our human relations commission for Martin, South Dakota. If there are other questions, I will certainly be available to answer them.

He has set up a meeting sometime after the first of August because he is on a vacation. This has been set up already.

MS. HUBER. Very well. Mr. Chairman, may we receive the letter from the State's attorney in our record?

I have no further questions at this time.

CHAIRMAN FLEMMING. I have already noted it as being received as an exhibit to be inserted at this point in the record.

MS. HUBER. Yes, sir.

COMMISSIONER FREEMAN. Mr. Larson, with respect to the proposed human relations commission, am I correct then that the status is that the attorney has recommended that it would be an appropriate action to take when the city council approves it?

MR. LARSON. I don't believe it read that way, did it?



COMMISSIONER FREEMAN. There is not now in existence a human relations commission. Is that correct?

MR. LARSON. It said—wait a minute.

It appears to me there is a substantial degree of interest from the Indian community commission and the city council representatives that I have discussed the matter with seem to be generally favorably inclined with regard to considering such an ordinance.

In the context before this, it says they are waiting for a copy of the Kadoka proposition and the Rapid City proposition. They would like to work something out in the—

COMMISSIONER FREEMAN. They are favorably inclined to consider it?

MR. LARSON. Well, I can't speak for the city council.

COMMISSIONER FREEMAN. The question that I asked was that it is not now in existence.

MR. LARSON. They are working at it. They are working at it.

COMMISSIONER FREEMAN. They are working at it, but it is not now in existence?

MR. LARSON. Not yet.

COMMISSIONER FREEMAN. Mr. Larson and Mr. Hodson, first of all, did you state that during the time you were in business, you are retired now, did your company extend credit to Indians?

MR. LARSON. Very much so.

COMMISSIONER FREEMAN. Was that during the entire time that your business was in operation?

MR. LARSON. Yes.

COMMISSIONER FREEMAN. You were not one of the merchants that refused credit. Is that correct?

MR. LARSON. There are very few people that can come to me and say that I never granted them credit—white or Indian or black or anything else. If I thought they were considered good people, honest people, they got credit.

COMMISSIONER FREEMAN. Then your answer is yes, you did extend credit?

MR. LARSON. You bet I did.

COMMISSIONER FREEMAN. Mr. Hodson, did your bank extend credit? Does your bank now extend credit to Indians?

MR. HODSON. Always have.

COMMISSIONER FREEMAN. You always have? So that you expressed some concern concerning the fact that the tribal court is open for the collection of bad debts. I understood you to say that when you heard that today that was your first information about it. Is that correct?

MR. HODSON. That is correct.

COMMISSIONER FREEMAN. Does your bank have bad debts?

MR. HODSON. You bet.

COMMISSIONER FREEMAN. In the past, how have you handled the collection of bad debts?

MR. HODSON. If they are a resident of Bennett County, which is off the reservation, we go into the small loans court and seek to receive a small loans judgment. If it is larger than that, we go through the State attorney's office, the usual legal collection procedures.

If it is out of Bennett County and on the reservation area, that is a tough question.

COMMISSIONER FREEMAN. Has the bank been represented by counsel during any of these proceedings?

MR. HODSON. Oh, yes.

COMMISSIONER FREEMAN. Does the fact the bank did not know indicate the counsel did not advise you the court was open or the attorney didn't know it either?

MR. HODSON. We used both local attorneys we have. I am certain neither are aware of the statement, that fact.

COMMISSIONER FREEMAN. How did the bank handle these debts? You did not pursue a remedy that was available to you because you say you did not know about it. How did you handle the bad debts?

MR. HODSON. Write them off.

COMMISSIONER FREEMAN. You wrote them off. So actually you took them off as a tax benefit?

MR. HODSON. You got to make money before you can take it off.

COMMISSIONER FREEMAN. Thank you. I have no further questions.

MR. NUNEZ. Mr. Hodson, you are a long-time resident of the area. I understand you have some familiarity with the history of the Sioux Tribe. I was wondering, the question I raised previously, how you would characterize the recent violence and its lessening in the last several years? Have you reviewed this whole situation and thought about it and feel that things are straightening themselves out in the area of violence on the Pine Ridge Reservation?

MR. HODSON. Everything always works its way out, both civil or world wars, they always do. But I think if it hasn't been made a point here it should be; a considerable portion of the violence is Indian to Indian. I don't want this group to get the impression that everytime there is a confrontation you have got cowboys and Indians chasing each other over the hills again or vice versa. That is really not the situation.

In our town, there is considerable intermarrying. I would say that at least 25 percent of our people are of some degree of Indian blood. I think our relationship on that basis really is quite good. Business people up and down the street are about the same proportion.

MR. NUNEZ. You would characterize the relationships as improving?

MR. HODSON. It always gets better. Every day has to get better. It is still here. You can try it.

MR. NUNEZ. Ms. Means and Ms. Flye testified just a little while ago they didn't feel things were getting better. There seems to be a major difference of opinion.

MR. HODSON. The fact we are all sitting here together discussing it would indicate it is getting better, wouldn't it?

COMMISSIONER FREEMAN. Of course, you are under subpoena.

MR. NUNEZ. No further questions. Thank you.

DR. WITT. Mr. Hodson, I have a question for you with the respect of something you mentioned earlier. It is my understanding that you felt that a polarization was developing between non-Indian and Indian populations brought about in part, perhaps in large part, by the Federal Government in developing programs on the reservation. Then would you suggest that the reservation system itself is a mistake? Should it be done away with in your observation?

MR. HODSON. No. I think the reservation is fine. I don't quarrel with that at all. I'm saying whenever in history you have people with dual citizenship, whether they have French citizenship and American citizenship, for instance, you are going to have a mixed emotion, you are going to have a mixed problem. If today that person who wants to be looked at as a Frenchman finds himself in the company of non-Frenchmen, and chooses to say, "Look, it is a conflict of my citizenship elsewhere," I think it has to be ironed out so that they fully have the right to govern themselves if they like.

I have no quarrel really with that, but I think they are going to have to know if it is a sovereignty. The problem of the sovereignty—how can you move back and forth between the two sovereignty points of view when you have two entirely different societies writing two different sets of laws, writing two different sets of enforcements of those laws, and you have an almost totally dominated government society on one side and a rather free and open society on the other, it is bound to cause conflicts—mentally, emotionally, financially, physically.

DR. WITT. It comes to mind we also have citizenship in State as well as national government. Is that another kind of analogy you might use as opposed to French and American?

MR. HODSON. No. I don't think so, because if you were to put on your hat and cross the boundary from a State to a State, you immediately assume that your membership in your home State doesn't give you any special immunity from the rules and regulations of the State you are traveling in.

DR. WITT. My question now is for Ms. Means.

In your observation, what is the nature of the Federal Bureau of Investigation's activity in the Porcupine area of the Pine Ridge Reservation?

MS. MEANS. My personal view of the Federal Bureau of Investigations is, on the reservation, on the part of the reservation where I live in Porcupine, I look at the FBI as snakes. That is my personal view.

A couple weeks ago, your staff member was doing investigations on the reservation and was in my home when they came down. We run a project of the American Indian Movement, a survival group home. There is a rumor floating around in the community constantly that the FBI is questioning, what are we doing down there?

It is a group of people educating each other, a survival school for young people.

One time last winter they came down and were accusing us of rustling cattle. At the time your staff member, Thelma Stiffarm, was in my home, I was going to take her around in the community so she could interview people for this hearing. The FBI was trying to go into the survival group home. They had a helicopter and three suburban vehicles with about seven FBI agents going to go in a home of kids, alleging that we were hiding some criminal down in the school. That is a common thing at home.

DR. WITT. How frequent would you say that is?

MS. MEANS. We have gone through it four or five times since we moved down to Porcupine, since the school itself moved out of Rapid City to Porcupine last fall. They terrorize, they will go to a home. People really don't know what to do when an FBI agent comes to your home and says he wants to talk to you, because they are afraid. They pull up in the back with a vehicle and in the front with a vehicle and they come on like the riot squad. That is how they come on to Indian people that really don't know that you don't have to talk to FBI agents, because they are trained to take anything that is said, even in smiling at you, and use it as evidence. As a member of the American Indian Movement, we have had people—members of the American Indian Movement have been murdered, and because they are AIM people, the FBI does little or a show of an investigation towards the people that committed the murder, but there is never any convictions made, or only a few. There are deaths that are unsolved on the reservation because of different people that are known members of the American Indian Movement, but if an AIM member is alleged to have committed a crime against somebody or whatever, the the FBI will go out and just break itself trying to convict an Indian person, especially if you have long hair in South Dakota.

DR. WITT. When these visits occur, are subpoenas brought forward?

MS. MEANS. I'm pretty sure the U.S. marshals issue subpoenas on the reservation, but last winter, an Indian women answered the door and FBI agents came through with rifles, knocked her aside, came in there, and took her son out of the home, with rifles on a 70-year-old Indian woman. We called the marshals to find out what was going on, why.

They didn't even let them see an arrest warrant. They just took him right out of there. I know this has got to be documented in this final report. You people have interviewed the family itself, but we called the U.S. marshal service to find out why he was arrested, and the people didn't even know where they were taking him. The marshals didn't know nothing about it. The FBI had made the arrest. We assumed and hoped that they would eventually get him to Rapid City because he is a known AIM member and the FBI have been known to commit whatever.

DR. WITT. Thank you.

MS. HUBER. Ms. Flye, Mr. Nunez mentioned earlier the current situation in regard to the enforcement on the Pine Ridge Reservation.

We understand there is a new tribal police force system for the Oglala Sioux Tribe.

What is your viewpoint of how that is working out in the La Creek District in Martin, where you live?

Ms. FLYE. As compared to a few years back when the BIA had the law and order system, it is a lot better in that when the law and order was under the BIA, most of the policemen were stationed in Pine Ridge. That is about 50 miles away from Martin. Any time we needed the help of the law, we had to call over to Pine Ridge; sometimes it was 2 hours, 3 hours and sometimes they never showed up. It was bad back then.

Ms. HUBER. How it now?

Ms. FLYE. It is a lot improved.

Ms. HUBER. Why?

Ms. FLYE. Because the police are right there, right in the community. They are right down the street when you need them.

Ms. HUBER. Ms. Means, would you like to comment on how the tribal police system is working out in the Porcupine District?

Ms. MEANS. Well, it is my personal view again after seeing when it was under the Bureau, the Bureau has the civil service, you know, and they use that too in hiring and firing people, and it is almost impossible to get somebody known to be a real pig fired. The Bureau usually transferred them to another reservation.

Ms. HUBER. How is this system now?

Ms. MEANS. Now, the tribal police, we get along with them good at Porcupine. We have a community police review board. If there is any trouble, they have a way to view the complaint and the grievances and the people on the police force, we know them and get along very well.

CHAIRMAN FLEMMING. Thank you very, very much for being with us, providing us with this testimony. We appreciate it.

Counsel will call the next panel of witnesses.

Ms. HUBER. Could we have Sheriff Ed Cummings, Sheriff Bruce Madsen, Lt. Lee H. Antelope, and Lt. Ellsworth Brown, would you please come forward.

[Lieutenants Antelope and Brown and Sheriffs Cummings and Madsen were sworn.]

**TESTIMONY OF LEE H. ANTELOPE, LIEUTENANT, OGLALA SIOUX TRIBAL POLICE, LA CREEK DISTRICT; ELLSWORTH C. BROWN, SR., POLICE LIEUTENANT, EAGLE NEST DISTRICT; ED CUMMINGS, SHERIFF, MARTIN, BENNETT COUNTY; AND ARNOLD BRUCE MADSEN, SHERIFF, JACKSON-WASHABAUGH COUNTY**

CHAIRMAN FLEMMING. Thank you. We appreciate your being here.

Ms. HUBER. We would like to begin by getting some background information. Sheriff Cummings, could you begin by identifying yourself and describing your position and the geographical area within your law enforcement jurisdiction?

MR. CUMMINGS. My name is Ed Cummings, Bennett County sheriff, Martin. And I am responsible for all the deeded or nontrust areas in Bennett County.

MS. HUBER. And how many square miles would that be?

MR. CUMMINGS. I have no idea. I don't know.

MS. HUBER. How many deputies or patrol officers do you have working under you?

MR. CUMMINGS. I have four deputies.

MS. HUBER. Could you briefly summarize the nature of your experience and training as a law enforcement officer?

MR. CUMMINGS. I have been involved in law enforcement in Bennett County since January of 1975. I spent 5 weeks at the criminal justice training center in Pierre for the law enforcement training sessions and a couple of kind of job-related training sessions.

MS. HUBER. So you have been a law enforcement officer essentially for 3 years?

MR. CUMMINGS. Yes, since 1975, January of '75.

MS. HUBER. You are an enrolled member of the Oglala Sioux Tribe; is that correct?

MR. CUMMINGS. That's correct.

MS. HUBER. Lieutenant Antelope, could you state your full name and position and the geographical area you cover?

MR. ANTELOPE. My name is Lee Antelope. I am a lieutenant of the La Creek District of the Oglala Sioux Tribal Police in Martin, and my responsibility is trust area in Bennett County at this time.

MS. HUBER. Is it fair to say that your responsibilities are for those areas that are not Sheriff Cumming's responsibility, with the checker-board jurisdiction?

MR. ANTELOPE. Right.

MS. HUBER. And could you tell us briefly the nature of your experience and training as a law enforcement officer?

MS. HUBER. I have been in law enforcement just about 8 years. I worked for several sheriff's departments in New Mexico. I worked for the Bureau of Indian Affairs police in Rosebud, for the tribal police in Pine Ridge right now.

MS. HUBER. And when did you start working for the Oglala Sioux Tribe?

MR. ANTELOPE. Twenty-fifth of April, last year.

MS. HUBER. Have you had any kind of specialized investigative training?

MR. ANTELOPE. Altogether I have about 280 hours, mostly training from the FBI in investigative techniques and related training to investigation.

MS. HUBER. That is criminal investigation?

MR. ANTELOPE. Yes.

MS. HUBER. Are you a member of the Oglala Sioux Tribe?

MR. ANTELOPE. No, I am not.

MS. HUBER. What tribe are you a member of?

MR. ANTELOPE. Rosebud.

MS. HUBER. Lieutenant Brown, will you tell us your name and your position, please?

MR. BROWN. My name is Ellsworth C. Brown, Sr.

MS. HUBER. And your position?

MR. BROWN. I am a lieutenant from Eagle Nest District.

MS. HUBER. Is that on the Pine Ridge Reservation?

MR. BROWN. Yes, that is on the Pine Ridge Reservation in Wanblee.

MS. HUBER. Is that the area that Mr. Whirlwind Horse and Mr. Brown were discussing earlier?

MR. BROWN. Yes, it is.

MS. HUBER. How many patrol officers do you have working under you in the Eagle Nest District?

MR. BROWN. Well, I have two.

MS. HUBER. And could you tell us your experience and training as a law enforcement officer?

MR. BROWN. Well, after I got out of the service in '64, I worked for the Cheyenne River Sioux Tribal Police. And I quit there and it's been a number of years and then I come to Pine Ridge and I work on the tribal police force now. I have had about 5 years altogether.

MS. HUBER. And what kind of formal training have you had in law enforcement and investigative techniques?

MR. BROWN. Well, in the training, like Lieutenant Antelope said, we got 280 hours in investigation and supervision.

MS. HUBER. Sheriff Madsen, could you tell us your name and position, please?

MR. MADSEN. Arnold B. Madsen, Jackson-Washabaugh County Sheriff. And as far as law enforcement, I have been in it approximately 3-1/2 years now.

MS. HUBER. Was that when you were elected sheriff?

MR. MADSEN. Yes, it was.

MS. HUBER. What area do you cover?

MR. MADSEN. We have Jackson County and the non-Indians in Washabaugh County.

MS. HUBER. Is that the jurisdictional situation that Mr. Hogen described earlier with the organized and unorganized counties?

MR. MADSEN. Yes, it would be.

MS. HUBER. What formal training have you had as a law enforcement officer?

MR. MADSEN. I went for the 3 weeks certification school at DCI.

MS. HUBER. Tell us what DCI is?

MR. MADSEN. Division of Criminal Investigation in Pierre plus another week of orientation before I took over as sheriff. And we do take numerous courses in such—some college courses in criminal justice. And they have special courses anywhere from 1 and 2 days up to 1 week or 2 weeks that a fellow can take. Some of it's offered through the FBI to the DCI.

MS. HUBER. Have you taken any courses?

MR. MADSEN. None here lately, no.

MS. HUBER. And how many deputies do you have working for you?

MR. MADSEN. I have two of them working for me.

MS. HUBER. We have been discussing the recent decision in the *Oliphant* case as to the handling of non-Indian offenders who may commit offenses on reservation or trust land.

Lieutenant Brown, could you tell us how it's handled if you or one of your officers observe a non-Indian committing some sort of offense within Washabaugh County on the Pine Ridge Reservation?

MR. BROWN. Well, the one thing that happened was that about 8 months ago one of my officers went and stopped a vehicle for a DWI and when we turned it over to Sheriff Madsen—well, the State's attorney went and had my officer go ahead and make a citizen's arrest and then went to court up there in Kadoka and the person got convicted.

MS. HUBER. Did your officer testify in the State court?

MR. BROWN. Yes, he did.

MS. HUBER. Is this the usual way that it would be handled if one of your officers observes a non-Indian committing an offense?

MR. BROWN. Well, yes, that is what I and Sheriff Madsen was talking about. That is the way we worked it out. We didn't talk to anybody else but that is—

MS. HUBER. That is what you would do?

MR. BROWN. Yes.

MS. HUBER. What happens if, for example, you would stop an intoxicated driver who turns out to be a non-Indian? How do you handle that in terms of detaining the person?

MR. BROWN. Well, I would call Sheriff Madsen over and have him take the matter. Until he makes the arrest, I will be the one that signs the complaint.

MS. HUBER. What will you do with the driver in the meantime until Sheriff Madsen gets there?

MR. BROWN. Well, I will hold him right where we're at. We have a substation down there where we keep them. And it's just a matter of minutes before Sheriff Madsen can get there.

MS. HUBER. Would you like to comment on what Lieutenant Brown said as far as handling of non-Indian offenders, Sheriff Madsen?

MR. MADSEN. Yes. In our area, that is the way it works. And like I said, it's working real well between the tribal officers and myself.

MS. HUBER. Lieutenant Antelope, how does it work in Bennett County if you or one your officers observe a non-Indian committing an offense on Indian trust land?

MR. ANTELOPE. Well, up until now we have arrested the person and produced them at the sheriff's office at which time we sign a complaint and incarcerate them if it was a jailable offense.

MS. HUBER. What happens to the case in court?

MR. ANTELOPE. We take them to the county court or State court or whatever or the magistrate, see the magistrate for that matter and dispose of it that way.



Ms. HUBER. Does the State's attorney accept your arrest as a citizen's arrest and take the offender to court?

MR. ANTELOPE. Yes, he does.

Ms. HUBER. Are you satisfied with the system for handling of non-Indian offenders, the way it's working out in Bennett County?

MR. ANTELOPE. In Bennett County, it's all right. I have a little trouble with Shannon County which is the reservation itself. I have to go to Hot Springs to sign a complaint. I think I had one person pending on the court action for about 5 months. It was a simple speeding ticket. I never got it to court yet.

Ms. HUBER. It's not working as fast there.

Sheriff Cummings, would you like to comment on how it's working between you and Lieutenant Antelope as to non-Indian offenders arrested on trust land?

MR. CUMMINGS. I think it's about like Lee says, until now we have worked pretty well. Lately, we have been working pretty well together. I don't know of any single instance that the State's attorney has refused to accept a complaint from one of the tribal officers.

Ms. HUBER. Thank you.

Sheriff Madsen, would you describe the nature of the working relationship you have with the Oglala Sioux tribal police officers in Washabaugh County?

MR. MADSEN. Yes, I would say that we have a very good working relationship. We have had instances just in the past 2 or 3 weeks where we have had problems on State jurisdiction and subjects have gone back across the reservation line, and we just contact the tribal substation there in Kyle and they dispatch officers and they will come across on the State jurisdiction and give us a hand there if necessary.

So we just kind of work back and forth and, if Lieutenant Brown calls and needs some assistance I go down there and give him a hand in any way he needs it too.

Ms. HUBER. How are you in contact with each other?

MR. MADSEN. We have a radio. Our radio communication isn't the best, but like I say, we go through my dispatcher and she will contact the substation and they will get hold of him on the air in the radio system if we cannot get through your State system.

Ms. HUBER. Do you think it's desirable for your county sheriff's department to have a close working relationship with the tribal police?

MR. MADSEN. Definitely it is.

Ms. HUBER. Why is that?

MR. MADSEN. Kadoka is the county seat, and we are only about 7 miles from the reservation border and we have a little town, 25,035 population, 30 miles to the southwest of us. And that is only about 2-1/2 miles from the reservation line. Most of their trade comes in off the reservation, I would say. And like I said, there we can have problems because they have no law enforcement, and myself and my two deputies take care of both counties as far as law enforcement.

Ms. HUBER. So you have got a lot to do with the a small staff; is that right?

Mr. MADSEN. Yes, we do at times. Like I said, it's very important that we have the close relationship with the tribal officers that we do have now.

Ms. HUBER. Why is it important?

Mr. MADSEN. Well, we have had burglaries and such, break-ins, and we might get a suspect vehicle. Like I said, here in April we had a situation where some parties in Interior had seen the suspect vehicle and they give us a description and said it was headed south. We contacted the tribal officer in Kyle, their substation, and they in turn dispatched their officers and arrested the subjects for us. And they even brought them back across into State jurisdiction for us and we prosecuted them.

Ms. HUBER. Lieutenant Brown, would you like to comment on your views on the relationship between your district and Sheriff Madsen's department?

Mr. BROWN. Well, there is times that I call for help and Sheriff Madsen is the first one there besides Lieutenant Antelope here. They both respond just about the same. The only thing is one of them is a few miles further than the other one, so I imagine they are breaking the speed limit a little bit, but they get there and give me a hand.

Ms. HUBER. Are you satisfied with the relationship you have with each other?

Mr. BROWN. Yes, I am.

Ms. HUBER. Lieutenant Antelope, could you tell us about the relationship that your office has with the Bennett County sheriff, both in the past as to any problems you may have had and how things are working out at the present time?

Mr. ANTELOPE. Well, in the past we had several personality problems. Some of my officers couldn't get along with some deputy sheriffs. There was a lot of nitpicking going on—nothing very important. The last maybe 2 months we have been working a lot closer together. We worked a couple good cases together and it seems to be working out real good now.

Ms. HUBER. During the times that your deputies and his deputies weren't getting along, did this create any law enforcement difficulties as opposed to personal difficulties?

Mr. ANTELOPE. Not as much law enforcement. There was no difficulties there because we really didn't work that close together up until then. There was no communication for about a couple months, I guess.

Ms. HUBER. Sheriff Cummings, what do you have to say about the relationship of your sheriff's department with the tribal police both in the past and how it is now?

Mr. CUMMINGS. Well, it goes back to what Mrs. Flye was saying a little while ago. They didn't have any police officers in La Creek Dis-

trict. I think this led to a lot of our problems when the tribe contracted the law enforcement. For years Bennett County had one law enforcement agency as we are combined and there is no city police in Martin. The sheriff's department does both the city and the county. I think this might have been some of our problem and that is what created the problem when the tribal police came in. I think, like Lee said, a personality conflict.

Ms. HUBER. Is it fair to say perhaps a feeling arose in your department that you had been the only law in the county for a while, and what is this new operation doing?

Mr. CUMMINGS. I believe that was probably a lot of it, yes. And like Lee said, in the last couple—3 months—he's eliminated a few and I've eliminated a few, and I think the two departments now can, with a few more changes from both sides, I think we can get along good in terms of law enforcement in Bennett County.

Ms. HUBER. Do you see a need or an advantage for close working relationships between the sheriff's office and the tribal police?

Mr. CUMMINGS. There is a definite need. Like I say, I have got four officers and Lee's got three or four officers at a time. There are situations when the one or two officers that are immediately available cannot handle the situation. I feel now for certain that if I call Lee here in town that Lee would come, and that if Lee needed some help in the county we would go help him. I think we have a good working relationship between the two.

Ms. HUBER. Sheriff Cummings, I believe you were here earlier this afternoon. Indian representatives from the Pine Ridge Reservation and also from Martin expressed their views that the Bennett County Sheriff's Office does not always treat Indians fairly in its law enforcement practices? Do you see any validity to these allegations?

Mr. CUMMINGS. No, I don't. Myself and my deputies and any law enforcement officer is sworn to uphold the law no matter who or what color. If we see a violation—I am sure Lee and Ellsworth and Sheriff Madsen—if there is a violation being committed, there is an arrest made. I don't believe we discriminate in who is arrested.

Ms. HUBER. If there is no truth to these allegations, why do you think that some people in the Indian community nevertheless have the feeling or have the perception that the Bennett County sheriff isn't fair to Indians?

Mr. CUMMINGS. There seems to have been, probably in the past 2 years, a hostility toward the Bennett County Sheriff's Office. Up to about 2 years ago we spent a lot of time in the Martin housing area, not particularly patrolling for whatever, giving people rides to town and give them rides home from town. About 2 years ago, several threats were made concerning our vehicles and our deputies about going into the housing project.

Ms. HUBER. The housing project is on tribal land; is that right?

MR. CUMMINGS. That is right, under tribal jurisdiction. Since that time, I don't believe one of my vehicles has been in the housing project for approximately 2 years. There is still a lot of people in there. We still get calls from people, but we are unable to help them for the simple reason we don't have the jurisdiction. We refer them to Lee and Lee takes care of their problems.

MS. HUBER. If a member of the Indian community or for that matter if a member of the non-Indian community has a complaint to make about the conduct of one of your deputies, how would that be handled? Where would they take that complaint?

MR. CUMMINGS. Either to myself or to the State's attorney.

MS. HUBER. And what would happen then?

MR. CUMMINGS. Then whoever gets it is the one that does the checking. I think most of the complaints from the Indian people go to the State's attorney. Very few of them come to me. I hear about them through the State's attorney.

MS. HUBER. Do you know if there is any record kept of the number and disposition of any such complaints?

MR. CUMMINGS. I know of none, no record, no, unless the State's attorney has it.

MS. HUBER. It's handled more or less on an informal basis?

MR. CUMMINGS. Yes.

MS. HUBER. Would you see any advantage in terms of how the community views the sheriff's department for a more formalized complaint procedure, for example, through a human relations commission?

MR. CUMMINGS. I believe it would have its merits, yes.

MS. HUBER. Lieutenant Antelope, would you care to comment as to why some members of the Indian community believe that there is unfair law enforcement by the Bennett County Sheriff's Office?

MR. ANTELOPE. Well, I think it's more the attitude of some law enforcement officers towards some people. I don't think it has anything to do with getting down on somebody. I think it's more that somebody just chose the wrong attitude, and I think attitude has a lot to do with police work. If you are going to go up to somebody and poke them in the chest and ask him what the hell he thinks he is doing, you're making a mistake. Ninety percent of the people you can talk them out of doing something silly before they do it anyway.

MS. HUBER. Sheriff Madsen, could you comment on, if you can, what percentage of the offenses that you deal with are in some way related to alcohol?

MR. MADSEN. Well, I would have to say that the biggest share of the offenses that we deal with as far as arrests and stuff, I would say in the area of 90 to 95 percent of them are alcohol related.

MS. HUBER. And how in general do you handle a case of someone being intoxicated and on the street, that sort of conduct?

MR. MADSEN. In that case, since they done away with our public intoxication law here a few years back, if we run into a situation of an

intoxicated person, we will go and pick them up and we will put them in our jail for a period of 8 to 12 hours, as we call it, for protective custody and then they are released.

MS. HUBER. What is your view of using statutes like disturbing the peace or disorderly conduct to deal with alcohol-related conduct?

MR. MADSEN. Well, those statutes would have their places in some instances but not for just any situation. If you were going to maybe incarcerate a party or put him in jail for protective custody and he got belligerent or violent with you, then you would have a charge, but normally there aren't that many of them charged with disorderly conduct in our office.

MS. HUBER. Is that a matter of policy on your part?

MR. MADSEN. Well, I don't know if it's a matter of policy. I guess you would have to say yes, that is just pretty much the way we handle that.

MS. HUBER. What is your thinking of that? Why do you use your discretion that way?

MR. MADSEN. Most of the time people in that situation need help, and it's not to be thrown in jail for 30 days or whatever for drying out. They need more help than that.

MS. HUBER. Mr. Chairman, I have no further questions at this time.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. No questions.

CHAIRMAN FLEMMING. Mr. Nunez?

MR. NUNEZ. Lieutenant Antelope and Lieutenant Brown, I would like you to respond to this question.

It's apparent among many differing opinions that many of the witnesses this afternoon have felt that the police situation has improved on the Pine Ridge Reservation. And just to confirm this, it's my understanding that previously the Bureau of Indian Affairs were the police on the reservation and now they have established the tribal police in the last year or so. I assume you gentlemen are both members of this new force. I am curious, aside from changing the organizational pattern, how do you attribute the lessening of the tensions and the better relationships with the community?

MR. ANTELOPE. Well, I think there is more policemen over a bigger area in the communities. Each community, we just about know the people there and how they are going to react, and we are available. I mean, there is no such thing as having to wait for officers for 2 or 3 hours like you had before.

MR. NUNEZ. You're divided into districts?

MR. ANTELOPE. Yes, we are divided into nine districts.

MR. NUNEZ. And how does that compare with the past organization?

MR. ANTELOPE. In the past, most of the police officers were stationed in Pine Ridge or in Kyle. And from Pine Ridge to Martin it took them at least 45 minutes to get there if they had a call. And we got our response time on a call down to about 7 minutes.

MR. NUNEZ. In other words, you decentralized the police force and you put them in smaller units?

MR. ANTELOPE. Small detachments all over the reservation for the community and for each district.

MR. NUNEZ. There was one other question in this area. I understand you have also set up a police review board. How does that work?

MR. ANTELOPE. Well, the police review board is responsible for hiring the officers.

MR. NUNEZ. For hiring them?

MR. ANTELOPE. Yes, sir. If you want a job as a policeman in a certain district, you should be a resident of the district to start with. You should live there, and you apply to your review board for a job. The review board follows guidelines as to how they can hire you. If you do get hired, it has to be approved through headquarters in Pine Ridge, and all the paperwork is done there and fingerprinting and everything else is taken care of. A record and background check is made by the FBI for the officer, and it takes maybe 2 or 3 days to get somebody to work.

MR. NUNEZ. You are a supervisor of a police unit in an interesting system of hiring policemen, in that, basically, they are being hired by community people. Do you feel the system works out well?

MR. ANTELOPE. When I first heard of this review board idea, I felt that policemen can't work for the board, that was my idea. And in about 2 months after I seen the operation and was part of it, I changed my idea. It can be done and it's working this way. If a community member has a complaint against a police officer, he writes a statement to the review board. The chairman gives it to me. I investigate the allegation and turn it back to the review board. They make the decision.

MR. NUNEZ. Lieutenant Brown, do you concur with Lieutenant Antelope's feelings about this new system?

MR. BROWN. Yes, I do.

MR. NUNEZ. Do you have anything further to add to the workings of this new system?

MR. BROWN. Yes. The review board members, if they were required to go ahead and to have their backgrounds checked too, because there is one that I know on the board that I felt that wasn't qualified on the last review board. And in these situations here, it wasn't me that was griping. It was the officers that was griping because they said, "Why should we have our backgrounds checked when the review board members who are our bosses don't have theirs checked?"

So anyway, it's kind of a touchy situation there, but the only thing, we still can go ahead and work together if the board members will go ahead and meet with the officers and go over the penal codes and the regulations that we have so everybody will understand what is going on.

MR. NUNEZ. No further questions. Thank you.

CHAIRMAN FLEMMING. Dr. Witt?

DR. WITT. None.

CHAIRMAN FLEMMING. Counsel has a couple of additional questions.

MS. HUBER. I would like to ask Lieutenant Antelope and Lieutenant Brown some questions about how the investigation of major crimes offenses are handled.

Lieutenant Antelope, if an offense occurred in your district that falls under one of the 14 major crimes and it comes to your or one of your officer's attention, how is the matter handled?

MR. ANTELOPE. Well, we start making a decision or an appraisal if it is one of the 14 major crimes and call the Federal Bureau of Investigation as soon as possible and advise them of the situation. Then we do a preliminary investigation and try to get as much work done as we possibly can before they get there.

MS. HUBER. Where is the FBI? Are they on the reservation?

MR. ANTELOPE. No, they are stationed here in Rapid City.

MS. HUBER. So they have to come from Rapid City to Martin?

MR. ANTELOPE. Yes.

MS. HUBER. You say you do a preliminary investigation; what would that consist of?

MR. ANTELOPE. Protecting the crime scene, collecting any evidence I can collect.

MS. HUBER. What might that be?

MR. ANTELOPE. Anything. If it's a violent crime, we try to find the weapon, try to find who it belongs to, round up witnesses, start taking statements from people, try to develop a suspect as soon as possible, and try to make an arrest.

MS. HUBER. And you say you want to do as much of that as possible before the FBI can get to Martin from Rapid City?

MR. ANTELOPE. Right.

MS. HUBER. Why is that?

MR. ANTELOPE. Well, if you waste too much time doing anything, people like to get lost. They don't want to be involved. And evidence likes to get lost. I feel like I owe it to the agents when they come to have as much information as I possibly can have for them when they get there.

MS. HUBER. Once they get there, what do they do in relation to the investigation that you have already undertaken?

MR. ANTELOPE. They probably interview witnesses that I produce for them, or they collect additional evidence, take photographs, or whatever they have to do, take sketches, fingerprints.

MS. HUBER. Are you trained to take photographs and lift fingerprints?

MR. ANTELOPE. Yes.

MS. HUBER. What, if anything, do you think the FBI adds to what you already do or are able to do being right there?

MR. ANTELOPE. Well, their equipment is a lot better than mine. That is about it.

MS. HUBER. Lieutenant Brown, what do you have to say about that? If a major crime occurs up in your district, how do you handle it?

MR. BROWN. Well, we have the preliminary thing, like Lieutenant Antelope said, we contact the FBI. So far we have been pretty lucky in that we have all the witnesses there, and it isn't so hard for the FBI to go ahead and go from house to house. Because the population there in the community are a little bit leery of the FBIs because the way they went and represented themselves before.

MS. HUBER. Why is that? What is it about the FBI agents that creates this response?

MR. BROWN. Well, before they usually come in there and they pack weapons and surround the house and all that stuff, and this is the image that they went and made for themselves. But so far now lately, well, we go over there and there is no weapons showing or anything like that, and even some of the agents are invited into the house and they do their interviewing right there. And the relationship between us and the special agents with the community is getting better. I think they are being accepted a little bit more. That isn't all the community, but, you know, it's the ones that they go visit—well, they are not afraid of the FBI anymore.

MS. HUBER. Do you feel that you have sufficient experience and training to be able to handle the investigation of a serious felony offense, a crime of violence?

MR. BROWN. Oh, yes, I think I do.

MS. HUBER. And when the FBI responds, what do they do with the investigation that you have already initiated?

MR. BROWN. Well, they take the evidence that I collect and they take some of the photos or they go ahead and take the photos themselves and all the sketches that they make there. So far they have commented that we done a good job of getting all the evidence and all that stuff. It's making their job easier.

MS. HUBER. What do you feel that their efforts add to what you do or you have already done?

MR. BROWN. Well, for the things that we have missed are the things that they are teaching us when they go and do their investigation. The officers I have sent out with them, well, then they go right ahead and help them take the fingerprints and photographs. They are learning right along with them. That is, the new men I have on the force.

MS. HUBER. The FBI is assisting in training your men in investigative techniques?

MR. BROWN. Yes.

MS. HUBER. As you may know, the FBI is cutting the number of its agents in its Rapid City office. Do you have any fears that you and your officers won't be able to take up the slack with the reduced force of the FBI?

MR. BROWN. Well, I think we can handle the situation. The only thing that we need would be some technical advice as to how to go ahead and dispose of the person that we have in custody at the time.



MS. HUBER. Lieutenant Antelope, how do you feel about that as far as being able to take over any slack that might come up with the FBI reduction in staff?

MR. ANTELOPE. I don't think it really makes that much difference anymore. I personally feel that maybe 2, 3 years from now we should be in good enough shape to take a felony case for one of the 14 major crimes directly to the United States attorney office.

MS. HUBER. Do you think it would be a desirable procedure as opposed to having the FBI involved?

MR. ANTELOPE. Every time you have a middleman involved somewhere you are not getting the credit sometimes that you really want.

MS. HUBER. Do you think that you have any advantage as a result of being in the community as far as being able to get information or be able to have people talk to you who might have information about a crime?

MR. ANTELOPE. People are a lot more open to you if they know you. If you are going to go in a community and nobody's seen you before and you come from 40 miles away, they are going to look you over for about 2 days before they are going to start talking to you. And I think, based in the community, there is more communication than there ever was before.

MS. HUBER. Lieutenant Brown, up in the Wanblee area are there many Indians who still speak the Lakota language?

MR. BROWN. Yes, they do. And I think that is one advantage I have over Lieutenant Antelope because I can speak the language fluently and I can communicate with anyone of the people there that speak the Lakota language.

MS. HUBER. And how does that assist you in your law enforcement duties?

MR. BROWN. Well, it helps me out good because I can go ahead and talk to people there, and they tell me in Indian and I have to translate in my reports. Because I sent in a couple of reports where the form said put down the words exactly like they said it, so I put down the Indian language and I sent the report in and I caught heck for it because they couldn't read it.

[Laughter]

MS. HUBER. I have no further questions.

CHAIRMAN FLEMMING. We are very appreciative of your coming in and giving us these insights, and we get the feeling that this new operation has taken hold. We appreciate the evidence that has come both from those who have direct responsibility and from the sheriffs that have got the overall responsibility and that you're working so closely. Thank you very, very much.

Counsel will call the next two witnesses.

MR. ALEXANDER. Marion Schulz and Jack Freeman, please come up.

[Messrs. Freeman and Schulz were sworn.]

TESTIMONY OF JACK FREEMAN, BUSINESSMAN, ZIEBACH COUNTY,  
SOUTH DAKOTA; AND MARION SCHULZ, FARMER, BATESLAND  
AREA, SOUTH DAKOTA

CHAIRMAN FLEMMING. Appreciate your being here.

MR. ALEXANDER. Could each of you gentlemen identify yourselves for the record, indicating your names, where you reside in the State, and what your current occupations are, starting with Mr. Freeman?

MR. FREEMAN. My name is Jack Freeman. I have been a resident of the State of South Dakota since the fall of 1949. I have been actively engaged in ranching, fast food business, and mobile home courts, real estate to date.

MR. ALEXANDER. In what area of the State?

MR. FREEMAN. In Ziebach County, State of South Dakota. The open portion of the Cheyenne River Sioux Tribe Reservation.

MR. ALEXANDER. Thank you.

Mr. Schulz?

MR. SCHULZ. My name is Marion Schulz. I was born and raised in the Batesland area, went to school in that area, did go to high school in Nebraska, educated in South Dakota, and farm a ranch there today.

MR. ALEXANDER. In the Batesland area?

MR. SCHULZ. You bet.

MR. ALEXANDER. In interviews with our staff both of you indicated that you were very active in the formation period of the South Dakotans for Civil Liberties. Is that correct essentially, Mr. Freeman?

MR. FREEMAN. It's correct from my point of view.

MR. ALEXANDER. Could you explain to us what factors or events led up to your participation in this organization?

MR. FREEMAN. My interpretation was that the Federal Government had embarked upon an accelerated policy of inverse discrimination among the residents of the State, based upon the race of the various people involved.

MR. ALEXANDER. Would you specifically translate that to an action that perhaps occurred, or tell us what were the components of this Federal policy?

MR. FREEMAN. Well, there were certain shelters from law that were available to individuals of one particular race in one instance that were not available to the citizens of another race in the same instance. And I couldn't reconcile this with the Supreme Court decision that separate but equal is not equal. And I felt that it was time that, even though my views might be unorthodox, they be made public and some consideration given them.

MR. ALEXANDER. When I spoke with you earlier, you indicated that a non-Indian within the exterior boundaries of the Cheyenne River Reservation was arrested by the Cheyenne River Tribe and prosecution was to proceed in tribal court. Did that incident create any activity on your part?

MR. FREEMAN. You might say that was the focus point. Your statement as to the exterior boundary of the Cheyenne Indian Reservation would be the point of dispute. The present contention of the non-enrolled citizen was that reservation boundaries was diminished since the Homestead Act opened it, and clearly the Federal Government was no longer defending that opinion or that philosophy.

The people that had taken up homestead and land ownership in this area were left disenfranchised from a judicial remedy in which they had a voice. And it was time that it be considered deeper.

MR. ALEXANDER. The issue of, for jurisdictional purposes, what is the exterior boundary of the Cheyenne River Reservation is one issue. What about the issue of criminal jurisdiction or civil jurisdiction over non-Indians as exercised by the tribal government in your area? Is that a serious concern to you?

MR. FREEMAN. Yes, inasmuch as it is a separatist form of government. And I think much of the conversation here this afternoon has endorsed that as a solution to the unrest or the instability of community life within the reservations. I think it's premature that people accept this as a solution. It is a near-term solution, but in the long term you have a lot of congressional and constitutional armor to be penetrated, and we will suffer for it in a later generation.

MR. ALEXANDER. Mr. Schulz, what led up to your involvement in the interstate congress?

MR. SCHULZ. Well, initially it was because of the problem at Wounded Knee. At that particular point in time, our Governor said, "Good luck, people, you're on your own." Our attorney general had the same opinion. It was at that point in time that our deputy sheriff moved back out of the county into Fall River and there we sat.

MR. ALEXANDER. What do you mean, "Good luck, people, you're on your own"?

MR. SCHULZ. Well, we all went into Bennett County the day that the Wounded Knee incident occurred. There was a roadblock and their officer, at that particular point in time, said, "From here on you're on your own, you're out of our jurisdiction. You live there, you're on your own, fellows." We called in the Governor at that particular point in time and he affirmed that. So, at that particular point, we formed an organization locally called Tri-County Protective Association which was simply a defensive organization which was there for one of our people, one of its members. And incidentally, there were tribal members who were also members of this organization. If they had a problem, they would call a neighbor and they would come and try to hold the situation together until you could get someone there.

From that then grew the State organization through a series of meetings we called here in Rapid City with the Governor, etc. From there grew what was called the South Dakotans for Civil Liberties. From there we joined with other States and then formed the Interstate Congress for Equal Rights and Responsibilities.

MR. ALEXANDER. This tricounty group that you mentioned initially, you said that was a defense group?

MR. SCHULZ. Strictly all it was, if I had a problem on my place, I could call a neighbor, make one phone call and I could get some help from a neighbor because we didn't have any law enforcement that we could call. The Federal marshals who were there said, "We are not there to help you guys." So we were sitting there with absolutely nothing.

MR. ALEXANDER. Is this an organization that essentially involved being able to call each other and people individually with their own rifles or other weapons would come over to a neighbor's home if necessary?

MR. SCHULZ. That is right. We contacted the attorney general and had his opinion to what point, you know, what actions could we take as individuals to protect ourselves. And it was upon his advice that we based our—you know, to what degree we would act.

MR. ALEXANDER. Was there ever any violence that you responded to with this organization?

MR. SCHULZ. There was one call that an individual made and some of the neighbors responded. They did not go into his yard; all they did was come up onto the hill above it. The people causing the problem got back into their car—who were members of the Indian tribe—whether or not they were local people we do not know. And that was the only case that anyone's ever been called on.

MR. ALEXANDER. In the years since Wounded Knee, that's been the one confrontation?

MR. SCHULZ. That would be the one confrontation, if you want to call that a confrontation. The only problem we have ever had.

MR. ALEXANDER. What are the current goals of the interstate congress? What is your solution, Mr. Freeman? Mr. Freeman mentioned he didn't necessarily agree with some of the solutions being proposed today. I would like both of you gentlemen to tell me what you think your solutions are.

MR. SCHULZ. Well, ultimately, you know, we are all citizens of this country, we are citizens of the State of South Dakota. We have all had a voice in the formation of the laws we live under. And I think that ultimately that we have got to have one set of laws for all of us. We have all got to have equal application of this law. Anything short of that, I think, is going to have some pitfalls and there is going to be some real problems developing.

MR. ALEXANDER. Mr. Freeman?

MR. FREEMAN. I would like to back up a little bit to background material for my suggestion.

I was born and raised in the State of Texas. When I was 15 years old, I migrated to Colorado. I spent 15 years there with a heavy density of Spanish American residents for neighbors. I came to South Dakota to the Indian reservation with the heavy density of American

Indian people for neighbors. I had 2 years of service with the United States Army in the occupied area of Germany, French sector, where we were in charge of over 3,000 German nationals in Marshall plan operations reconstructing Germany.

We had to deal on a daily basis with the German nationals who were subject to our authority. They were further subject to Lithuanian service battalions who were security people for the United States Army.

And from this various learning, however not academic in nature, I feel I have gained an ability to see from their mistakes some of the mistakes that are being proposed today and the general public being asked to accept compromise situations that are valid for 6 months, a year, and do not lend themselves to directly facing the problem.

MR. ALEXANDER. That is fairly general. What does "directly facing the problem" mean?

MR. FREEMAN. Equality before the law without race as a prerequisite for the judicial remedy.

MR. ALEXANDER. Does that, in your view, mean termination of any political power of an Indian tribe?

MR. FREEMAN. Ultimately, however it might be, it is not the termination of political power of the individuals collectively. If they so desire to organize and vote in a block, that freedom to express themselves is still available to them. The freedom to exercise this power in a block backed by the force of the United States Government is the disparity that I feel is inappropriate for the expression of my point of view.

MR. ALEXANDER. Mr. Schulz, would you agree with that point of view?

MR. SCHULZ. Basically, I would have to say yes, that there are points that we perhaps may not agree completely on, but in the general sense we, Jack and I, agree.

MR. ALEXANDER. Since the Interstate Congress was formed and South Dakotans for Civil Liberties, the Supreme Court of the United States has had several decisions which have diminished reservations in the State of South Dakota and which have determined that tribal court justice systems do not have criminal jurisdiction over non-Indians for prosecution purposes. Do these decisions, in some sense, go to some of the initial concerns that you gentlemen had? Does that alleviate the problem that you sought to address?

MR. SCHULZ. I think it has started in that direction. There are still some problems. As was mentioned, a case in Shannon County which is still pending. I happen to be familiar with it because this particular case actually happened in Bennett County. And it happened on a State road and the officer knew that the individual was not a tribal member and, in light of the *Oliphant* decision, etc., we felt that that officer had no authority, and there are some other cases—there are some other points of the case that I would just as soon not go into.

MR. ALEXANDER. Well, what is the legitimate interest of a tribe in your view? Let's talk about the facts of the Cheyenne River case for

a brief moment. In a general sense, a main street of town, public school, tribal hospital, BIA officers, tribal officers. Someone's speeding down that road. Does the tribe have a legitimate interest to prevent speeders from doing such?

MR. SCHULZ. I think that, yes, there has got to be law enforcement. I am not questioning that fact. The fact that I am questioning is in light of some statements that the tribe has made, if an officer felt that they would like to incarcerate an individual, they can for 8 to 12 hours and then decide if that individual is a non-Indian. I don't think that that is quite the procedure to follow. I think there is a lot of misunderstanding among the people just exactly to what extent the tribe does have jurisdiction over people or where. And I think the fear of it has gone on and there has been some instances where there have been arrests made and threats made or threats of arrest made. And I think that more than anything else it's lack of communication. I think somewhere along the line, from listening to the officers today, it sounds like they are trying to work out some of their problems. But I think they are going to have to take these solutions and let the people know what they are working on, because a lot of people don't understand that.

MR. ALEXANDER. In interview reports with members of my staff, it's indicated that you would not stop for a tribal police officer on Pine Ridge; is that accurate?

MR. SCHULZ. Okay. I have made that statement and I would like to qualify that if I could. Because, there has been times where individuals living in this town of Batesland and other places have witnessed some of these tribal officers, I don't know if they are still on the force or not, drinking on duty, etc.

There was a case in Fall River County where one of the officers arrested a tribal officer going to work in a state of which he should have been dead, according to a breath analyzer test. Okay. Now, whether or not this man was actually out on duty I really doubt, but I am saying these are the stories that come out.

Okay. We have instances where guys have stopped an individual, if there was some beer and they took it. Later on they saw these same individuals drinking said beer just a matter of a short time later. I am not going to say it's the same beer, but they were drinking on duty.

All right. If you take my wife going down the road at night sometime, who is to say if maybe one of these officers who will stop the individual has not been drinking, who is to say exactly what he would do? If she is not home at an appointed hour, I begin to wonder where she is at. If I can't find out—

MR. ALEXANDER. Do white police officers drink in this State?

MR. SCHULZ. I would imagine some of them do. I am just saying, you asked me on my particular reservation and I'm just answering that particular question. Therefore, in view of the *Oliphant* decision, in view of the lack of communication of whether or not they have a

working agreement with the county, I feel that these individuals do not have the authority to stop me.

MR. ALEXANDER. Are you in Bennett County?

MR. SCHULZ. No, I am in Shannon County.

MR. ALEXANDER. If Shannon County were to enter into a cross-deputization agreement with the Oglala Sioux Tribe, would you have any problem being issued an arrest citation, assuming it's appropriate, by a tribal police officer?

MR. SCHULZ. No problem whatsoever. I think they have got very qualified officers. I am not saying that. I am just saying that in instances that you hear—now these may be fabricated stories—all I am saying is this is what I have heard and this is what I have advised my wife to do.

MR. ALEXANDER. Does your organization try to verify these stories that seem to create some apprehension, at least on your part?

MR. SCHULZ. On two occasions, yes, we did. And we verified both of them.

MR. ALEXANDER. Did you bring that to the attention of the Oglala Sioux Tribal Police?

MR. SCHULZ. No, I did not.

MR. ALEXANDER. Do you think it would be an appropriate thing to do?

MR. SCHULZ. Perhaps it should have been. At that particular time it was not done. At this point in time, there is very little communication. I hope with the new tribal administration I think we're seeing the beginning of some more communications between the non-Indian and the Indian factions there. And I think eventually we're going to work out some of these problems. But under the previous administration, there was none. They absolutely refused to even recognize any authority whatsoever outside of their own. And I think that once you have an action there is an equal and opposite reaction, and I think, in this respect as to the law enforcement officers, this is where some of this has come from.

MR. ALEXANDER. Mr. Freeman, would you have a problem with a cross-deputization agreement in your county with the Cheyenne River Sioux Tribe? Would you have any problem being issued a citation?

MR. FREEMAN. Yes, I have considered it and it's been recommended over 3 years and tried over various periods of time with the proviso that each party can sever the agreement with 30-days notice, 12-hours notice, or in case of intoxication with no substantial—

MR. ALEXANDER. What would your problem be?

MR. FREEMAN. Well, many. One, that I compromise my American heritage of judicial remedy before a representative form of government inasmuch as the people that enter into a bargain with a purely racist form of government have diluted my voice in the government by giving these citizens a representative voice plus a tribal voice.

MR. ALEXANDER. Well, I would be curious. This morning Chief Fools Crow talked about the treaties the United States had made with the Sioux Nation, a series of treaties and the promises that were made in terms of land and government and so on. What you're essentially speaking about is treaty abrogation. Do you have any problem with abrogating the promises that the United States entered into with the various Sioux Nations in exchange for vast amounts of land on this continent?

MR. FREEMAN. I think the people that are involved in public dialogue surrounding the issues presently in South Dakota limit their history from 1868 to date. My study of history indicates that the Sioux crossed the Missouri River in the early 1800, decimated the Mandans—

MR. ALEXANDER. What is the pertinence of that?

MR. FREEMAN. The brutality that mankind shows to his brother is not limited to a white-Indian relationship.

MR. ALEXANDER. Yes, but the question, sir, was the United States entered into treaties with the Sioux Nation and with some of the individual bands a series of treaties, and tribe's governmental powers are recognized in them. The Supreme Court within the last month in a case after *Oliphant* clearly recognized tribal authority at least in terms of its own membership. Some of the other issues are open. What you propose and what your organization has proposed in its literature suggests as an appropriate remedy that Indian tribes be terminated and be at best a social collection—am I reflecting your view correctly?

MR. FREEMAN. I think you are right, inasmuch as you have eliminated the tribal vehicle that provides them a shelter that is not available to the balance of the United States citizens. Now we are not going to insist or even suppose that any form of government or resident go down and kick down the houses of the Pueblos that are the oldest continually inhabited residences in the United States.

MR. ALEXANDER. But do you think the Taos Pueblo should have governmental powers?

MR. FREEMAN. The freedom of choice must be made available to those citizens of Indian ancestry whether they want to belong to the tribe or whether they want to depart from it. And that is where my concern is based, that these people are not afforded the opportunity to exercise freedom of choice. There is a halo or aura of intimidation that prevails as long as the United States Government underwrites the expenditure of tribal government at the balance of society's expense.

MR. ALEXANDER. Again, those were obligations, as it's been stated, that were entered into by the United States. You're recommending that the United States not fulfill those obligations; is that correct?

MR. FREEMAN. I am basing this proposal, and this is purely an individual opinion which I am entitled to, upon certain Supreme Court decisions, particularly *Lone Wolf versus Hitchcock* and again it is set down in *Rosebud versus Kneip* that the United States Government and



Congress has the authority to abrogate the treaties, any or all part, at any time they desire and that they begin piecemeal to abrogate these treaties and try to bring these individual citizens into the mainstream of society as painlessly as possible.

MR. ALEXANDER. Without discussing Congress' power or the extent of Congress' power under the cases that you cite, it is a policy issue whether it is a wise thing for Congress to do, and Justice Frankfurter said, "Great men and great nations should keep their word." There was a very strong statement earlier this morning that our people all around the State continue to hear: that these are obligations of the United States to support and sustain these governments. And I just wanted to be somewhat clear that in fact what you're recommending is that these governments be terminated.

MR. FREEMAN. I think that it is more important that the Government of the United States keep its agreement with the total population of the continent, equal protection before the law, than it is to honor an outdated treaty that has already been compromised on many occasions for the general welfare of the people involved, as in *Lone Wolf versus Hitchcock*.

MR. ALEXANDER. Why is the treaty outdated?

MR. FREEMAN. It was made under a time duress for the Indian peoples. It was made by the War Department rather than Congress, authorized by the War Department to enter into the treaty. The treaty was a save-face situation for the defeated, fatigued, demoralized tribes.

MR. ALEXANDER. Would you be in favor of the President appointing a new treaty commission to negotiate a new set of treaties at this point?

MR. FREEMAN. I think this would run counter to the President's present inclination. His inclination seems to be to desist from interpretation of old treaties, citing the Panama Canal issue. And quite frankly, when we are viewing it from an international perspective, the negotiators that would be involved in negotiating the treaty would not necessarily have the best interests of myself and my neighbor of Indian ancestry at heart so that we might survive in the economic circus of today.

MR. ALEXANDER. The Cheyenne River Sioux Tribe has been steadily encouraging Indian ranching upon the reservation in the last 10 or 20 years. You're also a rancher in that area. One of the recommendations that we heard at an earlier hearing was that a person such as yourself and perhaps Mr. Schulz who were ranchers within—leaving aside the reservation boundary issue for a minute—within Indian county, should be bought out by the United States and lands be returned in a solid fashion to Indian tribes so it would be an enclave only for Indian people. What would your response to that sort of thing be?

MR. FREEMAN. Objectionable for several reasons. Incidentally, I offered my ranch in a block with three other ranchers for sale to the Indian tribes. I thought, if this is your attitude, and I being of a

nomadic instinct anyway, possibly more of an American Indian by nature than by blood having moved up and down the Great Plains three times, it isn't objectionable for me to move again. I find that it's exhilarating. So I said, "Well, we'll sell if this is your proposal. I don't want to live where I am not accorded a representative voice in the government that has no jurisdictional powers."

The BIA rushes in with four-wheel drive vehicles and appraisers. I said, "Well, what is the advantage of the appraiser?" I said, "The price is on the land. I am willing to sell at a fair market value. I established the selling price." "Well, we are unable to buy unless it's appraised at that." "Well, it isn't appraised at your price or isn't available for sale at your price. I am in control."

They priced it; the BIA would loan the tribe the money to buy it under FHA contracts, but the tribes said the cost of the acquisition is prohibitive, that it won't support itself. So the tribal council said, "We do not want to buy it even though the funds are available."

MR. ALEXANDER. Assuming the administrative problems could be solved, you would be willing to leave the reservation area if you could get a fair market value for your ranch; is that essentially correct?

MR. FREEMAN. Not necessarily on a day-to-day basis. One day your emotions are negative and one day positive. But to test the mettle of the philosophy and prove it in default, I exercised that option and proved it in default.

MR. ALEXANDER. Mr. Schulz, what is your view on the land reacquisition question that I asked of Mr. Freeman?

MR. SCHULZ. Okay. I think perhaps maybe a little background on how the non-Indians actually came onto this reservation. I talked to a guy who entered the reservation in 1907 and he ran a small store for a while and sold some things. He gave me in a capsule, you know, really how this whole thing came about. I realize I was supposed to have let you know ahead of time, but I would like to have this entered.

MR. ALEXANDER. Certainly we will take it for the record. Mr. Chairman?

CHAIRMAN FLEMMING. We will be very happy to accept it as an exhibit to be entered in the record at this point.

MR. SCHULZ. It is signed and notarized. But anyway it goes into briefly how they were encouraged to come into these areas. I have talked to some older people who moved into this area and they said they remembered seeing ads in some papers, something to the effect that, "We have got the land, you bring the plow," encouraging white farmers to come to these areas and utilize the land. There was problems. There was submarginal land where these people couldn't—that they come in and bought this land, how the Indians was given patents on his land. But like I said, this is covered in this short statement.

Getting on with that, we are here, we bought and paid for this land in good faith. I, like Jack, think that on a voluntary basis, if we de-

cided we wanted to sell the land, I think that the tribe should have an option to come in—or an opportunity, not an option, but an opportunity to come in, in the marketplace and try to buy it. I don't think—and what I would balk at is having the Government come in and say, "You shall." I think anytime anybody comes in and tells me "You will," I am going to start wondering why. But basically, no, I wouldn't have any objections to the tribe buying the land, but I think that under a sale of this nature if they agreed that fair market value was the only area in which you can talk. As far as I am concerned, you can't talk about the price that this land was purchased because economic conditions have changed tremendously since then. This again is discussed in this statement. But I would have no problem, no.

MR. ALEXANDER. One final hypothetical question for both of you.

Assuming you live next to an Indian reservation in another part of the country that was solely owned by the tribe and almost exclusively inhabited by Indian people and any non-Indian person on the reservation was probably there at the sufferance of the tribe, you drove through that reservation and you were speeding. Would you have trouble with that tribe exercising jurisdiction over you?

MR. SCHLÜZ. You're talking about a simple speeding ticket?

MR. ALEXANDER. Simple speeding ticket. Well, I didn't want to infer that you would perhaps do anything else, but you can extend it if you will.

MR. FREEMAN. You would like a response from—

MR. ALEXANDER. From both of you gentlemen.

MR. FREEMAN. You stated the question was hypothetical and I hope the answer will be taken in the same vein. And I think it is an area that we must discuss in view of the *Oliphant* decision.

There is a difference between an opinion or conclusion based on the need for social morality and one for representative form of government. And this has been a strong point of contention in any public gathering. The individual that is the perpetrator, the speeder, is cited. He can be cited through citizen's arrest or tribal arrest. Now if he agrees to tribal jurisdiction of his violation, he has agreed to a remedy that is not necessarily a representative government inasmuch as it excludes all nonmembers from a voice in the government. That is the point of grievance that I would refer to at this point.

Now should this government develop a program whereby all of the residents of the particular community without regard to race were allowed a voice, then you have a true representative form of government and an option and a just right to jurisdiction of the—

MR. ALEXANDER. Okay. Mr. Freeman, I believe my hypothetical involved a reservation exclusively inhabited or almost exclusively inhabited by Indian people. In Montana, and you're going to California and you drive through it and you go too fast, should that tribe be able to do anything? Should it have governmental powers? Is it different than speeding in Idaho when you live in the State of South Dakota?

MR. FREEMAN. Yes, because it is a racist form of government. It excludes all other citizens from a voice.

MR. ALEXANDER. Mr. Schulz?

MR. SCHULZ. Well, if I knew it was a reservation I would probably go around it. But basically, I think when you travel through another State you realize that all the people have a voice and most States have very similar types of speeding violations or fees or fines, etc. You know that the court system is very similar. Under the court system, as I understand it, of the Oglalas any fines collected, etc., go into a general fund supposedly for the benefit of all the people. Therefore, those administering funds have a direct interest there in fines levied and/or collected.

MR. ALEXANDER. That is not an uncommon circumstance, is it?

MR. SCHULZ. Well, most of it goes, in other than State courts, goes in to finance the operation of the system there, not into the general fund and this is one of my points of contention. And otherwise if I knew that it was the law and that if I had a system of appeal, if I felt that I was wrongly arrested and fined, that it would go into the State's appellant system, that I could be fairly tried, then no, I wouldn't have any objection.

MR. ALEXANDER. Do you think you could be fairly tried in an Indian court?

MR. SCHULZ. At the present time in Pine Ridge, I don't believe I could.

MR. ALEXANDER. Could you be fairly treated bringing civil litigation in a debt collection procedure in an Indian court?

MR. SCHULZ. At the present time, no. And I will back that up. Our family owns a clothing business in Gordon, Nebraska, and there have been Indian people that work there. My sister manages it for us and we have had some problems with collections. And they had previously made a phone call, this was the previous administration, on this particular point and they have refused to do it. And I see that from some testimony in Rapid City here a couple of days ago, some 60 cases of welfare fraud have been presented to different tribal courts with no action. And I talked to bankers in Gordon, Nebraska, in fact my banker, and he has indicated problems of, you know, this type of collection.

MR. ALEXANDER. But you have never been in the court yourself?

MR. SCHULZ. No, I haven't. And at the present time it's very doubtful that I would go under the stipulation that I have no voice in that government and I don't think I should be subject to those laws.

MR. ALEXANDER. Thank you. I have no further questions at this time.

CHAIRMAN FLEMMING. Ms. Freeman?

COMMISSIONER FREEMAN. Nothing.

CHAIRMAN FLEMMING. Mr. Nunez?

MR. NUNEZ. Nothing further.

CHAIRMAN FLEMMING. Dr. Witt?

DR. WITT. Mr. Schulz, you indicated that your organization has had but one semiconfrontation since, I guess, 1974. What does your self-defense organization do with the rest of its time?

MR. SCHULZ. We just go around in the business of trying to make a living, pay our bills.

DR. WITT. The organization itself does that?

MR. SCHULZ. The people in it because the people are the organization. We have had a couple of meetings to discuss problems and current events and the issues that are in the problem areas so that people are aware of what is going on in the country, not only in our local area, but as well as other areas of the country, so people are aware of what is happening, what the tribes are doing or attempting to do in court cases, so people are aware or at least hopefully aware of what is happening.

DR. WITT. So you have regular meetings; it's not just a matter of anticipating a confrontation situation that you get together?

MR. SCHULZ. Technically, we haven't had a meeting for probably a year and a half or something. It's been quite a while since we have actually called a regular meeting. As the thing, as Wounded Knee has quieted down so people's emotions have quieted down and the organization is still there, but it's practically, you know, at this particular point in time it doesn't really function. We don't have regular meetings per se. If something comes up that we feel should be discussed whether it be a court case or whatever, we will call a meeting and people will come that are interested in it and we will discuss it.

DR. WITT. It must be difficult to hold membership if you haven't had a meeting in a year and half time, for instance?

MR. SCHULZ. It is. Most of the people are local people, like I said, and like human nature as things die down peoples' memories fade and so does their participation, etc.

We had a little deal here a short while back with our fire department that got people a little excited again. So the participation came right back up and we called a meeting about the thing. So basically you are right. It's a very loose-knit organization, just people that are farmers and ranchers in that area and people that are concerned about their lives, their families, and their property.

DR. WITT. Would you care to tell us about the fire department incident?

MR. SCHULZ. Well, we have a local fire department that is a county-wide department in Shannon County. I believe it's 1.3 million acres. According to State law, their duty is to serve that entire area. Also in that reservation the Bureau of Indian Affairs has some firefighting units. In the past they have been somewhat ineffective. I know at one time they had 12 units and only 1 was running.

We respond to calls all over the reservation. It's a volunteer department. We have received county funds because only about 14 percent of it is taxable and at one particular point in time I think our payment,

if you want to call it, or fee from the county was only \$1,200, and that doesn't go very far when you talk about insurance and bills that the fire department runs into.

So therefore we have a firemen's feed, a fund-raising event. We sell tickets and we give half of it back. We have some drinks or some beer if they would like a beer or coffee or whatever they would like to drink. If the guys want to sit down and play some cards, they sit down. It's more of a social event, and proceeds go to the fire department. In the past we have raised \$1,000 sometimes and this goes a long way to paying some bills and making repairs on fire department. And this has been an annual thing.

So at any rate when this particular deal happened, the tribe came in and they were going to raid it. It was claimed first that it was a fund raising for one of the other candidates, then it was a fund raising for our interstate group, and there was an attempt made to come in and take names, etc., I think that, you know, without any explanation of what was going on. And I kind of got a sneaking suspicion that that may perhaps violate one's civil rights.

So therefore it proceeded on. We called our attorney general and he indicated he would come down and kind of check it out and see what was going on. They wanted to confiscate all the beer so they took it out. We took it back in, said we felt there should be a search warrant and an explanation of what was going on.

So in the interim they did take a couple empty kegs of beer and went ahead up, about a third of a gallon or about a third full, it was, and that was about the size of it. And then there was going to be prosecutions and the United States attorney refused to prosecute because he felt that it was essentially a fund raising for a volunteer fire department. He recognized the fact that volunteer fire departments all over the country have these types of functions to raise money and not only fire departments but other types of fraternal organizations. Basically, nothing has come of it, but the threat was there. In my opinion it was a real poor move on the part of the tribe because it is the Indian people perhaps in the tribal land that received by far the greatest benefit from that fire department. So it's—I felt it was really a very poor move. It was, in my opinion, a form of harassment. I just think it was very, very uncalled for under the circumstances. It would really tend to hinder relations between Indians and non-Indians.

I am not saying that there was only non-Indians who are members of the fire department because we have quite a few members of the fire department who are also tribal members. There were a sizable number of tribal members who were there helping to support the fire department.

DR. WITT. I guess I didn't pick up on the reason the so-called raid was made or what was the reasoning on the part of the tribal officials?

MR. SCHULZ. Okay. First of all they claimed it was a fund-raising event for another tribal president candidate. And then it came out that

it was a fund-raising event for our interstate group, both of which were erroneous. The basis for their contention was it is illegal to have beer on the reservation.

DR. WITT. Is it?

MR. SCHULZ. Technically, probably you're right, yes, it is. But if that is the case, beer in your home is a violation, and I got a sneaking suspicion that if you go to most of the homes, whether they be Indian or non-Indian, you're going to find a six-pack of beer sitting around in the home. If that is the case, beer at brandings—because that is a tradition all over the western part of the country. You invite your neighbors in and help you brand and furnish the beer. If that is the case, that is in violation. So technically, yes, it is in violation.

DR. WITT. It was a violation of the ordinance, I see.

MR. FREEMAN, clarification on something you said early on in our discussion this afternoon. I think I missed the point and I wonder if you would clarify it for me.

You were discussing your background in Texas and your opportunity to know and work with Mexican Americans. You spoke of your time in World War II, I guess it was, in the French sector of Germany dealing with German citizens; am I right so far?

MR. FREEMAN. Yes.

DR. WITT. And I think you were drawing a point from your description of your personal experience and I think particularly that derived out of your German experience. I think I failed to pick up on it and I wonder if you would clarify it for us?

MR. FREEMAN. I think the point I was trying to make that the difference between humans, the variation, you know, in approach, comprehension, preference, is greater within the race than it is between the races. We have a saying in the livestock industry that this gentleman prefers Angus cattle, and I prefer Hereford, he prefers Limousin. But when you take the whole thing and analyze it, there is more difference within the Limousin breed, there is more difference within the Angus breed and the Hereford breed than there is between the breeds.

Now if we place this analogy alongside that of human behavior, then there is a wider variation of preference within the Indian race of people and within the German race and the Spanish American and the Caucasians than there is between us.

DR. WITT. And so your next point would be what?

MR. FREEMAN. That our controversy should not necessarily always be based on races or race identity. Our needs in this area should deviate from identifying everyone as to race prior to making the recommendation for remedy. And thus far no one will discuss the problem until you draw the line and identify your race.

DR. WITT. Thank you for helping me.

MR. FREEMAN. Now, to further clarify—

CHAIRMAN FLEMMING. I think that is in response to the question that was addressed to you. Unless you feel that it's necessary to amplify—I mean, in my point of view that does round out the record in responses to that question.

MR. FREEMAN. If the Chairman would allow me, I felt that I was denied the opportunity to respond to the gentleman's question regarding the enclave theory. I said I had—

CHAIRMAN FLEMMING. Counsel's question?

MR. FREEMAN. Yes. There were many objections and I was allowed to express only one objection based on testing the mettle of a proposal that was denied, and I think there is a very important issue of inverse discrimination here that will surface if I am permitted to respond either presently or later.

CHAIRMAN FLEMMING. Well, I was going to suggest that if you feel that you do want to make a more complete response to counsel's question along that particular line, we would be very happy to have you provide us with a memorandum along those lines and we would be very glad to make it a part of the record at this particular point, and the Commission would be very happy to consider it if that is satisfactory from your point of view.

MR. FREEMAN. In what fashion will I be accorded this privilege? I mean via registered mail or vocally?

CHAIRMAN FLEMMING. No, you can develop a memorandum and transmit it to the Commission. You can address it to me as Chairman of the Commission and I will see to it that it is made a part of the record of the hearing at this particular point and that it is in response to the question that was addressed to you by counsel, if that is satisfactory.

MR. FREEMAN. Thank you for the courtesy.

CHAIRMAN FLEMMING. I was about to say that I feel both Mr. Schulz and Mr. Freeman in responding to the questions addressed to them by counsel have set forth their position on the issues that confront us in a clear manner, and we appreciate your being here and being willing to present your point of view in response to the questions addressed to you by counsel.

Thank you very, very much.

This hearing will be in recess until tomorrow morning at 8:30.

[The hearing was recessed at 5:50 p.m.] -

### Morning Session, July 28, 1978

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CHAIRMAN FLEMMING. The hearing will come to order. Counsel will call the first witnesses.

MR. LEVIS. Would John King, Beatrice McLean, Stan Smith, and Walter Schamm please come forward?



[Ms. McLean, Mr. Schramm, and Mr. Smith were sworn.]

**TESTIMONY OF BEATRICE McLEAN, FORMER COMMUNITY HEALTH REPRESENTATIVE, WINNER, SOUTH DAKOTA; WALTER SCHRAMM, BUSINESSMAN, WINNER; AND STAN SMITH, MAYOR, WINNER**

CHAIRMAN FLEMMING. Appreciate your being with us.

MR. LEVIS. Starting with Mrs. McLean, would each of you please state your name, your address, and your occupation?

MS. McLEAN. Beatrice McLean, I live in Winner, South Dakota, in the trailer court, and I am a housewife right now.

MR. LEVIS. Mr. Schramm?

MR. SCHRAMM. My name is Walter Schramm. I am in the retail furniture business. I live in Winner, South Dakota.

MR. SMITH. My name is Stan Smith. I'm from Winner, South Dakota, and I am in the restaurant business.

MR. LEVIS. Thank you.

Mrs. McLean, how long have you lived in Winner?

MS. McLEAN. Well, I was born and raised there, but we moved to Dallas, Texas, in 1965 and we stayed there until 1973.

MR. LEVIS. And did you move back to Winner at that time?

MS. McLEAN. Yes, we did.

MR. LEVIS. When you came back to Winner did you work at that time?

MS. McLEAN. Yes, I did. I was a community health representative.

MR. LEVIS. And how long were you a community health representative?

MS. McLEAN. From 1974 up until April of this year.

MR. LEVIS. What exactly does a community health representative or a CHR do?

MS. McLEAN. We make rounds in the community and if someone is sick or needs to be hospitalized or something, we take them to Rosebud Hospital. We provided transportation and take them there, see what is wrong with them.

MR. LEVIS. Were you a CHR then for the tribe?

MS. McLEAN. Yes.

MR. LEVIS. In your position as a CHR did you have an opportunity to visit the homes of the Indian members of the Winner community?

MS. McLEAN. Yes, every week I had to make a home visit on every Saturday.

MR. LEVIS. Mrs. McLean, in making the rounds of homes in Winner, do the members of the Indian community live all around Winner or do most of them live in one section of the community?

MS. McLEAN. We mostly live in one section of the community. There is very few families that live in other parts of the town.

MR. LEVIS. Could you describe where this is and what the housing conditions are like?

Ms. McLEAN. Well, everybody calls it Indiantown. And it's the north side of Winner, and the housing there is very terrible. There is no sewer in two streets in the town, and there is some trailer courts where they are trying to make them move, seems like to me all the Indians anyway, and the trailers are really terrible. I was making rounds last summer there and some of the sewer backup and the sewer gas was getting all the children sick and the water is really terrible there and some of the trailers don't have water right now.

Mr. LEVIS. Are these trailer courts in what you call Indiantown?

Ms. McLEAN. Yes.

Mr. LEVIS. And how large of a community is Indiantown in relation to the rest of Winner?

Ms. McLEAN. Maybe it's about like about a third or something of the whole town.

Mr. LEVIS. So most of the Indians that live there own or do they rent?

Ms. McLEAN. They rent and for the conditions of the housing I don't see how they can get rent out of them. Like \$150 they are charging for trailers that don't even have the sewer working or the water is bad, it's always leaking, and I hear that in one trailer court that this lady told me that the mayor had her water shut off because it was leaking all the time and the people who owned it wouldn't fix it. So they just completely shut the water off there.

Mr. LEVIS. Have the members of the Indian community gone to the city or the landlords to improve these conditions?

Ms. McLEAN. Well, we try and they—most of them say, "Well, we'll fix it," and they say, "Well, we're not going to pay the rent until you fix it." But they never do. And they still get their rent. So it just seems hopeless. And the only thing that I am really happy about now is that we're getting housing finally. Southeast of town there, we're getting some houses built for the Indians. And I hope it's a lot better than that we have been paying the rent for what we are living in right now.

Mr. LEVIS. Is this housing within the city limits?

Ms. McLEAN. It's outside the city limits.

Mr. LEVIS. Who provides this housing?

Ms. McLEAN. Let me see. HUD is providing the houses to the tribe and the tribe makes a selection of the people who live there, but they have to meet certain requirements.

Mr. LEVIS. So the housing is then on tribal land?

Ms. McLEAN. Yes.

Mr. LEVIS. You indicated that most of the Indian members of the community live in the northwest section of town.

Ms. McLEAN. Yes.

Mr. LEVIS. Why is that?

Ms. McLEAN. Well, most of the other people, non-Indian people live sort of south of town in the newer housing project like, and they buy their own homes, and it seems like they make it impossible for Indian

people to try to buy a home by how high the house costs. And the Indian people—just seems like they don't want us there. So we just live where we can get a house.

MR. LEVIS. Have you or anyone you have known ever experienced any difficulty in trying to get housing in these sections or even some of the trailer courts?

MS. MCLEAN. Yes, it's—we have to have—we bought a trailer in one of the trailer courts there, and we had to have the owner talk to the owner of the trailer court. He really had to talk to him just to let us leave a trailer there and live there.

Then just about 2 weeks ago they doubled the rent on an Indian lady living there and they forced her to move out because she couldn't pay that rent. We were paying \$30 a month for parking space, and they raised hers to \$60 a month and she was paying \$150 rent for the trailer in the first place and she just couldn't afford it. So she just had to move out; she's staying with relatives right now.

MR. LEVIS. To the best of your knowledge is there any organization in the city that you can go to when you have these problems?

MS. MCLEAN. No, I don't know of any.

MR. LEVIS. Thank you. Mr. Schramm and Mr. Smith, both of you have been mayor and, Mr. Smith, you presently are mayor of Winner now. Is there anything being done to improve some of the conditions or any attempts that have been made to improve some of the conditions that exist in Indiantown?

MR. SCHRAMM. At the moment there is a request into the project to put in curbs and gutters, sewer, water, sidewalks in that section of town. I don't refer to it as Indianville, but the northwest corner of town.

MR. LEVIS. Mr. Smith, is that application still before HUD or has some action been taken?

MR. SMITH. It's still before HUD. I heard it's been turned down, but we never received any confirmation of it.

MR. LEVIS. If it's been turned down, did HUD give you any indication at all why it had been turned down?

MR. SMITH. No.

MR. LEVIS. Was this the first application that was submitted by the city to HUD for improvement of sewers, gutters in that portion of town? Do you happen to know?

MR. SCHRAMM. In my time, as far as I know, that is the first one when supposedly money would be available to improve such a thing. We were willing and ready to apply for and make any improvements that are possible, anytime.

MR. LEVIS. How is curb and gutter provided in Winner?

MR. SCHRAMM. Curb and gutter is paid for by the property owner.

MR. LEVIS. Do either of you have an opinion on the new housing that is going out southeast of town that has been built by HUD in cooperation with the tribe, what effect this will have on the Indian community and on the community in Winner?

MR. SCHRAMM. I don't really have an opinion on it. They are very nice houses. None of them are occupied. I think they were arranged for—partly at least—during the time I was mayor and we were never contacted nor talked to. They just decided to put them out there and that is the way it is.

MR. LEVIS. Mr. Smith?

MR. SMITH. I don't know anything about it myself. I have drove by them.

MR. LEVIS. Do you think it would be better if the Indian community moved out to the housing outside of town or it would be better if the Indian community remained in the city of Winner?

MR. SMITH. I have no opinion as to that. I am sure they are nicer houses than what they live in now.

MR. LEVIS. Has the city done anything concerning the houses in the northwest section? Anything the city can do as far as housing codes to improve the substandard housing and some of the vacant lots there or the vacant homes that are presently in that section of town?

MR. SMITH. Well, I don't really know that much about law. I don't know if we can or not. We had a man down there the other day from the State sanitation department looking at the trailer court, I guess it's the one she's referring to, and shut the water off. I didn't know anything about it at the time. When I found out about it we turned it back on again right away, and I had him down there and showed him all the water and stuff that is running around in there, and we are going to try to get something done with it to get it straightened out.

MR. LEVIS. Have you ever received any complaints concerning the fact that the Indian community had difficulty in renting or buying homes in other portions of Winner?

MR. SCHRAMM. I think that they are buying homes in other parts of Winner. In fact, I know a number of Indian families that live in the same areas that other people do. However, you know, in order to buy a home in another section, in any place, you have to, like we do, well, somehow get the money to buy the house. If I was selling houses I wouldn't want to sell it, and neither would you, to anybody that didn't have the downpayment or possibly couldn't make the payments. That is normal American procedure, isn't it?

MR. LEVIS. Mrs. McLean?

MS. MCLEAN. I don't know. I really don't believe that, because it is really hard for an Indian to get any kind of credit in Winner for Indians, and as far as there is talking about trying to improve it down there, I don't think they are at all. It's been the same—before I left for Dallas and I came home and it's still the same; in fact, I think it's even worse because of those trailer courts. The kids were getting sores and everything from not having water and that is bad. That shouldn't be that way.

MR. LEVIS. You talked about concerns in getting credit. What type of problems are you talking about?

MS. MCLEAN. I don't think there is too many Indians in Winner that can go anywhere and get any kind of loans or anything. The only way we ever got credit was we always had to have my grandmother sign for us, cosign for us, and that is the only way we ever got any kind of credit in Winner. Otherwise they just refuse it.

MR. LEVIS. What type of credit are you talking about?

MS. MCLEAN. Like through a bank or anything like that, a bank or finance company or even at the stores where you can charge, they won't let you charge at any place.

MR. LEVIS. Have you experienced difficulty in cashing checks?

MS. MCLEAN. Yes, I have. I just almost refused to—I mean after about 2 months of having a checking account and I was in the city of Dallas and I could cash them anywhere, but when I came back to Winner I just about gave up having a checking account because it's so hard to cash checks anywhere. There is only a few places like maybe at a liquor store, an individually owned store in town, a market where I could cash a check. And sometimes if I didn't have any money for the weekend and I couldn't cash a check, well, I was just without money for the whole weekend.

MR. LEVIS. If you need funds then where would you get the money? Is there anyplace at all?

MS. MCLEAN. Not really. We just have to make arrangements ahead of time to have money, you know, on hand.

MR. LEVIS. Mr. Schramm, as I understand you own a furniture store and have since 1946. How do you determine who is going to qualify for credit for a furniture purchase?

MR. SCHRAMM. Anybody who has either a previously established credit rating, regardless, we don't pay any attention to who they are. We ask them questions like where do you work, do you have a job so that you can make your payments. We try to protect ourselves to that we have some chance of getting the money for the items we sell. And just ask them normal questions whether they can pay, and then we have to make the determination whether it's a good risk or not.

MR. LEVIS. Is there any difference between people who live in Tripp County, which is off the reservation, and those who live in Todd County, which is on the reservation?

MR. SCHRAMM. We do business with both of them, both on open accounts and on contracts and regardless of race, color, or whatever.

MR. LEVIS. Do you have loans that are not paid, contracts?

MR. SCHRAMM. Oh, yes, we have some bad contracts.

MR. LEVIS. What do you do in that case?

MR. SCHRAMM. At the moment I have tried to be a very nice fellow and a gentleman and talked to them and hope they will pay. I have never started any court action against anybody and I am not sure whether that is a good or bad procedure.

MR. LEVIS. This is both on the reservation and off the reservation?

MR. SCHRAMM. That is all people.

[Mr. King was sworn.]

TESTIMONY OF JOHN KING, EXECUTIVE SECRETARY OF ROSEBUD SIOUX  
TRIBE, WINNER, SOUTH DAKOTA

MR. LEVIS. Mr. King, would you just state your name, your address, and occupation?

MR. KING. My name is John King. I'm from Winner, South Dakota, and also from the Rosebud Sioux Tribe.

MR. LEVIS. And what is your occupation?

MR. KING. I am executive secretary for the Rosebud Sioux Tribe.

MR. LEVIS. Mr. King, we have been talking a little bit about housing conditions in Winner and also about the availability of credit, being able to live in Winner. And we would first be interested in your views concerning some of the housing conditions in town.

MR. KING. Well, I have been a resident of Winner, South Dakota, for something like 30 some years now. And the section of the town—I brought some slide pictures with me—

MS. MCLEAN. They said we couldn't show them.

MR. KING. That would show you the conditions of some of the houses the people are living in. Renting was one of the serious problems that Indian people have in Winner, South Dakota. Like, for instance, my family moved back there about 5, 6 months ago and they wanted to rent a house. We contacted five white people who had houses for rent, and they have always told us that, "Well, we just had some guy come down, you know, and check it out, so we don't know whether we can rent it to you or not." We call them back about a week later and they still have the house and say somebody's going to come down and check it out and they are still trying to rent it. And you know, I done this in front of witnesses. I made the phone call and I had the witnesses sit there and listen and I said, you know, "You can just watch and see for yourselves." I don't want to name any names of the particular individuals right now, but if you ever go to Winner, South Dakota—several of you maybe have been there—you notice that there are certain portions of the town only the Indian people live there. There is probably only one white family living on the corner of the street; otherwise the houses are inadequate.

I complained to the—what is your street manager? I complained to Turgeon [phonetic] that there was a seed company that completely blocked off the whole street with all kinds of seed. It turns into—I used to work there—it turns into a smelly substance that just completely smells out the whole place where the Indian people live. I turned that in twice and nothing has been done. It's still the same situation. It's still piled up there. He has got a junkyard right in the middle of town where Indian people live, where rats are just hanging around there. What he does is he put out poison, too, also inside of the seed company, and our dogs and our cats go over there and that is the end of it. I had nine pets being poisoned from that seed company, and I have turned this into Ray Turgeon [phonetic], I think his name is, and I asked him if he could clear that road because, if he

doesn't clear that road, all the water stops there and it backs up into the Indian community. And we have to walk through mud, through water, because of this situation.

In 1971, in the fall of 1971 Mr. John Fire, the late Mr. John Fire, sued the city of Winner because of the conditions of the streets. And to this—they reconditioned it around his house, put a couple culverts across his place and one on the corner where he lives. And they put in a couple of hydrants, but if you see the streets today they are worse than what they were when he sued them in 1971.

MR. LEVIS. You indicated that you had some slides concerning the housing conditions in Winner.

MR. KING. Yes, I did, but—

MR. LEVIS. Would you like to submit those for the record?

MR. KING. I would probably, yes, I would because the Federal court has copies of them anyway because those are the ones we showed Judge Boag. Yes, I would.

MR. LEVIS. Do you have those with you today?

MR. KING. Yes, they are—did I bring those over?

MS. MCLEAN. Yes.

MR. KING. Okay. We'll get them. Okay.

The situation, renting situation in Winner for the Indian people, there isn't any. There is none to speak of. I think Mr. Tobin here can verify that. As a matter of fact, I got slide pictures to prove it.

And I think one of the other things that when it comes to renting is concerned, my sister, her name is Lavina Antone, sued the trailer court because they wouldn't allow Indians to live there. And she won, she won that case. So you can, you know, by that token you can imagine the situation in Winner, South Dakota. And I imagine when I get back there will be all kinds of police officers there trying to arrest me and the people who are here for what I am saying now, but you know, I will live with that when I get back.

MR. LEVIS. Mr. King, is it your feeling then that Indians are not allowed to live in certain sections of Winner?

MR. KING. I never seen an Indian live across Fourth Street, you know, there is Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, you name it, most of them live around Dakota and Iowa Street and on Liberty Avenue. And I have never seen them live any other place than that, you know, across Fourth Street, across the highway from Second Street. And like I say, today I can't rent a house yet. I have to live where the environment puts me, you know, the people—the way the people think, I have to live there. I could call around for the places that they have for rent and I think one of the tricks they have is you have to call *Winner Advocate* in order to rent a house and, if you have an Indian name like Gray Owl or whatever, then they don't contact you anymore. You don't get to contact the person you want to rent from. It's a bad situation. I don't care what anybody says. These people believe in, you know, generally they say they are Christian and

they have all kinds of churches in town. They believe in the constitutional bylaws of the United States, the 14th amendment, the equal protection of law; you know, they should practice these things. That way these people wouldn't have to live the way they are living.

We are constantly—every day we are met with some kind of a problem and how are we going to solve these problems if we go to—at one time in 1970, I think it was or—yes, '69 and '70—we organized, we called the mayor of the town—I forget who was the mayor at that time—and we sat down and we complained about police brutality. We complained about—we had documented affidavits, and a person by the name of Leo Cardenas from Denver's regional office, works for the human rights division, came down.

MR. LEVIS. Mr. King, are you talking about the Community Relations Service in the Department of Justice?

MR. KING. Yes, that's the one. And he came down and we sat down with the city officials and we demanded a few things. We demanded 12 things. We demanded that the city police officers that were going to be hired—we wanted three Indians on the hiring board and three whites. That's what we wanted. These 12 conditions were never met with. They just—the city of Winner completely forgot about it.

MR. LEVIS. This event that you're talking about, that happened in 1974?

MR. KING. Yes, 1974.

MR. LEVIS. And was there a grievance committee appointed at that time?

MR. KING. We did have—we had a grievance committee composed of 10 people. The grievance committee was composed—we developed it.

MR. LEVIS. When you talk about "we"—

MR. KING. Winner Indian Council group. They developed it because of problems we had in town. We couldn't go in a store without being followed every minute. While they were doing that, you know, the non-Indians were ripping them off. And we finally proved that by putting one of these radar things in there, when you take something you get caught when you come out. We finally proved it by that because they started arresting their own people. Then they took it out.

MR. LEVIS. The 10-member grievance committee that was formed in 1974, who appointed that committee?

MR. KING. The Winner Indian Council along with, I think, the mayor of the town at that time.

MR. LEVIS. And do you happen to remember the composition of that committee, if it was five Indians, five whites?

MR. KING. Yes, it was five Indians and five whites, but I don't remember.

MR. LEVIS. How long was that committee in existence and what were the functions of the committee?



MR. KING. For 1 year—I think it only existed for about a year. It was mostly the function of—it was if you had any problems within the—like for instance family problems—they had so many problems they couldn't handle. We had some problems where the kids were fighting and both of the families couldn't handle it so we brought them in and they talked to them and they solved the problems with them, you know, just problems in general in the society that you live in. And one of the things that, you know, these gentlemen should remember is we had a guy named Bellecourt escape from the Winner County Jail. At that time, I was a prosecutor for the Rosebud-Sioux Tribe and I received the call, and my sister told me that you better come home because they're searching every home in Winner, every Indian house in Winner.

So what I have done was—it takes me an hour and a half to get back to Winner—so I told them to just tell them to stay right there. You have to have a search warrant before they come into your house. I drove back there and, at that time, Tiny Williams was the sheriff—

MR. LEVIS. Mr. King, if you could just give us the overall impressions of Winner, we would appreciate it. We would like to stay away from particular cases.

MR. KING. Okay. Just like any other redneck town, how's that?

MR. LEVIS. You indicated that there was a grievance committee which was formed in 1974 and the Community Relations Service came in in 1974. Did the Community Relations Service make any recommendations such as the formation of the human relations commission in Winner?

MR. KING. Yes, it did.

MR. LEVIS. What happened to that recommendation?

MR. KING. It went as far as the city council and the city council didn't want to take any more action on it. And Mr. Cardenas couldn't force them to take any action on it, so it died there.

MR. LEVIS. Has there been any move since 1974 to create such a commission?

MR. KING. No.

MR. LEVIS. What would such a commission do if it were created?

MR. KING. Well, we hope to establish a communication between us, the police officers, and in general, the white population, the Indian, so that we have a better understanding of what is going on, you know, with the problems that exist.

MR. LEVIS. Mr. Smith and Mr. Schramm, both of you have been and are the mayor. Has anything been done or being done to deal with some of the issues that Mr. King talked about, in particular the creation of either a human rights commission or some kind of committee to deal with police relations?

MR. SMITH. No, not that I know of. I don't believe there is right now, no. We do have an Indian on the police force.

MR. LEVIS. How large is the police force?

MR. SMITH. Seven. Chief and six.

MR. LEVIS. During an interview that we had earlier you communicated to me that you appointed, I think, two other council members to deal with hiring and firing police.

MR. SMITH. That is true.

MR. LEVIS. When was that committee formed?

MR. SMITH. When I took office.

MR. LEVIS. Would they deal with any complaints that would come down from members of the community?

MR. SMITH. Would they?

MR. LEVIS. Yes.

MR. SMITH. Yes, if they were asked.

MR. LEVIS. What is your feeling of the creation of a human relations commission? Do you think it would be a good idea?

MR. SMITH. I really don't have any opinion. No, I'm sure it probably wouldn't hurt anything.

MR. LEVIS. Such a move has not been made since you have been mayor?

MR. SMITH. No.

MR. LEVIS. Mr. Schramm, you were mayor for 2 years, in 1976 and the beginning of 1978. What are your feelings concerning the creation of such a commission?

MR. SCHRAMM. Personally, I feel it would be another committee to meet and argue and end up with the same answers we have got now. The city of Winner, contrary to anything you may have heard, is really not at all like some of the things you hear. The people there are equal as far as I am concerned. The police force in recent time had—I wish there was some way of referring to it other than to say minorities or Indians and so on—but they did have two Indians and a Negro on the police force. No problem at all, all good people. Two of them left because they had better jobs in Sioux Falls; another one was hired. We sent him to school in Pierre for training. The week that he got out of the training he decided not to go to Winner to work. He went to Kadoka. Another one left, and I don't think they know yet why he left. He just left and didn't show up anymore.

But we still have one on the police force and, as far as I am concerned, the police force does a good job. They are not antianybody. They do what they have to do which is what a police force is for. And I can't believe that a lot of these things are going on that you sometimes hear about.

MR. LEVIS. Has there been any organization—this is to all of you—that has been formed to increase communication between the Indian and non-Indian community in Winner, any formal or even informal organization beside the grievance committee which was working in 1974?

MR. SCHRAMM. I don't know of any committee that has been formed or anybody even mentioning or requesting that it be done. The people are welcome, as far as I am concerned, to come to any council meet-

ing and air their complaints if they have them or whatever. And I am sincere in saying I believe that is true.

MR. LEVIS. Mrs. McLean?

MS. MCLEAN. No, I don't think there is anything that [inaudible] help. There is no organization.

MR. LEVIS. Would such an organization help?

MS. MCLEAN. I think it would.

MR. LEVIS. How would it help and how would you set it up?

MS. MCLEAN. Well, I don't know. I just think that if we had an organization that they would listen to and really care about, well, we could get rid of a lot of problems.

Like right now we have down there in the Indiantown where we have a softball diamond and all the young kids play there every evening and the mosquitoes are so terrible that you can't hardly breathe without breathing some in. And I wish there was some way we could talk to the city of Winner to have them spray down there because they are getting sores from scratching the mosquito bites and all this. I don't know of anybody I could tell that would help.

MR. SCHRAMM. Mosquitoes are also in the south end of town or however you want to classify it, and of course there are certain rules about what you can spray with and that involves—that has nothing to do with it—but there are rules as to what you can or can't use to spray because of laws and toxification. Naturally, mosquitoes come with the wet year, and we are fortunate that we had a wet year last year and this year, and we are all in the same boat, I guess you would say.

MS. MCLEAN. In Indiantown, though, there is nothing but swamp down there down by the railroad tracks. The weeds are just taller than I am. It's just nothing but swampland down there.

MR. LEVIS. And you said earlier there was some runoff that goes in that part of town?

MS. MCLEAN. Yes.

MR. LEVIS. Is Indiantown the lower section of the community?

MS. MCLEAN. Yes.

MR. LEVIS. I have no further questions at this time, Mr. Chairman.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Mr. Chairman, there is in the record of this morning's hearing a statement by one of the witnesses of concern that he might be subjected to some undue harassment as a result of the testimony. For that reason I would like to repeat for the record and to all the witnesses the statement that was made at the beginning of this hearing of yesterday. And it is as follows: Witnesses at Commission hearings are protected by the provision of Title 18, U.S. Code, section 1505, which makes it a crime to threaten, intimidate, or injure witnesses on account of their attendance at Government proceedings. The Commission should be immediately informed of any allegations relating to possible intimidation of witnesses. Let me emphasize that we consider this to be a very serious matter and we will do all in our

power to protect witnesses who appear at a hearing. If there is any such intimidation, the Commission should be notified by addressing a communication or contacting immediately the Office of the General Counsel of U.S. Commission on Civil Rights, 1121 Vermont Avenue, N.W., Washington, D.C.

The next point, Mr. Chairman, there have been several allegations relating to what this Commission calls "shell case" problems, and I would like to request—in addition to violations of the Fair Housing Act, Mr. Chairman, I would like to request that the staff will forthwith transmit to the Department of Housing and Urban Development all of the allegations contained in this record of this hearing concerning violations of the Fair Housing Act with a request that HUD make an investigation and to determine the extent to which there is a pattern and practice of violating the Fair Housing Act.

In addition to that, the allegations with respect to the conditions concerning the swamp area should be brought to the attention of the Assistant Attorney General of the United States for Civil Rights, Mr. Drew Days, requesting an investigation of the Justice Department of those allegations.

CHAIRMAN FLEMMING. The Chairman rules that those steps should be taken by the members of the staff, and the Commission informed of the results of those actions.

COMMISSIONER FREEMAN. Thank you, Mr. Chairman, I have no questions.

CHAIRMAN FLEMMING. Mr. Nunez?

MR. NUNEZ. I have no questions.

CHAIRMAN FLEMMING. Ms. Witt?

DR. WITT. Mr. Schramm and Mr. Smith, what kind of funding did you have to pave the streets, to make curbing, and develop sewerage for Winner outside of the Indiantown area? And is there a reason why similar funding cannot be made available to Indiantown?

MR. SCHRAMM. Now, I don't recall that there was any funding made available for the other sections of town. At one time, as I recall, if I am correct, curb and gutter was not necessarily a requirement, and many people in all sections of town built homes and lived in them without curb and gutter, which is still true. This certain section of town is not the only section that doesn't have curb and gutter, and the city, to the best of my knowledge, has no ordinance that requires the sections that do not have curb and gutter to put in curb and gutter. As a result, there are sections, as I said, all over town that do not have them.

More recently an ordinance was passed requiring curb and gutter be put in any section of town that is brought in new and the improvement of streets which is being done. Anyone who now brings in a section of town in or a block is required to pay for, on their own, curb and gutter, sewer, pay their own costs. So there is nothing that is requiring that curb and gutter be put in on other peoples' property.

DR. WITT. My question of course included the curb, gutter, sewerage, and paved streets.

MR. SCHRAMM. I think I answered all those, or didn't I?

DR. WITT. I don't recall.

MR. SCHRAMM. Same way. Lots—you put in curb and gutter if you buy a lot, and if you rent from the city you pay for curb and gutter, your portion of the street, your sewer, your water tapping, your property, all of that is paid for by the individual who is building the house or buying the lot.

DR. WITT. It's my understanding that Indiantown is not necessarily owned by the occupants of the housing there but rather by owners who live elsewhere; is that correct?

MR. SCHRAMM. I am sure that there are people who own houses down there that don't live there. Some people make their part of their living or their living by owning rental property.

DR. WITT. And even it would be incumbent upon those owners to provide those things you mentioned?

MR. SCHRAMM. If it's required.

DR. WITT. I see.

MR. SCHRAMM. In the seeking of business, as I am sure you are all aware, you know, if you own a house and you only collect \$30 a month rent, it would be a very poor investment if you also had to put in curb and gutter and pay for it yourself and sewer. Not that there isn't—I think that all of the houses in Winner have sewer and water in them now. If there is a rare exception, maybe, but for the most part every house has sewer hooked up to it and I would say if there is an exception I don't know about it.

DR. WITT. Mrs. McLean?

MS. MCLEAN. No, there isn't. Every house isn't hooked up to sewers. The last two streets in Indiantown, they aren't. There is no sewer there at all. My grandmother lives on Liberty. She had to pay \$500 on her own to get hers hooked up to sewer.

DR. WITT. Does she own that home?

MS. MCLEAN. Yes.

MR. SCHRAMM. That is normal then.

MS. MCLEAN. But the rest of them don't have any. They have to use outdoor bathrooms.

DR. WITT. Mr. Smith and Mr. Schramm, from the descriptions we have heard this morning, it seems clear that Winner has an Indian ghetto. As mayor and as former mayor of Winner, how do you feel about this and, in view of the HUD grant turndown, what do you intend to do about it?

MR. SCHRAMM. I think you're premature in that Mr. Smith said this. He didn't say it was turned down. He said he heard that. He has no official statement. I don't know what the council or the people in the community will do if it is turned down. I thought they were very sincere in applying for it in the first place, trying to get it, and I have no reason why or if it's going to be turned down.

DR. WITT. Do you have any other plans should this one fail?

MR. SMITH. Not at the present, no.

DR. WITT. Thank you.

CHAIRMAN FLEMMING. Either Mr. Smith or Mr. Schramm, under what authority was the HUD application made? Was this the Housing and Community Development program or did you ask for use of funds under that particular program for this purpose?

MR. SMITH. Yes.

MR. SCHRAMM. The fifth district planning commission.

MR. SMITH. It came through the fifth district planning commission out of Pierre.

CHAIRMAN FLEMMING. I see. But you do not have any official notification as yet?

MR. SMITH. No, no.

CHAIRMAN FLEMMING. Regarding that particular application?

MR. SMITH. No.

CHAIRMAN FLEMMING. Mr. King, you are the secretary of the tribe. In that capacity are you familiar with the operating budget, the annual operating budget of the tribe?

MR. KING. Yes, I am.

CHAIRMAN FLEMMING. What is its order of magnitude?

MR. KING. Well, our annual budget varies depending on whether—the tribe sits down every year and we have a budget made up of Federal grants from the Bureau of Indian Affairs, manpower programs, for instance, CETA, as an example, and we also have about \$1 million lease income off our leases that is in our budget. Our budget is generally around \$3 million give or take \$100,000. But the way we figure the budget is we hire an accountant. We hire a computerized system and they work up the budget for us. We categorize entities of the tribe and each entity of the tribe, like for instance the ambulance service. We would find out what their budget was, you know last year, and we go according to what its needs are coming up and, if it doesn't need any, well, we'll go according to that too. Just like any other business, you know, our budget system—we have 84 entities of the tribe. We have probably 84 separate accounts and that is the way it works.

CHAIRMAN FLEMMING. How many persons does the tribe employ as a result of the operations that are financed these various ways?

MR. KING. Well, unemployment rate is 64 percent so I wouldn't know what the exact number of—but your unemployment rating on your reservation is 64 percent.

CHAIRMAN FLEMMING. Your employment—

MR. KING. Our unemployment rating, you know, people that are not working is 64 percent.

CHAIRMAN FLEMMING. Sixty-four percent of the employable persons are now working—

MR. SMITH. Not working.

MR. KING. Are not working.

CHAIRMAN FLEMMING. Are not working. Your unemployment rate is 64 percent?

MR. KING. Yes, the unemployment rate.

CHAIRMAN FLEMMING. At the present time. But as a result of the various grants and contracts that you have received, the tribe does employ directly some persons, I assume?

MR. KING. Yes, they do. Like for instance, the CETA program is a training type of program under HEW and, under this program, we do employ in each community something like 12 people in the larger communities, you know, like for instance, one councilman—I will give you an example. One councilman—like in my community I have two and we have 12 workers so, where there is a community of one councilman there is 6. Where there is a community of five councilmen, you know, where Ms. McLean comes from it's larger. But those HEW monies are received for that purpose, for training programs, and they do get salaries for them.

CHAIRMAN FLEMMING. Does a large part of the purchasing power that is created by this \$3 million budget result in business in the community of Winner?

MR. KING. No, it doesn't. Well, surrounding communities—see Winner, South Dakota, is—there is an ideal community which is an Indian community recognized by the Rosebud Sioux Tribe which is 17 miles north of it, okay? We have CETA workers there. We also have the community of Crow Creek which is 21 miles from Winner and those of us who live in town—okay, the money that we get from CETA workers, that we pay CETA workers, they all spend their money in Winner, and it's getting so that even people from Rosebud don't want to go shop in Winner anymore. So Winner doesn't get very much of the Rosebud business because they are scared to go there.

CHAIRMAN FLEMMING. Mr. Schramm, as a businessman in the community, do you feel the community is dependent to some degree on the income that comes from the tribe to the community?

MR. SCHRAMM. Without a doubt. Plus the fact they are welcome.

CHAIRMAN FLEMMING. Pardon me?

MR. SCHRAMM. They are welcome to come anytime they want as far as I am concerned. We treat them the same as anybody else. I do very nice business with people out there. I have a good relationship with them, exactly the same as the people from the east or the north or the south, makes no difference.

CHAIRMAN FLEMMING. So there is a close relationship between the economy of Winner and the operations of the tribe?

MR. SCHRAMM. I would say that. I wouldn't say it's the majority of our business by any means, but there is a close relationship. The people are—well, they come to Winner and buy all the time. Well, it's not true that people are scared to come to Winner, I assure you that.

MR. KING. There is only one catch to that. We have to cash our check in Rosebud because, when we go to Winner, no one will cash tribal checks.

MR. SCHRAMM. Untrue also. I have cashed them myself.

CHAIRMAN FLEMMING. Mr. Smith, do you care to comment on inter-relationship between the operation of the tribe and the economic life of the community?

MR. SMITH. I'm sure that—I'm in the restaurant business, and this lady here and John both—they both have been in the restaurant. I feel as I—we serve them. We have no quarrels with them. They probably have—oh, I would say a tenth of our business is Indian. We have no problems with them. We welcome them.

CHAIRMAN FLEMMING. Okay. I would like to make one request of your staff and that is before the record is closed on this particular hearing that we determine the nature of the application that was made to HUD and the result of that particular application.

We are very appreciative of your coming here and providing us with this additional testimony. Pardon me just a moment, one thing I did not make clear. There was a discussion on the slides that Mr. King brought, and we would be very happy to accept those slides and make them a part of the record of this hearing. All right, thank you very, very much for coming and providing us with your testimony.

Counsel will call the next witnesses.

MR. LEVIS. Will Mr. Charles Colombe, George Keller, Terry Pechota, Judge Marvin Talbott, and Tom Tobin please come forward?  
[Messrs. Colombe, Pechota, Tobin, and Talbott were sworn.]

**TESTIMONY OF CHARLES COLOMBE, MEMBER, ROSEBUD SIOUX TRIBAL COUNCIL; TERRY PECHOTA, ATTORNEY FOR THE ROSEBUD SIOUX TRIBE, MISSION, SOUTH DAKOTA; TOM TOBIN, STATE'S ATTORNEY FOR TRIPP COUNTY, WINNER, SOUTH DAKOTA; AND MARVIN S. TALBOTT, CIRCUIT JUDGE, WINNER, SOUTH DAKOTA**

MR. LEVIS. Gentlemen, starting with Mr. Pechota, would each of you state your name, your address, and your occupation.

MR. PECHOTA. My name is Terry Pechota, and I am an attorney at Mission, South Dakota, where I reside.

MR. TOBIN. My name is Tom Tobin. I am an attorney in Winner, South Dakota, where I reside.

MR. TALBOTT. My name is Marvin S. Talbott. I live in Winner, South Dakota, and I am an attorney and presently a circuit judge.

MR. COLOMBE. Charles Colombe. I am a member of the Rosebud Sioux Tribal Council. I live at Mission, South Dakota.

MR. LEVIS. Mr. Pechota, as I understand it, you're also the tribal attorney for the Rosebud Sioux Tribe?

MR. PECHOTA. I am one of the attorneys. They have three or four.

MR. LEVIS. Beginning in 1972, it's my understanding that the tribe sued the State in Federal court concerning the boundaries of the Rosebud Reservation. And then in 1977, the Supreme Court ruled that the reservation had been diminished to that of Todd County. I wonder



if you would just give us your views of how that decision affects the tribal government's relationship with neighboring counties and local governments.

MR. PECHOTA. Well, I think, to answer that question, you would have to look at that from the tribe's power and authority over its own members as opposed to the tribe's power and authority over nontribal members. With respect—at the present time, with that area being diminished in those four counties the tribe wouldn't have any governing power except on trust lands in those particular areas. Prior to—had the decision been the other way it would not have made any difference whether you were on trust land or not out in that area. The tribe would have had general power and authority, I guess, in those particular areas. The tribe has communities out in those areas and those communities are represented on the tribal council. And so as far as those functions that are uniquely tribal and don't involve any governmental authority, the tribe can still function out in those areas, but when you get down to talking about governmental authority, then it's been greatly diminished.

MR. LEVIS. Mr. Colombe, could you describe the original reservation and the diminished reservation and how it relates specifically to Todd and Tripp Counties?

MR. COLOMBE. Okay. I think the original reservation would be Todd, Mellette, Tripp, Gregory Counties, and a small portion of Lyman County south of the Big White River. All these counties south of the Big White are directly east of the Pine Ridge Reservation and the former reservation bordered the Missouri River. And today, my understanding of what is the reservation would be all of Todd County and the trust land located outside the Todd County.

MR. LEVIS. Within the original boundaries of the reservation?

MR. COLOMBE. Within the original boundaries of the reservation.

MR. LEVIS. So presently Todd County is a diminished portion of the reservation?

MR. COLOMBE. Would you repeat that?

MR. LEVIS. Well, Todd County is the remaining portion of the reservation. The other parts have been opened as such. The original reservation is Todd County, Tripp County, Mellette County, Lyman County, Gregory County.

MR. COLOMBE. Correct.

MR. LEVIS. Mr. Pechota, what is the relationship between Todd County and Tripp County? As I understand it, Todd County is an unorganized county.

MR. PECHOTA. Todd County is, I think in the words of the statute, an unorganized county attached to Tripp County for governmental and administrative purposes. And prior to the decision in *Little Thunder* the county commissioners elected in Tripp County would make most of the governmental decisions or a great many of the governmental decisions in Todd County. We would not have a sheriff elected out

there or county treasurer or the full panoply of county officers that existed in every other county, but rather the Tripp County officers would govern Todd County and would exercise the powers that those officers would, if they had been elected in Todd County, would perform.

Do you want me to go into after *Little Thunder*?

Basically, except for that court decision, you know, that is still the status of Todd County under State law.

MR. LEVIS. Mr. Tobin, I understand you're the State's attorney for Tripp County?

MR. TOBIN. Yes, I am.

MR. LEVIS. How does that affect Todd County and particularly as far as law enforcement is concerned?

MR. TOBIN. Well, as Mr. Pechota stated, Todd County is attached to Tripp County for that particular function. Because Todd County is an Indian reservation, the State's jurisdiction is limited by court decisions and Federal statutes in Todd County.

Do you want me to describe specific instances where we feel we have jurisdiction and specific instances wherein we feel we don't?

MR. LEVIS. Yes. If you would wait one moment, please.

Mr. Keller is here, Mr. Chairman.

[Mr. Keller was sworn.]

**TESTIMONY OF GEORGE KELLER, SUPERINTENDENT, ROSEBUD  
RESERVATION AGENCY, BUREAU OF INDIAN AFFAIRS**

MR. LEVIS. Before we get back to Mr. Tobin, Mr. Keller, would you please state your name, your address, and occupation and talk into the microphone, please?

MR. KELLER. My name is George Keller. My address is Box 701, Mission, South Dakota, and I work for the Bureau of Indian Affairs. I am a superintendent of the Rosebud agency.

MR. LEVIS. Thank you.

Mr. Tobin, you were talking about the jurisdictional boundaries of the Rosebud Reservation.

MR. TOBIN. The jurisdictional boundaries of the Rosebud Reservation encompass Todd County. And, therefore, Todd County is the Rosebud Reservation and it's my understanding, in general, that Congress has preempted in certain areas State jurisdiction within the reservations, and, therefore, any major crime, what is denoted as a major crime in Federal statutes, by or against an Indian person, is a Federal crime and the State would, therefore, have no jurisdiction.

Any crime major or otherwise involving only non-Indians, the State would have jurisdiction, under a series of cases from the Supreme Court, primarily case law, *U.S. v. McBrattney* onward until the *Oliphant* decision. In misdemeanor situations, victimless crimes, the Court, the Supreme Court this year recently decided in the *Oliphant*

case that tribal courts do not have jurisdiction over non-Indians. They have jurisdiction over Indians, and in my view, it's presently unclear whether the State or the Federal Government would have jurisdiction over victimless crimes involving non-Indians in such instances as driving while intoxicated or speeding or something like that.

I think the Federal Government, the Department of Interior has taken the position that the tribe would have jurisdiction to make arrests if it involved the heart of the tribal community or something and that the Federal Government should do something about it.

MR. LEVIS. Does the sheriff, as I understand, patrol both Todd and Tripp County though?

MR. TOBIN. Yes, he does because there is a substantial number of non-Indians living within Todd County as well as Indians.

MR. LEVIS. How large is the sheriff's department in the two counties?

MR. TOBIN. In Tripp County, we have one sheriff and one deputy sheriff. In Todd County, we have one deputy sheriff who is a member of the tribe.

MR. LEVIS. As I understand it, there is no cross-deputization at this time, and there was a meeting with Mr. Keller, I think, that was in May of this year to discuss cross-deputization and also related areas as a result of the *Oliphant* decision. Why was this meeting held and what were the results of the meeting?

MR. KELLER. The meeting was asked for by my office and was conducted and carried out on I think, it was May 10, because there was a letter sent to the sheriff's department at Tripp County on March 28 asking if we could have this meeting concerning cross-deputization and offering our commissions so we could sit down and come to some agreement. There was no answer to that letter as there is no answer as of this date. So a meeting was called on the 10th. There wasn't much resolved at the meeting other than some points brought up which we just couldn't agree on.

The area office as well as the local agency was represented at that meeting, and we offered to sit down and draw up some sort of agreement with Tripp County in terms of cross-deputization. I don't believe we have in the past offered our Federal commissions to county as well as State officials, law officials. I don't think that there has been a time when the State has cross-deputized. If so, it's been with just one person, the agency's special officer.

MR. LEVIS. What happened on the reservation before the *Oliphant* decision concerning non-Indian offenders and what has happened since that time as far as stopping, arresting non-Indian offenders?

MR. KELLER. As far as the Bureau is concerned, we have been instructed to encourage the tribes to follow the decision of the Supreme Court in that non-Indians are exempt from their court system. We are making—as far as some of the minor victimless crimes, such as speeding and so forth, are stopped and given verbal warnings. Some of the

citations that are issued by the police officers are taken to Tripp County to the magistrate. I, at this time, can't tell you the outcome of some of those that have been taken to Tripp County. We are continuing, of course, to enforce the tribal law as far as enrolled members of the Rosebud Sioux Tribe are concerned on the Rosebud Reservation.

MR. LEVIS. But non-Indians have been stopped and cited into court in Tripp County?

MR. KELLER. Yes, they have. The citation has been issued and presented to the magistrate. I don't know whether there has been any fines collected or any outcome of the citations yet.

MR. LEVIS. Mr. Tobin, you were at the May 10 meeting as I understand.

MR. TOBIN. Yes.

MR. LEVIS. What happened as a result of that meeting and what has happened to the citations Mr. Keller talked about?

MR. TOBIN. In the first instance with respect to the letter to the sheriff, I would presume that the May 10 meeting negated any continuing need for answer to that particular letter. I didn't know about the letter until we had the meeting of May 10.

There are several legal and other problems with cross-deputization. I know that in the State of South Dakota certain areas and certain communities feel that it is necessary and it is a very good thing and they adopt it. Other communities resist it. We have had it in the past, I think, between Tripp County and Todd County in certain instances. It's not a permanent thing. It's somewhat dependent upon the officials that are in office, both tribal and State. We have had, for example, the deputy sheriff in Todd County—although he is a member of the tribe, the tribe has refused to let him be cross-deputized for the past 2 or 3 years. One of the problems by the way—so those are some of the problems involved.

The State statutes, I believe, make the sheriff personally liable for the acts of all of these deputies, so there was some thought that maybe there should be some action by the legislature to take care of the few problems that might arise in a particular arrest situation.

I told Mr. Keller just recently, I think within the last week or 10 days, that there was a question in my mind—that one of the questions that we were talking about with respect to the tickets that had been issued—there was a question in my mind whether an individual in a police car wearing a police uniform, for example, a tribal police officer arresting a non-Indian in a speeding situation could properly be termed a citizen's arrest. Now that is the authority, the only authority which they expect us to act under and that is the authority that we are assuming to act under, and I know that as a result of the question, we believe it was a legal question, whether that would constitute a citizen's arrest or not. We referred the question to the attorney general's office for the attorney general's opinion, and we will take action on that. And I think we have one or two other complaints that

are currently pending for prosecution after we get that opinion from the attorney general's office.

MR. LEVIS. When did you refer that opinion up to the attorney general's office and have you received any response?

MR. TOBIN. We referred the opinion to the attorney general's office, I think, within the week of the meeting, you know, that we had with the tribe and the BIA. And I know at the same time there was a court case pending in which the State was involved and the Cheyenne River Tribe was involved in Federal district court, and I think that, in part, the outcome of that case might be one of the reasons or the pendency of that particular case might be one of the reasons that we haven't received a response back as of yet. But we expect one shortly, and I mentioned it to Mr. Janklow last week, as a matter of fact, 2 weeks ago.

MR. LEVIS. So at the moment what are you doing with the citations that are being transferred?

MR. TOBIN. As far as I know, we had the first—we had one, two—I think we have had only two. The first one we declined to act on because of the circumstances in which it arose. The second one is the one that we have referred to the attorney general's office for an opinion and, as far as I know, we don't have others.

MR. LEVIS. If you received others, what would you do with them?

MR. TOBIN. I won't do anything with them until I receive an opinion from the attorney's office if they arose in a fact situation of a police car and an individual.

MR. LEVIS. So at the moment there is no cross-deputization with the tribal police?

MR. TOBIN. That's correct.

MR. LEVIS. Mr. Pechota, you were at that meeting too, as I understand it, on May 10?

MR. PECHOTA. No, I wasn't at the meeting.

MR. LEVIS. Oh, you weren't at the meeting? You did talk with the attorney general after that meeting?

MR. PECHOTA. I had talked with Mr. Tobin and Mr. Janklow at various times about the problem. And the thing that I was concerned about was that the Federal authorities didn't seem to be willing or desirous of assuming jurisdiction over these misdemeanor crimes that were being committed out there by non-Indians. And on the other hand, the State wasn't willing to assume responsibility for those people that were arrested for the violations. And I also talked with the U.S. attorney about this problem. And I indicated my concern to all of those was that someone had to fill the void because you can't have non-Indians running around there with impunity committing crimes. I am not saying that anyone does that, but there could certainly be situations where that could happen. And the end result of those conversations was an indication by Mr. Janklow that anytime a non-Indian was arrested that we send all the arrest reports, all of the investigative

materials to him and at that time or when he received those—and after reviewing those and he thought it was a prosecutable case and he indicated he would go ahead.

I sent a copy—after talking with him and coming to that understanding with him, I wrote a letter to Captain Long of the police department and indicated that that is what should be done in the interim as long as no one was going to step in and take responsibility for prosecuting those crimes.

MR. LEVIS. So what is the situation now when someone is speeding on the reservation?

MR. PECHOTA. It's in the state of limbo. They are just not being prosecuted.

MR. LEVIS. Mr. Tobin?

MR. TOBIN. One particular thing. *Oliphant* did not—there is a problem, and it's always been a problem, but I don't think it is of the magnitude as some people would like make it out as. Prior to *Oliphant*—there was no question that *Oliphant* only ruled on a situation that had existed 2 or 3 years. Tribal courts asserting jurisdiction over non-Indians was unheard of within the Rosebud Reservation prior to 1971 or '72. So for the past 50 years, it had always been either the city of Mission or whatever officers, State officers, were stationed in the area had always had the responsibility for enforcing State law just as they do today.

Now I think within the Rosebud Reservation the South Dakota Highway Patrol had a reorganization or a location problem that just happened to correspond with the same time that the *Oliphant* decision was handed down. We were one officer short of the three that had been assigned to the Tripp County for the 2 previous years. And as a result of that, the patrolmen that usually patrolled Todd County was busy taking care of the business in the area surrounding Tripp County and at the same time *Oliphant* came down, then there was no highway patrolman in Todd County. So in that respect, you know, while things might yet be in the state of limbo, I think it's attributable to other causes as well.

MR. LEVIS. Mr. Keller?

MR. KELLER. If I may, I would like to point to an instant previous, in fact 2 days ago, where a non-Indian passed a tribal police unit equipped with red lights. The police unit had a radar system in it. The car that passed was exceeding the speed, I don't know, it was well—60, 65 miles an hour. She was cited. The ticket was taken to Winner. The tribal police officer was disallowed even to sign a complaint.

I beg to differ with Mr. Tobin here. About 2 weeks after our meeting, or early part of June there was, I believe, about 10 or 15 citations turned into the police magistrate or the city magistrate, county magistrate in Tripp County, and like I said before, I am not sure just what status they are is now. But we do have a great deal of residents, en-

rolled members as well as non-Indians, breaking the law in terms of traffic violations, especially. Those that are enrolled are subject to fines by the court, by the way which my son just paid \$40 last week. Those that are not enrolled, are non-Indian, have a choice. Some of them have submitted to the tribal council, I am thinking they are part of the community and have gone through and have paid their fines. They have, however, a choice, basically, to go to Tripp County, which I don't know whether anything's done or actually to go scot-free, I suppose.

MR. LEVIS. When I talked to you previously you indicated that you had requested or the BIA area office had requested a meeting with the attorney general to discuss this issue. Has anything happened as a result of that request?

MR. KELLER. We haven't met with him. I talked to Mr. Tobin after the meeting in Pierre last week and had indicated that we would get together soon, that we could possibly resolve the issue of insurance or liability on the part of the tribal officers.

There was other problems that were mentioned at that time such as warrants that were being held from both angles in terms of, you know, serving the warrants on a reservation and reservation warrants served outside the reservation. But I believe the area office assistant special officer has worked out with other agencies and counties some sort of agreements that could work.

MR. LEVIS. We heard about this liability problem. Could you expand on that and what the BIA has offered to do to deal with this problem?

MR. KELLER. In terms of some of the Bureau police officers, of course, were covered by the tort claim situation in terms of insurance, and those tribal officers that would carry our commissions could fall into the same category and I believe this system could be set up with the sheriff's department. Now we did last year, and I have signed 20 commissions, Federal commissions, I think one of which went to the sheriff in Gregory County. I know definitely he had one last year, a Bureau commission, and their commissioners met and offered to issue a commission to one of our tribal officers or Bureau officers whenever we could get a person stationed down there. We do have a portion of the Rosebud or some trust land in Milks Camp area in Gregory County.

MR. LEVIS. Mr. Tobin, at the May 10 meeting was this question of liability brought up and was the BIA proposal discussed?

MR. TOBIN. The question of liability was brought up.

MR. LEVIS. And the BIA reimbursing the sheriff's office for whatever?

MR. TOBIN. Yes, that was brought up. I don't think there were any definite decisions; I think those were things to be explored.

MR. LEVIS. Has there been any research done in this area or any proposal?

MR. TOBIN. Yes, I think Mr. Keller indicated that the tribe had sent some people to talk to some insurance people to find out what the cost of the project would be because we would be talking about cross-deputizing 15 or 20 tribal police officers. And, in that respect, it is, I guess, cross-deputization is a discretionary decision. Mr. Janklow took the position last week, it's a discretionary decision to be made by the sheriff and which must be confirmed by the county commissioners. So when they are satisfied, and I think this will involve a couple of other areas such as extradition and such, and the community is satisfied, I would imagine it could take place.

MR. LEVIS. Is there no extradition agreement at this time?

MR. TOBIN. We have 70 some warrants in Tripp County for members of the Rosebud Sioux Tribe in Todd County that haven't been honored in the last 2 years from all over the State of South Dakota.

MR. LEVIS. Is there any agreement at all though either way?

MR. TOBIN. None.

MR. PECHOTA. There is statutes on the laws in the books of the State of South Dakota providing for extradition to and from Indian reservations between the State and the tribe. The tribe has an extradition law.

Now I don't know if—I don't know if these warrants that Mr. Tobin is referring to have been officially referred to the tribal court or not in the manner that has to be followed under the tribal law.

MR. TOBIN. It's my understanding there is a South Dakota statute that allows local units of government to enter into agreements, and there is no agreement. And these warrants have been, you know, brought to the attention of the tribal court, at least according to our deputy sheriff.

MR. LEVIS. Judge Talbott, you have sort of been ignored this morning. As I understand it, you were the State's attorney in the 1950s and I wonder if you could describe the situation that existed at that time, and I also understand you were on a State Indian task force in the mid-seventies and just some of the recommendations you might have for dealing with some of these problems.

MR. TALBOTT. Yes, I was a State's attorney of Tripp County in the 1950s, and perhaps at that time we were operating in an area of ignorance because during that particular time the general assumption by all people involved was that the Federal Government had exclusive criminal jurisdiction over the 10 majors as they were provided for at that time. And the rest of the general assumption was that the State and the tribe had a kind of cojurisdictional aspect as to the enforcement of laws.

And during the fifties, the courts entertained almost full civil jurisdiction and almost full criminal jurisdiction. And during that period of time, the tribe and its police officers and the various State and county law officials cooperated, and the State did enforce, for instance, the drunk driving statutes of our State with regard to both Indian and non-Indian personnel in Todd County. And the relationship was



understood to be the same as it is, for instance, between our State laws and various municipal ordinances. Sometimes they overlap and sometimes they don't.

But that is the way things were done in the fifties. The arrests were made—if they were made by a tribal officer they were turned over to the deputy sheriff who brought them to Winner for prosecution.

As I say, this was before the court decisions started coming down that delineated the jurisdictional issues.

MR. LEVIS. You also served on a task force during the mid-1970s?

MR. TALBOTT. Yes, in 1975 I was a member of the reservation task force.

MR. LEVIS. Were any recommendations made there or do you have any feeling on any recommendation that should be made, any laws that could be changed to alleviate some of the problems that are occurring?

MR. TALBOTT. You're referring, Mr. Levis, to the cross-deputization issue?

MR. LEVIS. Yes, and the sheriff's liability.

MR. TALBOTT. Yes, Mr. Levis, as you know, I have discussed—it's my opinion that this issue is just not well enough understood. Very briefly, I would like to say that the Federal warrants, I believe they call them—anyway, the authority of appointing a special officer can be given and issued without making any one particular individual or government liable for the acts of that individual. The contrary is true with regard to county sheriffs. The relationships, historically, in South Dakota between the State and the counties is that each county officer is personally responsible for the conduct of his office. And that is also true of the office of the sheriff.

The statute particularly provides that deputy sheriffs are to be appointed by the sheriff with the approval—I believe the statute actually provides that the actual appointment is to be made by the board of county commissioners. This statute is different from that that governs other appointments made by other officers of the county.

The statute provides that the county is liable for any damages that might be recovered by anyone against a sheriff or a deputy. Thus, there is an extremely personal relationship that exists between a deputy and the sheriff. And because of this, it is with considerable reluctance that any sheriff will at random pass out deputy sheriff badges.

The problem of cross-deputization is—I have been practicing law for 28 years and have been in discussion involving this question for at least that long. Yes, Mr. Levis, in the course of the meetings that were held by the reservation task force I did make some recommendations to that group as to what could be done.

MR. LEVIS. What specifically would you recommend?

MR. TALBOTT. I feel it's inappropriate really because of the extent of which this personal relationship between deputy sheriffs and sheriffs is ingrained into our legal system to attempt to change that relation-

ship. But we do have a statute on our books in South Dakota that refers to county constables. It's chapter 7013 of the South Dakota Compiled Laws. I did bring a copy of that with me which I will be glad to leave with the Commission if they so desire to have it.

Now this statute as it presently exists on the books would not in itself solve the problem. It needs amending. But I believe that, at least in my opinion, it would serve as a proper vehicle and could be enlarged to permit some governmental authority, say the county commissioners, to make appointments at random of county constables to serve as peace officers.

MR. LEVIS. So these officers would be in positions similar to that of a deputy sheriff but they would not be called the same thing?

MR. TALBOTT. That's correct.

MR. LEVIS. Would the amendment have to deal with the liability of the sheriff or of the county for false arrests?

MR. TALBOTT. You mean what would their liability be?

MR. LEVIS. Yes.

MR. TALBOTT. Well, in my view certainly there would be personal liability.

MR. LEVIS. Of the constables?

MR. TALBOTT. Of the constable. And it has never been litigated as to what the county's liability might be for a county constable. They are not mentioned in the same law that makes a county liable for judgments obtained against a sheriff for malfeasance of his duties.

MR. LEVIS. Has this statute ever been used in Tripp County to the best of your knowledge?

MR. TALBOTT. It's never been used in Tripp County to the best of my knowledge.

MR. LEVIS. Thank you.

MR. TALBOTT. I beg your pardon. I just wanted to emphasize that in its present form it could not be used to satisfy the requirements of the cross-deputization. It would have to be amended. I only suggest that it's a vehicle that could be used by amendment to provide a remedy. And this was a suggestion I made at the reservation task force.

MR. LEVIS. Four years ago or 3 years ago?

MR. TALBOTT. In 1975.

MR. LEVIS. Mr. Colombe, as I understand it you are the chairman of the resource development committee of the Rosebud Sioux Tribe?

MR. COLOMBE. Yes, sir.

MR. LEVIS. What does your committee do, if you could just describe it briefly, and how does this relate to just the Todd-Tripp situation, if at all?

MR. COLOMBE. The committee has some real basic responsibilities that are outlined by the tribal council, and like the name says, resource development, we are into that area and that deals with the—I think our primary function would be the purchase of lands with the use of FHA loan monies for the tribe from individual members.

MR. LEVIS. Do you purchase land both within Todd County and outside Todd County?

MR. COLOMBE. Yes, we do. We purchase land in Todd County, Melette County, Tripp, and Gregory and I am not positive about Lyman.

MR. LEVIS. What happens to the land after you purchase it as far as its status?

MR. COLOMBE. It then is under the ownership of the tribe. Now as far as you could go, it probably wouldn't change. That is on a maybe a competitive basis for leasing.

MR. LEVIS. As I understand it, Todd County has approximately 880,000 or 890,000 acres. How many or how much of that land is owned by the tribe and how much of the land is within the original boundaries of the reservations owned by the tribe?

MR. COLOMBE. Okay. How much land is owned by the tribe? That would mean—

MR. LEVIS. Or in trust status.

MR. COLOMBE. Okay, trust status. In Todd County probably 550,000 or 555,000 acres.

MR. LEVIS. In Tripp County?

MR. COLOMBE. In Tripp I think 72,000 or 73,000 acres.

MR. LEVIS. And do you happen to know how big Tripp County is?

MR. COLOMBE. I don't. I think one of these gentlemen could answer that.

MR. TALBOTT. In rough figures it's about 1,100,000 acres.

MR. LEVIS. As I understand it, Todd County is attached to Tripp County. Does this affect any of the services or anything your committee has to do?

MR. COLOMBE. Yes, it does. I can't—well, maybe a lot of—it's just our lack of knowledge in how to work the system, but it does affect us. It definitely does.

MR. LEVIS. As I understand it, the County of Tripp sued the State to deal with the unorganized county statute to get essentially Todd either removed from Tripp or at least have declared the unorganized statute to be unconstitutional. Did that affect the relationship of your committee at all?

MR. COLOMBE. It affects us in our dealings with the government and certainly with the Farmers Home Administration in one way that is easy to explain. They wouldn't at one time allow us to purchase land outside of Todd County. Now we have got that worked out since September 1977 that we can buy land from our individual members in Tripp County, but prior to that, for 2 or 3 years the tribe was unable to buy. And of course I think all of this should be looked at. Most of the time the land we are buying are fractionated interests and divided interests.

MR. LEVIS. Mr. Tobin, as I understand it, you now work with the National Association of Counties or NACO, and they had their na-

tional convention in Atlanta either last week or 2 weeks ago. Did that organization at that time pass any resolutions or deal with the issue of Indians at all?

MR. TOBIN. I don't work with the National Association of County Governments. I have appeared before them on several panels relating to State and tribal and county matters, but I don't represent the national association.

They did pass a resolution indicating that there were several areas of concern especially, I think, with the majority report of the American Indian Policy Review Commission that tribal governments become the primary governing bodies within Indian reservations whereas some of these particular counties also exist in the same areas with substantial portions that are non-Indian.

They passed a series of resolutions the thrust of which, I believe, is that they think it's time for Congress to have some hearings and decide what is going to be the policy of Congress in certain directions. I don't have that resolution with me here today, but I can forward it to the Commission if you would like.

MR. LEVIS. We would appreciate it.

Did you have any role at all in the passage of that resolution or did you advocate that resolution?

MR. TOBIN. No, as I understand it, that particular resolution was adopted the day before I got there.

MR. LEVIS. Thank you. I have no further questions at this time, Mr. Chairman.

CHAIRMAN FLEMMING. Mr. Talbott, I was very much interested in the recommendation that you made to the task force on which you served relative to the possible role of constables contrasted with the deputy sheriffs. Was your recommendation accepted by the task force? Did it become a part of their report? If so, what is the present status of that report?

MR. TALBOTT. It did become, Mr. Chairman, a part of their report. And the report of all the task forces was filed with the State legislature. I am not aware of any effort being made at the present time to implement that particular thing. I really believe though that it could be done and, Mr. Chairman, by your leave may I make a comment? I have a feeling you're about ready to wind up.

Some of the things that are mentioned here are little bits and pieces out of a whole and they are true. We have been presented with traffic tickets. To get this whole thing rolling will take some cooperation from a lot of people, and I believe that it can be put together within the existing framework of our laws and perhaps with some few amendments. But there is going to have to be a lot of togetherness to get it done. For example, the tickets that have been presented are traffic tickets issued by, well, with the name of the Rosebud tribal court printed on them. Well, it's basic law that any defendant is entitled to know by the summons or other citation he gets to know which court

he is coming to. And I mention this, Mr. Chairman, only to point up the need not only to amend a few laws, perhaps, but the need to have some togetherness and some training and, for instance, furnish the tribal officers with the proper kind of State tickets and the proper information so they will know how to handle them.

Similarly, I believe that the motor patrol and the other county officers that might be cross-deputized, if you will sir, also be given information as to how their court system works and how their tickets should be handled. It will take more, Mr. Chairman, then just to amend the chapter that I mentioned.

CHAIRMAN FLEMMING. I appreciate your comments and I was about to comment on the fact that the issue that has been the issue that has dominated the questioning of the panel is one that has been called to our attention a number of times. And I feel that the dialogue that has taken place here this morning has been particularly helpful to me at least in attempting to get a clear picture of the issue and possible approaches to the issue.

Judge Talbott, I would like to move away from that issue for just a few moments and discuss with you one or two other issues that have been called to our attention.

As you know, our State Advisory Committee did conduct an investigation in this whole area, did hold some hearings, and did file a report, which of course this Commission has considered very carefully, and one of the issues identified by the Advisory Committee was the issue of the participation or nonparticipation of members of the Indian community as members of trial juries. And I was just wondering whether or not, growing out of your experience both as an attorney and judge, you would like to comment on that issue.

MR. TALBOTT. I have read the report of the Advisory Committee. One of the statements made therein was that it was extremely rare when an American Indian served on a jury panel, and I, from my own experience, would have to take issue with that kind of a statement. The South Dakota jury selection procedure was changed approximately 5 years ago. The general pool is now made up of the list of registered voters, in other words, very similar to the Federal system. As a matter of fact, the identical same list that is supplied to the Federal court system is also the same list that is furnished to the clerk of courts for our jury selection procedures. Mr. Chairman, we do have American Indians on our jury panels. They do serve on our juries, and just last week a young Indian lady was foreman on one of my juries. They do serve, sir.

CHAIRMAN FLEMMING. All right. Appreciate your comment on that.

Then another issue that was called to our attention was the fact that allegedly a large percentage of cases do not actually go to trial but are settled as a result of what I guess is rather loosely referred to as plea bargaining. That encompasses a fairly wide area, and we would certainly appreciate your comments and observations on that particular issue.

MR. TALBOTT. I think the Advisory Committee's comments about there being relatively few trials as to the number of arrests that are made is very true. Many people just admit their guilt and plead guilty. There are plea negotiations in some cases but not all.

MR. CHAIRMAN, I have never had an opportunity to compare the figures that were compiled by the Advisory Committee with any of the figures that are available for comparing arrests with trials on a national level. But I have had the general feeling that they would be within the same kind of range. As was pointed out in one of the comments in the Committee report, the backbone of the court system would be indeed broken if we had to try all of them.

CHAIRMAN FLEMMING. Right. Tied in with that was a reference to what is allegedly a practice of overcharging initially. Do you have any observations on that?

MR. TALBOTT. Going back quite a few years, Mr. Chairman, I did know of an instance where a prosecutor regularly engaged in that kind of a practice in all of his cases. But that has been quite a few years ago.

MR. CHAIRMAN, in my experience as a judge—and it's been more than 20 years now—I have not had occasion to be concerned about a need for myself as a judge, for instance, to worry about or be overly concerned about whether or not a man was, as you say, overly charged. Because I am aware of a personal situation where I knew this to exist a good many years ago, I have no question but that it might exist again sometime. But in my own experience, sir, I have had no reason to be concerned about this possibility.

CHAIRMAN FLEMMING. Mr. Tobin, do you care to comment on any of these issues I have been discussing with the judge growing out of your present experience?

MR. TOBIN. Well, the one comment that I would like to make is the action and inaction of the Federal Government by enacting statutes and vacillating in its Federal Indian policy have put the State of South Dakota and the tribal governments at odds within the last 4 or 5 years on two very different issues to resolve by negotiation, namely, the exact location of reservation boundaries and, secondly, whether the tribal governments do have any jurisdiction over non-Indians. I think that those two issues have been resolved by the Supreme Court, that there exist a number of other minor areas, such as cross-deputization and the problems that really affect local governments working with other local governments, or community problems that the communities are probably both willing and will be able to resolve within the next 2 or 3 years, hopefully so.

CHAIRMAN FLEMMING. Do any of the other members of the panel care to comment on any of the issues that I was discussing with Judge Talbott?

MR. KELLER. Mr. Chairman, if I may, unlike other gentlemen here, I suppose I feel somewhat more responsible in that law and order is

my major objective on the reservation. I have authority over the Bureau people that are in the law enforcement as well as supervising the tribal people. It's a 24-hour-a-day problem that we are faced with right at the reservation level, and if I may quote just a few statistics that I would like to enter into the picture. Since January first of this year, and I find these—I haven't checked them completely, but the people working on them—I would probably guarantee them 90, 95 percent accurate.

There were a total of five non-Indians who were issued warning tickets for driving without a license. Two of them were male; three were female. A total of 32 warning tickets for speeding, 9 female, 23 male. These are all non-Indians by the way, sir.

CHAIRMAN FLEMMING. What area is this? What territory?

MR. KELLER. This is on the reservation in Todd County that were issued by the tribal police officers. There are a total of 23 male, non-Indian, warning tickets for speeding. We had a total of 34 non-Indian traffic citations issued; 6 were female and 28 were male. These citations that are issued at the top state, "State of South Dakota Uniform Traffic Ticket" of which I have a copy I would like to present the board with it, if you wish.

And the person here, the one I referred to as of yesterday was cited, "The County of Todd, City of Winner, South Dakota, in the circuit-court." This was not accepted.

I don't like to make an issue of these things, but I am in fact continually faced with them every day and night, and I am pushing to try to get some agreement set up. We are willing to meet in every respect with the State and try to get something worked out and with the tribe too. We are caught somewhat in the middle. The tribe did pass a resolution indicating they would like to have a Federal magistrate stationed at Rosebud, which in effect would answer a lot of these questions. And that resolution has been approved and submitted on to the area office and I am sure has passed the area office.

CHAIRMAN FLEMMING. Thank you very much.

Ms. Freeman?

COMMISSIONER FREEMAN. No.

CHAIRMAN FLEMMING. Mr. Nunez?

MR. NUNEZ. Yes, I have one question. I want to clarify an issue.

Mr. Tobin, you indicated that you had asked for an opinion from the attorney general concerning the matter of citizen's arrest. Was that—I assume you did that because you personally felt that there was something contrary to current law to have tribal or BIA police using this statute to carry on to arrest non-Indians on the reservation?

MR. TOBIN. Well, at the time that we requested the opinion I was aware of a fact situation that existed in the Cheyenne River Reservation area involving a tribal police officer, I think, also with the radar gun. And it was pending in the Federal district court, and I said in my own mind that there was a further consideration as to whether or not

that particular situation came within the purview of our statutes or our case law on citizen's arrest, yes. And for that reason, I indicated that as a State's attorney that we would be—we would feel comfortable proceeding with the prosecution after we had an attorney general's opinion.

Now, ordinarily Mr. Janklow's office is very good in getting out attorney general's opinions. They used to get them out in 3 weeks. In this particular instance, I think part of the delay for the opinion was the existence of this matter in Federal court which, as I understand it, as of a week ago has been now resolved. So perhaps I can answer in that respect.

CHAIRMAN FLEMMING. Thank you. We appreciate very, very much your being with us and sharing your experiences and your insights with us in connection with these very important issues. Thank you very, very much.

MR. TALBOTT. Thank you for the opportunity to come.

CHAIRMAN FLEMMING. Counsel will call the next witnesses.

MS. HUBER. Will Henry Gayton, Walter Plumage, and Captain Two Bulls please come forward?

[Messrs. Gayton, Plumage, and Two Bulls were sworn.]

**TESTIMONY OF HENRY GAYTON, SPECIAL OFFICER, BIA, STANDING ROCK, FORT YATES, NORTH DAKOTA; WALTER V. PLUMAGE, SPECIAL OFFICER, BIA, ABERDEEN, SOUTH DAKOTA; AND FRED TWO BULLS, CAPTAIN, PINE RIDGE RESERVATION POLICE DEPARTMENT**

CHAIRMAN FLEMMING. Thank you. We appreciate your being here.

MS. HUBER. Would you gentlemen begin by identifying yourself, stating your official position, beginning with Mr. Plumage?

MR. PLUMAGE. My name is Walter V. Plumage. I am the area special officer for the Aberdeen office, stationed at Aberdeen, South Dakota, for the Bureau of Indian Affairs.

MR. GAYTON. Henry Gayton. I'm the agency special officer at Standing Rock, Fort Yates, North Dakota.

MR. TWO BULLS. I'm Fred Two Bulls. I'm the captain of the Pine Ridge Police Department, Pine Ridge Reservation.

MS. HUBER. Thank you.

MR. PLUMAGE, could you just tell us briefly the nature of your duties as area special officer of the Aberdeen area of the BIA?

MR. PLUMAGE. I'm stationed in Aberdeen, South Dakota. We have the responsibility for the States of North Dakota, South Dakota, and a portion of Nebraska. We work basically with training, setting up training for the people in the field as well as working with them, our own people, in the field for law and order code for the tribes. We work with the budget. We also work with ordering equipment for each reservation within our area. We are also available for any type of technical assistance that the tribe would request pertaining to law enforcement matters.



Ms. HUBER. Could you describe briefly the duties that an agency special officer would have?

MR. PLUMAGE. The agency special officer's primary duties is supervisory responsibility for the law enforcement program which includes the budget, also the supervision of the uniform police department, the supervision of the jail operation, and also, he handles the investigation of the 14 major crimes on the reservation, initial investigation along with the FBI.

Ms. HUBER. All right. Mr. Plumage, does the agency special officer, such as Mr. Gayton, report directly to you or does he report to his agency supervisor?

MR. PLUMAGE. He reports directly to the superintendent of the agency; that's his immediate supervisor.

Ms. HUBER. Mr. Gayton, you are the agency special officer at Standing Rock as I understand?

MR. GAYTON. Yes.

Ms. HUBER. Could you describe briefly the nature of your experience and training as a law enforcement officer?

MR. GAYTON. In a couple weeks I will have my 23rd year completed. I started at Standing Rock, transferred over to the Sisseton agency, then up to Turtle Mountain, North Dakota, then back to Standing Rock, my home.

Ms. HUBER. That is within the Bureau of Indian Affairs?

MR. GAYTON. Yes.

Ms. HUBER. Are you a member of the Standing Rock Tribe?

MR. GAYTON. Yes.

Ms. HUBER. What training have you had as a criminal investigator?

MR. GAYTON. I have had many inservice training put on by the FBI, Oklahoma University, places like that, for seminars.

Ms. HUBER. Could you tell us how major crime investigations are handled on the Standing Rock Reservation? What is the usual procedure?

MR. GAYTON. Well, usually one of our police officers are the first to arrive at the scene, then they—quickly they call the police station, usually by radio, state there has been a major crime committed. Either myself or the criminal investigators go out, start procedures to investigate the scene.

Ms. HUBER. What would those procedures be?

MR. GAYTON. We secure the crime scene, secure any evidence that might be available. If there is any of the witnesses there, get the names and, if the subject happens to be there, probably arrest him.

Ms. HUBER. What about the role of the Federal Bureau of Investigation?

MR. GAYTON. We then call it, after we establish there has been a crime committed that falls into the category of going to Federal court, we notify our—one of our agents. In Standing Rock, we are both in North and South Dakota. Whichever side of the State line this happens will be notified, the agents in Bismarck or Aberdeen.

MS. HUBER. How far is Bismarck from the Standing Rock Reservation?

MR. GAYTON. About 75 miles.

MS. HUBER. How far is Aberdeen from—

MR. GAYTON. About 150.

MS. HUBER. Ordinarily, how long will it take an FBI agent to respond to the reservation after you or your investigator calls?

MR. GAYTON. It depends on the type of case. If it is a, say a murder, something like that, they usually respond immediately.

MS. HUBER. Immediately would be, in terms of time, how long?

MR. GAYTON. The quickest could be about an hour and a half. Aberdeen probably about 2-1/2 hours to 3, if they got started immediately when we called them.

MS. HUBER. How about other kinds of major crimes, offenses not involving a homicide? How long generally is the response time?

MR. GAYTON. It can run up to 2 weeks to 10 days, somewhere in there.

MS. HUBER. What will the FBI agents do once they do respond in regard to the investigation?

MR. GAYTON. They usually—we usually have our case report, at least the interviews all typed. They usually take those. Then many times they reinterview some of the subjects.

MS. HUBER. Do you think the FBI's involvement as a general rule adds anything to the investigation you have already done?

MR. GAYTON. Not normally.

MS. HUBER. Captain Two Bulls, could you explain how, as a matter of procedure, major crime investigations are handled on the Pine Ridge Reservation?

MR. TWO BULLS. It is pretty much like Mr. Gayton said here, but it is our officers that do the initial investigation, the preliminary investigation. We secure the crime scene and interview and we call the FBI to establish if there is a homicide, whatever, or a more serious crime.

MS. HUBER. What is the nature of your training and experience as a law enforcement officer?

MR. TWO BULLS. My experience is about—pretty close to 20 years. I have been to the University of Idaho in a management school; I have been to the Bureau of Indian Affairs criminal investigation course in Roswell, New Mexico. I have numerous inservice training.

MS. HUBER. In what capacity did you work at the Pine Ridge Reservation prior to the tribe taking over its own law enforcement from the Bureau of Indian Affairs?

MR. TWO BULLS. I have worked from the bottom clear to the top.

MS. HUBER. For the Bureau?

MR. TWO BULLS. For the tribe and the Bureau.

MS. HUBER. Have your lieutenants, your senior officers, had any specialized training in the investigative—

MR. TWO BULLS. Some of them have.

MS. HUBER. Could you describe the nature of that training?

MR. TWO BULLS. They went through investigator's courses that we present right there on the reservation. Some of them have been to the Bureau academy.

MS. HUBER. Are there FBI agents stationed on the Pine Ridge Reservation?

MR. TWO BULLS. No.

MS. HUBER. From where does the FBI respond if a major crime occurs?

MR. TWO BULLS. Usually from Rapid City or one of the border towns in Nebraska where they stay when they aren't working the reservation.

MS. HUBER. As a general matter how long does it take the FBI to respond to Pine Ridge?

MR. TWO BULLS. On a serious crime it takes about an hour and a half, or sometimes later. It all depends on what season it is in; due to weather conditions, sometimes they are late.

MS. HUBER. All right. What do they do once they respond? What role do they take in regard to the investigation you or your officers have undertaken?

MR. TWO BULLS. They take what we have written up and they take it from there.

MS. HUBER. What do you think the FBI in general adds to the investigation that you or your officers have already done?

MR. TWO BULLS. Well, the time element is the only thing. They are more trained in that field right now. Our department is just a young department yet. We are trying to get our officers to work with the agents so they can learn from them.

MS. HUBER. All right.

MR. PLUMAGE, the procedure for handling of major crimes has been described by Mr. Gayton and Captain Two Bulls. Is that pretty much the same situation for the other reservations in South Dakota?

MR. PLUMAGE. Yes, it is.

MS. HUBER. Mr. Gayton, based on your experience as a criminal investigator, would you favor the tribal police or the BIA taking over primary responsibility for investigation of major crimes offenses and presentations to the U.S. attorney?

MR. GAYTON. Yes, I think it should be phased in as quickly as possible.

MS. HUBER. Why is that your opinion?

MR. GAYTON. Like Mr. Trottier testified yesterday, I think they have a closer personal relationship with the citizens of the particular reservation and they know what the pressures are, as Mr. Trottier said yesterday. I think, probably, it would be a quicker way of getting the people that commit violent crimes before the court system.

MS. HUBER. Do you feel that you and the criminal investigators on the Standing Rock Reservation are sufficiently qualified and able to handle investigation of serious felony offenses?

MR. GAYTON. I think we are, yes.

MS. HUBER. Do you think your membership in the tribe, your presence on the reservation in any way adds to your ability to conduct an investigation?

MR. GAYTON. Yes, I believe it does, yes.

MS. HUBER. How so?

MR. GAYTON. We have had instances where—I'm sure Mr. Two Bulls has too—where people of the community have wanted to talk to one of us rather than somebody that is not living there.

MS. HUBER. Captain Two Bulls, could you comment on that aspect from the perspective of the Pine Ridge Reservation?

MR. TWO BULLS. Yes. There is many times when this happens. The people just would not communicate with someone that isn't from there. It helps a lot to be bilingual in this line of duty on the reservation, to some of the people. They do speak English but not to a point where they can really can express themselves or make you understand what they really want. In their own language they feel more comfortable.

MS. HUBER. Are you and some of your other officers bilingual in Lakota?

MR. TWO BULLS. I would say over half of them are bilingual.

MS. HUBER. Mr. Plumage, from your perspective as area special officer, would you favor BIA investigators taking over primary investigative responsibility for major crimes investigation?

MR. PLUMAGE. I would have to agree with what Mr. Gayton and Mr. Two Bulls said. The fact—I feel that our people are there on the scene, they are there all the time. They know the people on the reservation. A lot of our criminal investigators now are of Indian descent which has a big effect. The fact—and I don't like to use the term—but a non-Indian, sometimes they run into problems as far as talking to the subjects. It is a different matter, like I say, our people live there, they know the people, they know their customs. I feel that they make the initial investigation, and a lot of times, like Henry says, they make the full investigation. I feel the FBI does a real good job when they are there, but it's just a fact that they have got other duties. I don't feel that—we are there on the scene, I think we do probably—our investigators would do just as good a job.

MS. HUBER. Captain Two Bulls, you said yours is a young department. Do you have as a goal your department's taking over primary responsibility for investigation of major crimes?

MR. TWO BULLS. Yes, that is what we are striving to do right now, make it this way. In taking over the investigation, we'd feel more professional. Like what we are doing now, we feel like we are just a figurehead between the crime and the FBI there, that at times we don't get any credit for what we have done in some of the investigations.

MS. HUBER. How do you think it would affect the residents of the reservation if your department took over their primary investigative authority?

MR. TWO BULLS. Well, I imagine it would be some that would disagree with it; some will like it.

MS. HUBER. How do you think it would affect the attitude of the residents of the reservation toward your departments?

MR. TWO BULLS. I think they would give us a second look. They know that we are investigating and we mean business. This would give us more prestige.

MS. HUBER. Thank you.

Captain Two Bulls, you have served as a police officer at Pine Ridge for many years; is that correct? And you were one of the senior officers under the BIA police system prior to the tribe taking over; is that correct?

MR. TWO BULLS. Yes.

MS. HUBER. From your perspective, how does law enforcement at Pine Ridge under the new Oglala Sioux tribal police system differ from the BIA system you worked under before?

MR. TWO BULLS. Under there, we enforced the same laws and everything, but the difference is we have better coverage, there is more men in there. We are still lacking communications, telephones in some areas are not existent. There is a lot of things that go unreported. A good communication system on the reservation—I think we can do an even better job than what we are doing now.

MS. HUBER. Do you feel you are doing a good job now?

MR. TWO BULLS. Yes.

MS. HUBER. Captain Two Bulls, the Department of Justice in 1975 issued a task force report regarding the Department's role in Indian affairs, including law and order. There was a comment on the conditions at Pine Ridge back in 1975. The report said, "Conditions at Pine Ridge have deteriorated since the occupation of Wounded Knee so that today there is a total breakdown of law and order on that reservation. Murders and other incidents of violence and violations of civil rights occur regularly." It goes on to say, "Many reservation residents are armed, and few have the courage to travel the roads at night. Vigilante groups have appeared and the last vestiges of community confidence in a system of laws has vanished."

It is 1978 now. Is this an accurate description of how the Pine Ridge Reservation is in terms of law and order at the present time?

MR. TWO BULLS. That is the aftermath of the siege, during the siege and after, but it isn't like that anymore.

MS. HUBER. How is it now?

MR. TWO BULLS. It is pretty peaceful. People are getting—they are getting to understand each other better; they are trusting each other again. It is getting to a point where you feel pretty comfortable.

MS. HUBER. As you may have heard, the FBI is reducing the number of its staff at its Rapid City office. If the FBI reduces its staff, do you feel that your police force will be able to continue to keep the peace and fulfill any additional responsibilities?

MR. TWO BULLS. Yes.

MS. HUBER. Could you briefly describe what the role of the FBI has been in the training of the new Oglala Sioux tribal police force?

MR. TWO BULLS. They have been of great help to us down there. Instead of sending our boys away off to school for 10 to 12 weeks, we try to keep them as near home as possible so we have developed a training course—a basic training course for our officers for 6 weeks. We have all kinds of instructors come in there—the FBI, the highway patrol—State highway patrol, Bureau of Indian Affairs officers.

MS. HUBER. Do you think that the FBI's providing training to your officers is an appropriate role for the FBI?

MR. TWO BULLS. Yes, ma'am.

MS. HUBER. Mr. Plumage, we understand that the U.S. attorney for South Dakota has guidelines for what sort of major crimes offenses will be accepted for prosecution in the Federal court and that ordinarily theft offenses where the loss of property is less than \$500 are not accepted. Is that correct?

MR. PLUMAGE. Yes.

MS. HUBER. Could you comment on that guideline and to what extent you think it serves or does not serve the residents of Indian reservations in South Dakota?

MR. PLUMAGE. Well, the guideline was drawn up with—we had our input into it as well as the FBI, U.S. attorney's office. We hold quarterly meetings with the FBI and U.S. attorney in Aberdeen as well as Federal agencies. We discuss problems we have mutually. We agreed upon it, on these guidelines, and of course they are not set guidelines. They are open for change of its meaning.

So far we have had some comments where they feel that the amount should be lowered because of the fact \$500 is a large amount to an Indian family. Maybe \$100 would be like \$1,000 to somebody else. We have had some minor problems there, but I feel that overall that it is working. The guidelines are working. Like I say, they are open for changes that we feel is needed, that they are not hard set, they are open for discussion.

MS. HUBER. Captain Two Bulls, in discussions that I had with you earlier you had some advice on the \$500 limit. Would you care to tell us your views as to how that applies to the Pine Ridge Reservation?

MR. TWO BULLS. We feel about the same way; it is a little too high.

MS. HUBER. Why is it too high?

MR. TWO BULLS. Because the people, like Mr. Plumage says, \$100 is like a \$1,000 to other people. That is set for upper-middle-class families, we feel, and somebody took \$500 worth of household items from these Indian people, they would clean the whole house out.

MS. HUBER. Thank you.

Mr. Plumage, I take it that you have been involved in discussions of the procedures for handling of non-Indian offenders on reservation areas following the *Oliphant* decision. Is that correct?

MR. PLUMAGE. Yes, I have.

Ms. HUBER. Are there any areas in South Dakota where difficulties exist as to the handling of non-Indian offenders?

Mr. PLUMAGE. I think that is a pretty well-known fact now—it is just in the Rosebud area where we are having our major problems.

Ms. HUBER. Could you tell us what the effect is of lack of cooperation between the State and tribal officials in the handling of offenses committed by non-Indians? What effect does that have on law and order on the reservation?

Mr. PLUMAGE. I think if I might elaborate a little bit—I had planned on holding this for the comment section—but I was sitting in the room when Judge Talbott made some comments I feel I would have to disagree with. I also served on the task force for the Bureau of Indian Affairs for the State of South Dakota.

In regard to our cross-deputization cards, these deputy officers' cards are Federal commissions. They are issued under the authority of the area director who in turn delegates that authority down to each superintendent at the reservation level. Before these cards are given to officers, they have to fill out an application. Also, there is a background check made on each individual before these cards are issued. They are not handed out as random as it was made to sound. They are handed out to enforcement officers. They are there strictly to be used for the enforcement of tribal and Federal law on the Indian reservation. Basically, the card is issued for the protection of the officers as well as the Indian people.

I believe that the comment was also made that nobody stands behind the card which is not true. The card is a Federal commission and, therefore, the Federal Government stands behind the card for events of liabilities. If the officer is not doing his job, he is sued. If the case warrants it, it is handled by the U.S. attorney's office. At the same time the card is issued, the officer has to be doing the job, he has to be enforcing Federal or tribal law. We do not issue these cards to just anyone.

And to add a little more to it, I also worked the State of North Dakota with our enforcement officers in North Dakota. We have got no problems in North Dakota. We have all of our officers there commissioned with deputy sheriff commission cards. We have four reservations in North Dakota. I feel that I do agree with him that there is some problems as far as liability and stuff, but I think these are problems that can and should be worked out.

Right now, only, I think, to get into the question you asked that—like I say, we at the area level, we generally do not get involved unless it is requested. We had the local Sisseton agency try to work out an agreement with the County of Roberts as far as prosecution of non-Indians, because they were not being prosecuted. So, therefore, we stepped in, in an attempt to set up a meeting with officials at the county. We did set up the meeting. We had two meetings in fact. Nothing was resolved from the meetings. Like I say, we as a Bureau

feel like it is our responsibility that when the life of Indian people are involved, there is a possibility they are going to be hurt or somebody is going to be killed, then it is our responsibility to move in and see if we can get things going in the right direction.

We also had the same incident down at Rosebud where we had a meeting with the officials down there; of course it was the same thing. We went, our hands open for an agreement. When we tried to work an agreement out, we did not get any results with it. We also attempted—I talked to the area director about this, and I expressed to him my concerns, if we didn't get something going or done, there were going to be problems. We attempted to set up a meeting with the State's attorney general. In June we extended a letter to him, inviting him to come to Aberdeen for a meeting with the area, the Bureau of Indians, other tribal officials, which we never did receive a response.

MS. HUBER. Mr. Plumage, in situations as you described, where efforts to work out a cooperative arrangement between the State and tribal officials, where these efforts have failed, at least at the present time, what do you think the role of the Federal Government should be to ensure law and order on Indian reservations?

MR. PLUMAGE. I feel—like I say, I felt it was our responsibility first. I feel now we have done all we can do. We have attempted to set up meetings. I have talked to the U.S. attorney's office about it. I feel now that, if we can't do anything, then the U.S. attorney's office should attempt to enforce the assimilated crimes law or attempt to set up a Federal magistrate.

I realize they can't do it at the local level. I feel now the responsibility, if we can't work it out—I would sooner see us work it out locally. If we can't, I feel it should be done at the Washington level, at the Department of Justice. The Attorney General has the authority to look into these matters.

I feel as a last resort that, if we cannot work out an agreement where non-Indians are prosecuted by the State and taken care of through their courts and that justice is served, then we have no resort but to look toward a magistrate system where the Federal Government would assume enforcement over all the people on the reservation, including non-Indians. The State would just be left out of it. But I wouldn't want to see this happen. But I feel, unless we can start getting meetings with the State where we can sit down, work out problems that we have, we have no resort but to seek this. This was told to the Sisseton people and also to the people of Rosebud. We want it to work; we want an agreement worked out. We are willing to sit down and listen. This is why I hate—one of the gentleman made the comments that it is a dual role. Everybody has to cooperate. I agree with that. I feel in my own mind that we as a Bureau, also as a tribe, have attempted to work out an agreement. We are not getting the response of the State's attorney, local sheriffs, also the State of South Dakota attorney general's office. They don't want to work out an agreement.



If they do, they are not coming forward and showing they want to do this. We want—we feel everybody should be protected on Indian reservations regardless of whether you are Indian, whatever you are. You are entitled to protection.

Ms. HUBER. Thank you.

Mr. Chairman, I have no further questions.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Gentlemen, I have noted that you, each of you has extensive law enforcement experience. In fact, Mr. Plumage with his 18 years of law enforcement experience has less than any one of you—Mr. Gayton with 31 years and Captain Two Bulls with 24 years.

I would like to ask you if you can indicate whether you have any records to show the number of cases in which there has been a delay in prosecution because of the FBI. You indicated that where there is a major crime that the FBI responds in about 1-1/2 hours, but that in other cases there is probably a 2-week delay. Do you have records to reflect those cases?

Maybe I will ask you my second question: if you have such records, would you then make those records available to this Commission for inclusion in the record, Mr. Chairman, at this point?

Do you know whether you have such records? Some have indicated a number of warnings—I'm going to go to the other point. With respect to where there has been a delay, do you have records where there has been a delay?

CHAIRMAN FLEMMING. Over the span of the last 2, 3 years—

MR. GAYTON. It would be hard to—of course we have a record of all our cases, but I would have to see if we can pinpoint the times, especially as to burglaries, as to when they got there. We just go ahead, do our case, write it up, send it on in.

COMMISSIONER FREEMAN. Let me further pursue it. You have completed your investigation. You have requested the FBI to come in. In some instances, you have processed them. In other instances, they have not been processed or referred to the prosecutor because you are waiting on the FBI. Would your files reflect that?

MR. GAYTON. When we complete a case, we just send it right on to the FBI. Usually the delay is in—for the grand jury to meet, see, these non—except for the murder and the real serious rape cases, most are presented to the next term of the grand jury. That is usually—

COMMISSIONER FREEMAN. Who is the one who makes the presentation to the grand jury?

MR. GAYTON. The FBI agents.

COMMISSIONER FREEMAN. The FBI. If the FBI agent is 2 weeks late getting the case or arriving to get the information or continue an investigation, the FBI agent may make a determination. He uses his discretion whether to present it or not. Is that correct?

MR. GAYTON. No.

COMMISSIONER FREEMAN. What is the procedure?

MR. GAYTON. He presents all the cases to the U.S. attorney at one time or another.

COMMISSIONER FREEMAN. Does he make a recommendation to the U.S. attorney?

MR. GAYTON. I think they probably do, yes.

COMMISSIONER FREEMAN. Do your records indicate what happened to these cases?

MR. GAYTON. Well, if they are declined, yes, the U.S. attorney's office will let us know, if they have been declined for prosecution, yes.

COMMISSIONER FREEMAN. Then do you have the information concerning the cases where the U.S. Attorney General's office has declined?

MR. GAYTON. Yes.

COMMISSIONER FREEMAN. Would you provide that information to this Commission for the record at this point?

MR. GAYTON. Yes.

COMMISSIONER FREEMAN. Mr. Chairman, I would like—

CHAIRMAN FLEMMING. Without objection, it will be held open. That information will be inserted in the record at this point.

COMMISSIONER FREEMAN. Will each of you indicate whether there have been cases that have not been prosecuted because of a delay in referral or an action by the FBI. Would you have an opinion as to how many such cases there are?

MR. TWO BULLS. I don't know of any.

COMMISSIONER FREEMAN. Do you have an opinion as to whether there is a duplication of effort on the part of your officers and that of the FBI?

MR. PLUMAGE. I can probably comment on that. In fact, when I worked in the State of North Dakota I would say yes, there is duplication. Sometimes we make the initial investigation. We may handle the full case before the FBI can become available due to other commitment. Sometimes when they come in they get our reports, interview the same people, which is the end result in the same thing.

COMMISSIONER FREEMAN. Do you consider this a duplication?

MR. PLUMAGE. Yes, I would.

COMMISSIONER FREEMAN. That is an unnecessary expenditure of taxpayer money.

MR. PLUMAGE. I wouldn't necessarily say that. I would say it is a duplication.

COMMISSIONER FREEMAN. You have a comment, Mr. Gayton?

MR. GAYTON. I feel many times there is duplication, yes.

COMMISSIONER FREEMAN. Have you or do you have the procedures for referring any opinions that you have concerning duplication of effort to the Justice Department with a recommendation for change? Have you initiated any recommendations?

MR. PLUMAGE. I can say the comment has been made, and I feel now that we are moving that way because of the fact that the com-

ment was made where the FBI is reducing their officers in Rapid City and also Pierre. Their time is going to be limited as far as investigation. Now our criminal investigators are being called upon to do more of the investigation. So I feel the FBI is going to be held for major crimes like a murder, something like this. Of course, if they are available for the lesser crimes then they will be out there.

COMMISSIONER FREEMAN. You are saying that the changes that you consider to be necessary are being considered, are being planned, and will become operative soon?

MR. PLUMAGE. I do not know whether they will be operative, but I know they have been discussed. We have discussed them with the FBI, the U.S. attorney's office, and I feel something will be worked out, right.

COMMISSIONER FREEMAN. With respect to those cases involving offenses by non-Indians in which a warning has been issued, does your office, and I mean this to each of you, do you have a record with respect to the warnings and the description of the offense that has been given to non-Indians during the past 2 years?

MR. PLUMAGE. We recently started to tabulate offenses since the *Olyphant* decision of crimes committed by non-Indians on the reservation as far as misdemeanors go.

COMMISSIONER FREEMAN. Would you make that tabulation available to this Commission for inclusion in the record at this time?

MR. PLUMAGE. Yes, ma'am.

COMMISSIONER FREEMAN. May it be received?

CHAIRMAN FLEMMING. Without objection, it will be inserted into the record at this point.

COMMISSIONER FREEMAN. I might just add we have received some testimony about five individuals who had been warned, given a warning for driving without a license. I had to at least remember that Leon Spinks of St. Louis would have appreciated a warning.

No further questions.

MR. NUNEZ. Mr. Plumage or Mr. Gayton, I still am rather confused as to the relationship that the Bureau of Indian Affairs police has with the FBI. Do you have a written procedure as to when they come into a case or don't come into the case?

MR. PLUMAGE. The basic responsibility for the investigation for 14 major crimes in Indian country lies with the FBI. It is their major responsibility. But being the fact, like we say, we are there, we have investigators who are trained to do the same thing, we usually initiate the initial investigation. From there, when the FBI is notified, we worked jointly on a case until it is taken to Federal court and eventually prosecuted.

MR. NUNEZ. That is a formal agreement, as you indicated.

But even the secondary, when the reality of the situation is that you are there, they are not there, they have to come from Rapid City or one of the other communities where they reside in—you haven't

worked that out any other way aside from just calling them and they come when they can?

MR. PLUMAGE. Where we ask for an FBI agent on the reservation?

MR. NUNEZ. Yes.

MR. PLUMAGE. We never formally made the proposal, no.

MR. NUNEZ. You think it might be useful to lay out some kind of—say it was a murder, they would be expected to come within a day; if a less serious crime, you would hope they could come, work something out?

MR. PLUMAGE. I feel now that we are starting to work in this direction. The fact, like I say, their agencies are being reduced within our area. The fact that they are calling on us to do more of the investigation on the lesser major crimes that we would handle ourselves.

MR. NUNEZ. So this problem would work itself out?

MR. PLUMAGE. I think it is, yes.

MR. NUNEZ. No further questions.

CHAIRMAN FLEMMING. Right on the point that has just been raised, we have taken note of the fact that there are apparently plans for the FBI to reduce the force that has been serving the reservations. Is it your understanding that some shift is going to be made in terms of their basic responsibility for investigation of these 14 crimes?

MR. PLUMAGE. I do not know whether there is going on an official shift or not. But through mutual discussion, it's been stated that we would start handling more of the investigation of the lesser offenses.

CHAIRMAN FLEMMING. But when you say more of the investigation of lesser offenses, you are still talking about the 14?

MR. PLUMAGE. Right.

CHAIRMAN FLEMMING. As far as some of the 14 are concerned, you feel this will result in your doing most of the work on those 14?

MR. PLUMAGE. Yes, sir.

CHAIRMAN FLEMMING. Now, when you have completed the work, it will—the results of your work will still be referred to the FBI, am I correct, for presentation to the U.S. attorney?

MR. PLUMAGE. I'm not too clear on that part. I feel probably—I may be speaking out of turn, but the U.S. attorney will be following me, so I'm sure he will correct me if I am wrong. I feel that on some of these cases in which they would be put together, we would probably be presenting them to the U.S. attorney and maybe the grand jury. But this would be at the discretion of the U.S. attorney.

CHAIRMAN FLEMMING. Let's assume that on a gradual basis there is a shift of responsibilities so that you carry more of the responsibility for the investigation of some of these major crimes. Would you still want to be in a position in connection with some of those investigations where you could call on the FBI for assistance?

MR. PLUMAGE. Definitely. Right. We would almost—they have a laboratory. They have got real fine agents. Serious crimes, murders, things like this, where we may have to interview a subject in New

York or somewhere. They have got agents there. I feel we always have to work together as a mutual agency with one another.

CHAIRMAN FLEMMING. Right. Okay. We appreciate very much your—

MR. PLUMAGE. Mr. Chairman, could I make one more comment?

CHAIRMAN FLEMMING. You certainly may.

MR. PLUMAGE. I would like to add a little bit more as far as the training of our police officers. I think that the comment was made, the way I interpret it myself, is the fact if our police officers were trained that they would probably be considered for cross-deputization. Our officers are trained. Our Indian police officers are probably some of the finest trained officers in the world. When they go into the Bureau, they go to our Indian police academy down in Brigham City, which is probably about a 600-hours course. Through the years after that, they are given 40 to 80 hours of inservice training by our department as well as the FBI. So they come in and train our officers. They are proficient in firearms. I really resent a comment like that. Our officers are probably better trained than officers within the State of South Dakota. I can't see how they could use that as the fact we have to have our officers, better trained. Not only for our Bureau officers for our tribal officers—they also go to our training services, like we had training down at Pine Ridge which the FBI assisted. The State was involved in there.

But I would just like to make a comment myself. I feel really that if the people would just take the time—we have our Indian people, our Bureau people, our State people, if they would just sit down, start talking, taking one another seriously, I feel things could be worked out on a local level. But at the same time, I feel really that, like I say, the people that are being hurt right now are the Indian people. And this is the reason why we feel something has to be done as far as non-Indian crimes on the reservation—whether a minor crime or whatever, it is still a crime.

Thank you.

CHAIRMAN FLEMMING. Thank you. Thank all three of you for giving us the benefit of your experience and the insights you have gained from that experience. Thank you very, very much.

Counsel will call the next witnesses.

MR. ALEXANDER. David Vrooman, U. S. attorney for the District of South Dakota, Mr. David Brumble, agent-in-charge, Minneapolis area office, FBI, Thomas H. Greene, senior agent-in-charge, Rapid City office, FBI.

[Messrs. Brumble, Greene, and Vrooman were sworn.]

**TESTIMONY OF DAVID BRUMBLE, AGENT-IN-CHARGE, FBI, MINNEAPOLIS, MINNESOTA; THOMAS H. GREENE, SENIOR AGENT-IN-CHARGE, FBI, RAPID**

**CITY, SOUTH DAKOTA; AND DAVID VROOMAN, U.S. ATTORNEY FOR THE DISTRICT OF SOUTH DAKOTA, SIOUX FALLS**

**CHAIRMAN FLEMMING.** We appreciate your being here.

**MR. ALEXANDER.** Starting with Mr. Greene, would each of you identify yourself, your name, your city of residence, and your position with the Federal Government for the record, please.

**MR. GREENE.** Yes. My name is Thomas H. Greene; I'm a special agent with the Federal Bureau of Investigation, assigned to Rapid City, South Dakota.

**MR. VROOMAN.** David Vrooman, United States attorney for the District of South Dakota, Sioux Falls.

**MR. BRUMBLE.** David Brumble, special agent-in-charge, Minneapolis Division of the FBI.

**MR. ALEXANDER.** Mr. Vrooman, we will start with you. Could you briefly give us a description of the U.S. attorney's responsibilities for Federal criminal law enforcement within Indian country?

**MR. VROOMAN.** There are two basic statutes—1152, 1153—plus some special statutes dealing with intoxicants, hunting, and fishing. The problem in 1153 is the statutes which we call "the major crimes."

Judge Talbott was talking about 10 major crimes. It is now up to 14. In the area—the major crimes—if an Indian commits one of those crimes upon an Indian or non-Indian, my office has jurisdiction. As far as non-Indians are concerned, we have jurisdiction under 1152, Assimilative Crimes Act, or if a specific statute of Federal law is broken, and we have an Indian victim or the property of an Indian victim. That's our primary area of responsibility for some special statutes. And, of course, all the Federal laws apply—postal violations, firearm violations, they apply on and off the reservation as anywhere in the United States.

**MR. ALEXANDER.** You have been in office now how long?

**MR. VROOMAN.** Sixteen months. It seems like 5 years, but I have only got 5 weeks to go.

**MR. ALEXANDER.** In previous discussions, you indicated that when you assumed your current position that there was a very significant backlog of pending cases. Is that accurate?

**MR. VROOMAN.** That is more than accurate, yes, sir. There were 266 felony cases pending in the district of South Dakota when I took office, with two Federal judges.

**MR. ALEXANDER.** Approximately how many of those would have been under the major crimes act and the other statutes you've just discussed?

**MR. VROOMAN.** I didn't take statistics at that time. I did go back—we are down to 130 cases. We are more current now than we have been for a long time. The breakdown this week was 67 crimes involving Indians, 63 involving non-Indians. Only one of those crimes involving a non-Indian was on the reservation. It is 51 percent, would be the answer.

MR. ALEXANDER. Did you establish prosecutorial guidelines in response to the backlog or other reasons?

MR. VROOMAN. The backlog was part of it. I have taken some criticism and maybe rightly so as far as the guidelines are concerned. I have had guidelines off the reservation and insofar as bank embezzlements are concerned. I have had guidelines insofar as if there is a \$50 theft from an interstate shipment, the Milwaukee railroad, we are no longer spending \$1,000 worth of government time trying to solve that. I have a \$750 level there. Primarily, the thing that people talk to me about are, of course, the guidelines on the reservations.

I inherited 266 cases. The seven cases that were tried before Judge Bogue immediately prior to the time I took office, seven jury cases involving Indians off the reservation, all seven resulted in acquittals. Now there is something wrong. Either there is too many cases, we aren't using right kinds of cases, or there is too much delay. Any one of the three is fatal. I don't think one office should get to the point where we win 100 percent of our cases. If we are doing that, we are being way too selective. But no U.S. attorney's office or any prosecutor should be losing seven out of seven.

I haven't kept track, but we are winning about 90 percent of our cases. Yes, I did implement guidelines, but I would like to make one correction for the record. Burglaries under \$500 are being investigated, but they are being investigated by the BIA special officers or by the tribe.

I tried to do two things. I tried to get the Federal courts back so that we could use them, get people in, get them tried, which we are doing. By the same token, we were training tribal judges; we were training tribal investigators and tribal policemen. So I was trying to send cases back for them to work on.

At Pine Ridge, for example, 87 burglary cases were declined by my office because in the first 6 months—because of the \$500 guideline. The tribe followed up on 80 of those 89. The other nine, somehow they lost the paperwork. They followed up on 80. Fifteen of those resulted in convictions in tribal court. Those cases—and some are still being investigated. So there is not a place where there is no investigation, no enforcement. I used the example, and this is what my guidelines were based on.

On a Friday night, on the Indian reservation, two guys are having a drink and they get mad and one guy hits the other guy in the head with a beer bottle. In the prior administration, that person was indicted for assault with a dangerous weapon. He was hauled from Pine Ridge or Rosebud, wherever it might be, to Sioux Falls or Aberdeen where he was arraigned. He was given a lawyer.

They discover—they went around 6 months, and finally they plea bargain the case down. They were given 90 days probation on simple assault. It cost the Government thousands of dollars. The defendant beat the rap, so to speak, because the probation officer wasn't going to do anything for 90 days.

Those cases now, and I think properly so—the same thing would happen in Sioux Falls—would not go into circuit court but Sioux Falls municipal court. Those cases are now going in next week into tribal court. Yes, technically that's an assault with a deadly weapon. But unless there is serious bodily injury, we don't take them. That's just how my guidelines work.

MR. ALEXANDER. Are your guidelines similar to or different from those applied by other U.S. attorneys in other parts of the country where there are Indian reservations?

MR. VROOMAN. As I understand, the U.S. attorney in North Dakota adopted mine. I had no others before me. I have since seen some guidelines by the U.S. attorney in Phoenix. They are similar.

MR. ALEXANDER. Is there any central policy of the Department of Justice on the issue of guidelines and what crimes should be prosecuted by your office and which crimes should be deferred to tribal justice systems?

MR. VROOMAN. There are guidelines throughout the Department of Justice regarding guidelines and crimes. However, there are no guidelines in the Department of Justice in so far as the enforcement of the Major Crimes Act are concerned.

MR. ALEXANDER. So each U.S. attorney is within his or her own level of discretion in this area?

MR. VROOMAN. That has been true historically, yes.

MR. ALEXANDER. The declination rate generally under the Major Crimes Act, as I understand it, covers somewhere between 80 and 90 percent?

MR. VROOMAN. I think that is a fair figure, yes.

MR. ALEXANDER. Is that fair for your office too?

MR. VROOMAN. I think so.

MR. ALEXANDER. Is that distinctly different from your declination rate in other areas of responsibility?

MR. VROOMAN. No. I would think—no. About the same.

MR. ALEXANDER. In your role as a Federal prosecutor, as opposed to a local prosecutor, if you were a State's attorney, hypothetically, would you be running the same kind of declination rate for, let's say, a county in Sioux Falls for major crimes, or does a local type of prosecutorial operation tend to have a different declination rate than the U.S. attorneys do?

MR. VROOMAN. I think that it may be somewhat different. I'm not sure. I'm not privy to that kind of information. I have friends who are State's attorneys. I have never been one. I would think that maybe there are some differences. For example, if I prosecuted every social security violation that came into my office, which I get a lot of them—79-year-old guy that said he didn't have any money and they find he has \$2,000—I don't take him through the process. But I don't turn down every social security violation.



I recently prosecuted a fox-hunting violation, but we don't take every one of them. The role of the Federal Government—there are 63 different investigative bodies—63 that I know of—bringing cases into my office. The BIA just happens to be one, and the FBI happens to be the second one. But there is a lot of them. So we use discretion every day. I delegate it down to my assistants who I have utmost faith in. I'd like to make clear that if anybody doesn't like a decision or a declination, either the FBI or the BIA, through their channels can come to see me personally, and I will review the cases, which I have done in a couple of cases.

MR. ALEXANDER. Mr. Chairman, while we are discussing the guidelines, I have a copy of the guidelines; I would like to have them submitted as an exhibit at this point.

CHAIRMAN FLEMMING. Without objection, they will be entered at this point.

MR. ALEXANDER. Are you familiar with the Department of Justice task force report on Indian affairs?

MR. VROOMAN. Three or four years ago?

MR. ALEXANDER. Yes?

MR. VROOMAN. I've browsed it; I can't say I'm familiar with it, but I've browsed it. If I read everything the Department of Justice gave to me, I couldn't have gotten the job done. But I am familiar with it, yes.

MR. ALEXANDER. It involved 11 different sections of the Department of Justice, all of whom have some responsibility touching on Indian affairs. Their conclusion was that U.S. attorneys tend to treat offenses on Indian reservations in the same manner as they would treat other types of criminal cases. It was also their conclusion that that overlooked the special Federal responsibility in that area. I would like you to comment on that viewpoint.

MR. VROOMAN. I don't think that is a fair criticism, at least of my staff. My office here in Rapid City spends 90 percent of their time, and I'm conservative in that, on Pine Ridge. That is what they do. Our responsibility is different. For example, if we had a kidnapping from Minnesota to South Dakota, we have three different sovereigns who could prosecute—Minnesota, South Dakota, we have three different sovereigns

It has always been my policy to defer to State prosecution, unless there is some reason. I recently prosecuted a Mann Act, believe it or not, in Pierre, South Dakota. The only reason we did it, because I'm not going to be the policeman for the State of South Dakota if the local prosecutor doesn't want to do it. That is his businesses or gamble. What happened is they had an evidentiary problem. They called me up and we took it. We were successful. So we take our responsibility on the reservation more seriously because it is ours. There is nobody else to go to. But we work more closely off the reservation and defer probably more often to local prosecution. So there is a difference, yes.

MR. ALEXANDER. In relation to deferrals to Indian justice systems, do you have any recommendations with respect, for example, to the Indian Civil Rights Act in terms of the limitations on tribal court justice systems to \$500 and 6 months? If you are going to be referring more and more cases to these local justice systems, doesn't the Federal Government need to upgrade the penalties that these justice systems can impose?

MR. VROOMAN. Of course, it's more of a legislative problem. My opinion is yes. It ought to be comparable to State court, \$1,000, 1 year, or both or comparable to a magistrate's jurisdiction.

You do have the problem about facilities where you can incarcerate somebody. I wouldn't want somebody incarcerated in a facility for a year that wasn't a top-grade facility, and of course, South Dakota right now—presently the State is in a very serious jail reform effort, as you know. The State bar just recently supported that. We have some rather poor facilities both off and on the reservation. I don't want to spend the night in any of them, but there certainly aren't very many of them I would want to spend the night in.

MR. ALEXANDER. Moving to a slightly different area, there's been, I believe you heard some of the testimony this morning, some considerable concern around the State in terms of non-Indians committing what is known as "victimless crimes." Who has jurisdiction and what happens when the local communities cannot work out some solution?

MR. VROOMAN. I was interested in Walt Plumage's comments. I have a lot of regard for Walt, but he overlooks the basic legal problem, *Oliphant*; that is, it isn't up to the Attorney General of the United States to wave a wand and say we have jurisdiction. Jurisdiction is based on constitutional law, based on Federal law; it is not something that the Attorney General can say, "From now on, I'm going to take jurisdiction."

*U.S. v. Dodge*, Eighth Circuit Court of Appeals about 5 years ago, a Wounded Knee case, said, if it is a non-Indian on a non-Indian, then it is State jurisdiction. A non-Indian on an Indian or an Indian committing the crime, we have it under 1152 or 1153. They did not address the so-called "victimless crimes."

The Solicitor for the Department of the Interior took a rather strong stand. He wrote an opinion, sent it to the Attorney General, Griffin Bell. Ben Civiletti was primarily the one they talked to.

The Department of Justice concluded about 3 weeks ago that they do not have Federal jurisdiction over victimless crimes.

MR. ALEXANDER. Is that an official policy statement of the Department of Justice?

MR. VROOMAN. Yes, and I was authorized, because I told them I was going to be quizzed on that, I was authorized by the Department of Justice to announce it was their official stand.

MR. ALEXANDER. Now the Department of Justice—this has been in question since *Oliphant*?

MR. VROOMAN. Right.

MR. ALEXANDER. Since the Department of Justice has now decided it does not have the jurisdiction, what is the alternative?

MR. VROOMAN. I might say I don't think the Department has made an opinion yet as to whether the tribal officers have the right to arrest and turn over to the States. My personal opinion is that based on the Treaty of 1889, that based on my understanding of case law which has developed for 100 years, and also based on the dissent in *Oliphant* which I thought very well made the point, I think they do have the right to arrest non-Indians. Judge Bogue agrees with me because he so ruled in Cheyenne River very recently. I do not know the answer. I think, ordinarily when we think of jurisdiction, it is a grant by one sovereign to the other. I think in the unique field of Indian law that the Congress of the United States probably could come back in or step in and say where the jurisdiction is on Indian reservations. I think it is unique in the Constitution; it's probably the only kind of jurisdiction that is granted that way.

In the meantime, I have one case being investigated at Sisseton, and I'm disturbed by the Sisseton situation, probably more than any other area in South Dakota. We've devoted some time to it. I know the BIA, Harley Zephier, and Walt Plumage and Gene Trottier spent a lot of hours trying to get that thing ironed out. We are presently investigating—I won't divulge the details—a civil rights violation over there. It is my feeling at the present time that if the cities or the counties refuse to do their duties—and I might point out, everybody seems to think I'm the attorney general of South Dakota; I'm not, I'm the United States attorney—if the State's attorneys aren't doing their job, then Bill Janklow is the one to tell them to do it. And Bill, so far, has said that he would be willing to do it. He sent us a memo, and I have no reason to believe that he wouldn't. But, if they refuse to do their job, then I think we ought to go in under the Civil Rights Act, civil rights violations and say, "Charge them either by enjoining them or by criminal violations for not doing their job and take them into Federal court." At least we will get their attention if nothing else. I really believe that that's the only avenue open to us right now. I'm in the process of exploring one. I put my first assistant, Bob Hyden [phonetic], in charge of that after September 9. He's still going to be here. It won't be swept under the rug.

MR. ALEXANDER. Mr. Brumble, could you briefly describe what your responsibilities are at the Minneapolis office?

MR. BRUMBLE. I am in charge of all the supervision of investigations in Minnesota, North Dakota, and South Dakota.

MR. ALEXANDER. From interviews we have had with FBI personnel, we understand that the FBI uses a three-point classification system for its work or one, two, three priority system. Is that accurate?

MR. BRUMBLE. That is right.

MR. ALEXANDER. Major crimes activity is classified as what?

MR. BRUMBLE. It would be classified as a personal crime which would be a priority two matter.

MR. ALEXANDER. Does that affect in any way, shape, or form the number of resources made available to you in major crimes' investigation?

MR. BRUMBLE. Let me—I guess I have to explain what the program is. Under the management by objective concept which was implemented by an Executive order in 1972, we have to establish priorities and goals in every agency in the Federal Government. The goals that are set down in the FBI are set down by the Director of the FBI in concert with the Attorney General and the oversight committees in Congress. Those priorities, category one, white-collar crime and organized crime. Then depending upon the crimes of violence, personal crimes are in the category two, along with much of the other work.

However, in the Minneapolis division, my priorities are not the same as the national priorities. In other words, I may have situations here that I categorize as more important than they do in Washington. In the Minneapolis division, these crimes are the second major problem that I have in my division.

MR. ALEXANDER. The first being?

MR. BRUMBLE. White-collar crime.

MR. ALEXANDER. We have heard a number of speakers mention that the FBI is reducing the number of agents in and about the Rapid City area. Is that accurate?

MR. BRUMBLE. Yes.

MR. ALEXANDER. Was that your decision?

MR. BRUMBLE. Yes, sir.

MR. ALEXANDER. Could you explain to us what the basis of that was?

MR. BRUMBLE. I discussed this with many officials at the State level, the Federal level, and the local level. I took the opportunity to talk to a number of the people on the reservation itself at Pine Ridge and this area. We have had a strong commitment of manpower here for a long time, and after studying it and the use load and the workloads that were here, it was my opinion we could do the job more effectively, more efficiently, more economically with a reduction in manpower.

MR. ALEXANDER. Would it be fair to say that from your perspective of that at least southwestern South Dakota does not present itself as a crisis situation any longer?

MR. BRUMBLE. No, I would not say that.

MR. ALEXANDER. What would you say?

MR. BRUMBLE. I would say that the background of danger of the agents still working on the Pine Ridge Reservation is a reality. There is still hostility. There is still tension and the threat is as much a reality to the agents today as it was in 1975.

MR. ALEXANDER. This grows out of the killings of the two agents and an Indian person in an incident several years ago?

MR. BRUMBLE. I believe it probably goes back, further back than that, probably back to 1973. I think it is probably a situation that the FBI was placed in and the reservation—following the activities of

Wounded Knee where the Indians have identified the agents as totally responsible for deterioration of the quality of life on the reservation. Frankly the FBI is blamed for just about all conduct and activity of the Federal Government on the reservation. The hostilities started there; I think it has continued. I think it was manifested in the attack of 1975 where the two agents were killed. Hostility today is still continuing in demonstrations, the contacts that the agents have with the people there. They don't like the agents.

MR. ALEXANDER. What procedures were instituted of a special nature by your office after the killings in 1975?

MR. BRUMBLE. There was, of course, an infusion of manpower here. There was a new administrative organization set up here also. There was a minioffice of the FBI created which encompassed Rapid City and Pierre, South Dakota, operations. It was just a greater assignment of manpower to the area.

MR. ALEXANDER. We have heard and from commentary and discussions that we have had previously also it was mentioned the caravan system was going on on the reservation and significant upgrading of weaponry also occurred about that time. Is that accurate?

MR. BRUMBLE. Yes. Are you referring to the caravan, the situation where the Attorney General wanted a 7-day—

MR. ALEXANDER. No. I'm referring to the FBI traveling in two to three vehicles with backup units and so on.

MR. BRUMBLE. Yes, it was—the traveling of the teams to the Pine Ridge Indian Reservation was primarily a response to instructions of the Attorney General to provide immediate 24-hour response, 7 days a week on the reservation. That was a system initially designed. The weaponry was upgraded.

MR. ALEXANDER. To what?

MR. BRUMBLE. To automatic weapons, shoulder weapons.

MR. ALEXANDER. We had some testimony yesterday, and as a matter of fact one of our staff attorneys observed the FBI in the Porcupine area, where they came in several cars, front and back, to a home that ended up—turned out to be occupied by an old woman and a young child. The result that we perceived, at least that person who was there perceived, was a very terrified old woman, very terrified as to what the FBI would do to her and so on. We have talked about your perception of continuing hostility. I'm curious to know how the continuation of that practice—it was also described as a hovering helicopter in addition to the several cars—and the impact on the local Indian people, how that balances off with the agents' safety. You talk about a situation that has continuing crises and tones, and from testimony we have received, it seems that the practice itself continues at least to create some of the tension. I would like you to comment on that.

MR. BRUMBLE. I would have to agree with you.

MR. ALEXANDER. But you maintain that it is still essential to do that for the agents' safety?

MR. BRUMBLE. Yes, I do.

MR. ALEXANDER. At this time?

MR. BRUMBLE. Yes.

MR. ALEXANDER. Is that an issue that will be, on a fairly systematic basis, reviewed on a monthly basis, on a 2-month basis, or what have you?

MR. BRUMBLE. It will be constantly reviewed by my supervisor here, Mr. Greene, as well as myself.

As far as certain of the equipment, I have found some of the equipment may not be essential or necessary here such as the helicopter. There will be—at the present time let me say this. There are only certain areas on the reservation where the hostility remains as critical as it did, let's say, in 1975. It is not true throughout the reservation. It would be very unfair to leave that comment stand. The Porcupine area is an area where the agents must respond in tandem because intelligence information and information we possess on the individuals who reside in that particular area.

MR. ALEXANDER. Your agents that cover the Pine Ridge Reservation would reside where?

MR. BRUMBLE. In Pine Ridge.

MR. ALEXANDER. The agents themselves?

MR. BRUMBLE. I'm sorry. In Rapid City.

MR. ALEXANDER. And they would respond to a call from whom to go onto the reservation?

MR. BRUMBLE. From whatever source a complaint came from.

MR. ALEXANDER. A private citizen?

MR. BRUMBLE. It could come from a private citizen; it may come from an individual in Nebraska who has been on the reservation and has left in fear and called in because they were attacked; it could come from the tribal officers, the Bureau of Indian Affairs service officer, or from David Vrooman. It comes from every quarter of the American public.

MR. ALEXANDER. Do you notify the tribal president or the top of the Oglala Sioux law enforcement structure when you are going onto the reservation?

MR. BRUMBLE. Not necessarily.

MR. ALEXANDER. Do you have some places where you will notify them and others where you won't?

MR. BRUMBLE. It is not a standard policy for the FBI to seek permission or approval to operate or notify the authorities.

MR. ALEXANDER. I didn't ask whether you were seeking approval. I was asking whether you would, just as a standard practice in any situation, notify the tribal police?

MR. BRUMBLE. No. Not as a standard operating procedure. In other words, if we were going to apprehend a fugitive or go down and conduct an investigation that we felt there was no reason for him to be notified, we would not notify him.

MR. ALEXANDER. How do you then determine when you do notify the tribal police?

MR. BRUMBLE. Primarily when we would solicit their help or need their assistance or feel we would be operating in an area where there might be a misunderstanding—misunderstand the presence of the agents at the time they are there.

MR. ALEXANDER. Is that a decision of the individual agent on the case or do they have guidelines from you under which they operate?

MR. BRUMBLE. No, this would be the individual, the case agent, the man, the team leader at the time the situation was occurring.

MR. ALEXANDER. Agent Greene, would you like to comment on the use of what I termed the "caravan procedure"? Do you have any additional comments on the effect it has on your officers, on your ability to function as investigator?

MR. GREENE. No adverse comments. What Mr. Brumble said down the line is correct. We do it because we feel the need for it. We feel that it is an assistance to good law enforcement—not law enforcement—to good investigative techniques. It presently is still necessary.

MR. ALEXANDER. Mr. Brumble, when an FBI agent is assigned to work on an Indian reservation or in an office that has an Indian reservation as part of its major responsibilities, is any particular training provided to that agent?

MR. BRUMBLE. Probably, upon his assignment here for the first several weeks he is here, he will be working with another agent. We would not necessarily make him a team leader or in charge of a two-man team situation. This would be an on-the-job type situation and development. Our agents are not specially trained to work on reservations because we do not feel as investigators that there is any difference in investigating a crime on the reservation, necessarily, than any other type of Federal crime.

MR. ALEXANDER. Could you expand on that? I have a little difficulty in understanding that, that it is not any different than investigating a crime, say, that occurs in Wanblee where many people speak Lakota, for example, than investigating a crime that occurs in the middle of Rapid City.

MR. BRUMBLE. It will be no difference in operating a Polish section of Chicago or the Czechoslovakian center of Florida. We will have our people there who can best understand the situations that are present. In other words, we don't train all of our people. I certainly wish that we had the capability of attracting and recruiting Indians who could speak the language. At the present time, we have a very positive affirmative action program in the FBI. Our successes have not been as good as they should be. We are continuing to try to improve it.

MR. ALEXANDER. Agent Greene, in your experience, I gather that you have worked on a number of Indian reservations over the years. Is that correct?

MR. GREENE. That is correct.

MR. ALEXANDER. Do you discern a difference in going out to interview Indian people in how, when to ask questions, perhaps how one

listens as opposed to interviewing a white insurance agent in Rapid City?

MR. GREENE. Very definitely.

It is the same difference you would encounter in interviewing somebody in Miami, Florida, as you would in town interviewing somebody in Butte, Montana, whether they both be white or any other race or religion or creed.

MR. ALEXANDER. Is the same difference in what sense?

MR. GREENE. There is a difference in every individual you interview in every locale in the United States, whether it be a rural area, a major city, a ghetto, whether it be in a very wealthy section of a community, whether it be in a poor section or underdeveloped section of a community. So your difference, when you interview somebody, when you are conducting an investigation, the area where you are, the people with whom you have to deal, varies from day to day, maybe even from hour to hour. But this does not set aside an investigation on an Indian reservation as totally different than any other investigations the FBI conducts throughout the entire United States.

MR. ALEXANDER. There has been testimony over the last day which tends to take a different point of view than the one you just expressed. Primarily it has come from the tribal police officers, BIA special officers who seem to feel their ability to be tied to the community, to understand perhaps cultural differences, made them more effective in being able to deal with people than perhaps you were. Would you like to respond to that?

MR. GREENE. I couldn't argue with this point of view in individual situations. It depends on the officer himself. You can't just take anybody and say, "You are now a police officer and you do the job better than anybody else because you are from this area and you have a cultural sameness with the individuals who you will investigate or whom you encounter in your investigations." It depends on the training, the attitude, the emotional status of the individual.

This is not my first office in the FBI. I have been throughout the entire—not entire—but throughout many places in the world, not only the United States. You have those cultural differences, but this does not mean to say that because an individual is an Indian, per se, that he is a better investigator or would be a better investigator than a non-Indian. It would be the same analogy as saying that you take an investigator who is black, place him in the investigative status of a black ghetto or a black community anywhere, the possibility that he will do a much better job to assimilate to culture and the people with whom he deals is very definitely true, but again it depends on the individual officer and his ability to function in the job that is given him.

MR. ALEXANDER. Mr. Brumble, could you explain to us in rather specific terms exactly what training every FBI agent gets with respect to work on Indian reservations?

MR. BRUMBLE. In the initial academy curriculum, the agent receives training in basic and interview techniques, crime scene searches —



MR. ALEXANDER. Specifically with respect to work on Indian reservations as opposed to training that is general.

MR. BRUMBLE. He receives instructions on how to work the crimes on the Indian reservations and the major crimes. In other words, this is a very specific block of instruction as far as the law is concerned.

MR. ALEXANDER. Essentially legal instructions?

MR. BRUMBLE. There are legal instructions primarily.

MR. ALEXANDER. Is there anything else?

MR. BRUMBLE. Of course, every aspect of his training has an impact on what his reaction is and how he will do his job, including firearms.

MR. ALEXANDER. I understand your position on that. I wondered if there was anything in addition to the specific legal training for the 14 major crimes that specifically related to an Indian reservation?

MR. BRUMBLE. No.

MR. ALEXANDER. The answer is no.

We have had testimony this morning—I hope you gentlemen were here to hear the panel prior to you—as to the role of the BIA, perhaps the tribal police, in responding to the scene of many offenses, and the notion that oftentimes these gentlemen feel they do a considerable amount of the investigation and that perhaps, not necessarily today, but some day in the future that that responsibility should be deferred either totally or in part to the BIA or tribal police, the responsibility for the investigation of major crimes.

Mr. Brumble, would you care to comment on that?

MR. BRUMBLE. We conduct the investigations on the reservation at the present time because the law requires us to. The Attorney General says we will be—

MR. ALEXANDER. Mr. Vrooman, my understanding is that is a Justice Department policy and that their Federal statutory law does not require any particular agency to investigate.

MR. BRUMBLE. That is true.

MR. ALEXANDER. Mr. Brumble?

MR. VROOMAN. That's the way it is. You bet.

MR. BRUMBLE. It is a matter of policy. We are there because we are required to be there.

MR. ALEXANDER. This Commission will be making recommendations with respect to Federal policy, and we are interested in your view as to whether or not the role of tribal police and the Bureau of Indian Affairs should be significantly expanded in terms of the responsibility of investigating major crimes. What is your view?

MR. BRUMBLE. I would, of course, I would like to see them be able to become a greater or have a greater role in it. To this end, I am committed to as much training as I can possibly provide to both the BIA service officers as well as the tribal police. In earlier comments to you this morning, which I overheard, we are trying to accommodate them by bringing the instructors here from Washington. I believe that where there is much to be exchanged in such a training program, I

have no hesitation, but as long as I am charged with the jurisdiction of the 14 major crimes, I will have to, of course, respond.

MR. ALEXANDER. Mr. Vrooman, as a matter of your office discretion, will you accept a major crimes investigation from a tribal police officer or the BIA agent presently?

MR. VROOMAN. Outside of drug enforcement, no.

I would like to—I'd like to have the floor. As far as the speaking of the Lakota Sioux language, I have talked to hundreds of Indian witnesses as an assistant U.S. attorney. I did work at Sisseton for a good many years; I was formerly a special officer of the Bureau of Indian Affairs, the same job Walt Plumage has got. I have had 20 years more or less practicing law but also working with Indian people. I can't remember over two or three instances, Mr. Alexander, where we had to use an interpreter. I put hundreds of Indian witnesses on the stand. This year I think I might have used an interpreter once or twice. We had put hundreds of witnesses in the court. They speak English. They understand questions. The language barrier has not been a barrier insofar as investigating cases or presenting cases. Quite frankly I'm a little shocked this thing has got out of proportion. I don't believe it is true. At least that is my opinion.

The other thing is about the BIA and the tribal police. I think the presence—I say this as candidly as I can be—I do not believe the Indian tribes have yet recognized the separation of power. As long as the executive is calling the shots, I think it is going to be dangerous to have all crimes investigated on the reservation where, when you have an election, people's jobs are at stake. The FBI, I think at this point, goes in, does not have any local pressure insofar as their investigative techniques are concerned.

Quite frankly, I'm a little bit skeptical at this point in time with the tribal governments—it is not true with all of them—the only place they ever went in caravans was at Pine Ridge. They didn't do it at Rosebud, Crow Creek, or Lower Brule or Yankton or Sisseton or any of the rest of them. The FBI has got along beautifully at Cheyenne River and Standing Rock and those reservations. It's just the one reservation where we are really centering in on here. I think the overall record of the FBI as far as investigation being free from local political pressure, investigative techniques, their reports to my office, I would have to say have been excellent.

One other point. Before we had this beef up of FBI, BIA special officers, when I was an assistant back in the sixties, did appear in front of the Federal grand jury. They did excellent work. They still do excellent work. It is not a duplication. A lot of times we will find something in the BIA or FBI report which will be helpful in a prosecution and quite often helpful to the defendant because they have two views, they're not always the same. I think the FBI has recognized—and I know Mr. Brumble, his assistant, was in Aberdeen at our meeting 3 weeks ago, so they feel that as their presence diminishes on the reser-

vation, but they are going to demand more and more on the BIA special officers. I think we had this situation from '73 to '78; I think it is cooling off. I think the FBI is lowering their presence on the reservation. The BIA, as Mr. Plumage says, is picking up the gap. I think it is going to take care of itself, at least to some extent. And if we continue to upgrade tribal police and tribal courts, they will reach that utopia—I don't know when it's going to be—that they can do it themselves.

MR. ALEXANDER. Do you think it is possible for certain types of crime—I gather you have a problem in terms of the executive influence on the tribal police—that certain types of crimes could be accepted directly in this transitional period from tribal police and the BIA special officers?

MR. VROOMAN. I still think there is family and political pressure put in every type of— You are talking about some reservations of only a couple thousand people, and they are a rather close-knit group. If somebody—Johnny gets charged with a crime, they are certainly going to know somebody, either their councilman, president, or somebody, and they are going to ask for some favoritism and quite frankly, I have run into it. So what crimes—depends upon who commits them, I guess.

MR. ALEXANDER. Mr. Greene, when you spoke with some of our staff, you indicated that much of the negative publicity that the FBI has received in certain investigations could be cleared up if certain FBI policies were not extant, for example, when a case is open, still pending, that no material concerning that case could be released. Is that an accurate reflection of your views? You think you have gotten bad publicity because of your own internal policies?

MR. GREENE. Not necessarily because of our own internal policies. The idea of not being able to divulge information concerning a pending unadjudicated case and in some cases which are not pending investigation, there are a myriad of reasons, good reasons, for not divulging this information, the protection of the individuals now under the Freedom of Information and Privacy Acts, a lot of different reasons. Yes, you are accurate in your statement. We have received, in my opinion, a lot of bad publicity not on the Pine Ridge Indian Reservation alone but nationwide, wherein if it was possible to divulge to the public, to the American people, exactly what the facts presented as collected or as known through official investigations, there very definitely would not be the amount of bad publicity given to the FBI.

We are on the defensive constantly and for good reasons. I don't think that should change because there are good reasons for them, but a lot of our bad publicity is not substantiated. There are statements made by different individuals, groups, people, and we are not able to countermand or counteract or reply to these accusations. This is the reason for it. I do agree with you.

MR. ALEXANDER. Mr. Vrooman, there were comments made in the earlier panel about the applicability of Federal law in terms of BIA police officers and tort liability. Would you like to comment on that?

MR. VROOMAN. I do not know what the Solicitor of Interior's opinion is, but I certainly don't agree. As I understand the Federal Tort Claims Act, it covers employees or agents of the United States. Number two, in the course of their official duty, I find it a little hard to stretch that a tribal police officer in the employ of the tribe is an employee of the United States. I find it, even stretching it further, that if he is arresting somebody on a State traffic that we could say he is acting on behalf of the United States. We have a situation at Crow Creek right now where a police officer, an Indian police officer, who was practicing his quick draw, so to speak, killed somebody. The Department of Justice instructed us, number one, to urge the defense he was not a Federal employee, which we did; number two, that even if he was, he was not in his official duties at the time.

So I don't think it is clear cut at this time that if a tribal deputy has a deputy badge, BIA or State deputy, that necessarily he is covered by the Federal Tort Claims Act. I think it is rather naive to start with that assumption. I think the case law and my own personal experience would be that it isn't that simple.

MR. ALEXANDER. You raised an interesting side issue that you raised earlier, too, that the Department of the Interior, which under the Federal trust responsibility is the prime agent for the United States, has taken in the past, and particularly with the jurisdiction over non-Indian, has taken a distinctly different position than the Department of Justice who has the litigating responsibility for the United States. In these discussions that go on between the Bureau of Indian Affairs and the local counties and perhaps the State of South Dakota itself, does your office play any role in that? Are you part of that process?

MR. VROOMAN. We aren't a part of the discussion on the national level. It has been one of my great concerns as a U.S. attorney every time I get there, I think they thank God that he is going to be gone one day. They sit down on the Washington level—they decide *Oliphant*, they decide their policies. I talk to other United States attorneys around the county. We aren't getting any input, those of us who work. I have nine Indian reservations, if I include Flandreau, and our input is nil. As far as local, yes. I talk to Bill Janklow. We talked to the people of Sisseton, my first assistant went up there. Jeff Viking from Rapid City goes down, oh, quite often, to Pine Ridge, talks to the local people. Yes, we do it locally because we are invited. We don't do it nationally because we aren't invited.

MR. ALEXANDER. What is the relationship between the regional solicitor for the Department of Interior and your office in terms of advising Indian police officers, the Bureau of Indian Affairs police officers?

MR. VROOMAN. Wally Dunker in Aberdeen is in contact with somebody in our office on a regular basis. We go to the quarterly meetings. He writes opinions. Sometimes he doesn't agree with us; sometimes he does. We have a very good relationship with the solicitor and with Harley Zephier and Walt Plumage of the BIA. Nothing wrong with the relationship with the BIA—

MR. ALEXANDER. What happens when your agencies take distinctly different positions such as it just has in relation to victimless crimes?

MR. VROOMAN. I guess the answer is quite simply that right now I'm the chief Federal law enforcement officer and Griffin Bell happens to be the chief law enforcement officer in the United States. As Harry Truman said, the buck's got to stop some place. He finally has to listen to all sides. I get the Corps of Engineers fighting with the BIA, Fish and Wildlife fighting with some other agency. Somebody finally has to say, hopefully, they base it on law, not on policy, but Griffin Bell has to call the shots.

MR. ALEXANDER. One step further, the Department of Interior, though, has the prime trust responsibility, but the Department of Justice has the decisionmaking responsibilities on these issues?

MR. VROOMAN. They have the trust responsibility which I well understand. But we are the litigating branch of the Government. We have to be able to go in, in front of a Federal district court, the court of appeals, and the U.S. Supreme Court, and be able to justify our opinion, and quite frankly, I don't take a case into court unless I think I'm right. I don't take one for the sake of taking one and I hope my assistants feel the same way.

MR. ALEXANDER. Mr. Greene, there has been discussion over the last day and a half about the response time of the FBI to occurrences on Indian reservations for violations of major crimes. Could you tell us what factors go into whether or not you get down in an hour or whether you come back next week? How do you decide?

MR. GREENE. This decision is made on the need as it is related to us by the individual furnishing us the information that a crime has been committed which might fall or does fall within our investigative jurisdiction. If, when we get the call, particularly, say from the law enforcement branch, local law enforcement branches on the Indian reservation, and they say, "We have everything handled," or "We can't find any of the witnesses or the subject of the investigation," no matter what the type of crime is, and they may say, "We want you to know about it, could we talk to a couple agents tomorrow morning," or something, then the agents would go in the morning. If they say, "We need your help. We have a major investigation going on. It has been a shooting," a murder, manslaughter, a vicious rape, something of this nature and, "We need agents down here right now," we have a major crime scene search to conduct this type of investigation; we would respond immediately.

MR. ALEXANDER. Who would make the decision?

MR. GREENE. That would be my decision.

MR. ALEXANDER. Do you have guidelines from either Agent Brumble's office or the national Government crimes office in Washington, D.C., as to what requires your immediate presence and what can be postponed?

MR. GREENE. No, I do not.

MR. ALEXANDER. Have you given the BIA and the tribal police any standardized guidelines or indications of when you will be coming, when you will not be coming? Not talking about guidelines cast in concrete but guidelines more in the nature that Mr. Vrooman discussed.

MR. GREENE. No. Definitely not and for a good reason, in view of the fact that each case, each situation must be evaluated on the situation itself and not each murder case as it happened and the pending investigation is the same. Nor is each burglary, larceny, arson, or any other case. So it is a command decision that you must make.

MR. ALEXANDER. Are there generalizations that one can make about murder cases as opposed to thefts of \$12 or something like that?

MR. GREENE. Yes, you can make generalizations. Any violent crime, any violent personal crime more than likely we would respond immediately.

MR. ALEXANDER. I guess what I'm getting at, the local police officer doesn't necessarily know what to expect from you in any standardized procedure. Is that correct? If you would be transferred next week to Wyoming and a new agent came in to take your job, it would be an issue of his discretion. Is that correct?

MR. GREENE. Yes, that is correct. But the discretionary power, even though there are no set, concrete guidelines for me to follow, it is of a general fact there is such a thing as common sense and the ability to evaluate the situation through years of law enforcement experience which will be basically the same with any agent that happens to come into this area.

MR. ALEXANDER. We have talked about transfers a number of times. Is it accurate to state in one's career in the FBI you will move frequently from one part of the country to another part of the country? Is that correct?

MR. GREENE. Not necessarily, no, it is not correct.

MR. ALEXANDER. You have been in how many different assignments?

MR. GREENE. Eleven.

MR. ALEXANDER. Is it possible that someone will come into your office who last served, say, in New York City?

MR. GREENE. Yes, it is a possibility.

MR. ALEXANDER. Has it happened?

MR. GREENE. Yes, it has.

MR. ALEXANDER. Mr. Brumble, is it your view in the FBI that people are transferred from station to station?

MR. BRUMBLE. Yes.

MR. ALEXANDER. Mr. Vrooman, one final question for you. One of the things that has been raised to us several times during the course of interviewing around the State is the notion of someone committing a crime on an Indian reservation, the crime is investigated, then it is someone's decision as to whether or not that individual remains at large in the community or is immediately brought into Federal court. Is that decision made by yourself?

MR. VROOMAN. Yes.

MR. ALEXANDER. How is that decision made? It seems to create some friction.

MR. VROOMAN. I am well aware of that problem. You look at the State of South Dakota—I have seven assistants, four in Sioux Falls, three in Rapid City. We have a big State geographically. We have to indict under the Federal system, under the Constitution, unless it is waived. If we have—if we file a complaint that means that individual is brought in front of a magistrate, at which time I have to take an assistant United States attorney, I have to take witnesses to that magistrate, present the case. Assuming we presented the case, probable cause is established. The magistrate binds that person over to Federal court. We still have to indict. So those cases which have immediate community reaction, those aggravated cases where I feel that that person should be snapped up, put in the system immediately—I have a grand jury every month incidentally—those cases I snap them up. We take them to Rapid City, Sioux Falls, Aberdeen, wherever it might be, and give them a preliminary hearing and the magistrate sets the bond.

On other cases, a burglary where we have a suspect but he doesn't appear to be dangerous, we wait until the grand jury indicts, presents the case, he is apprehended and brought in front. Our bond policy is the same as the national policy. A lot of people criticize our bond policy because our bond policy is one of leniency. It has been my experience that 95 percent, and that's probably low, of the Indian people told to appear in Federal court will do so willingly and will be there when they are supposed to be. It is very seldom that we have to put a heavy bond on them. We do in some of the cases because, if somebody murders somebody and tomorrow if he is back on the reservation, I get reaction.

MR. ALEXANDER. Thank you.

COMMISSIONER FREEMAN. Mr. Chairman—

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Mr. Vrooman, you stated you have seven assistants. How many of them are Indian?

MR. VROOMAN. None. I tried to hire one. In fact he was a witness here, Mr. Pechotá. At the last minute he turned me down and I hired Shelly Stump.

COMMISSIONER FREEMAN. Mr. Brumble, will you give the number of FBI agents who are Indian?

MR. BRUMBLE. Throughout the United States?

COMMISSIONER FREEMAN. Well, begin with this area.

MR. BRUMBLE. None.

COMMISSIONER FREEMAN. None.

Mr. Greene?

MR. GREENE. Yes, ma'am?

COMMISSIONER FREEMAN. The answer is none in your area?

MR. GREENE. Yes, Mr. Brumble is correct in his statement.

COMMISSIONER FREEMAN. Will you tell me if either of you, Mr. Brumble or Mr. Greene, whether the curriculum of the academy includes any training in human relations?

MR. BRUMBLE. Yes, it does.

COMMISSIONER FREEMAN. What is the nature of that course, how long?

MR. BRUMBLE. I'm just not familiar with it. With an hour or a day span, it is broken down in such areas as community relations, abnormal human behavior, several areas of psychiatry, relationships; there are just several courses offered during the basic academy training.

COMMISSIONER FREEMAN. Does the academy training curriculum include any courses of sensitivity with respect to multicultural or multiracial?

MR. GREENE. Not necessarily speaking. To be very frank with you, both Mr. Brumble and myself, it has been quite a few years since we were at the academy. We are not familiar with what the curriculum is at this time.

COMMISSIONER FREEMAN. Does the FBI provide for any inservice training of its agents with respect to any law enforcement activities?

MR. BRUMBLE. Yes. In fact, we have specialists that are trained in community relations. In turn, they go out and provide that training to local law enforcement agencies themselves.

COMMISSIONER FREEMAN. Have either of you had occasion to bring in any of those specialists to your offices?

MR. BRUMBLE. No.

MR. GREENE. Yes, I have, here in Rapid City, solely in view of the fact I'm one of them. I went through a concentrated course of applied criminology back at the FBI Academy approximately 4 years ago. I am definitely not an expert, but I have had extra training in—special training in that field. I impart this knowledge to the agents working in Rapid City or any other place that I happen to be assigned.

COMMISSIONER FREEMAN. One of the fundamental concepts of American jurisprudence and administration of justice is that it works most effectively if it is perceived to be inclusive of the community, of the total community, just as a judiciary that is exclusively white will not be perceived by the minorities to be sensitive to—in the administration of law—to any of their concerns. This is why I have raised these questions. I would want to know if you have made—I know the new director, Mr. Webster, has announced that, really given a directive that there should be affirmative action in recruitment. Will you state for this Commission what it is that you have done to assist him in that regard? Both of you.

MR. GREENE. Yes. We have a very definite affirmative action, particularly on the Pine Ridge Indian Reservation, which is the only Indian reservation within our investigative jurisdiction out of Rapid City. We are constantly putting forth the information, what the requirements are to become an FBI agent and asking if there is anybody available.



We are constantly contacting the law enforcement agencies down there regarding this matter, if there are any officers which might possibly now or in the near future meet these requirements, and we are soliciting and recruiting on a constant basis on Pine Ridge.

COMMISSIONER FREEMAN. Do the residents of the reservation—are they aware of this program?

MR. GREENE. You say the residents. You mean 100 percent of the residents? I doubt it.

COMMISSIONER FREEMAN. Do you have an outreach program?

MR. GREENE. No.

MR. BRUMBLE. We do have within our division. I have a man assigned exclusively to this area. Included in this program is the affirmative action program of trying to identify all the minorities that have the basic qualifications to become an FBI agent, regardless of who they are, as long as they have achieved a standard. It is very difficult to identify them, but for instance, in the city of Minneapolis alone, where they had to fire in the neighborhood of 200 school teachers this year, we have started a program to contact each and every one of those. You may say, "Why?" It just happens to be most of those are minorities. We are offering them positions in the FBI.

We at the present time are in conference with Alpha Phi Alpha, which is meeting starting today in Minneapolis. Jordan Young is there. We have one of our agents, the special agents from Alexandria, meeting with those people trying to tell them we mean business, that we want to recruit, we want to employ in that area.

We are working very closely with all the colleges, particularly where Indians have graduated from or attended. We must look at a person who has a 4-year college degree. This reduces the availability of many, many people.

We do teach in the elementary schools. We go into junior high schools. We go to church groups. We try to reach them at the very youngest age. We try to let them know what it is to be an FBI agent, to encourage them to plan their life towards a career vocation as an FBI agent.

COMMISSIONER FREEMAN. Gentlemen, there are other positions with the Federal Bureau of Investigation, other than agents?

MR. BRUMBLE. Yes.

COMMISSIONER FREEMAN. That do not require a college degree?

MR. BRUMBLE. Yes.

COMMISSIONER FREEMAN. How many such positions would there be?

MR. BRUMBLE. In Rapid City proper, I have four.

COMMISSIONER FREEMAN. How many of those positions are held by Indians?

MR. BRUMBLE. None.

MR. GREENE. None.

COMMISSIONER FREEMAN. So there is no Indian employed by the FBI in Rapid City or Minneapolis?

MR. BRUMBLE. No. Excuse me a minute.

Not in Rapid City. I do have in Minneapolis—

COMMISSIONER FREEMAN. How many?

MR. BRUMBLE. Either one or two. I'm sorry. I know I have at least one.

COMMISSIONER FREEMAN. Would you submit for the record, to this Commission, the profile of the employment of the FBI in both offices as to the agents and the other categories, managers, supervisors, clerical, cross-categorized by race and sex?

MR. BRUMBLE. I don't see any reason for it. I have to say, however, that the release of those figures have been controlled by our Washington headquarters.

COMMISSIONER FREEMAN. Mr. Chairman, then I would like to request we ask the Director Webster—

MR. BRUMBLE. I will let him know. If he says okay, I will give it to you.

CHAIRMAN FLEMMING. We will make the record clear. You can indicate to the Director that this is a request from the U.S. Commission on Civil Rights for this information. If there is any difficulty, why, we will address the request directly to the Attorney General.

MR. BRUMBLE. Yes, sir. I do not envision a problem, but the caveats on these figures as I receive them once monthly are restricted. I'm sorry.

COMMISSIONER FREEMAN. Thank you.

MR. NUNEZ. Mr. Greene, you indicated or your record indicates that you have a broad background, have served in many areas of the country. From your own experience you indicated that you felt that working in this area, in the Rapid City area and on the Pine Ridge Reservation, was similar to working in different parts of the country, in ghettos, high income areas, that an agent that is experienced in working in various parts of the country has the flexibility in dealing with different kinds of people. Am I correct in summing up your testimony?

MR. GREENE. Yes, you are.

MR. NUNEZ. Would I be also correct in saying that you view the problems and know that working on an Indian reservation in being similar to dealing with any other type of group in our society?

MR. GREENE. No. They are not similar per se. That is not what I said or intended to say. What I'm saying is the *differences* are similar. The differences in people, the differences in culture, the differences in the size of the population, in the socioeconomic activities of a particular area are dissimilar, totally dissimilar in each and every situation that I have ever been in; therefore, the same goes for Rapid City. It is dissimilar to every other situation. It cannot be compared. The dissimilarity that the agent must necessarily run into in his travels throughout his career gives him what I feel is, again, on an individual basis, an expertise to handle the majority of situations which might be placed before him anywhere that he may be assigned.

MR. NUNEZ. Your role on an Indian reservation is a lot broader than it would be in any other kind of jurisdiction. Am'I correct in that?

MR. GREENE. Almost in any other kind of jurisdiction, but not all.

MR. NUNEZ. In other words, I'm getting at another point now—generally the FBI is held to be an investigative body?

MR. GREENE. Yes, sir.

MR. NUNEZ. Would you make a distinction between investigation and normal police work, going out, dealing with the whole range and gamut of crimes?

MR. GREENE. Yes, sir, it is very easy to describe and that description is contained in the 14 major felonies over which we have the primary jurisdiction on Indian reservations. Also, a broader investigative jurisdiction on Government reservations per se, some of them. It is more of what is categorized normally as "police work" instead of investigative work. It can be very definitely be described by just looking at the types of crimes that we do have jurisdiction over on the Indian reservations, which is in addition to all the other jurisdictions we have which would also, would be included on the reservation.

MR. NUNEZ. You have the situation where you have a background of very special Federal laws and case law involving Indian people. You have them in a reservation. You have a slightly, well, fairly major shift in your responsibilities?

MR. GREENE. Yes, sir.

MR. NUNEZ. Police work as well as investigative work?

MR. GREENE. Yes, sir.

MR. NUNEZ. What I'm getting at, you don't perceive that this set of circumstances makes for the average agent—presents a unique situation for the average agent, aside from the ethnic differences, the whole gamut of differences?

MR. GREENE. Yes, sir, temporarily I'm sure it does. I know it did for me the very first time I started working a Government reservation or an Indian reservation, but a matter of common sense and the training which each and every special agent receives when he goes through training school encompasses all these facets of this type of special investigative techniques. Crime scene searches, lifting of fingerprints, the collection of evidence, photography, anything that would involved us, say, in a murder case, arson case, a burglary, a larceny. The general rules of good solid investigation are basically and fundamentally the same in almost any case you would work, whether it be a theft from interstate shipment which all or most agents probably work a number of occasions throughout their career. The techniques of good investigation would not be dissimilar between that type of case and a murder on an Indian reservation.

MR. NUNEZ. You wouldn't feel that perhaps, making the distinction again between police work and investigative work, regular normal police work, that perhaps a local individual, a member of the Bureau of Indian Affairs, special police, tribal police, in that kind of regular

crime that is very much given over to local jurisdictions for handling, perhaps they would be more effective than the FBI in those kinds of cases?

MR. GREENE. May I ask you a question, Mr. Nunez? More effective in what respect or what category?

MR. NUNEZ. In dealing with the people, in resolving the case, in solving the case.

MR. GREENE. Very possibly so, but again, I would like to revert back to my first statement, again it depends on the individual. I have met special agents of FBI who could deal with any situation as well as or better than any other investigator I have ever met; i.e., it goes. I'm sure there are members of the Bureau of Indian Affairs who work on their home reservation or in an adjoining reservation which probably, because of the cultural background, could do a better job than certain special agents.

MR. NUNEZ. My final question to Mr. Brumble and Mr. Greene—I hope you can answer this. Do you feel comfortable with the much broader responsibility?

I understand you have to enforce the law and the 14 major crimes acts, but as professional FBI agents, do you feel that that is an appropriate use of your agents to be involved in all of this local police work?

MR. BRUMBLE. I think the special agent of the FBI is primarily an investigator as opposed to the conventional or standard, meeting the responsibilities of police officers. In our recruitment efforts, in our employment efforts, those people who come to us seek employment are seeking a job as an investigator, not as a police officer to respond to these types of crimes. I do believe in all probability that most agents would rather be investigators than be responsive to meeting these types of crimes.

MR. NUNEZ. Do you care to comment?

MR. GREENE. No.

MR. NUNEZ. You agree?

MR. GREENE. Yes, very definitely. I agree with this. But I would like to clarify, when you say "comfortable"—does not go along with the rest of the statements as far as my answer would be. I know of no special agents that I am presently associated with who feel uncomfortable in this type of work. They are all of them very capable. None of us are uncomfortable. We do feel we know what we are doing and do a good job at it.

DR. WITT. My question is for both Mr. Brumble and Mr. Greene. If a citizen had a complaint against an FBI agent in the course of his duties on a South Dakota reservation, how—what procedure would be followed for lodging that complaint and seeking its resolution?

MR. BRUMBLE. The citizen should, of course, if they feel comfortable, should notify Mr. Greene; if they don't feel comfortable with that, they should notify me in Minneapolis. I am responsible for the conduct

of all the people assigned within my division. After the information is received, I am to forward it to Washington, D.C., to our Office of Professional Responsibility within our organization. They in turn determine whether or not it is a matter which would be handled by the Office of Professional Responsibility in the Department of Justice. They are put on notice.

As far as the investigation, an inquiry is conducted. If they believe the matter is one that I can handle independently, with objectivity, they will tell me to go out and conduct the inquiry. If they feel it is a matter that should best be handled by agents of Washington, D.C., then it is done in that fashion. The results and conclusions of the investigation that is conducted, regardless of the nature of the complaint, is furnished, of course, to the Director as well as to the Office of Professional Responsibility within the Department of Justice.

DR. WITT. Have you received such complaints?

MR. BRUMBLE. Yes.

DR. WITT. Do you maintain a system of records concerning these complaints? Do you keep statistics?

MR. BRUMBLE. No. I don't have statistics on the number of complaints. They are in our record system, however.

DR. WITT. Are they available to the public?

MR. BRUMBLE. They are not here. They are not in the Minneapolis division. I am not positive as to whether the statistics have been made available to the public in Washington. I believe that the Office of Professional Responsibility, the Department of Justice, sometime this spring, released figures, statistics, of some type involving FBI employees. Whether that was done mistakenly or not, I don't know.

DR. WITT. Are the results of the complaints made known to the complainants?

MR. BRUMBLE. I do not believe so. I have never notified a complainant of the results of one.

DR. WITT. Thank you.

MR. ALEXANDER. I want to get that very clear. If someone, let us say, in the tensions of the past 5 to 10 years out here, made a complaint about a specific FBI officer, misconduct or alleged misconduct or whatever, that officer could have been perhaps fired, transferred, demoted? Is that accurate? And that individual who made the complaint and the rest of the community would never know whether any action was taken one way or the other?

MR. BRUMBLE. That is right.

MR. ALEXANDER. Okay.

CHAIRMAN FLEMMING. I would like to try to piece together the testimony that has been given by previous witnesses and testimony that you have given this morning with the idea of looking into the future.

We are dealing here with three resources as I see it: the resources of the FBI, the resources of the Bureau of Indian Affairs, and the law enforcement resources of the various tribes. If I have understood the

testimony, and I will address this to Mr. Brumble, it is your policy at the present time to make available resources which can be utilized for the purpose of training the Bureau of Indian Affairs officers, and also the tribal officers, with the end in view of improving their standards of performance in this area?

MR. BRUMBLE. That is right, sir.

CHAIRMAN FLEMMING. As you look down the road, do you feel that you are going to have additional resources that you can make available for this purpose?

MR. BRUMBLE. In the end result, sir, the oversight committee kind of determines that.

CHAIRMAN FLEMMING. I appreciate that, but I'm just thinking in terms now of the utilization of the resources that are available. Do you—within your particular area, you have some opportunity, as you indicate, of shaping some of your own priorities growing out of the situations that confront you. I am just trying to get the feel as to whether or not you give this a fairly high priority?

MR. BRUMBLE. I give this a very high priority of commitment of manpower, resources, time, and effort, at the present time, and I predict it will be essential to do that for many months ahead.

CHAIRMAN FLEMMING. The second thing that I perceive is that you are reducing—secondly, I know you are reducing your number of persons here. Am I correct in my assumption that one of the factors that you have taken into consideration in reducing your personnel strength here is that you believe that some additional workload can be assumed by the Bureau of Indian Affairs and by the tribal—the resources that are available to the various tribes?

MR. BRUMBLE. Yes, I do.

CHAIRMAN FLEMMING. And that additional workload would relate to these 14 major crimes we have been talking about?

MR. BRUMBLE. Yes, sir, of necessity. I think the practical aspect of this is that the tribal police officers at Pine Ridge generally respond or is on the scene at the time the complaint is received.

CHAIRMAN FLEMMING. Right.

MR. BRUMBLE. It is terribly important for him to preserve that crime scene or to know what to do and what not to do if we ever are going to have successful prosecution, so it is terribly important. This is the area we constantly want to train the men in. It is what they can do immediately to assist the FBI. We also call upon police officers throughout the county in the same vein. There are only so many of us. We cannot, we don't have a response factors of minutes, of half-hours, or 45 minutes. Many times within the past years, we would say we have men who could respond within 1 hour of where a crime was committed. However, with a reduction of monies and cuts in our budgets, etc., etc., we have found that we are going to have slower response time in many areas of work where before we were able to respond immediately.

This is not an Indian matter, but theft from interstate shipments. Used to be we had rules that require the agents be there within the hour if a pair of shoes was stolen off the rear of a truck. We have done away with those kinds of rules now. We just absolutely don't have the personnel to respond. Of course, the oversight committees have said what we will and will not do. I hope I answered your question.

CHAIRMAN FLEMMING. You have. I gather then that your end objective is to have this situation evolve so that more and more the tribal police officers, the Bureau of Indian Affairs officers will in effect be able to complete the case and be in a position to indicate that they have done a complete, thorough, well-rounded type of job which in turn can be passed on to the U.S. attorney.

MR. BRUMBLE. I would like to see that, yes, sir.

CHAIRMAN FLEMMING. May I ask you, Mr. Vrooman, if you would welcome that kind of an evolution as far as the development of the resources of the Bureau of Indian Affairs and the resources that are available to the various tribes?

MR. VROOMAN. Yes, sir, I would, very much so.

CHAIRMAN FLEMMING. As a result of your experience here and your continuing experience here, do you detect that kind of an evolution taking place at the present time?

MR. VROOMAN. I have seen it just within the last 15 months, yes, sir.

CHAIRMAN FLEMMING. Mr. Greene, I don't know whether you would like to comment on that—

MR. GREENE. No. What both gentlemen say is very true. There is a very definite evolution in this direction taking place. I think it is a very healthy evolution.

MR. ALEXANDER. One clarification, one question—

CHAIRMAN FLEMMING. We have just about run out of time.

MR. ALEXANDER. Mr. Brumble, in an interview with Francis X. O'Brien of your Washington office, he indicated that major crimes work had a priority of number three on a scale of one to three. Could we have from you a clarification with that conflicting information after the hearing in writing?

MR. BRUMBLE. Yes. I may be mistaken. I'm trying to recall.

MR. ALEXANDER. I would like to have the record accurate on that point, please.

MR. BRUMBLE. I would not argue that point, sir.

MR. ALEXANDER. Mr. Vrooman—

CHAIRMAN FLEMMING. Could I interrupt you there? I gathered from your response to an earlier question something like that might be the case, but as far as this area is concerned, you personally have got it in the number two category?

MR. BRUMBLE. Let me say this. My immediate priority, from an operating standpoint, is white-collar crimes. That includes on the resear-

vation. The fraud attendant on these reservations is unbelievable. As far as the reservations are involved, they are in that number one priority insofar as Federal funds, etc., etc., are involved. In addition, the crimes of violence are in the second category. Those are my primary objectives to resolve on a long-range plan.

MR. ALEXANDER. That is local though, and we were talking nationally. Mr. Vrooman, you are leaving office?

MR. VROOMAN. Yes.

MR. ALEXANDER. You have had some rather extensive experience in a fairly controversial area where the law has been changing and so on. Are there specific recommendations that you would make to Congress or to the Federal executive to do in this area that have come out of that experience that we have not gotten out of you?

MR. VROOMAN. I had several objectives I started out with. I am glad that you asked me the question.

MR. ALEXANDER. Okay.

MR. VROOMAN. I have had a continuing battle with the Drug Enforcement Agency. I have had the cooperation of the FBI. We have eight virtual islands of drugs on the Indian reservations. The State of South Dakota can't and won't work them because of jurisdictional problems. The FBI doesn't work them unless they come up incidentally to another investigation such as murder, rape; if they happen to get into a drug case, they will present them.

We have two non-Indian DEA agents in Sioux Falls. The first goes in everyday and it doesn't raise any suspicion because they are there working the case. If those two non-Indian drug agents got within 20 miles of the reservation, I think that things would clamp down. I have pleaded—I have written letters to Griffin Bell. I believe that the area of drug law enforcement on Indian reservations is a national disgrace. I sent some statistics, which I will be glad to furnish the Commission, which I've gotten from the Public Health Service to show how many drug overdose cases they have been treating in the last years.

DEA is very, very jealous of their position. The FBI—I don't know what they have done nationally—but I believe that if there is one area of law enforcement in which we have a void—what I have done, I just wrote the Department, the BIA special agent. I said earlier, there is one exception. I finally just said, "BIA special officers bring me a drug case. I'm going to take it"; at Pine Ridge, I told them to find somebody—the head of the tribal police—and I would take the complaints from them. I just couldn't leave that complete void there—we really do have a void. If this Commission could get somebody jarred on that, I think maybe that of my eight criteria that is one I didn't accomplish.

I thank you all for that.

CHAIRMAN FLEMMING. I gather there is one other recommendation you would make. That is when it comes to matters like the *Oliphant* decision, the Department in Washington give the U.S. attorneys an opportunity for an input.

MR. VROOMAN. You bet.



CHAIRMAN FLEMMING. Thank you very, very much. We appreciate it. We will recess until 1:35.

### AFTERNOON SESSION

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CHAIRMAN FLEMMING. The hearing will come to order. Counsel will call the next witnesses.

MR. ALEXANDER. Arthur Zimiga, William Janklow, Mary Sue Donahue, and Donald Dahlin.

CHAIRMAN FLEMMING. Remain standing and raise your right hand, please.

[Ms. Donahue and Messrs. Dahlin, Janklow, and Zimiga were sworn.]

**TESTIMONY OF MARY SUE DONAHUE, FORMER DIRECTOR, STATE DIVISION OF HUMAN RIGHTS; DONALD C. DAHLIN, SECRETARY, STATE DEPARTMENT OF PUBLIC SAFETY; WILLIAM JANKLOW, STATE ATTORNEY GENERAL; AND ARTHUR W. ZIMIGA, STATE COORDINATOR OF INDIAN AFFAIRS**

CHAIRMAN FLEMMING. We appreciate your being here.

MR. ALEXANDER. Starting with Dr. Dahlin, could you each identify yourself and your position with State government for the record?

MR. DAHLIN. My name is Donald C. Dahlin, and I am the secretary of public safety for the State of South Dakota.

MR. ZIMIGA. I am Arthur W. Zimiga. I am the State coordinator of Indian affairs for the State of South Dakota.

MS. DONAHUE. Mary Sue Donahue, former director of the South Dakota Division of Human Rights.

MR. JANKLOW. Bill Janklow, the attorney general of South Dakota.

MR. ALEXANDER. For the past several days and during staff work throughout the State we have, along with other people, clearly heard that there has been a significant amount of conflict in the State concerning Indian issues, and there seems to be some indication, at least in some communities, that that's tapered off somewhat in the last year or two. Starting with Mr. Zimiga, could you tell me what, in your view, are the underlying causes of the conflict and perhaps the change that we have today?

MR. ZIMIGA. I think some of the conflict comes about by the lack of education on behalf of non-Indian people about Indian people and, you know, certain kinds of stereotypes that they live with and relate to Indian people.

We have in the past, in my experiences, going around talking to groups of people just in recent—this week—is that, you know, those things are quite evident and very true in their mind as far as discrimination.

MR. ALEXANDER. Mr. Janklow?

MR. JANKLOW. I think if you have to look at it in a serious analysis you have got to realize there is problems on both sides, not one side. We have problems with some white people with respect to Indian people, and we have just as many problems with respect to Indian people against white people.

I think one of the things that has caused a great deal of problems has been the incredible amount of indecision and decision changing by the Federal Government. We didn't have the problems that we have in the jurisdictional sense up until about 1972 and '74 when the Federal Government—as a matter of fact, since 1972 the Federal Government, with respect to just one of our reservations, have changed their position three different times as to how large the reservation is and what areas there is and isn't jurisdiction. And the same is true, with respect to the jurisdiction, not only as far as geography goes, but jurisdiction over individuals, in personal jurisdiction. And you just can't take people that have lived together or lived in a certain community for 100 years or 80 years or 50 years or 10 years and all of a sudden tell them the rules have changed and expect everybody to wake up with a smile on their faces the next morning.

I think every time there is a change of administration in Washington you have got a change in policy, and I think that change of policy has caused a great deal of conflict away from the Washington area and specifically in places like South Dakota where we have these unique jurisdictional problems. That isn't all of it, but I think it's part of it.

MR. ALEXANDER. Well, in your view with the recent decisions in the two diminishment cases and the *Oliphant* case in relation to jurisdiction over non-Indians, would that have cleared the waters at all and allowed for some of that tension to subside or are we still in a situation of great ambiguity?

MR. JANKLOW. I am aware of more than two diminishment situations. I was aware of several—Sisseton, Rosebud, Pine Ridge, and Standing Rock, which is still in confusion. But as far as the first three go, it put it where it's always been since the turn of the century. A great deal of the problems up in the Sisseton area came as a result of the Federal Government changing its official position in 1972 as to whether or not a reservation existed in that particular area and caused a great deal of problems.

The United States Supreme Court finally resolved that and, since that point in time, there has been a dramatic reduction in the instance of problems in that area, in the racial sense, comparing it to what it was during the 3 years of turmoil. The same is true with respect to the Rosebud Reservation. The United States Supreme Court ruled that Tripp, Gregory, and Mellette Counties were the way everybody had recognized them to be since the turn of the century, and that the changed position of the Federal Government was not accurate that they changed to in 1974. And I think, since that decision was handed down, there has been a dramatic reduction.

MR. ALEXANDER. Miss Donahue, would you like to comment on the climate in the State from your perspective at the human relations commission with respect to what some of the factors have been?

MS. DONAHUE. You're talking about the source of the conflict and what it is?

MR. ALEXANDER. Yes, from your understanding and the work that you have done.

MS. DONAHUE. Okay. I agree with Mr. Zimiga that part of it is the difference in culture and the failure to recognize and adapt to those differences. I also see greed playing part of the role in the conflict.

MR. ALEXANDER. Could you explain that, please?

MS. DONAHUE. Historically, you know, who the land belongs to, who has rights to it is a source of conflict there.

MR. ALEXANDER. Recognizing that the Federal Government has clearly played a role in this area, and an ambiguous role over the years, certain responsibilities tend to fall on State agencies in terms of the problems that have been created.

Could you, starting with Mr. Zimiga, explain what it is your agency does and how it relates to curing, if you will, any of the fallout from these uncertainties, perhaps from the lack of understanding of Indian people or Indian peoples' lack of understanding of white people, if that may be also true.

MR. ZIMIGA. There is two goals and objectives that I set up when I assumed this position as State coordinator of Indian affairs. And within that office one of the goals was to regain tribal support for the commission. And the other one was to develop communication lines between Indian and non-Indian communities.

MR. ALEXANDER. Specifically what has been done to develop communication lines?

MR. ZIMIGA. What we have been doing is this week, for instance, was at Kadoka, we met with the sheriff there in Kadoka and with Jean Nelson who is the head of consumer affairs. And underneath that is human rights division, and so we went there to look at and to see if we could find some way and solution and maybe presenting some of these problems and maybe getting—just get some dialogue for ourselves to be educated how people think that we could best serve them. So we found that some communities were willing and some had some good discussion and misunderstandings about one another and started to, in a sense, to—for example, in Martin they were going to form a committee, human relations committee, and they wanted to have some dialogue with tribal officials. So we stopped at Pine Ridge and discussed that with the tribal chairman and with the superintendent and proceeded to go into like Fall River County surrounding just that reservation, those border towns.

MR. ALEXANDER. So you basically see yourself in an education function and a facilitating function?

MR. ZIMIGA. Yes. I think that before that, you know, many of these cases can get there, but then maybe someone files discrimination charges specifically for some area. I think maybe if we could sit down and discuss it and maybe have an understanding about one another and where we are going or how people in the community are affected by one another, I think that would be—that is a good start instead of not having communications at all.

MR. ALEXANDER. Thank you.

Mr. Janklow, last week at the State jurisdiction conference, I believe sponsored by the University of South Dakota, there seemed to be significant emphasis from yourself and quite a few other State officials and local county officials on the need to negotiate out some of the issues that could potentially be negotiated. Could you explain to us exactly what the existing State mechanisms are in terms of State negotiating committee and so on as to what statutorily this State can do in relation to negotiations with Indian tribes?

MR. JANKLOW. We basically, by our law, have two things set up in terms of intercommunication. Absent lawsuits, and lawsuits obviously is one way to communicate, but I have never met a happy loser to a friendly lawsuit yet. They all call them friendly, but they are not when they are over. As far as strictly talking and negotiating, our State has a unique—and I am sure it's unique nationwide—committee that was set up by our legislature called the State negotiating committee. It is a successor agency to what originally was known as the State Indian task force, which again was unique in America, that consisted of legislative representatives from our government, executive representatives from our government, and representatives—or the tribal president or his or her designee from the nine tribes in South Dakota.

It worked well, in my opinion, but the tribal presidents voted to ask the State to have that cease to exist and so it was terminated by legislative action. And in its place came the negotiating committee and the negotiating committee is set up by statute. It consists of appointees of the leading Republican and Democratic legislators in both the House and the Senate, appointees by the Governor which include the lieutenant governor, whoever he or she may be. The attorney general provides them legal counsel and they are the committee that negotiates on behalf of the State.

I have only—in one instance I have seen legislation come as a result of these kinds of discussions. At the request of one of the tribes, the committee was convened and there were discussions pertaining to extradition, and, as a result of the meetings, legislation was put together, drafted, and submitted to the legislature and passed unanimously in one house and with one dissenting vote in the other house, the procedural mechanisms for working out extradition problems. The tribes have not seen fit to want to carry the matter any further, which is perfectly their right. And if they want to, the mechanism, the statutory authorization is now on our statute books for doing that kind of thing.

We have had discussions with game and fish departments in the tribes that have resulted in agreements and agreements that have worked well. We have had sales tax agreements where the State collects sales tax for the tribes, if their own sales tax laws are the same as ours, and rebates the money back to the tribal governments and it's worked well.

The one other thing that we have that I am aware of in the statutes is under figures 1024 of the South Dakota Compiled Laws, we have the Joint Powers Act which allows governments and the State and its political subdivisions all the way down to the lowest level to enter into agreements. Wherever you have two or more agencies of government, each of which have the right to do something individually, our statutes authorize them to join together by contract to do it either one or the other or both together.

In 1974, I believe it was, our law was changed to include the word "Indian tribes" under the definition of public agencies with whom the State and its political subdivisions can contract. We do have some experimental contracts going on under that now. I don't know whether it's operative yet, but the social services up in the Sisseton area is going to be virtually turned over to the tribal people through a pilot project to see if that works, but that is generally the statutory mechanisms that I am aware of.

MR. ALEXANDER. Thank you.

Dr. Dahlin, could you explain what your office does, please, how it relates?

MR. DAHLIN. Well, we have several divisions within the department of public safety and, of course, the highway patrol has principal traffic law enforcement responsibility in the State. And the highway patrol, through its training program, tries to ensure the officers coming on to patrol understand, at least in part, some of the cultural differences between Indians and non-Indians in the State. We have tried, informally at least, to work with the reservations that have wanted to and with Cheyenne River and Rosebud have had a very good working relationship over the years. We also have, within the department, the division of law enforcement assistance which is the LEAA [Law Enforcement Assistance Administration] program in South Dakota. And the way that that program is structured nationally, it is the responsibility of the division and of the criminal justice commission for the State to formulate a plan, which includes planned expenditures for tribal criminal justice improvement efforts. And over the years the criminal justice commission, I think, has tried to be responsive to needs that have been identified in the planning process by the reservations for their criminal justice planning process.

MR. ALEXANDER. One of the issues that was raised this morning and again yesterday involves, in a sense, a fallout from *Oliphant* or perhaps it was an issue previously, the issue of non-Indians within the State who commit what is generally termed a "victimless crime" on a reser-

vation area within Indian country. And many different situations were outlined, some of them cooperative between local counties and Indian reservations, others not cooperative in terms of recognizing cross-deputization agreements and also in recognizing each other's tickets.

The State highway patrol, does it have a role in relation to the victimless crimes? Will it accept a referral from a tribal police source and so on? That is under your jurisdiction.

MR. DAHLIN. That's correct, but not at the present time. We have, going back to 1974 at least, the Bureau of Indian Affairs did cross-deputize all highway patrolmen, and that authority still remains in effect, although there are arguments about how extensive the authority that is conferred by that action, and we have—in effect the patrol has been recognized, I am not sure whether it's formally or informally, by both the Cheyenne River and the Rosebud Sioux Tribe when Indians are arrested. But we, up until about a year ago, did not think that we had any authority to in turn cross-deputize Indian law enforcement officials. And then about a year ago we thought possibly under the Joint Powers Act that we could enter into such an agreement, and we made some efforts in that direction, particularly with the Sisseton Tribe. But, ultimately, after consulting with the attorney general, it was his conclusion that we did not have the authority under the Joint Powers Act. And so no agreement was reached.

MR. ALEXANDER. Mr. Janklow, without going into the detail, necessarily, unless you feel it's necessary, explain what it is about the Joint Powers Act that would preclude the State agency from entering into such an agreement.

MR. JANKLOW. Well, it's got nothing to do with jurisdiction at all. If I as a citizen, forgetting any official position, or you as a citizen complained to a highway patrolman that I have been speeding, he can't arrest me. In South Dakota for misdemeanors, you can only arrest when the law enforcement officer has seen the offense committed. And as a result, a tribal—there is no way that they can accept the word of another police officer and make the arrest. A highway patrolman can't accept the word of a local deputy sheriff in that instance. So that is the first problem that you have to encounter. It's got nothing to do with jurisdiction. It's the way that our State constitution has been construed with respect to probable cause to make arrests.

The second area where there is a problem that the highway patrol does not have power to make arrests absent cross-deputization on an Indian reservation over Indians. They do over non-Indians or over white people or anyone but a tribal member or an Indian. And I don't feel that that fits within the purview of the Joint Powers Act because they don't have that authority that they can confer.

The third thing is that I think it would be suicide for State officials to try to cross-deputize when the backbone of the law enforcement function in South Dakota is carried out on a local government level. That is where those decisions ought to be made and, as you know and

I assume have heard in testimony, in Marshall County in some areas that it is being done. But to have some bureaucrat or elected official in Pierre tell a local area that they are deputizing a lot of people, you would find out what a war really is because nobody's going to accept that.

MR. ALEXANDER. Mr. Tobin, the State's attorney from Tripp-Todd Counties, testified this morning that he had some issues as to whether or not he had the authority to accept citations from tribal police officers and what he could do with them and that he had requested your view on that but as of yet had not heard. Is that an accurate representation?

MR. JANKLOW. Not to my knowledge.

MR. ALEXANDER. You have not gotten a request from Mr. Tobin?

MR. JANKLOW. Whether or not he can cross-deputize?

MR. ALEXANDER. No, whether he can accept citations from tribal police officers.

MR. JANKLOW. I have not been asked by Tobin, but the State officials or county officials can't accept them. They are not State law enforcement officers, and you run into that hearsay type problem with a misdemeanor I just told you about. I have never been asked by him, but if I was that would be my answer. He can't do it. But he has the power locally there through himself, the county commissioners, and his sheriff to cross-deputize—to make anybody a deputy, not just Indians, anybody.

MR. ALEXANDER. You don't see any issues within the current State statutes that would preclude such cross-deputization agreements?

MR. JANKLOW. Absolutely not. It exists now. I have the authority to do it. I can create agents and assistants with law enforcement power. They can locally also. I don't see the problem.

MR. ALEXANDER. Okay. Does the attorney general's office have a defined role in relation to the local State's attorneys? You indicated that it is a very strong local government State.

MR. JANKLOW. They are locally elected like I am, statewide elected. They are elected on partisan ballots in South Dakota. The vast majority of the criminal justice work in the State is done by State's attorneys. However, under the law, 1111 of the South Dakota Code, the attorney general has the right to exercise control—I can't remember the exact language. The attorney general can advise, consult, and exercise supervision over the several State's attorneys. I think that that gives the attorney general supervisory powers if he should—he or she chooses to use it over the State's attorneys.

MR. ALEXANDER. In a situation where a local State's attorney or a local sheriff's department, take them both separately, is refusing to prosecute crimes involving non-Indians exclusively within Indian country, what is your role there?

MR. JANKLOW. Okay, two things. And I have to back up to another question you asked and I will be brief.

Prior to 1974, the way we operate now is exactly like we operated for 100 years in this State until 1974. *Oliphant* did not bring any changes in South Dakota.

Prior to 1974, no Indian tribe in this State arrested anyone except tribal members or other Indian people. So nobody should get the impression that it's changed 100 years of precedent in this State. It's not done that. One.

Two, and during the whole *Oliphant* fight there were a lot of tribes in this State that didn't try to arrest non-Indian people. All right? The second thing and the key thing about *Oliphant* is that beginning way back when the *Oliphant* fight was going on, and on four occasions I have personally written letters to the chief of—or to the president or the chairman, depending on what their title is, of every Indian tribe in the State, laying out very specifically how they should treat non-Indians who break the law in their government; i.e., make a complaint to the local sheriff, the municipal authorities, or the State's attorney. I said in my letter every time, because I sent the same letter, in the event that that matter is not pursued locally they can call me or write me. I included my phone number and tell them where I can be reached 24 hours a day, 7 days a week, 365 days a year. If I am contacted and they tell me the local authorities have done nothing, I guarantee them that I will personally see to it that the case is investigated, and I will exercise my discretion as to whether or not the matter ought to be prosecuted.

On several occasions they have taken use of that, the letter that I have written. In every instance I have had the matter investigated, and because I felt there was probable cause in every instance, I have had my office from the attorney general's office pursue the prosecution. In no instance have I turned down—I reserved the right to do it, but I have not done it. In every instance I have pursued the prosecution that has been requested.

MR. ALEXANDER. It becomes a very important issue, because this morning the United States attorney for this district announced that the Department of Justice has taken the position now that victimless crimes on Indian reservations committed by non-Indians are a matter of State jurisdiction. As you may know, there has been some dispute within the Federal bureaucracy as to what their—

MR. JANKLOW. I understand, but it is my position that there is no one in the State of South Dakota, be they black, yellow, red, or white or a mixture, who is above the law and has the right to bother people, bother other people's property, or be a public menace or danger in violation of laws. And as a result, I couldn't care less what the color of their skin is or where they are at. If they are breaking the law, they are accountable to some governmental entity. So if the Feds don't pursue them we will. Our position is, with respect to white people, that if the Feds do pursue them on a reservation we still maintain the right to pursue them. We don't have that right with respect to Indian people.



MR. ALEXANDER. Miss Donahue, your agency is specifically in the business, the agency you left a short while ago, specifically in the business of dealing with complaints of discrimination; is that correct?

MS. DONAHUE. Yes.

MR. ALEXANDER. You, I understand, have prepared a statement which indicates the types of allegations that you have received and some of the statistics that you have compiled. With your permission, I would like to have this introduced into the record.

CHAIRMAN FLEMMING. Without objection it will be entered into the record at this point.

MR. ALEXANDER. In general terms, the complaint load of your agency, how did it break down in terms of complaints from Indians, women, black people, white people and so on?

MS. DONAHUE. Well, in South Dakota the two largest complaint groups are women, and they make up about 50 percent of the complaints, and the other large group is racial complaints, about 40 percent, slightly over 40 percent, and by far the largest group of them are filed by Native Americans.

MR. ALEXANDER. What areas do these tend to focus in?

MS. DONAHUE. The Native American complaints tend to focus more in public accommodations, public services. And that is any service performed by a local, county, or State government.

MR. ALEXANDER. That would include police services?

MS. DONAHUE. Yes. And housing is another large area. This is in contrast to the women who tend to file for more in the area of employment and education.

MR. ALEXANDER. What is your agency able to do? I understand you are a full EEOC referral agency; is that correct?

MS. DONAHUE. Yes.

MR. ALEXANDER. And have similar types of powers. In terms of the police complaints we have heard—and I don't know the truth of any particular allegation—a number of complaints about police practices in border towns—

MS. DONAHUE. Yes.

MR. ALEXANDER. Assuming that someone would know about your availability, what would happen to such a situation that a police officer was acting with excess force in a patterned way against Indian youth and no one else—that is the hypothetical. What happens then? What do you do?

MS. DONAHUE. They can file a complaint with the agency. It is investigated. We have two investigators or did have two investigators on the staff.

MR. ALEXANDER. For the entire State?

MS. DONAHUE. Right.

The cases take—well, at least when I left— take 2.7 months to resolve, which I believe is very low for agencies like that. And a decision of cause or no cause is rendered. And as with most other agen-

cies, most of them are no cause. We have had some relating to arrest patterns and there is one, for example, in Melette County that is being conciliated. If the conciliation attempt fails, it goes to a public hearing before the State commission on human rights. A difficulty with that kind of complaint, however, of course is the remedy that could be fashioned.

MR. ALEXANDER. What type of remedies are you limited to?

MS. DONAHUE. Well, the statute has specified remedies relating to putting people back in the position they would have been had they not been discriminated against rather than any kind of penalty by fines or something.

MR. ALEXANDER. We have heard testimony in several communities about attempts to establish human relations type commissions to work on a very local level to provide mechanisms for discussion for resolving particularized problems. Does your agency have any role in the establishment of such or technical assistance or mediation or what have you?

MS. DONAHUE. Yes.

MR. ALEXANDER. Several of them seem to be quite bogged down.

MS. DONAHUE. There are two local agencies that are operating at the present time, one in Rapid City and one in Sioux Falls. The one in Rapid City does not have full-time staff people which really, I believe, impedes its ability to operate. And they also act on complaints.

I think that most South Dakota towns, and this is my own opinion, are too small and too—where people know each other too well—for a local agency to actually handle complaints. One thing that we even ran into in Rapid City is that the members of the commission, say there were 10 or 12 or however many there are, they would know one of the parties well enough so that they believed that that relationship would hamper their objectivity, and this is true all over the State. And so I see that local human relations agencies can better function as liaison people in that kind of function. And we have offered and been called upon to provide technical assistance in other communities.

MR. ALEXANDER. Did your agency or does it currently have the resources sufficient to deal with any—

MS. DONAHUE. Funny you should bring that up. As I mentioned earlier, there were two investigators on the staff, the director, and two secretarial people, which does indicate that there is a very limited staff. And while the legislature and—you know, this is one of the problems that I see in human rights in South Dakota. That is that I think that the law is—after it was reviewed by the sunset committee and they decided to keep it on the books, that an area of attack is in its budget. So that the only thing that we are able to do is handle cases.

MR. ALEXANDER. Mr. Janklow, are there currently issues that are still extant, in your view, as to confusing jurisdictional Federal policies that need to be resolved?

MR. JANKLOW. I think there are several of them. I think a perfect example is the one that you cited, the U.S. attorney's present position, and which I assume has come from Washington—

MR. ALEXANDER. Yes, it has.

MR. JANKLOW. —which is in disagreement with the positions that have been taken in other areas of the country in official Interior Department memoranda that I have seen since *Oliphant*. It's that kind of thing that is driving everybody nuts in this State because they can sit back there and do that, but we're stuck with the results.

But in the civil area I can see—I think, as far as geographical boundaries or reservations are concerned, it is settled for every tribe in this State, and now I am giving you my own opinion, but I think it's settled for every tribe in this case but the Standing Rock and Cheyenne River area which would be Corson, Ziebach, and Dewey Counties. Those three areas—as a matter of fact, at the present time we have in Corson County, South Dakota, a decision from the United States Court of Appeals on the Eighth Circuit, a more recent decision from the Federal district judge for the Western Division of South Dakota, and a decision from the South Dakota Supreme Court, a unanimous decision, all three being different on whether or not that is a reservation and if so how much of it. That is the kind of thing. But those two reservations are still a problem as far as geography.

I think that the next question that you have to address yourself to, that has to be resolved in this State, is who exercises what jurisdiction within the boundaries of the reservation. Now, the criminal one has been settled as far as trial. There is a dispute going on right now as far as whether or not there is the power to arrest, so that is going to be either resolved by legislation, by negotiation, or litigation. There is no other way.

The second area you have to deal with the whole criminal area, who exercises what civil jurisdiction over who. Do the tribes, for example, have the right to regulate the commerce of all the people on the reservation, or is it just for their tribal members subjecting the others to jurisdiction under the Indian trader's law? There is just a whole realm of those kinds of problems, but I don't think we have accomplished much in the civil area. But remember, your Commission and everybody who comes to testify talks about our problem areas. There is a heck of a lot of areas in this State where we don't have problems and have never had problems. And when they creep up they work them out. You don't need an outside agent from Pierre or an agency locally or one from Washington to resolve it or a lawsuit. A lot of people's problems get solved by people on a local level on a day-to-day basis.

MR. ALEXANDER. In terms of these jurisdictional issues, for example, you mention the dispute as to whether or not tribes retain arrest powers in light of the *Oliphant* decision. Is there any negotiation going on to resolve that? You mentioned that is one of the three possibilities.

I am aware there has been some litigation in that. Is there any ongoing negotiations between your office and the Cheyenne River Sioux Tribe?

MR. JANKLOW. At the present time no, there is litigation going on between our office and the Cheyenne River Sioux Tribe.

See, it depends. All tribes aren't the same. There are some tribes who don't want it and don't try to exert it and never have over people other than their members or other Indian people. And there are other tribes. You have got to treat them like different countries or states. You can't lump all the tribes into a package of nine, and there are other tribes that take the position they exercise jurisdiction over everybody, *Oliphant* notwithstanding. And then we have got everything in between. In a couple of tribes it's not a problem.

MR. ALEXANDER. Well, the fact that you're in litigation itself does not necessarily preclude negotiations?

MR. JANKLOW. We have had negotiating sessions, if that is what you mean, but there is no formalized negotiation going on. Understand, our legislature only meets 30 days one year and 45 days the next. I am not the diety. I can't change the law or write law in South Dakota, and so, there is no agreement I could reach anyhow that would affect the law of this State. The most I could do is propose legislation to the legislature either through the negotiating committee, myself, or with other interested citizens or legislators to try and put into effect any agreement that is reached with a tribe.

If it were to be cross-deputization, and I think most tribes, all the tribes but one, would go for that kind of arrangement; that is my guess. That could be effectuated without legislative action. But it would necessarily involve the local communities being involved. It would take no change in the State law to cross-deputize everybody in this State. It could be done now under our existing law, but for the State to give jurisdiction to a tribe to try non-Indians or, on the other hand, for a tribe to give it to the State would take a lot of remedies other than negotiations.

MR. ALEXANDER. For sure. And in all the discussions between the local communities and the tribes that have gone on in the past 2 days, most of the discussion focused on cross-deputization and not transfers of jurisdiction.

MR. JANKLOW. Right. I think the key position that people take, at least the president of the Cheyenne River Sioux Tribe, which is what I reiterated to you today, nobody should be allowed to break the law and it doesn't make any sense whether it happens to be Mary Sue, myself, you, or Matthew Warbonnet on the reservation. If they break the law and they place property or people in jeopardy, they ought to be held accountable for it. And the mechanics are the only thing that ought to, have to be worked out.

MR. ALEXANDER. Art Zimiga mentioned earlier that there is a great deal of misunderstanding in his perception from being around the State amongst the general community about Indian tribes and Indian people.

In your own view, do you see Indian tribes as permanent political institutions in the State and country?

MR. JANKLOW. I see them as that, but I—with respect, I disagree with the conclusion he reached. I think when people have lived together in towns of 500 and 600 for 50 years they don't have very many stereotype problems, and if they do, they are not on the basis of color of skin, they are on the basis of what side of the tracks you may have happened to come from or what your economic status is or things of that nature. I don't think it's on the basis of color of skin. I happen to respectfully disagree with that position of his.

MR. ALEXANDER. Mr. Zimiga, do you wish to comment?

MR. ZIMIGA. I don't believe that discrimination started in 1972 or '74. I think it existed long before that. I was born on Pine Ridge Reservation. I lived off the reservation. I lived within this State. I was educated in this State and I think that the general non-Indian to understand the culture of Lakota people—he doesn't understand it. And to him, when he lives there it's foreign. But in the practice of traditional religion, which was outlawed at one time by the United States Government and then now is in practice again, people down from those areas—a lot of them consider it being barbaric and they voice their opinions in the papers. I think you can see some of those reactions that come out within local papers and some things on Indian people.

I just think presently that things can be better in the sense that through the office of human rights and those issues that people get down to, start communicating together, and you know, economically, reservations support a great percentage of the economic growth of the State of South Dakota. That without Indian people three-quarters of a million people in this State—you know how much revenue is derived from Indian people? And I just wonder within myself how we are going to sit there and say that discrimination doesn't exist within a little town or community. And I just came from Hot Springs, and a man that had been running a business there, that is a county commissioner says, "If someone comes from Pine Ridge," he said, "I wouldn't accept his check because he was from Pine Ridge because I didn't think that I could collect on that if it went bad."

Now in the same sense, I don't see the same sense of people at Pine Ridge saying, "If you have a checking account then go down to Pine Ridge," and Pine Ridge people say, "We're not going to accept your check because you are from Hot Springs." And that happens here in Rapid City.

I directed the Title I program on Pine Ridge Reservation, and I brought up people that were on school boards for meetings up here and they couldn't even cash checks in some of the places where they were staying. And I don't know what you call that, you know, is that discrimination or what is it? But to me that is what it is. So I don't agree with the attorney general at all on that point.

MR. ALEXANDER. Miss Donahue, do you have a view on what has been discussed?

MS. DONAHUE. I think the issue that has been brought up about credit and the example that Mr. Zimiga brought forward have been addressed by my office, and I think it's a difficult issue. We have considered it discrimination and therefore illegal and have conciliated cases similar to that.

MR. ALEXANDER. Okay.

At the jurisdiction conference, which both Mr. Zimiga and I remember, Dr. Dahlin was there and you, of course, were there, Mr. Janklow, there was a great deal of emphasis on solving problems locally or at the State level without the Federal Government having the necessity to come in. What changes do you see within each of your own agencies that need to be made to help you to perform your job better, if any, or changes in the current State law that would facilitate either local negotiated solutions to problems or statewide negotiation solution to problems, starting with Mr. Janklow. Are there any changes needed in State that you're cognizant of at the current time that could facilitate locally negotiated solutions to the types of problems for all that have been raised for the past several days?

MR. JANKLOW. I don't know of anything. I am not aware of anything. I think the power is generally there now. There may be agreements that are reached that would take legislative action to accomplish, but as far as the power to sit down and work them out and work out most things without legislation and implement them, I think that particular authority is available right now. I don't see any change.

Can I add one other thing though? Because I am concerned about it. I didn't say we don't have discrimination in this State, but I will tell you this. I wonder if the man from Hot Springs was asked if he would take a check on an individual from Australia because, if that check from Pine Ridge bounces, he doesn't have any better chance on going to Pine Ridge after it necessarily then he does going to Australia. And I don't know if that has to do with color of skin or where somebody happened to reside and the law enforcement jurisdiction that is attendant with that.

MR. ALEXANDER. I might mention that Chairman Whirlwind Horse from the Oglala Sioux Tribe testified yesterday and indicated that merchants from surrounding communities have regularly been appearing of late in tribal court and receiving judgments.

MR. JANKLOW. That is correct. And the most recent case that we had of murder, unfortunately, in this State—I should say a killing because there's been no conviction—the individual defendant happened to have come from within Pine Ridge. The arrest was initially made by the tribal authorities and that individual was turned over to the State authorities in Martin, being as good an example, without an agreement, but as good an example of cooperation on a local level that you have ever seen in your life. Once the injury was there and the in-

cident took place, nobody cared where the police came from. They all worked together and resolved the problem without formal agreements.

MR. ALEXANDER. Miss Donahue?

MS. DONAHUE. If I may say something on this trust that we were discussing earlier, and that is in our investigations in human rights cases we had an opportunity to talk to both sides of issues of complainants and respondents. We also received many inquiries that never became complaints and bitchings about things that were going on that would probably never reach our office if there was a level of more trust in certain areas. You know, you would try to resolve them by going to each other. And it's not every reservation town in the State but certainly some.

MR. ZIMIGA. I think one of the things that I initiated when I got into office was called a coordinating committee, was made up of various people within the State department and from the Bureau of Indian Affairs as representatives asking them to sit on there so that we could look at and maybe in some ways provide some solutions to some of the problems that may be confronting Indian people, not just on reservations but off reservations.

I see that as far as Indians affairs, I think that the Office of Indian Affairs should be increased. I see in the past that the legislature didn't see that it should be increased and the amount of workload within that office and half that time—if a grievance come to me I use to take them to the division of human rights but within those areas. So I see that, you know, more emphasis has to be given in the area of Indian affairs within this State.

MR. ALEXANDER. Dr. Dahlin?

MR. DAHLIN. A couple of comments. I guess the first thing, I am not sure that I sensed from the conference, at least the portion of it I attended, that there was necessarily a feeling that the Federal Government didn't have even a greater role to play then they had played in the past. At least personally, I guess, that would be my feeling. I think a lot of the problems of jurisdiction and other kinds of problems could be cleared up if there were clear and consistent Federal policy. And I think the attorney general's given a couple examples currently of where we have got problems. And there is no reason why, in my view, we should have to litigate for several years the question of whether or not tribal law enforcement officers can arrest non-Indians. That could be, I would think, established very clearly and quickly in a statute, whatever the policy judgment of the Congress might be.

As an example, in our own agency I mentioned earlier that the Law Enforcement Assistance [Administration] program at the national level places the money that is available under the block grant program to tribes is administered through a State agency. The highway safety program, which is administered through the Department of Transportation at the Federal level, deals directly with tribal government. And I think this kind of inconsistency on the part of Federal agencies is difficult

for me to understand and I believe its difficult for most people in the State. So the first point I would emphasize is that I think the Federal Government has a very strong role and that, in my view, it has not fulfilled in the past in establishing clear, consistent policy that all of us at the State and local government level can operate under.

Then secondly, in terms of State authority again, I think it is important to emphasize that unless the agreements are acceptable at the local level, whether it's the local tribe or the local county or city, that an agreement that is imposed somehow from Pierre or from Washington is not likely to be very successful. And in that framework, I think probably there is, as far as South Dakota law goes, ample legal authority to reach agreements at least in the law enforcement area.

MR. ALEXANDER. Mr. Chairman.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. No questions.

CHAIRMAN FLEMMING. Mrs. Witt?

DR. WITT. Yes, please.

My question is for each of you. This Commission staff in the course of its investigation has discovered that law enforcement data relative to the Indian population is very difficult to come by, that such data are not broken down by race. What is your view on the gathering of this data and Mr. Dahlin, if you would start?

MR. DAHLIN. That is not an easy issue for me, but on balance, I think that it would be inappropriate for a highway patrolman to have to ask the race of the person that he arrests out on the highways. And as a consequence, the current version of the uniform traffic citation does not contain a place for race to be recorded. I am very sympathetic to the need for that kind of data, but I think it places the law enforcement officers in a terribly unfortunate position, because the person that is being asked the question is very likely to wonder what in the world his business is and why does he want to know it and does this reflect some kind of racist attitude that would affect his judgment toward me. So I think it aggravates a problem rather than solving it. If there is some way further along to gather that data, say at the court level, then I think that would be an appropriate place.

DR. WITT. I understand.

Is it true that the South Dakota driver's license contains that information?

MR. DAHLIN. I can't respond. I don't believe that it does, but I could be wrong about that. Yes, certainly, that is right it could. I didn't think that it did.

DR. WITT. This would be one way to do so without intimidating the driver of this hypothetical automobile would be to check the driver's license which is checked in any event, yes?

MR. DAHLIN. It would place the burden on a different State official to determine race. That is right, yes. It would make it easier for law enforcement. It might make it a little more difficult for the driving examiner, but it would make it easier for law enforcement.



DR. WITT. Self-indentification, I guess, is the term.

MR. ZIMIGA, do you feel a need for such data and how would it affect anything that you're involved with?

MR. ZIMIGA. I think in a number of senses, if we look at using data for the amount of Federal funds that flow in through the State that relate to Indian people, that we could look at that within the comparison of—as far as economic areas—that as far as the Indian people are concerned, now they are participating in that economic part of the growth of the State. And I think it would be beneficial in some of these areas that—maybe like for revenue sharing—so that we know that sometimes on some of the reservations within the revenue sharing program with tax collection that maybe—at Rosebud, I think, last year they indicated that they weren't collecting the taxes because they didn't know who was an Indian. So that is—I think it would be helpful economically and for identification of tax collection purposes.

DR. WITT. Miss Donahue, I am particularly interested in the collection of data of law enforcement agencies that you would be relating to.

MS. DONAHUE. My office took a position a couple of years ago stating pretty strongly that it believed that the data should be collected at an early stage in a law enforcement, say an arrest, at the time of arrest. My reason for saying that is that it would be more accurate if taken at that time rather than later in the whole process.

Also, I address the issue because one issue that was raised, about whether or not a judge should have the race of a defendant before him or her in making a disposition of the case. And I have a copy of a letter that I did send to the secretary of public safety which you can have for your records.

DR. WITT. Do you have responses from your requests?

MS. DONAHUE. Apparently he wants to litigate it.

CHAIRMAN FLEMMING. We'll be very happy to make the letter a part of the record at this particular point.

DR. WITT. And then Mr. Janklow, would you respond to this general question?

MR. JANKLOW. You bet. I can't think of anything that is further from making sense. I am not opposed to people voluntarily giving their race to anybody if they want to. But I think we better reach the point of time in America and especially in South Dakota, what do you do if you stop somebody and give them a ticket that's one-fourth Indian and another one is three-fourths? Does your monthly statistics say one because you add the fourths? And if you've got a person that is half Indian and half white where do you carry him on the statistical point? Do you give a point five to each? I mean the whole thing is nonsense and we might as well break them down by Norwegians and Swedes and Irish then too. If we're going to do that, let's throw in the religion and let's start finding out everything about everybody. I just can't think of anything that is basically more un-American than prying into their

private life. If I want to tell you about my race is, it's my business, but I don't think the government has any business eliciting that information from people over their objection. And if you put it on a driver's license, what are you going to do with everybody that is arrested that doesn't have a driver's license or wants to throw it away? The whole thing is nonsense.

DR. WITT. Thank you.

CHAIRMAN FLEMMING. Just to follow up briefly on that particular point, Mr. Janklow, how would you relate your feelings on that to the development and implementation of an affirmative action program in the field of employment?

MR. JANKLOW. How would you relate that to an affirmative action program? I don't know that you could draw up criminal justice statistics on offenders to bridge that gap.

CHAIRMAN FLEMMING. No, I am shifting over to the area of employment and to the area of affirmative action. If you're going to develop an affirmative action program, if you're going to develop timetables and goals, it is going to be necessary for you to have some information to raise for that particular question: Would you agree on that?

MR. JANKLOW. Yes, sir, but you get that information first of all every 10 years in South Dakota with the national census, assuming some validity in the statistical gathering, but you will end up with a statistical base at least every 10 years if the Federal Government does its job right, first of all.

And second of all, when applicants apply for employment they are given the option of putting those kinds of things down if they want to, but I just don't like the idea of the Government coming through and taking that information from everybody in advance of any problem area.

CHAIRMAN FLEMMING. I would like to say on behalf of the Commission that we appreciate very much having the representatives of State government that have served as panel members coming here today and sharing with us the experiences that they have had in dealing with these very difficult issues. The kind of information that you have provided is the kind of information that we need and that we, of course, will weigh carefully in connection with the nationwide study that we're making in this area.

As you know, we will be making—we have held hearings in other parts of the country. We will have a national hearing dealing with these issues and then we will finally develop a report which will contain findings and recommendations to the President and to the Congress and you have given us some real insights as to the way that your respective units of State government approach these issues. And we are appreciative of the fact that you have provided us with these insights.

Thank you very much.

MR. BACA. Harley Zephier, Leo Cardenas.

[Messrs. Cardenas and Zephier were sworn.]

**TESTIMONY OF LEO CARDENAS, REGIONAL DIRECTOR, COMMUNITY RELATIONS SERVICE, U.S. DEPARTMENT OF JUSTICE; AND HARLEY ZEPHIER, AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS**

MR. BACA. Would you both please identify yourself for the record giving your title and business address as appropriate?

MR. CARDENAS. Leo Cardenas. I am the Regional Director of the Community Relations Service, an agency with the United States Department of Justice.

MR. BACA. Thank you. Mr. Zephier?

MR. ZEPHIER. Harvey Zephier, Aberdeen, South Dakota. Area Director for the Bureau of Indian Affairs.

MR. BACA. Mr. Zephier, if we could take care of a housekeeping matter first, I have in my hand a document entitled "Program Amount, FY 1978" by reservation. Did you give it to us with the idea that it be submitted for the record?

MR. ZEPHIER. Yes.

MR. BACA. Mr. Chairman, if it were appropriate, I would like it entered at this point.

CHAIRMAN FLEMMING. Without objection it will be entered into the record at this point.

MR. BACA. Thank you.

Mr. Cardenas, beginning with you, could you tell us something about the functions of the Community Relations Service and its place in the Justice Department?

MR. CARDENAS. The Community Relations Service operates out of the 1964 Civil Rights Act. It operates under Title X which mandates the service to assist communities to resolve disputes. It's called "Disagreements Based on Discriminatory Practices." It can operate on its own motion or it can operate at the request of citizens or local officials.

The services that it provides are held in confidence, and in fact if any of the representatives should violate those confidences they face or have the possibility of facing a fine or imprisonment.

MR. BACA. Sir, I presume that if we ask you a question which you would be prohibited from answering on that ground that you will advise us of that?

MR. CARDENAS. Yes, I will.

MR. BACA. Thank you.

Please continue.

MR. CARDENAS. The powers of the agency as mandated by Title X does not provide for any investigative powers nor does it provide for any funds to be given in providing services to communities.

There are four basic services then that the service provides: conciliation, mediation, technical assistance, and finally training. It provides this, of course, in situations of racial conflict.

In terms of the region that I represent, it's based in Denver, it includes what is commonly known as Region VIII. We, through the ser-

vice, call it the Rocky Mountain Region for obvious reasons. We cover the States of Colorado, North Dakota, South Dakota, Utah, Montana, and Wyoming.

MR. BACA. How large a staff do you have to service those States?

MR. CARDENAS. We have a staff of six professionals which includes myself and two secretaries.

MR. BACA. And are those professionals assigned by State or by subject matter or in what other way is your office organized?

MR. CARDENAS. The service or the—the regional office is actually organized currently according to the processes and the services that we provide; that is, I assign one specific representative to work on nothing but the requests that come in, the filtering of the requests. A second representative works on the assessment of those requests. And then finally we have two senior conciliators who actually provide the services. We also have a specialist in police-community relationship and finally myself, the administrator of the program.

MR. BACA. Could you give us a rough estimate of how much time and what kinds of staff have been involved in South Dakota the last several years?

MR. CARDENAS. Dating back to 1973, which was to the best of our knowledge the first time that we became involved or heavily involved in responding to crises involving Indians, out of my office we have provided approximately 35 and to as high as 45 percent of our time and staff to South Dakota alone.

MR. BACA. And were those at the invitation of State officials, tribes, or by what process did you come into this State?

MR. CARDENAS. I think reviewing over those years, we are dating back to 1973, I would venture to say that about 50 percent of those through the middle of 1976, about half of those came at the request of officials or citizens and the other half at our own motion.

MR. BACA. In other words, you saw a particular need in this State greater than the other States that you service?

MR. CARDENAS. Correct.

MR. BACA. Would you say that the reasons that caused you to make such a commitment to the State continue to exist?

MR. CARDENAS. They have diminished and just reviewing our own records, they have diminished approximately 30 percent over the last couple of years. And the reason for this is the fact that because of the nature of the racial conflict in this particular State, dating back in 1973, services that we provided were one of reaction. There were violent confrontations involving Indians and communities, so it was one of us coming in and providing services to keep the peace and to maintain the peace.

Over the last 2 years or so the type of services that we provided have changed, in my estimate dramatically. Whereas, as I mentioned, earlier we would come to prevent violence, today while it is in the same nature of the tone, whereas it would come in to work with law

enforcement on a highly tense situation, today we come in and provide training that in essence which would assure and would provide the officers with better equipment, with equipment—and I mean in terms of how to handle situations, virtually the type of reaction, you know, that we used to handle 5 years ago.

MR. BACA. I presume that kind of training is at the invitation of a particular police force?

MR. CARDENAS. Very definitely.

MR. BACA. Could you tell us some of the police forces for which you have provided that sort of training?

MR. CARDENAS. In the State of South Dakota it is the Pine Ridge Reservation.

MR. BACA. Can you tell us what kind of success the Community Relations Service had over the years that it made such a commitment to the State of South Dakota?

MR. CARDENAS. I think I could perhaps provide an example and use the Pine Ridge Reservation. Our first major assistance to South Dakota came during the Wounded Knee occupation on which we spent considerable time and resources. This was in 1973, as most of you know. Two years later at the invitation of the reservation officials or tribe officials we came in and conducted an assessment of where the police services, how they were being delivered, where they were needed. We provided a consultant who spent—who made two trips into the reservation assisted by our own staff out of the Denver office. We provided a report for the tribe.

One of the major recommendations that was made at that time was one of decentralization which has occurred over a year ago. The other one was of training. Then finally, a civilian body that would work hand in hand with the police department.

Most of these recommendations have now occurred. And in fact, just reading some recent media reports that appear in the local paper quoting local officials, indicate that the crimes, the types of crimes that were committed, say, 4, 5 years ago and the types of crimes that are being handled today are quite different. The type of response that the officers are doing are quite different, the way in which the officers respond is quite different.

I would like to think that through the efforts of the Community Relations Service, its consultants, and obviously the cooperation at the local levels, you know, that some of these changes have occurred.

MR. BACA. I am just asking more as a matter of curiosity than anything else, what service of the four that you listed were you performing at Wounded Knee during the trouble there?

MR. CARDENAS. During the trouble it was what we considered conciliation; that is, opening lines of communications, making sure that people get together and know what each other is doing.

MR. BACA. Between what elements to that conflict were you negotiating or attempting to affect in that conciliation?

MR. CARDENAS. The major conciliation that we were trying to effect at that particular time was to end the occupation of Wounded Knee because of the violence that was occurring. And needless to say which occurred, of course, in some depth.

MR. BACA. Thank you.

Mr. Zephier, can you tell us about the Aberdeen office of the BIA?

MR. ZEPHIER. Yes. I have administrative responsibility for the Aberdeen area which covers three States, North Dakota, South Dakota, and Nebraska. We have 13 agencies and one field office that is planned for South Dakota. We then work with the 15 tribal governments in the three States. We have about 1,450 employees in the BIA in the Aberdeen area.

MR. BACA. What kind of services do you provide?

MR. ZEPHIER. We provide all services except for health services, and these would be any community-related types of services such as social services, recreation, educational, credit, economic, business development, realty, land operations, to mention just a few of them.

MR. BACA. In those latter few, you provide assistance, actually representation?

MR. ZEPHIER. Yes, we do have staff at the agency as well as at the area in those specific program areas.

MR. BACA. Could you tell us something about how your office is organized to carry out these functions?

MR. ZEPHIER. Okay. The area office at the present time has what we call directors of the major programs, social services, trust and natural resources, tribal government, business development, employment, employment assistance, and so on.

We then in turn provide technical assistance, management assistance, and training both to the agency and tribal government.

Each agency is staffed in a likewise manner with the superintendent, administrative officers, and of course the various program chiefs or branch chiefs at their level in the same program areas.

MR. BACA. I know you answered this in part, but could you tell us again how many employees you have and the size of your budget to carry out these responsibilities?

MR. ZEPHIER. Okay. In the total area we have about 1,450 Bureau employees, and this would be the permanent positions that we have. We operate with about \$94 million budget in the total three-State area.

MR. BACA. Could you tell us how many of the 1,450 employees are Indians?

MR. ZEPHIER. Okay. We are running close to about 68 percent of these would now be Indian employees.

MR. BACA. And I presume that they are distributed among the professional and support staff?

MR. ZEPHIER. Correct.

MR. BACA. Thank you.

You have heard Mr. Cardenas talk about a change that he has noted in the climate in South Dakota—that is, the climate of tension; could you comment on that, please?

MR. ZEPHIER. Yes, I think in terms of a relationship that exists between the tribal government and of course the State itself would be parallel within the Bureau of Indian Affairs. The reason why I say this is because when a tribe is viewed in terms of the stereotyped attitudes, the prejudice, the discrimination that does go on, subtly in many instances, the BIA experiences the same type of thing.

The BIA is put in the position where many outside Federal agencies come down criticizing the BIA because they happen to have the trust responsibility for tribal entities. And in a sense you're fighting not only, I think, these kinds of issues, but you're fighting many, many attitudes in the entire process through the system that eventually channel down through the BIA, eventually hits the tribal government itself. And they feel the brunt of the whole situation.

So I think the relationship itself still remains to be improved dramatically in terms of both relationships within the State of South Dakota.

MR. BACA. Could you go into that perhaps a bit more? Mr. Cardenas said that the kind of services that he has to provide or provides now mostly is training and I presume that at least in part is because there has been an easing of tensions and less need for conciliation and for negotiation; are you finding that to be true, also?

MR. ZEPHIER. Yes, because the Bureau of Indian Affairs maintaining the trust responsibility for Indian tribal governments has been moving along the lines of Public Law 93-638 which is the Indian Self-Determination and Educational Assistance Act.

In this the BIA is mandated to work directly with tribal governments and their memberships in giving them every opportunity from a budgetary, financial, as well as staffing, point to deal with any and all resources that are coming through the BIA as well as any other Federal agency that affects the entire reservation.

MR. BACA. Mr. Cardenas, you have been here for a while. You have heard testimony,, a great deal of testimony about the concern in both the Indian and non-Indian community about law enforcement; that is, questions about jurisdiction, questions about alleged maltreatment, questions about overlapping investigative responsibilities. Could you comment for us as to the extent to which you think overlapping jurisdictions—the extent to which you think overlapping investigative responsibilities contribute to rather than relieve or ease tensions?

MR. CARDENAS. Let me address that in terms of the type of services that we can provide, and that is that I feel, and my agency feels, that we can be perhaps a greater service in this particular area, the area—the area of—call it jurisdictional or cross-deputization. We feel that we can be of service first of all because we bring third party mutual services to the area, to the local area that is. While there are some

resources in almost any area that can provide similar services that we can, what they cannot provide is neutrality, at the point that we can come in—neutrality, of course. The other one of which I am very proud of is the years of experience that we provide. For example in my own office the 38, total of 38 years of service is combined within the staff of only six persons. So consequently we can bring neutrality and experience to a local situation.

And then once given these two particular elements we can get—we are able to arrange meetings, we are able to bring resources to bear and work out agreements that people at the local level—first of all made the decision and then second, hopefully, are able to live with it.

I think we have heard earlier from Mr. Janklow and I heard earlier from Mr. Vrooman that they are within the confines of the various laws and the changing laws and the appeals in recent decisions that have occurred. There is obviously confusion on the part of some people. Where the confusion can be diminished is at the local level if people are able to sit down together involving various entities. One of the entities that was mentioned involves Sisseton which is complex by its very nature in that you're involving the reservation, you're involving a city, you're involving a county. Just by its own very nature of those types of parties involved it becomes very complex. But taking all of those three entities together and given the resources that are available to that particular community, we are beginning to work with them and have worked with them over the last year or so on a variety of issues. And they involve—one involves cross-deputization, another one involves the expenditure of funds for education, and another one involves one that we think will come to bear, and that is the creation of some kind of a commission, we call it human relations commission, but some type of body that would begin to address the relief of day-to-day activities.

Over the last 18 months we have been working with all of these people. We have not—or at least we have not seen real positive results, you know, that we could take to the bank today, but we feel that over the next months or so we are very optimistic that all of these issues will come to bear simply because over the last 18 months they have all been working towards the same goal and that is harmony within their own community, harmony to the degree that if you have on the one hand a reservation, a reservation that has received resources that are better than perhaps the city, county on the other hand has some other resources. If they bring all of those resources to bear, put them on the table, and say under these particular conditions this arrest will occur, under these particular conditions these resources will be used for education, these resources will be used for this particular issue, things will work out.

And we also heard earlier, for example, that the people at the local level know each other and consequently cannot, if given some type of a mechanism for relief, cannot judge each other if the issue happens



to be one in which the relief will have to rely on the judicial system. For example—well, we feel that through this mechanism and to us it doesn't matter whether you call it a human relations commission, a task force, as long as it's a matter of people coming together, addressing the issues, and then making the appropriate resources work.

While all of this has been going on there has been decision upon decision at various levels. At the local level they're having suits filed. There have been appeals; there has even been a decision at U.S. Supreme Court level. But the work continues on all of the time. And as long as that continues we are very optimistic, you know, that each of the day-to-day issues will eventually be resolved.

MR. BACA. Along that line, just one final question for both of you and that is you alluded to a recent Supreme Court decision. I presume you mean the *Oliphant* case?

MR. ZEPHIER. Right.

MR. CARDENAS. Yes.

MR. BACA. And I presume also that you were working on issues involving cross-deputization prior to the time that decision came down?

MR. CARDENAS. That's correct.

MR. BACA. Did you notice any change in attitude among the people you were dealing with—that is, representatives of counties, of cities, of the tribal government—as a result of that decision that changes your hopes as to whether there will be cross-deputization on a wider scale?

MR. CARDENAS. What occurs with any decision is a reevaluation of where people are and of course this immediately occurred. How it affected them, the normal apprehension of how that would, you know, how the decision would be implemented at a local level.

While all of this occurred, and in fact as far as we could see from the type of things that we were trying to work locally, you know, there was a standstill of action from the goals that we were seeking for 1 month, perhaps even 2 months. Once that was over then they proceeded to still seek the same goals; that is, working in harmony at the local level.

MR. BACA. Mr. Zephier, do you see that same result from the *Oliphant* case?

MR. ZEPHIER. What I see of course right now—and I was surprised to hear United States Attorney Vrooman mention the fact that they had received instructions down from the Department of Justice, because within our Bureau structure we have not received such memoranda at this date. And our efforts have really gone into trying to get the local people together with the tribes. Our local agency staff have been excellent in terms of making this possible. But again we can only go so far, and really, when you reach an impasse I think we have a responsibility from a Federal standpoint then to do what we can to go the other route if we don't get that cooperation. But we have made that effort at a couple of locations that you are well aware of now, and if we do not get some things directly back, I guess, from our

Washington office, we would try to go the magistrate route and handle it within the Federal court system.

But we will pursue that, I guess, prior to hearing any other policy direction that may come out of the Washington office.

MR. BACA. Thank you.

Mr. Chairman, I have no further questions.

CHAIRMAN FLEMMING. Your response to questions on the part of counsel has given us a very clear picture of the role that both of your Federal agencies are playing in dealing with these issues. We appreciate your coming, appreciate your giving us this picture. It will be very helpful to us as we try to develop findings and recommendations in this area.

Thank you very much.

Counsel will call the next witnesses.

MR. ALEXANDER. Wayne Ducheneaux.

[Mr. Ducheneaux was sworn.]

**TESTIMONY OF WAYNE DUCHENEUX, CHAIRMAN, CHEYENNE RIVER SIOUX TRIBE**

MR. ALEXANDER. Would you please identify yourself for the record, your name and the position you hold in your tribe?

MR. DUCHENEUX. I'm Wayne Ducheneaux, and I'm chairman of the Cheyenne River Sioux Tribe.

MR. ALEXANDER. Yesterday afternoon we had some testimony from several non-Indians representing some organizational basis that stated that they thought in any circumstance that it was inappropriate for an Indian tribe to exercise jurisdiction over a non-Indian. I would like to have your views on that issue.

MR. DUCHENEUX. In any circumstance?

MR. ALEXANDER. Any circumstance.

MR. DUCHENEUX. Well, I disagree with that view. There is several instances where I feel that the tribe—the fact is, I think you should have jurisdiction over all of them whenever they are on reservation lands, but evidently *Oliphant* has taken care of that in some cases. But there is cases involving our land where they are leasing our land, have range permits to run on our land, where they are—could abuse the land, overstock it. They come on the reservation and want to do business on the reservation. I feel that if they want to come on the reservation and do business they ought to be able to abide by the laws of the Cheyenne River Sioux Tribe and be under the jurisdiction of the court if they don't abide by the laws.

MR. ALEXANDER. There is a number of outstanding issues with respect to jurisdiction in the civil area and arrest area. Would it be your view that the appropriate way to resolve these issues is through litigation or are there other mechanisms?

MR. DUCHENEAX. No, sir, I feel that the appropriate way is through negotiation and have attempted to do so on a number of occasions. In fact, one of the first meetings that I attended as tribal chairman back in 1974 was out here at a hearing that Senator Abourezk called. And I stood up then in a public meeting and stressed that I was willing to sit down and negotiate jurisdictional issues with anybody that wanted to talk to me. And for awhile everyone wanted to talk to me so I went back and drafted a proposed jurisdictional agreement. And then came the *DeCoteau* decision and no one would talk to me. And I have been attempting to sit down with someone and negotiate these things ever since.

MR. ALEXANDER. A short while ago several officials from the State government testified indicating various State mechanisms for—State negotiating commissions, the Joint Powers Act, and said today and they said last week that they were willing to negotiate these issues. Has that been your experience? Have they in fact, been willing to respond when inquiries have been made to them?

MR. DUCHENEAX. On some issues. We have a sales tax agreement with the State for collection of our sales taxes as does, I believe, Pine Ridge and Rosebud. We have an agreement on the deer and antelope seasons, and it seems to me the thing that they don't want to sit down and negotiate on is cross-deputization and jurisdiction over each other's people. And they don't want to talk about this at all.

MR. ALEXANDER. Did you have a view as to why they don't?

MR. DUCHENEAX. I have no idea unless, I guess, they don't want an Indian arresting a white man is about the only thing I can see.

The other day—before the *Oliphant* decision—we were arresting white people who broke the law there in Eagle Butte or on the reservation and routinely taking them up to tribal court and giving them a choice, you know, you can go through tribal court or we will turn you over to the county sheriff if you so desire. And the surprising majority of them elected to go through tribal court. Since the *Oliphant* decision said that the tribal court had no jurisdiction over their—over non-Indians, the attorney general has made some statements such as that the policemen can't arrest non-Indians. But we don't hold that to be true, and we don't hold that we are powerless to try the people because our constitution gives us jurisdiction over non-Indians where they will stipulate to that jurisdiction.

Since the *Oliphant* decision we have arrested some 38 non-Indians and only 9 of them have refused to consent to the jurisdiction. The rest of them all have and it went through the tribal court.

The one case where Mr. Janklow says that we are in litigation, and I thought the case was settled, was the case of a lady speeding through town. She was stopped by the tribal police and told to appear for arraignment and she wouldn't. She sued, saying that we had no jurisdiction over her to arrest her, and Judge Bogue ruled that we did have and remanded the thing back to the tribal court to determine whether

or not she was an Indian or non-Indian. And I was glad to hear the person from the department of public safety say that it would be impossible for the State highway department to stop everybody and ask him whether or not he is an Indian or non-Indian because that is the exact same thing we say, that you cannot ask a policeman out there when someone is breaking the law to stop and determine whether or not he is an Indian or a non-Indian. The policeman has no business making an assumption of whether or not he has jurisdiction over a person if he is breaking the law. That is the court's prerogative, and since the *Wheeler* decision that says that the tribal courts are not arms of the Federal courts, I believe that the tribal court has—its first duty is to see whether or not—to determine its own jurisdiction over any particular case that comes before it.

MR. ALEXANDER. In your view, is the controversy surrounding jurisdiction and some of the fallout from that that we have heard in interviews or allegations of tribal justice systems aren't as fair necessarily or as efficient as other justice systems? Do you think that these allegations and these controversies are in fact the real issues or are there other underlying issues that don't necessarily get discussed?

MR. DUCHENEAUX. I don't feel that our courts are any more incompetent or corrupt than the old JPs [justice of the peace] used to be, that the State of South Dakota had up until about a couple of years ago. They were untrained magistrates and everyone seemed to get along pretty well with them.

And our judges, I feel, are just as trained in tribal law and the protections that are given under tribal law as any—as Judge Bogue is about the Federal laws, or any South Dakota judge is to the procedures and the protections that are given under the State laws.

And I feel that it's just a case of non-Indians not wanting to have to have an Indian being able to tell them what to do. I was quite surprised to hear Mr. Janklow say that the highway patrol couldn't—the department of public safety couldn't enter into cross-deputization agreements because we have an agreement with the game, fish, and parks that specifically provides for cross-deputization. And section 6 of the agreement says:

Both parties agree that an appropriate game law enforcement officer acting as agents for each party shall be deemed agents of both parties during the above mentioned coinciding seasons, such agreement to be considered to be a cross-deputization of agents of both parties for the above described period only.

Now if the department of game, fish, and parks and the department of revenue can enter into these kinds of agreements under joint powers or any other authorizing legislation it would seem to me that another department of the State of South Dakota, which is the department of public safety, could enter into these agreements. And he says one of the reasons he don't want them to do it is because of the local officials down below not participating in it.

We have asked the local officials on many occasions to participate with us. They want cross-deputization, but they want it one way—where they can arrest Indians, but we cannot arrest white men. And they keep bringing up the fact that their sheriff would be liable for—or the county—or the county or the city would be liable for any—

MR. ALEXANDER. Wrongful conduct?

MR. DUCHENEAUX. Wrongful conduct, while at the same time the city is hiring people that we have terminated from our police department for various reasons. The fact is, their present officer is a guy that used to be one of the policemen on our force and had been terminated.

MR. ALEXANDER. If problems such as these are unable to be resolved at the local level and if the State apparatuses do not work in certain circumstances, do you have a view as to what the appropriate Federal role should be, either legislatively or through the Department of Justice?

MR. DUCHENEAUX. Well, first off, I don't feel that if these can be worked on a local level the Federal Government shouldn't take a hand in it, because I don't believe any solution that Congress might impose upon us is going to be liked by either the non-Indians or the Indians on the reservations. I would like to see Federal legislation. I believe that would force the States to negotiate with the tribes on a good faith basis. And I don't mean to give up anything that they feel is rightfully theirs, but to sit down and negotiate and if an agreement could be reached between the two that the agreement should go into effect.

MR. ALEXANDER. You have been involved to some extent in some of the national Indian organizations. I know you have been involved in NCAI [National Congress of American Indians] and so on. In your view is the level of cooperation or ability of cooperation distinctly different in this State than others that you are familiar with or is this a problem that is reflected throughout Indian country today?

MR. DUCHENEAUX. That is a good one. There seems to be some States that are working with the tribes in certain areas better than others. That's about all I can say. I don't think that there—there is very few of them where the criminal and civil jurisdiction of the court systems are working, that I know of. Others have had agreements like we have on fishing and hunting and things like this, but it boils down to this one place where all the trouble is.

MR. ALEXANDER. Some of the testimony earlier indicated oftentimes that tribal law enforcement systems are relatively new instrumentalities in the State. A number of people have suggested it sort of started in the 1970s. What is the situation at Cheyenne River? How long have you been running your own tribal—

MR. DUCHENEAUX. Cheyenne River Tribe has been running their own law and order system since the Indian Reorganization Act in 1935 and up until a couple of years ago has been paying the full freight for it. The Bureau does help out now.

MR. ALEXANDER. Has the tribe been involved in recent years or throughout the years in efforts towards economic development to put more Indian people into the ranching economy and other economies in the Cheyenne River?

MR. DUCHENEAUX. Yes, sir, for—again since 1935, we have had several cattle programs or one cattle program that has been ongoing ever since then and then another one that was just phased out.

MR. ALEXANDER. Does this activity of the Cheyenne River Sioux—developing and utilizing its own lands—have any impact in this controversy? Do you think land and the use of your own resources affects the conflict setting in the State?

MR. DUCHENEAUX. Very much so, sir. Back in 1956 when the tribes started what was known as the rehabilitation program, most of our lands was leased by non-Indian ranchers, and when the tribes started taking the land back to give to the Indian operators to set up their own ranching operations, some of the people threatened to take us to court. We was taking their land away from them. I know they all said their county governments were going to fold and this was their land, they used it for many years. And most of them, I think, have the idea that Indian lands are public lands and that they can pretty much dictate the use of those lands. But they are not public lands. They are private lands. And I think since about 1956 and on they have woke up to the fact and found out and now they are going out to try to get the lands in any way that they can. If they can get the State jurisdiction over them and the ability to tax them, that is the first step.

MR. ALEXANDER. So would it be accurate to state that even if the criminal jurisdiction was completely straightened out there still would be an underlying conflict based on land?

MR. DUCHENEAUX. You need only look at what the Public Law 280 states and you will see that the conflict is still there and it's still the land and the resources that is causing the conflict.

MR. ALEXANDER. And do you have a view as to what the Federal Government's role should be on a land-based conflict and how?

MR. DUCHENEAUX. On a land-based conflict?

MR. ALEXANDER. On the underlying conflict that you have just talked about, of land, what should the Department of Justice and the Department of Interior be doing? What role should they be playing here?

MR. DUCHENEAUX. Well, in those cases where they can't settle it without going to court, I believe the Department or the Federal Government ought to hold to the letter of the law and enforce, I think it's section 175 of 25 U.S.C., and act as the attorney for the tribes for their being abused, for their land and natural resources. But in a lot of cases they won't do it. The tribes have had to go out and hire their own attorneys although they are the trustees of this land and supposedly operating it in our best interest. It's not always been the case.

MR. ALEXANDER. Thank you.

Mr. Chairman.

CHAIRMAN FLEMMING. Mr. Nunez?

MR. NUNEZ. No questions.

CHAIRMAN FLEMMING. Ms. Witt?

DR. WITT. No questions.

MR. DUCHENEAUX. I would like to say a little bit more, if I may.

CHAIRMAN FLEMMING. You certainly may. Go right ahead.

MR. DUCHENEAUX. You know, Mr. Vrooman, the United States attorney, I think more or less indicated that the tribal government is, and the courts are corrupt. And I don't agree to that at all. Our tribal code—well, where he said like I might go in and interfere in the courts. Once the case is in court our tribal code says that I am liable for punishment or any officer of the tribe is liable for punishment if they are—if they do try to interfere in there and the penalties are as severe as the law allows.

But if in some cases they are—I think we had a hell of a poor example to follow, you know, under the present government of ours which more or less parallels the United States Government. There has been a little corruption up there too, but I haven't heard anyone say we ought to give the jurisdiction to the World Court or anything like that.

The other thing is until—now, our code has been recently revised, and in our code the United States attorney has been refusing to prosecute cases, and they are not all under-\$500 cases in the burglaries, because someone busted into my house and took over \$500 worth of stuff and they refused to prosecute him, which is well and good. We have put everything in our code from murder to spitting on the sidewalk, you know, covering the full range. And at any time if they refuse to prosecute, whether it's been murder or burglary or whatever, we will prosecute.

But I feel that the Civil Rights Act that limits the penalties and fines that the tribal courts can impose and the Major Crimes Act that limits the jurisdiction that Indians have over people is a detriment to the tribal courts rather than a help. For a good many years before the Europeans and others came over here we handled our own affairs. And until we are able to handle our own affairs in all these things, our court systems aren't going to develop.

You know, you have got to give a person responsibility if you want him to build in character and the same is with the government or the court system or anything else. And I feel that if an elected judge out here in the State of South Dakota can sit and try a murder case, I don't see where our people can't. And I feel they are perfectly capable, and I feel as they get more responsibility they become more responsible. And I would like to see that changed.

And I do not agree with the Department of Justice, if they have so ruled, that the Federal Government does not have jurisdiction over non-Indians breaking the law on reservation land.

MR. ALEXANDER. Victimless crimes.

MR. DUCHENEUX. Victimless crimes. I feel that the treaty of '68 is very specific in that case and I feel we would challenge them on that if they would try to hold that way.

Another thing that was said was that—the FBI sat up here and said that they are in danger when they go out on the reservation, and if they are in danger, it's their own fault because they are very arrogant people, and I have got another word up here I'd better cross out. But to give you an example, I will cite an incident that happened, and how if they had cooperated with the tribal police at the time they would have had their man. But there is a fellow that the FBI wanted for blowing up a van down in Kansas City, or I think that was what happened, but anyhow he was staying, I guess, down in Swift Bird on our reservation. And one day I commenced to getting calls from the Swift Bird community. They wanted to know what was going on. There were people running around in camouflage suits with M-16 rifles. Well, it turned out it was the FBI. And they were after this particular gentleman and, in fact, stood and talked to him in the doorway for about a half-hour, and he said he thought the guy lived down the road a piece. And when they left he took off.

But at that time I became very hostile and I called the FBI in Pierre and I told them that I didn't want this to happen again. And the gentleman assured me that it wouldn't, and the very next day the people from Swift Bird called again and said they were down there, and so I asked for a meeting with them and got them up there and told them that, if they ever come up in that fashion again, I will have them thrown in jail. And they said, "Well, we're FBI." I told them, "I don't know that when you're creeping around the hills with an M-16 rifle. You may be invaders from some other country," you know, or anything.

But still, whether or not I knew they were FBI or not, I felt it was as a courtesy if they didn't have to have it, they should stop in and check with our people. It would make their job easier. They would have had their man and several other men. When they have cooperated our officers have helped, and in most cases they wouldn't have the hostility that is shown to them. And the gentleman that I talked to assured me that they would do this.

Now whether they have stopped or not, I don't know. I haven't checked with the chief of police, and he is the gentleman that they check in with.

Mr. Janklow said that the problems have only been on the reservation since 1972, and I think he is talking about at the time of the *New Town* decision, but the problems have always been there. It's just that for the first time the shoe is on the other foot and they just now found out that there is problems. They have been going along their merry way thinking that there wasn't any problems out there. And he says that, "Well, things haven't changed in 100 years," but I don't fully agree with that statement. We have always maintained that we have



had jurisdiction within those boundaries. Our constitution which is supposed to have the effect of Federal law says that we have jurisdiction over those, all areas within those boundaries.

But in any case just because something goes on for 100 years doesn't necessarily make it right or the law. And Mr. Janklow being a lawyer had ought to know that.

And then to get back to the State negotiating committee. First of all I will go back to the task force on State-Indian relations. The tribes felt very comfortable with that organization. There were nine legislators and nine tribal chairman on the task force. We sat down and met on a one-to-one basis and the task force was authorized to introduce legislation into the State legislature that they felt would help the State-Indian relations.

And out of the nine proposed bills seven of them passed, and some of the legislators began to get a little worried and said, well—the thing was running out, it was a 2-year task force and we wanted it continued as such. But they said, “No, we're going to go back and establish the commission of Indian affairs,” revamp that and make it a—somewhat along the lines of the task force. But before my time, the Indian affairs commission had sort of a bad name amongst the Indians because the commissioner was the Governor's man, whoever he appointed, he done whatever the commission—or the Governor's wishes and served at his pleasure. And we weren't comfortable with the State Indian affairs commission, so we wanted the task force. But they said, “No. We have set up the State negotiating committee to meet and talk with you.” Well, on the one occasion they did meet that I know of some of these things were ironed out, but I had written a letter to Mr. Janklow requesting that they come up to Cheyenne River and sit down and negotiate the problems of cross-deputization, jurisdictional agreements, and whatnot. Of course, I didn't know that he wasn't the chairman of the committee; Lieutenant Governor Wollman was now Governor so nothing ever came of it. I guess he forwarded the letter to the lieutenant governor. But it just seemed to me that Mr. Janklow seems to be worried about the jurisdictional problems in the State of South Dakota. If he had wrote me a letter and said come on down, whether he was the chairman of the thing or not, I would have went down and visited with him. But he wouldn't do so.

Okay, that is all I have to say. If there are any more questions I will be pleased to answer them.

CHAIRMAN FLEMMING. You are the windup witness and we appreciate very, very much your commenting on the points that have occurred to you as a result of listening to the hearing. And we appreciate your being here with us and we appreciate your giving us the benefit of your views growing out of your experiences.

Thank you very much.

MR. DUCHENEAUX. Thank you.

CHAIRMAN FLEMMING. I ask the hearing be in order.

At the opening session of this hearing, I stated that near the close of the hearing, persons who had not been subpoenaed would, under certain circumstances, be given the opportunity of appearing in an open session. Commissioner Freeman, in her opening statement, setting forth the rules governing this hearing, said that persons wishing to appear at the open session should be in contact with members of the Commission's staff in Room 201 up until 12 o'clock noon on Friday. She stated that such persons would be heard in the order in which they signed up. Those who have signed up have talked with staff, and I'm sure understand the rules of the game, so to speak. Each person will be given—each person will be sworn as a witness. Each person will be given 5 minutes. The 5-minute rule will be enforced by counsel rigidly, strictly, in fairness to all who are participating. When the 5 minutes is up, a sentence of reasonable length can be completed. But the complete statement, if it is a written statement, will be included in its entirety in the record of the hearing.

I understand that there are four or possibly five persons who have indicated that they desire to make a presentation under this 5-minute rule. We have got room for five, haven't we, so I'm going to suggest that all who have given that indication be called. I will ask them to come to the witness table, and we will swear all of them at the same time. Then the counsel will call them in the order in which they signed up.

MR. LEVIS. George Bartlett, Cleveland Two Crow, Ted Means, Charmaine Wisecarver, and Marvin Amiotte, please come forward.

CHAIRMAN FLEMMING. If you will read the names again to make sure the people, the other people are not in the room—

MR. LEVIS. George Bartlett, Marvin Amiotte, Cleveland Two Crow, Ted Means, Charmaine Wisecarver.

[Messrs. Bartlett and Amiotte were sworn.]

#### TESTIMONY OF GEORGE BARTLETT, CUSTER, SOUTH DAKOTA

CHAIRMAN FLEMMING. Thank you.

We are very glad to have you with us. If you will just take a seat.

Counsel will recognize the first witness. You understand the 5-minute rule?

MR. BARTLETT. Yes.

MR. AMIOTTE. Yes.

CHAIRMAN FLEMMING. When the 5 minutes is up, you can complete a sentence of reasonable length, and then if you do have a written statement or want to file a written statement we will be very, very happy to receive it and make it a part of the record.

MR. LEVIS. Mr. Bartlett, would you please state your name, address, for the record, and both of you, I would just like to indicate that any testimony which tends to defame, degrade, or incriminate will be stricken from the record, and the witness will be instructed to cease

and desist from giving such testimony. Also Mr. Bartlett, you had submitted to us a statement that you would like to make part of the record.

MR. BARTLETT. Yes, that is correct.

MR. LEVIS. Would you state your name and address please?

MR. BARTLETT. George Bartlett [inaudible], Custer, South Dakota.

MR. LEVIS. If there is no objection, I would like to submit this into the record.

CHAIRMAN FLEMMING. It is understood that will be made part of the record of the hearing. We will be very glad to listen to a 5-minute summary of it at this time.

MR. LEVIS. Go ahead.

MR. BARTLETT. Thank you very much for letting me come to talk to you.

CHAIRMAN FLEMMING. Speak into the mike.

MR. BARTLETT. I read the *Liberty and Justice for All* report. I understand that most of the people say all it was was generalities. I have submitted documents to you, presented evidence to support the report by South Dakota Advisory Committee on the U.S. Commission on Civil Rights.

What I wanted to talk about was—I want to tell you about South Dakota. I cannot walk, you know, in any town in South Dakota without being harassed, intimidated, or provoked into a fight. This includes bars, restaurants, police stations, or even on the street, you know.

I'm still alive. I'm thankful for that because in these white towns that I walk in, I cannot wear my braids. I have had a lot of hair pulled out from, you know, from people who provoke violence against me or my family. You know, my cars—every car I had is in some way damaged. It doesn't matter what it is, I have experienced prejudice, in law, in church, and just about every facet of life. That includes school, education, and when I went to school, all I heard about was First and Second Battle of Bull Run and Custer and Thomas Jefferson, our forefathers; we never heard nothing about Sitting Bull or Big Foot or Hump or Little Wolf, you know, or Washeta, Sand Creek, Wounded Knee Massacre, or Slim Buttes. I never heard anything about that.

When I went to first grade, why I never knew any English, and when I went to first grade, English, you know, they pound it into me. I try to live like a white man. I can't do it. I failed marriage. I can't drink like a white man. I can't borrow money like a white man, you know, and so that is why you are here, and I'm here. You are here because of all this violence in South Dakota, you know, injustice.

I'm a fugitive-from injustice and the documents will prove what I have to say. When I went to Vietnam and I was drafted, I had to leave my loved ones. Now after Wounded Knee and all this violence, I have to leave the reservation. I'm a fugitive from injustice, like the Vietnam refugee that have to leave the country, that is what a predicament I

am in. I'm not the only one. There are a lot of Indians that leave areas where there is violence caused by FBI, highway patrol, deputy sheriff, sheriff, or chief of police. I have nobody to turn to, but this is my last hope, whatever documents and evidence that I give to you, I hope you look at it, because I'm not, you know, I expect reprisal for speaking.

MR. LEVIS. You have 1 minute.

MR. BARTLETT. That is all, thank you very much.

CHAIRMAN FLEMMING. Thank you.

MR. LEVIS. Mr. Amiotte, would you state your name and address, please?

**TESTIMONY OF MARVIN AMIOTTE, ATTORNEY,  
OGLALA SIOUX TRIBE**

MR. AMIOTTE. My name is Marvin Amiotte, Pine Ridge, South Dakota. I'm an attorney with the Oglala Sioux Tribe.

I would like to correct a misstatement of fact as stated by Attorney General Janklow earlier this afternoon. He referred to a recent shooting incident in which an individual was shot and killed in Interior, South Dakota, and one of the suspects of that particular shooting was a tribal member who lived on the reservation. Mr. Janklow seemed to indicate that the Oglala Sioux Tribal Police did arrest that individual and turn him over to the State authorities. This is not true. The Oglala Sioux Tribe does not have an extradition agreement with the State of South Dakota. While there have been instances wherein they have arrested individuals and turned them over to State authorities, it was not true in this particular case. The suspect in the shooting was on the reservation and did voluntarily turn himself in, in Martin, South Dakota. And there was no arrest made by the tribal police and that individual was not arrested by tribal police and turned over to State authorities. The individual voluntarily turned himself in. I would like the record clear on that particular incident.

I would also like to make a few comments on tribal courts. Tribal courts are becoming increasingly more and more sophisticated. I believe you had an individual here who was a licensed attorney out of one of the central South Dakota tribal courts.

Rosebud has a licensed attorney who is a tribal judge. Pine Ridge, we had a licensed attorney who was the special judge, also a tribal member, and he is licensed to practice in the State of South Dakota. So there are more and more—the tribal courts are becoming more and more sophisticated. In Pine Ridge in particular we have licensed attorneys from the State of South Dakota and Nebraska who come to tribal court, are licensed to practice in tribal court. They come from all the surrounding towns of Hot Springs, Rapid City, Martin, and you know, from some of the testimony I heard, the merchants seemed to give the impression that they really were not aware that this remedy was available in tribal courts. I know there are many, many non-Indian merchants from Nebraska and from the border towns around the Pine Ridge Reservation who have these licensed attorneys come in to tribal

court on collection actions, and for the most part, the tribal members represent themselves against these professional attorneys. I know there have been furniture, automobiles, trailer, mobile homes, have all been repossessed under these actions, if the action was true, and returned to the non-Indian merchants.

Those are the only comments that I have.

CHAIRMAN FLEMMING. Thank you very much. We appreciate both of you being here very, very much. I would like to suggest you read those names once again to make sure they—because we are just a little ahead of our agenda—I want to make sure they haven't come in.

MR. LEVIS. Cleveland Two Crow, Ted Means, Charmaine Wisecarver.

CHAIRMAN FLEMMING. I assume no one is in the corridors. All right. Anyone in the corridors?

We understand that one of the persons who signed up is on the way here. We recognize we are a little bit ahead of our schedule. This was scheduled to start at 4 o'clock. So we will stand in recess until she arrives, and possibly one or two of the others may also come. As soon as she arrives, the hearing will resume.

[The hearing was recessed from 3:40 p.m. to 3:55 p.m.]

CHAIRMAN FLEMMING. The hearing will resume.

MR. LEVIS. I would like to call Cleveland Two Crow, Ted Means, Charmaine Wisecarver, please.

[Ms. Wisecarver was sworn.]

#### TESTIMONY OF CHARMAINE WISECARVER, RAPID CITY, SOUTH DAKOTA

CHAIRMAN FLEMMING. Thank you. We are very happy to have you.

I assume that counsel has explained to you the procedure, the 5-minute rule and so on? Am I correct?

MS. WISECARVER. Yes.

CHAIRMAN FLEMMING. Okay.

MR. LEVIS. Would you please state your name for the record.

MS. WISECARVER. Charmaine Wisecarver, 903 Lablanc, Rapid City, South Dakota.

MR. LEVIS. You may go ahead.

MS. WISECARVER. I realize that the issues being presented at these hearings relate primarily to reservations and towns bordering reservations. As urban Indians not living on the reservations, we do not wish to detract from the importance of these hearings, as the problems presented are real and need attention. However, because the urban Indians are not organized and presently do not have a representative en-

tity, we face greater discriminatory practices and yet do not often have the opportunity to express our concerns.

I have read the report, *Liberty and Justice for All*, prepared by the State Advisory Committee on Civil Rights. I feel this report has only touched the surface of the problem of discriminatory practices of the law enforcement and individual agencies of Pennington County.

The fact that only 50 of the approximate total of 4,000 Indians residing in Rapid City testified at the hearings mentioned in the report indicates that testimony was received from a very small sampling of the total Indian population.

My greatest concern and the concern of many of my friends and relatives lies in the future of the findings of this report. These concerns we realize cannot be answered at this time and will require a great deal of debate and deliberation before a solution can be reached.

Our major concerns are as follows:

Number one, many times different advisory committees and research groups develop reports concerning the problems faced by urban Indians, for example, the American Indian Policy Review Commission's findings on the problems of urban Indians. Although these recommendations were given to State and local agencies, the advisory committees themselves lack the power to enforce the recommendations.

Number two, we are not unique in the problems we encounter and similar situations exist in other urban areas concerning Indian people.

Number three, as a result of our cultural upbringing, we are not as vocal as our fellow white and black neighbors. We have been taught to endure mental and physical pain for the sake of peace.

Number four, our educational level is not as high as our white and black neighbors, and therefore, we are not aware of the avenues available to rectify the injustices inflicted upon us.

Number five, again, as we are not an organized entity and have chosen to live as individual citizens, we do not have a representative body to assist and protect us although we are discriminated against as one group of people.

These concerns have also been expressed in the report, *Liberty and Justice for All*. We realize that we are opening up a new area of concern that has not been given adequate attention or has not been adequately dealt with in the past. Therefore, at this time we would like to request from the Civil Rights Commission assistance in helping us in our efforts to find solutions for our problems in the area of law enforcement and judicial procedures as it pertains to the urban Indian.

Thank you.

CHAIRMAN FLEMMING. Thank you very much. We appreciate your coming back. We appreciate your presenting that statement.

We will read the other two names once more.

MR. LEVIS. Cleveland Two Crow, Ted Means.

CHAIRMAN FLEMMING. This completes the hearing scheduled for this city. In closing it, I again want to express appreciation of the Commis-

sion to the State Advisory Committee for South Dakota for the work that they have done in this area, and in so doing I also want to express deep appreciation to Dr. Witt and her associates in the regional office in Denver for the assistance they gave the State Advisory Committee and the staff that have worked on this hearing, and then obviously, I want to express our deep gratitude to all of the members of the staff who have spent so many weeks conducting interviews and getting ready for what we feel has been a very profitable 2 days.

As I indicatd earlier this afternoon, the evidence that has been brought together in this way will be considered along with evidence from other hearings, evidence from the national hearing that will be held soon after the first of the year, the first of next year. Then we will evaluate all of the evidence and on the basis of that evaluation will develop findings and recommendations which we will address to the President and to the Congress.

Commissioner Freeman, do you have anything to add?

COMMISSIONER FREEMAN. No, except to join you in thanking the staff.

CHAIRMAN FLEMMING. Okay. This hearing is adjourned.

[At 4:01 p.m. the hearing was adjourned.]

*Exhibit No. 1*

[6335-01]

## SOUTH DAKOTA

## Hearing

Notice is hereby given pursuant to the provisions of the Civil Rights Act of 1957, 71 Stat. 634, as amended, that a public hearing of the U.S. Commission on Civil Rights will commence on July 27, 1978, at the Rushmore Plaza Civic Center, Room 103, 444 Mount Rushmore Road North, Rapid City, South Dakota. An executive session, if appropriate, may be convened at any time before or during the hearing.

The purpose of the hearing is to collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice, particularly concerning American Indians; to appraise the laws and policies of the Federal Government with respect to denials of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice, particularly concerning American Indians; and to disseminate information with respect to denials of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice, particularly concerning American Indians.

Dated at Washington, D.C., June 20, 1978.

ARTHUR S. FLEMING,  
*Chairman.*

IFR Doc. 78-17402 Filed 6-22-78; 8:45 am



*Exhibit No. 2*CROSS DEPUTIZATION AGREEMENT

This agreement, between U.S. Department of Interior's Bureau of Indian Affairs, the Sisseton-Wahpeton Sioux Tribe and Marshall County

regarding the matter of Cross Deputy Commissions, is for the purpose of establishing specific guidelines and delineating the boundaries of jurisdiction.

All cross deputized officers must meet the minimum qualifications as established by the State of South Dakota. There will be no exceptions.

Offenses committed within a particular jurisdiction will be responded to by the police agency that has primary police responsibility for the jurisdiction in which the offense was committed. This will not prevent a cross commissioned officer who is properly authorized from initiating police action when time and distance would be a factor in expediting the Law Enforcement function.

When a cross deputized officer is working within the additional jurisdiction, he or she will be under the direction of the officer who has charge of that jurisdiction.

Cross deputy commissions will not allow the enforcement of one agency's jurisdiction on a separate jurisdiction or be used to further the authority or jurisdiction of one agency to another.

The permanent employer of a cross deputized officer will be responsible for the salary and mileage of an officer who must appear to testify in court as result of an arrest made under the cross commission. This reciprocal granting of police authority is agreed upon for the sole purpose of providing more effective or efficient Law Enforcement. This agreement is meant to insure that no person who has committed a crime and who would normally be subject to arrest and incarceration, is permitted immunity from such action merely because of a Law Enforcement Officers inability to act in an official capacity within that jurisdiction.

This commission will apply in those territories in which Law Enforcement Officers or agencies, within the normal course of their duties, cross jurisdictional boundaries. All arrests made under this agreement must be processed as they would under normal circumstances.

This agreement shall become binding and operative upon its approval by both governing bodies involved.

This agreement can then be terminated by either Party thereto by advising other party that they wish to terminate such agreement. Upon termination both governing bodies to return their Cross Deputization cards.

If an officer is terminated from his Department his card is to be returned to the issuing department.

This agreement shall become binding and operative for an indefinite period of time, except for violation of Law Enforcement Code of Ethics, at which time the heads of the various governmental agencies will determine whether or not the agreement shall be terminated.

Ly... ! 1111  
Chairman, County Commissioner

Robert Olson  
Sheriff, of Marshall County

J. Kenneth Adams  
Superintendent, Sisseton Agency  
Department of the Interior  
Bureau of Indian Affairs

Ray Hute  
Chairman, Sisseton-Wahpeton  
Sioux Tribe

Adopted July 1, 1977

Other Jurisdiction

Exhibit No. 3



February 15, 1977

Hon. Judge Parynke  
Fifth Judicial Circuit  
Court  
Sisseton, ND 57262

Dear Judge Parynke;

This is to inform you of the Tribal Court's position on the opinion that you issued regarding the Sisseton Wakpeton Housing Authority's jurisdiction.

The Tribal Court's position is that we will not honor the opinion issued by your court, as it is not binding to the Sisseton Wakpeton Sioux Tribe.

I will continue to assert jurisdiction, both civil and criminal, over this portion of trust land.

Sincerely,

*Joseph C. Senia*  
 Joseph C. Senia, Chief Judge  
 Sisseton Wakpeton Sioux Tribe

State of South Dakota }  
 County of Roberts } ss *In Circuit* Court  
 I, the undersigned, Clerk of the above named Court, do hereby certify, that the within and foregoing is a full, true and complete copy of the Original Instrument, as the same appears on file in this office.  
 IN WITNESS WHEREOF, I have here unto set my hand and seal at Sisseton, S. Dak. this 16 day of May, 1977.  
 Clerk of *In Circuit* Court;  
 By \_\_\_\_\_ Deputy



Exhibit No. 4

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
COUNTY OF ROBERTS) :SS FIFTH JUDICIAL CIRCUIT
\* \* \* \* \*

Jolene Mandan
Plaintiff,

-vs-

JUDGMENT

Tribal Police of the Sisseton-
Wahpeton Sioux Tribe
Defendant.

\* \* \* \* \*

The trial on the above entitled matter having come on
before the Court in the Courtroom in the Courthouse in the
City of Sisseton, County of Roberts and State of South Dakota,
on the 24th day of November, 1976, before the Honorable
Mildred Ramynke, Judge presiding, and the officers of the Court
present; the Plaintiff appearing in person and by her Attorney,
L.R. Gustafson of Britton, South Dakota, and the Defendants
appearing by their Attorney, Creighton L. Robertson, Attorney
of Sisseton, South Dakota; the Court having heard and considered
all of the Plaintiff's evidence including exhibits and oral
testimony and the Defendants having not presented any evidence
to the Court, and the Court having heard the arguments of the
respective counsels and having considered their Pre-Trial
Briefs as had been requested by the Court and having entered
its Findings of Fact and Conclusions of Law, which are incor-
porated herein by reference thereto as if the same were herein
restated, and being fully apprised in the premises, it is now
therefore

ORDERED, ADJUDGED AND DECREED that the Defendants and
each of them be and they hereby are enjoined, restrained and
estopped from exercising any criminal or civil control or
jurisdiction over the Plaintiff on the property described as:

- 4 Outlot A in the Northeast Quarter (NE1/4)
of the Northeast Quarter (NE1/4) of Section
Twenty-eight (28), Township One Hundred
Twenty-six (126) North, Range Fifty-one
(51), West of the 5th P.M., Roberts County,
South Dakota, and Sublot 1 of St. Peters
Subdivision of the Southeast Quarter (SE1/4)
of the Northeast Quarter (NE1/4) of said
Section Twenty-eight (28), Township One Hundred
Twenty-six (126) North, Range Fifty-one (51),
West of the 5th P.M., Roberts County, South Dakota.

(2)

that being the Low Rent Housing Project or any part thereof and that the said Defendants or any of them are enjoined, restrained and estopped from testifying against the Plaintiff in any Court for any charge that the Sisseton-Wahpeton Sioux Tribe has for any violation of Tribal Law on the above described property.

It is further ORDERED, ADJUDGED AND DECREED that the State of South Dakota has exclusive civil and criminal jurisdiction upon the property described as:

Outlot A in the Northeast Quarter (NE<sup>1</sup>/<sub>4</sub>) of the Northeast Quarter (NE<sup>1</sup>/<sub>4</sub>) of Section Twenty-eight (28), Township One Hundred Twenty-six (126) North, Range Fifty-one (51), West of the 5th P.M., Roberts County, South Dakota, and Sublot 1 of St. Peters Subdivision of the Southeast Quarter (SE<sup>1</sup>/<sub>4</sub>) of the Northeast Quarter (NE<sup>1</sup>/<sub>4</sub>) of said Section Twenty-eight (28), Township One Hundred Twenty-six (126) North, Range Fifty-one (51), West of the 5th P.M., Roberts County, South Dakota.

It is further ORDERED, ADJUDGED AND DECREED that no costs shall be taxed in this case.

Dated this 10th day of January, 1977, at Sisseton, South Dakota.

By the Court:

*Mildred Ramoake*  
Judge of the Circuit Court



*Carol Pederson*  
Clerk.  
*Carol Pederson, deputy*

State of South Dakota } ss In Sisseton Court  
County of Roberts }  
I, the undersigned, Clerk of the above named Court, do hereby certify, that the within and foregoing is a full, true and complete copy of the Original Instrument, as the same appears on file in this office.  
IN WITNESS WHEREOF, I have here unto set my hand and seal at Sisseton, S. Dak. this 16 day of May, 1977.  
Clerk of Sisseton Courts  
By Carol Pederson Deputy

STATE OF SOUTH DAKOTA }  
COUNTY OF ROBERTS }  
Filed and Recorded at 11:00 A.M.  
*Mildred Ramoake* / 516-517  
*Carol Pederson*

*Exhibit No. 5*FISCAL YEAR - 1978FEDERAL FUNDS PROVIDED FOR PROVISION OF SERVICES FOR BENEFIT OF THE  
SISSETON WAHPETON SIOUX:

<u>AGENCY-PROVIDER:</u>	<u>AMOUNT:</u>
1. Sisseton Wahpeton Sioux Tribe:	\$8,755,483.
2. Sisseton Agency - Bureau of Indian Affairs, (including \$629,617. obtained from leases of Indian Lands):	2,229,292.
3. Sisseton Service Unit - Indian Health Service:	<u>5,021,640.</u>
TOTAL:	\$16,006,415.

SISSETON WAHPETON SIOUX TRIBE  
FEDERAL CONTRACT-GRANT-LOAN PROGRAMS  
Fy-1978

1. BIA CONTRACTS: (Pursuant to PL 93-638)	CONTRACT NO.	AMOUNT:
01 RESERVATION EMPLOYMENT OPPORTUNITY	#A00C14206437	\$286,000.00
02 EDUCATION PLANNING PROJECT	#A00C14206445	12,000.00
03 EMERGENCY CARE OF INDIAN CHILDREN	#A00C14206446	12,640.00
04 ADULT EDUCATION	#A00C14206441	23,000.00
05 DISTRIBUTION OF DONATED COMMODITIES	#A00C14206439	10,000.00
06 AID TO TRIBAL GOVERNMENT	#A00C14206443	20,200.00
07 JUDICIAL SERVICE PROGRAM	#A00C14206475	50,000.00
08 COOPERATIVE EXTENSION PROGRAM	#A00C14206440	21,600.00
09 LAW ENFORCEMENT SERVICE PROGRAM	#A00C14206481	131,600.00
10 COMMERCIAL ENTERPRISE DEVELOPMENT PROGRAM	#A00C14206444	7,200.00
11 HOME IMPROVEMENT PROGRAM	#A00C14206425	104,600.00
12 WORK EXPERIENCE & JOB PLACEMENT	#A00C14206438	30,000.00
13 RECREATION & CAMPING	#A00C14206442	13,000.00
14 RESERVATION PROGRAMS	#A00C14206625	33,400.00
15 UPDATING CENSUS PROGRAM	#A00C14206356	104,600.00
16 REVISION OF TRIBAL CONSTITUTION	#A00C14206569	5,000.00
17 TRAINING & TECHNICAL ASSISTANCE	#A00C14206585	6,700.00
18 TRAINING & TECHNICAL ASSISTANCE L. S. & L.	#A00C14206586	7,500.00
19 CRIMINAL JUSTICE PLANNER	#A00C14206344	22,055.00
20 LAND ACQUISITION (ended 12-20-77)	#A00G1420-7004	121,660.00
21 LAND ACQUISITION	#A00G1420-8000	136,345.00
22 JOHNSON O'MALLEY	#A00C14206687	174,372.48
23 GENERAL COUNSEL CONTRACT	#A00C14203382	10,000.00

24	RESERVATION REALTY ASSISTANCE	#A00C14206487	35,216.80
25	AGRICULTURAL DEVELOPMENT PROJECT	#A00C14206714	200,000.00
26	JUVENILE CRISIS INTERVENTION CENTER	#A00C14206719	15,120.00
27	BIG COULEE EARLY CHILDHOOD INST. SERVICE	#A00C14206722	<u>5,280.00</u>
	<u>TOTAL:</u>		\$1,599,089.28

2.	<u>HEW CONTRACTS AND GRANTS:</u>	<u>CONTRACT NO.</u>	<u>AMOUNT:</u>
01	ADMINISTRATION OF NATIVE AMERICANS (ANA)	#90-I-92 (5)	80,000.00
02	ADMINISTRATION OF NATIVE AMERICANS WINTERIZATION (ANA)	#90-I-92	31,000.00
03	PARENT, CETA INVOLVEMENT PROGRAM	G007702973	115,000.00
04	<del>SPECIAL CRISIS INTERVENTION PROGRAM</del>	<del>#80I23</del>	<del>15,667.00</del>
05	ALCOHOLISM PROGRAM FOR INDIANS	#5-H84-AA00508-106	146,486.00
06	FAMILY PLANNING	#241-77-0330	65,375.23
07	COMMUNITY HEALTH REPRESENTATIVE (PL 93-638)	#241-77-0148	128,000.00
08	JUVENILE HEALTH PROGRAM (PL 93-638)	#241-77-0475	11,370.00
09	TRIBAL HEALTH ADMINISTRATION & DEVELOP. (PL 93-638)	#56-A-000002-01	108,574.00
10	P.O. 3176 TRAINING GRANT FOR ALLIED TRIBAL HEALTH WORKERS (PL 93-638)		<u>5,355.00</u>
	<u>TOTAL:</u>		\$706,827.23

3.	<u>DOL CONTRACTS AND GRANTS: (Indian Division):</u>	<u>CONTRACT NO.</u>	<u>AMOUNT:</u>
01	CETA II	#99-7-045-30-106	57,985.00
02	CETA VI	"	792,708.00
03	CETA III	"	171,073.00
04	NAESP - AGRICULTURAL DEVELOPMENT	99-8-045-19-47	123,964.00
05	NAESP - ACCESS ROADS		<u>244,244.00</u>
	<u>TOTAL:</u>		\$1,389,974.00



4.	<u>HUD GRANTS: (From Regional Office-Office of Indian Programs)</u>		<u>AMOUNT:</u>
	01 HOUSING, URBAN, DEVELOPMENT #701		31,250.00
	02 COMMUNITY DEVELOPMENT BLOCK GRANT		<u>150,000.00</u>
		TOTAL:	\$181,250.00
5.	<u>EDA GRANTS:</u>	<u>GRANT NO.</u>	<u>AMOUNT:</u>
	01 LOCAL PUBLIC WORKS - ALCOHOL BLDG.	#05-51-26537	374,150.00
	02 LOCAL PUBLIC WORKS - VO-TECH	#05-51-00940	631,800.00
	03 SPECIAL PLANNING GRANT	#05-05-15011-06	35,000.00
	04 FARM IRRIGATION GRANT	#05-01-01782	<u>600,000.00</u>
		TOTAL	1,640,950.00
6.	<u>FEDERAL PROGRAMS CHANNELED THROUGH THE STATE OF SOUTH DAKOTA:</u>		<u>AMOUNT:</u>
	01 WOMEN, INFANT, CHILDREN		19,200.00
	02 COMMODITIES		14,000.00
	03 CHILD PLACEMENT PROGRAM TITLE XX	#4482045	77,250.00
	04 TRIBAL ELDERLY PROGRAM		<u>60,893.00</u>
		TOTAL:	\$171,343.00
7.	<u>DOA - FmHA LOAN: (PL 91-229)</u>		<u>AMOUNT:</u>
	01 FARMERS HOME ADMINISTRATION LAND ACQUISITION LOAN		3,000,000.00
8.	<u>DOT-REVENUE SHARING:</u>		<u>AMOUNT:</u>
			66,050.00

SUMMARY OF FEDERAL CONTRACT-GRANT-LOAN PROGRAMS,  
SISSETON-WAHPETON SIOUX TRIBE OF SOUTH DAKOTA IN EFFECT  
DURING FISCAL YEAR - 1978 PERIOD (As of July 21, 1978):

<u>FEDERAL OR OTHER AGENCY SOURCE:</u>	<u>NO. CONTRACTS:</u>	<u>TOTAL AMOUNT:</u>	<u>APPROXIMATE NO. OF EMPLOYEES:</u>
1. BIA:	27	\$1,599,089.	123
2. HEW (including IHS):	10	706,827.	30
3. DOL-CETA-Other: *Summer Youth Programs Not included	5	1,389,974.	171
4. HUD:	2	181,250.	2
5. EDA:	4	1,640,950.	54
6. FEDERAL FUNDS For Services THROUGH STATE OF SD:	4	171,343.	10
7. FmHA-LOAN:	1	3,000,000.	3
8. REVENUE SHARING:	<u>1</u>	<u>66,050.</u>	<u>    </u>
TOTALS:	54	\$8,755,483.	393

BUREAU OF INDIAN AFFAIRS-SISSETON AGENCY  
Fy-1978 ALLOCATIONS

<u>ACTIVITY:</u>	<u>AMOUNT:</u>
<u>1. INDIAN EDUCATION:</u>	
1. Education - Adm. Gen.	\$ 44,290
2. School Operations	119,395.
3. College Student Assistance	180,200.
4. Special Education	3,800.
Subtotal:	\$347,685.
<u>2. INDIAN SERVICES:</u>	
1. Service Grants	297,060
2. Service Other	125,835
3. Law Enforcement	46,675
Subtotal:	\$469,120.
<u>3. INDIAN REAL ESTATE SERVICES:</u>	
	80,790.
Subtotal:	\$ 80,790.
<u>4. BIA-GEN. MANAGEMENT &amp; FACILITIES, OPERATION &amp; MAINTENANCE:</u>	
1. Facilities - Gen.	4,100.
2. Facilities Operation	22,155.
3. Facilities Repair & Maintenance	22,875.
Subtotal:	\$ 49,130.
<u>5. INDIAN ECONOMIC DEVELOPMENT &amp; EMPLOYMENT PROGRAMS:</u>	
1. Credit Operations	19,610.
2. Employment Assistance	147,515.
3. Road Maintenance	128,060.
Subtotal:	\$295,185.
<u>6. INDIAN NATURAL RESOURCE DEVELOPMENT:</u>	
	267,660.
Subtotal:	\$267,660.

7. AGENCY ADMINISTRATION:

1. Executive Direction	46,070.
2. Administrative Services	44,035.

Subtotal: \$ 90,105.

GRAND TOTAL: \$1,599,675.

8. LEASE INCOME FROM LEASE OF INDIVIDUALLY OWNED INDIAN LANDS:  
(PAID OUT TO INDIAN LANDOWNERS)

629,617.

TOTAL FUNDS: \$2,229,292.

INDIAN HEALTH SERVICE - SISSETON SERVICE UNITFy-1978 ALLOCATIONS

1. INDIAN HOSPITAL HEALTH CARE & OUTPATIENT BUDGET:	\$ 803,500.
2. INDIAN CONTRACT HEALTH CARE BUDGET:	316,540.
3. INDIAN <u>FIELD</u> HEALTH SERVICES (includes construction)	<u>3,901,600.</u>
TOTAL:	\$5,021,640.

FEDERAL CONSTRUCTION FUNDS FOR PROJECTS  
IN NON-INDIAN COMMUNITIES FOR BENEFIT OF  
THE SISSETON WAHPETON SIOUX:

<u>AGENCY-PROVIDER:</u>	<u>AMOUNT:</u>
1. Bureau of Indian Affairs:	\$ 4,635,639.
2. Indian Health Services	632,111.
3. Department of Housing and Urban Development through Sisseton Wahpeton Sioux Housing Authority:	5,301,000.
4. Economic Development Administration:	<u>498,000.</u>
TOTAL:	\$11,066,750.

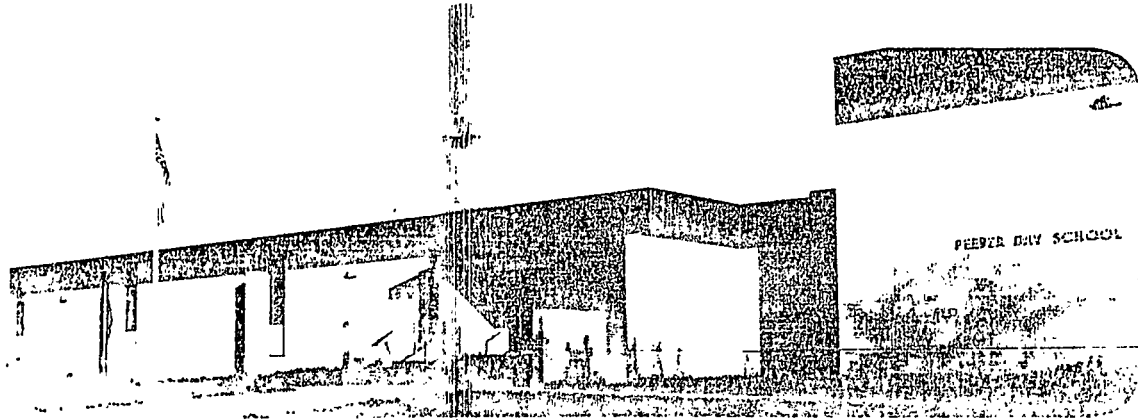
BUREAU OF INDIAN AFFAIRS CONSTRUCTION PROJECTS IN NON-INDIAN COMMUNITIES:

<u>PROJECT:</u>	<u>AMOUNT:</u>
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<p>1. Sisseton SD BIA-High School and Gymnasium Facilities, authorized by the Appropriation Act of June 24, 1967, PL 90-28; Project completed in summer of 1970; (facilities are owned by BIA, and presently are used and occupied by the Sisseton SD Public School District, which receives annual Indian appropriations for the operation of these facilities):</p>	\$3,422,639.
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<p><del>2. Peever SD BIA-Elementary School and</del> Gymnasium facilities, authorized by the Appropriation Act of June 24, 1967, PL 90-28; Project completed in summer of 1970; (facilities are owned by BIA, and presently are used and occupied by the Sisseton SD Public School District, which receives annual Indian appropriations for the operation of these facilities):</p>	<u>\$1,635,639.</u>
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TOTAL:	\$4,635,639.
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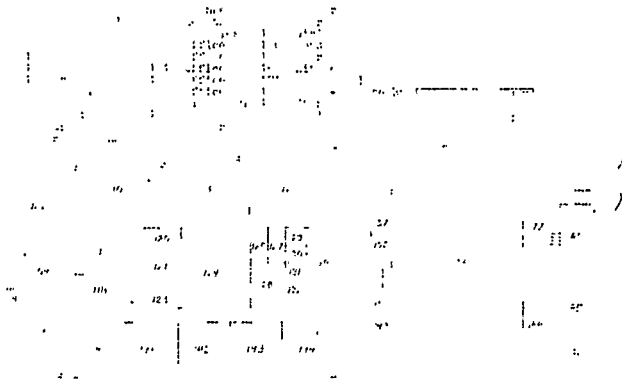


**PEEVER SCHOOL  
STATISTICAL DATA**

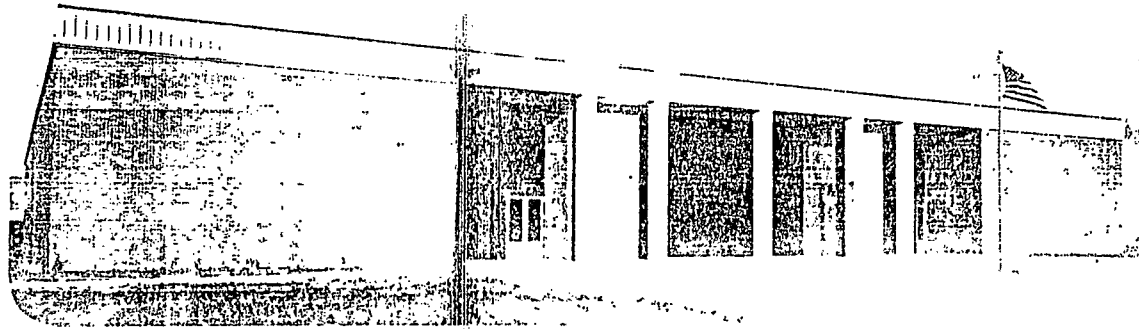
Land Area ..... 110,000 square feet  
 Building Area ..... 41,940 square feet  
 Classrooms ..... 10  
 Gymnasium Seating ..... 450  
 Building Cost (includes equipment and architects fee) \$1,213,000  
 Cost per square foot ..... \$28.97  
 Pupil Capacity ..... 250  
 Construction ..... April 1969 to April 1970  
 General Contractor ..... Les Schull, Watertown, S. D.  
 Mechanical Contractor ..... Sheesley Plumbing & Heating,  
 Mitchell, S. D.  
 Electrical Contractor ..... Bauer Electric, Yankton, S. D.  
 Inspector ..... Jim Ingram  
 Construction Foremen ..... William Hippen

**BUREAU OF INDIAN AFFAIRS  
 Branch of Plant Design and Construction  
 Albuquerque, New Mexico  
 Bob Dudley, Chief**

**PEEVER SCHOOL**



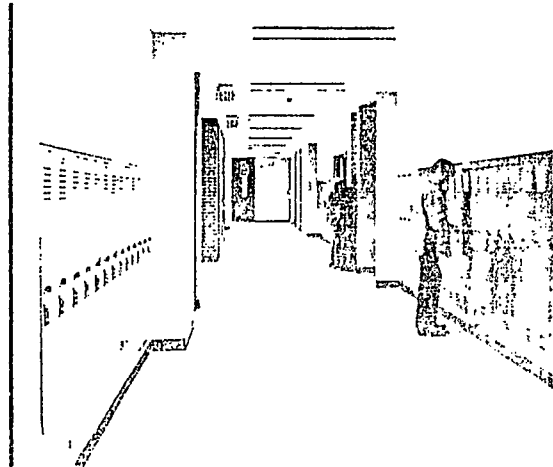




**SISSETON HIGH SCHOOL  
STATISTICAL DATA**

Land Area .....	60 acres
Building Area .....	141,200 square foot
Classrooms .....	34
Gymnasium Seating .....	permanent 1136 bleachers 1500
Building Cost (excludes equipment and architects fee) .....	\$3,422,639
Cost per square foot .....	\$24.24
Pupil Capacity .....	650
Construction .....	October 1958 to August 1970
General Contractor .....	Henry T. Carlson Co., Sioux Falls, S. D.
Mechanical Contractor .....	Sheesley Plumbing & Heating, Mitchell, S. D.
Electrical Contractor .....	Bauer Electric, Yankton, S. D.
Project Architect .....	Neil Kelly
Inspectors .....	Joe Walcott George Thompson Jim Ingram
Electrical Engineer .....	James Foy
Construction Foreman .....	Ernard Reynolds
Architects and Engineers .....	Wendell C. Fritze, A.I.A.; Jean R. Kroeger, A.I.A.; Edward L. Griffin, A.I.A.; Milton L. Berg, P. E., Sioux Falls, S. D.

**BUREAU OF INDIAN AFFAIRS**  
Branch of Plant Design and Construction  
Albuquerque, New Mexico  
Bob Dudley, Chief



INDIAN HEALTH SERVICE CONSTRUCTION PROJECTS LOCATED IN NON-INDIAN COMMUNITIES:

<u>PROJECT:</u>	<u>AUTHORIZATION:</u>	<u>YEAR:</u>	<u>PROJECT DESCRIPTION:</u>	<u>AMOUNT:</u>
1. Project AB-70-990	PL 86-121	1970	Construct water supply and waste disposal facilities to serve 80 units of low-rent housing for Indians in town of Sisseton, SD:	\$204,801.
2. Project AB-71-035	PL 86-121	1971	Construct water supply and waste disposal facilities to serve 80 units of low rent housing for Indians in towns of New Effington, Peever, Summit, Veblen, and Waubay, SD:	221,310.
3. Project AB-73-060	PL 86-121	1972	Construct water supply and waste disposal facilities to serve 28 units of low-rent housing for Indians in towns of Peever, New Effington, Summit, and Veblen, SD:	<u>206,000.</u>
			TOTAL:	\$632,111.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT CONSTRUCTION PROJECTS GRANTED TO  
SISSETON WAHPETON SIOUX HOUSING AUTHORITY PROVIDING LOW-RENT HOUSING TO TRIBAL  
MEMBERS LOCATED IN NON-INDIAN COMMUNITIES:

<u>LOCATION:</u>	<u>NO. UNITS:</u>	<u>COST (@ \$28,500. per Unit):</u>
1. SISSETON SD (ROBERTS CO.)	83	\$2,365,500.
2. PEEVER SD (ROBERTS CO.)	22	627,000.
3. SUMMIT SD (ROBERTS CO.)	<del>14</del>	399,000.
4. NEW EFFINGTON SD (ROBERTS CO.)	18	513,000.
5. WAUBAY SD (DAY CO.)	29	826,500.
6. VELEN SD (MARSHALL CO.)	<u>20</u>	<u>570,000.</u>
TOTAL:	186	\$5,301,000.

EDA INDIAN CONSTRUCTION PROJECTS IN NON-INDIAN COMMUNITIES:

<u>PROJECT NO.</u>	<u>FISCAL YEAR</u>	<u>PROJECT DESCRIPTION</u>	<u>AMOUNT:</u>
1. 05-02-00055	1966	Construction of 30-Bed Community Hospital for City of Sisseton SD. Presently, the facility, Prairie De Coteau, is operated by a non-Indian Board of Directors, and employs one Indian:	\$180,000.
2. 05-01-00144	1967	Construction of a sewage collection system for City of Sisseton SD.	<del>36,000.</del>
3. 05-02-00127	1967	Construction of a sewage treatment plant for Sisseton SD:	20,000.
4. 05-02-00593	1969	Construction of improvements at local airport for City of Sisseton SD:	24,000.
5. 05-02-00584	1969	Install Interceptor and construct sewage lagoons for City of Sisseton SD:	<u>238,000.</u>
		TOTAL:	\$498,000.

## Sewer Project Grant Made To Sisseton

BY THE ASSOCIATED PRESS

More than \$300,000 was made available by the federal government Thursday for a sewer project at Sisseton.

The project will enable the city to expand and provide new jobs, Sen. George McGovern said.

The economic development administration made a \$108,000 grant and a \$130,000 loan to the Sisseton project. Another \$162,240 grant was supplied by the water pollution administration. The federal agencies said

sewer program would help economic situation of the Western Sisseton reservation area.

The money, McGovern was notified, will enable Sisseton to procure a 60-acre lagoon about two and one-half miles from the city and will allow for construction of an interceptor sewer to the lagoon.

EDA said Sisseton sources have reported that commercial expansion plans as a result of the sewer program include expectation by the Sisseton Livestock Auction Company to add 13 men and for Lynch Food Corp. to put on another 30 men. Holiday service and motel corp., also was reported planning to locate at Sisseton, with a staff of 12 employees.

## Grant Approved For Sisseton Reservation

Approval of a \$24,156 grant to help spur industrial growth on the Sisseton Indian Reservation in northeastern South Dakota was announced today by the Economic Development Administration, U. S. Department of Commerce.

Sisseton in Roberts County is the applicant for Federal funds.

They will enable the applicant to convert an unpaved landing strip into an all-weather airport. It will facilitate the location of two industrial plants and the expansion of a local firm the applicant wants.

The Herrer Company, a sporting goods manufacturer and

an assembler of electronic components, plans to establish branch plants in Sisseton and the Landsberger Creamery and Produce Company plans to expand its operations, according to the applicant.

Sisseton officials have been seeking new industry to provide year-round employment for the area's unemployed and underemployed. Most of the new jobs to be opened up as a result of the airport project will be filled from the ranks of the long-term unemployed Indians on the reservation, officials report.

The applicant is supplying \$17,600 and the Federal Aviation Agency is making a \$48,244 grant to complete the total project cost of \$88,000.

EDA was established under the Public Works and Economic Development Act to assist economically lagging areas. In addition to public works grants, the agency may provide public works and business loans and planning and technical assistance.

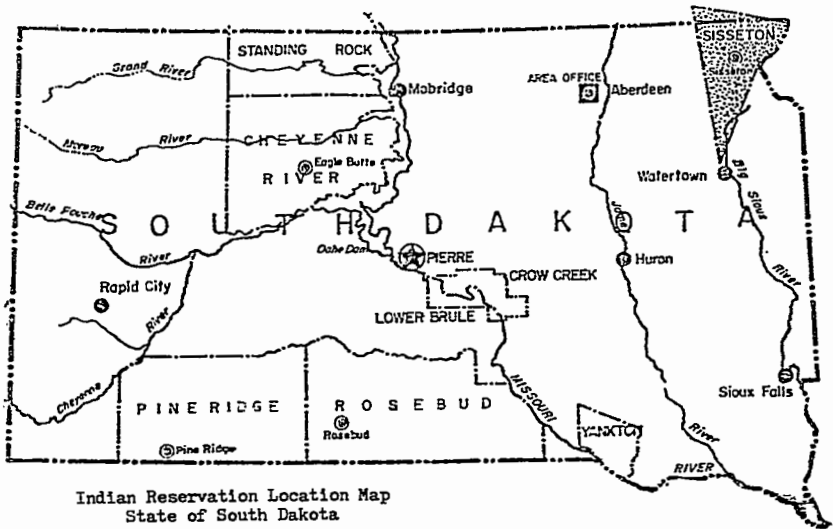
SISSETON WAHPETON SIOUX TRIBE

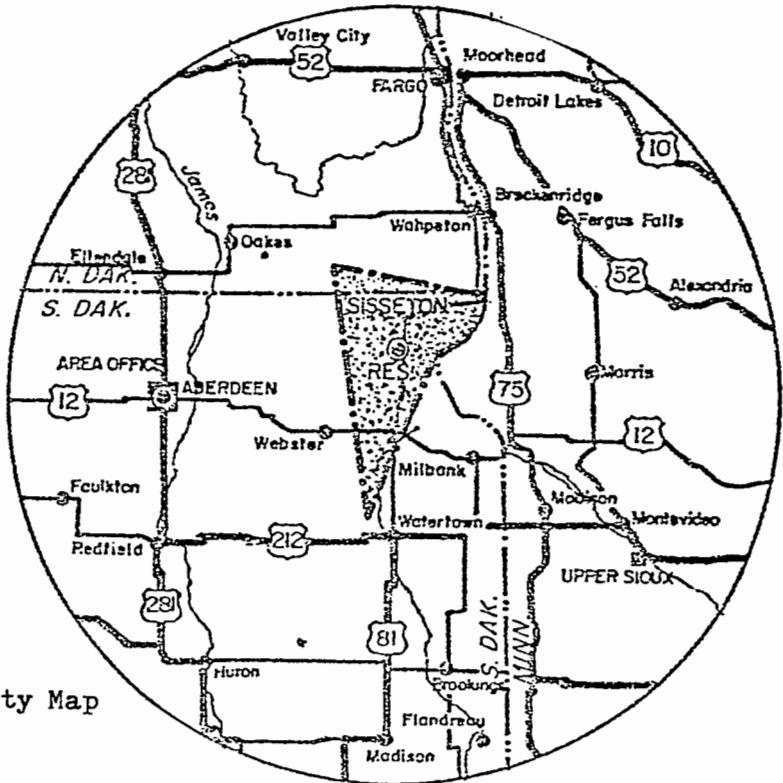
Reservation and Vicinity Maps

and

Land and Population Distribution

CALENDAR YEAR 1977

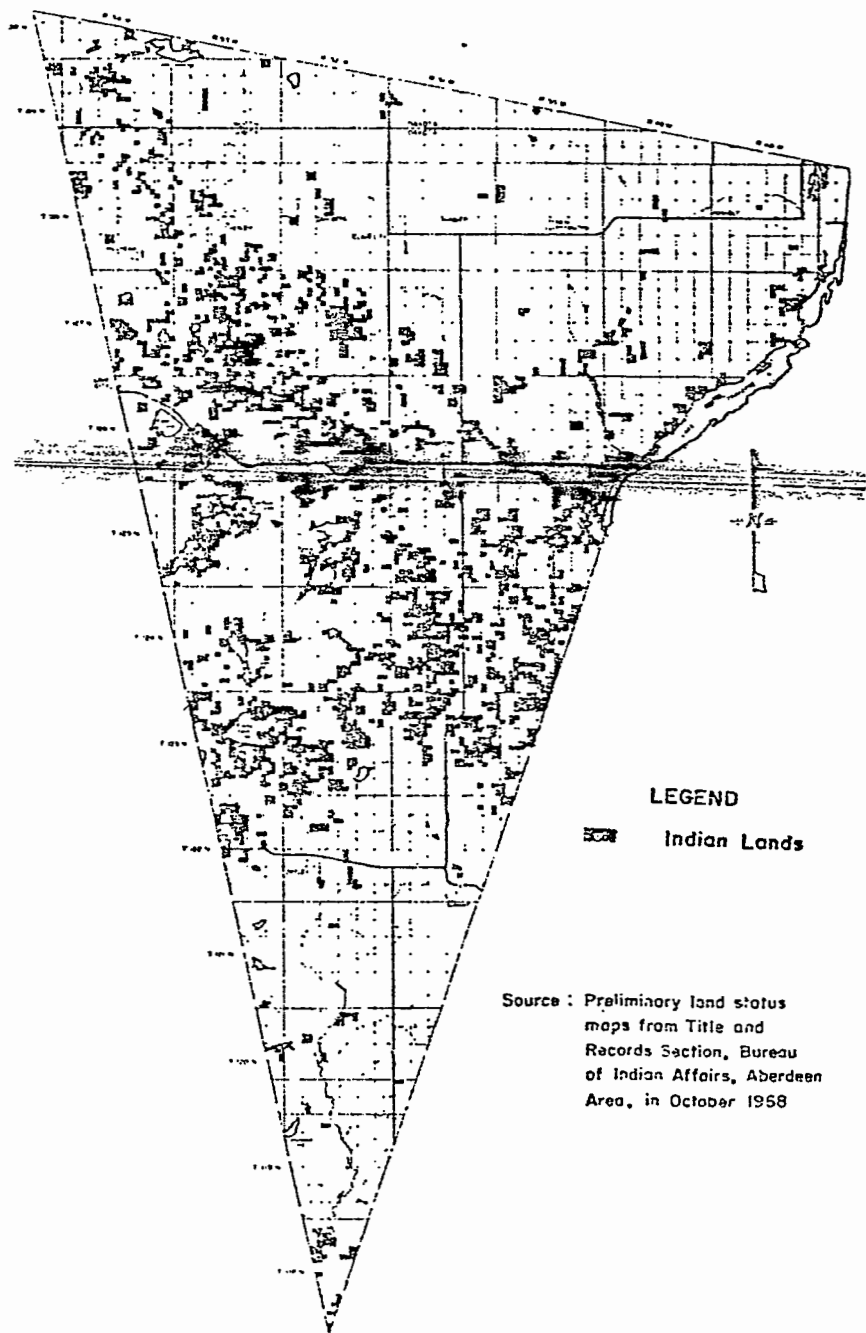




Vicinity Map



## LAND OWNERSHIP MAP



LAND OWNERSHIP IN ACRES - SOURCE: SOUTH DAKOTA PLANNING BUREAU

COUNTY	STATE	% STATE	FEDERAL	% FEDERAL	INDIAN	% INDIAN	PRIVATE	% PRIVATE
Codington	38,717.	8.806	2,013.	0.452	1,002.	0.228	397,948.	90.509
Day	49,290.	7.477	8,028.	1.212	9,278.	1.407	592,604.	89.897
Grant	15,435.	3.511	2,199.	0.505	600.	0.138	417,606.	95.216
Marshall	36,923.	5.690	2,212.	0.383	26,993.	3.677	667,352.	90.910
Roberts	35,241.	4.970	3,986.	0.562	65,513.	9.239	604,378.	85.229
<b>TOTAL:</b>	<b>175,606.</b>	<b>29.624</b>	<b>19,040.</b>	<b>3.126</b>	<b>103,886.</b>	<b>14.689</b>	<b>2,679,838.</b>	<b>452.361</b>

**Ownership and Land Use Breakdown of Trust Land on the Lake Traverse Reservation**

	Tribal Ownership	Individual Ownership	Government	Total
A. Open Grazing	5,102.81	54,017.36	0	59,120.17
B. Comm. Timber	0	0	0	0
C. Non-Comm. Timber	0	4,048.82	0	4,048.82
D. Dry Farm	4,018.05	31,818.20	0	35,836.25
E. Irrigation	0	0	0	0
F. Wild Lands	186.75	4,376.30	0	4,563.05
G. Other Uses Non-Agr.	447.11	1,309.94	72	1,828.55
H. Tribal Development	985.28	0	0	985.28
I. Total	10,740.00	95,570.62	72	106,382.62

I.	BIA OPERATED	72.
II.	TRIBALLY OWNED	10,740.
III.	INDIVIDUALLY OWNED	95,570.62
IV.	TOTAL TRUST ACRES	106,382.62
V.	SOLD ALLOTMENTS	203,531.04
VI.	ORIGINAL ALLOTMENTS	309,913.66
VII.	SURPLUS LAND CEDED	608,865.66
VIII.	TOTAL RESERVATION ACRES	918,779.32

Ownership Interests in Indian Lands,  
Sisseton-Wahpeton Reservation, 1967

Number of Heirs	Percent
One	29.0
Two to ten owners	34.6
Ten to twenty owners	18.5
Twenty or more owners	17.9
Average	12.9 owners
Median	5 owners

Source: Sample drawn from BIA lessee files, Sisseton Agency

Characteristics of Indian Land Ownership Interests

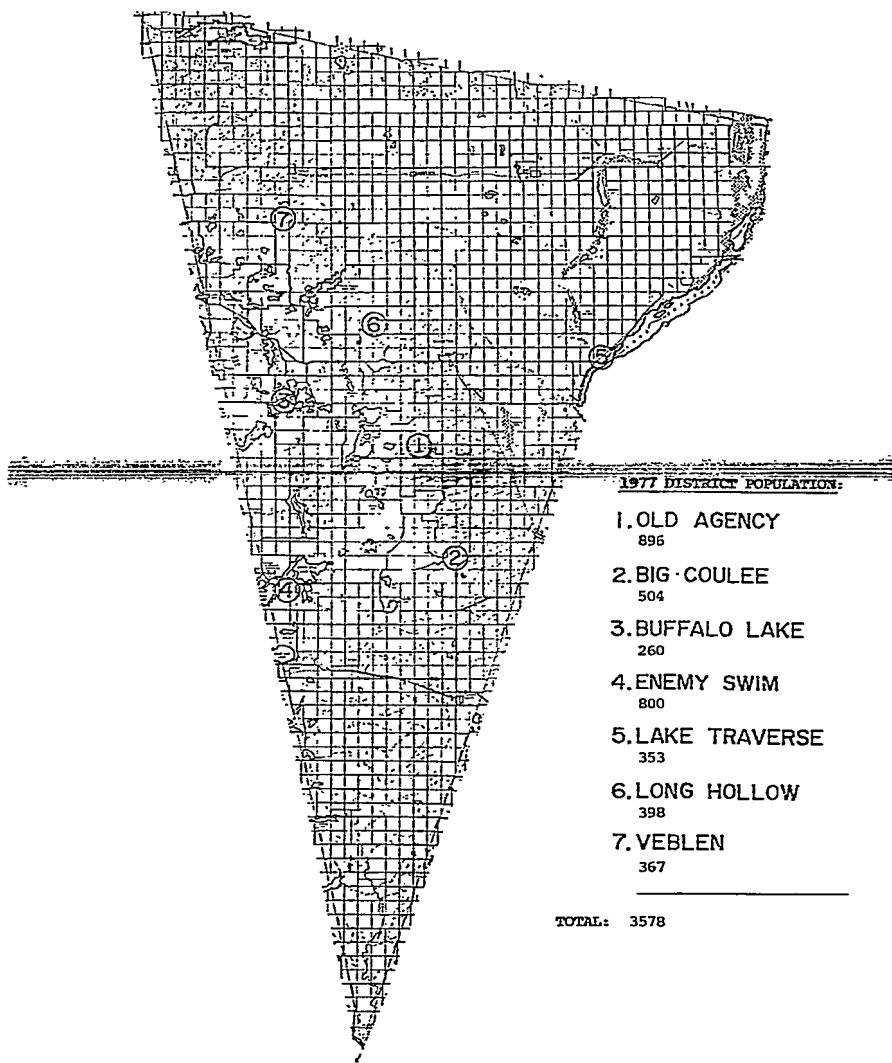
Characteristics	Resident	Non-Resident	Both Groups
Percentage of Indians owning land	36.8	33.6	34.4
Average number of tracts per individual	<del>3.31</del>	<del>6.25</del>	<del>7.52</del>
Average number of acres per individual	53.50	49.25	47.00
Average land income per Indian	\$143.67	\$62.83	\$107.63
Average land income per acre	\$ 2.69	\$ 1.28	\$ 2.29 <sup>1/</sup>

<sup>1/</sup> Updated figure for 1972 is \$2.63

Source: Sample of leases drawn from BIA files, Sisseton Agency

The average number of Indian owners per tract of land was 12.9 with some having extremely high numbers of heirs. This multiple ownership leads to problems in leasing and management of Indian trust land. The maximum number of inherited interests observed in any one tract of those sampled was 257 Indian individuals sharing the ownership of a single parcel of land. For greater detail regarding the heirship per tract, see Table 15.

Virtually all of the Indian land is leased to non-Indian farm operators, thereby contributing much less than its maximum potential to total Indian income.

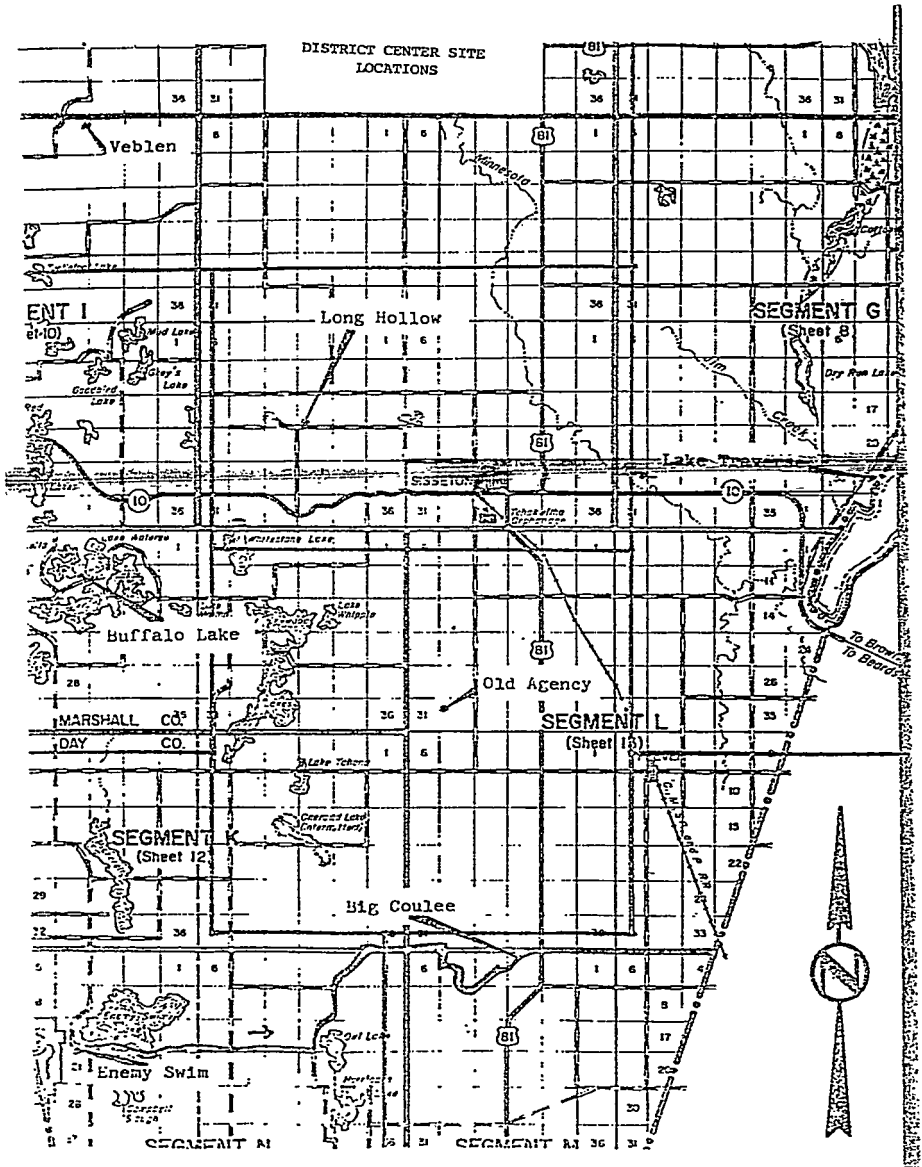


LAKE TRAVERSE INDIAN RESERVATION

The Reservation is divided into seven (7) districts, each district has the following enrollment. The enrollment of each district combined totals 3,578 tribally enrolled residents. - see below at figures indicated.

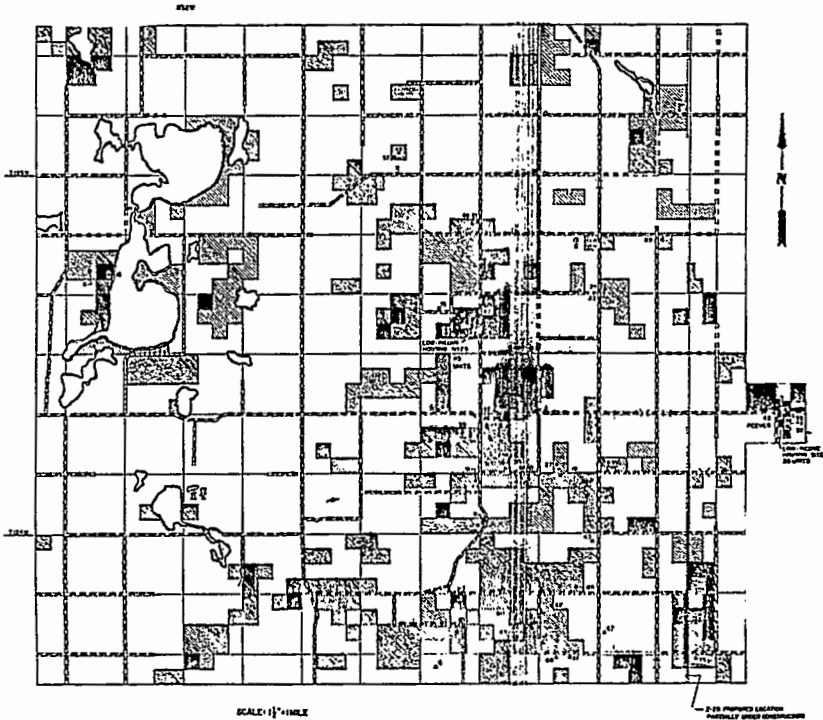
	1960-1977 under 16	1951-1959 (16-24)	1941-1950 (25-34)	1940-1951 (35-44)	1930-1911 (45-64)	1910 65 & Older
Enemy Swim	349	172	112	59	89	19
Buffalo Lake	119	35	56	24	33	13
Lake Traverse	144	61	51	30	39	28
Veblen	155	66	52	27	41	26
Big Coulee	226	94	65	50	46	25
Long Hollow	165	74	52	43	36	28
Old Agency	418	109	196	63	68	42
TOTAL	1,576	611	564	296	352	179

Enemy Swim	800
Buffalo Lake	260
Lake Traverse	353
Veblen	367
Big Coulee	504
Long Hollow	398
Old Agency	896
TOTAL	3,578



For the current calendar year of 1978, the Bureau of Indian Affairs in the U. S. Department of the Interior lists the population-composition of the Tribe as follows:

	Total	Male	Female
1. Total Resident Indian Population:	3,757	1,924	1,833
2. Total under 16 years of age:	1,655	835	820
3. Resident Indian Population of Working Age - 16 years & Older:	2,102	1,089	1,013
a. 16 - 24 years	641	327	314
b. 25 - 34 years	592	306	286
c. 35 - 44 years	311	160	151
d. 45 - 64 years	370	205	165
e. 65 years and over	188	91	97
4. Not in Labor Force - 16 years and over:	1,079	424	655
a. Students (16 yrs & over, including those away at school):	521	251	270
b. Men (physically or mentally disabled, retired, institutionalized)	173	173	
c. Women for whom no child care substitutes are available	137		137
d. Women, housewives, physically or mentally disabled, institutionalized.	248		248
5. Potential Labor Force (16 yrs & Over)	1,023	665	358
6. Employed:	641	372	269
a. Employed, earning \$5,000. or more a year, all jobs:	437	262	175
b. Employed earning less than \$5,000. a year, all jobs:	204	110	94
7. Not Employed:	382	293	89
a. Persons not employed actively seeking work:	176	132	44



SCALE: 1" = 1 MILE

**LEGEND**

- |                                 |                         |
|---------------------------------|-------------------------|
| INDIAN INDIVIDUAL OWNED         | PRIVATE ROAD            |
| TRIBAL OWNED                    | UNIMPROVED ROAD         |
| INCORPORATED CITY               | GRADED AND DRAINED ROAD |
| DISTRICT CENTER SITE            | GRAVEL SURFACE ROAD     |
| INDIVIDUALLY OWNED HOMES        | BIA ROAD                |
| MUTUAL HELP HELP HOME OWNERSHIP | BITUMINOUS SURFACE ROAD |

WILEY BOWEN 4	ALBERT EASTMAN 38	EMERSON CHRISTIAN 15
LARRY BOWEN 5	BONNIE LAMAYE 39	EMERSON CHRISTIAN 16
CLARA BUCHANAN 6	ARM GOSWAMI 40	WILSON BOWEN 21
CHARLES BOWEN 7	ROBERT JONES 41	FRANK MILL 22
WALTER BULLOCK 8	SCHEMONE BOURGEOIS 42	ROBERT STEELE JR. 23
ALBERT CHRISTIAN 9	EDWARD TWO STAYS 43	JOHN WATTS 24
ALBINE BRILL 20	CHARLES BRUCE BELL 44	REYNOLD LAMBLE 25
WALTER CAMPBELL 21	JOHN BETHUNE JR. 45	BOB WATTS JR. 26
ROBERT EVANS 22	JOHN BETHUNE JR. 46	EDWIN BERRY 27
YONG HANCOCK 23	JOHN BETHUNE JR. 47	FRANK WATTS JR. 28
EDWARD BOURGEOIS 24	JOHN BETHUNE JR. 48	EDWIN BERRY 29
JAMES B BETHUNE 25	JOHN BETHUNE JR. 49	ALBERT CHRISTIAN 30
JOHN BETHUNE 26	JOHN BETHUNE JR. 50	ALBERT CHRISTIAN 31
WALTER BETHUNE 27	JOHN BETHUNE JR. 51	ALBERT CHRISTIAN 32
WALTER BETHUNE 28	JOHN BETHUNE JR. 52	ALBERT CHRISTIAN 33
WALTER BETHUNE 29	JOHN BETHUNE JR. 53	ALBERT CHRISTIAN 34
WALTER BETHUNE 30	JOHN BETHUNE JR. 54	ALBERT CHRISTIAN 35
WALTER BETHUNE 31	JOHN BETHUNE JR. 55	ALBERT CHRISTIAN 36
WALTER BETHUNE 32	JOHN BETHUNE JR. 56	ALBERT CHRISTIAN 37
WALTER BETHUNE 33	JOHN BETHUNE JR. 57	ALBERT CHRISTIAN 38
WALTER BETHUNE 34	JOHN BETHUNE JR. 58	ALBERT CHRISTIAN 39
WALTER BETHUNE 35	JOHN BETHUNE JR. 59	ALBERT CHRISTIAN 40
WALTER BETHUNE 36	JOHN BETHUNE JR. 60	ALBERT CHRISTIAN 41
WALTER BETHUNE 37	JOHN BETHUNE JR. 61	ALBERT CHRISTIAN 42
WALTER BETHUNE 38	JOHN BETHUNE JR. 62	ALBERT CHRISTIAN 43
WALTER BETHUNE 39	JOHN BETHUNE JR. 63	ALBERT CHRISTIAN 44
WALTER BETHUNE 40	JOHN BETHUNE JR. 64	ALBERT CHRISTIAN 45
WALTER BETHUNE 41	JOHN BETHUNE JR. 65	ALBERT CHRISTIAN 46
WALTER BETHUNE 42	JOHN BETHUNE JR. 66	ALBERT CHRISTIAN 47
WALTER BETHUNE 43	JOHN BETHUNE JR. 67	ALBERT CHRISTIAN 48
WALTER BETHUNE 44	JOHN BETHUNE JR. 68	ALBERT CHRISTIAN 49
WALTER BETHUNE 45	JOHN BETHUNE JR. 69	ALBERT CHRISTIAN 50
WALTER BETHUNE 46	JOHN BETHUNE JR. 70	ALBERT CHRISTIAN 51
WALTER BETHUNE 47	JOHN BETHUNE JR. 71	ALBERT CHRISTIAN 52
WALTER BETHUNE 48	JOHN BETHUNE JR. 72	ALBERT CHRISTIAN 53
WALTER BETHUNE 49	JOHN BETHUNE JR. 73	ALBERT CHRISTIAN 54
WALTER BETHUNE 50	JOHN BETHUNE JR. 74	ALBERT CHRISTIAN 55
WALTER BETHUNE 51	JOHN BETHUNE JR. 75	ALBERT CHRISTIAN 56
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WALTER BETHUNE 53	JOHN BETHUNE JR. 77	ALBERT CHRISTIAN 58
WALTER BETHUNE 54	JOHN BETHUNE JR. 78	ALBERT CHRISTIAN 59
WALTER BETHUNE 55	JOHN BETHUNE JR. 79	ALBERT CHRISTIAN 60
WALTER BETHUNE 56	JOHN BETHUNE JR. 80	ALBERT CHRISTIAN 61
WALTER BETHUNE 57	JOHN BETHUNE JR. 81	ALBERT CHRISTIAN 62
WALTER BETHUNE 58	JOHN BETHUNE JR. 82	ALBERT CHRISTIAN 63
WALTER BETHUNE 59	JOHN BETHUNE JR. 83	ALBERT CHRISTIAN 64
WALTER BETHUNE 60	JOHN BETHUNE JR. 84	ALBERT CHRISTIAN 65
WALTER BETHUNE 61	JOHN BETHUNE JR. 85	ALBERT CHRISTIAN 66
WALTER BETHUNE 62	JOHN BETHUNE JR. 86	ALBERT CHRISTIAN 67
WALTER BETHUNE 63	JOHN BETHUNE JR. 87	ALBERT CHRISTIAN 68
WALTER BETHUNE 64	JOHN BETHUNE JR. 88	ALBERT CHRISTIAN 69
WALTER BETHUNE 65	JOHN BETHUNE JR. 89	ALBERT CHRISTIAN 70
WALTER BETHUNE 66	JOHN BETHUNE JR. 90	ALBERT CHRISTIAN 71
WALTER BETHUNE 67	JOHN BETHUNE JR. 91	ALBERT CHRISTIAN 72
WALTER BETHUNE 68	JOHN BETHUNE JR. 92	ALBERT CHRISTIAN 73
WALTER BETHUNE 69	JOHN BETHUNE JR. 93	ALBERT CHRISTIAN 74
WALTER BETHUNE 70	JOHN BETHUNE JR. 94	ALBERT CHRISTIAN 75
WALTER BETHUNE 71	JOHN BETHUNE JR. 95	ALBERT CHRISTIAN 76
WALTER BETHUNE 72	JOHN BETHUNE JR. 96	ALBERT CHRISTIAN 77
WALTER BETHUNE 73	JOHN BETHUNE JR. 97	ALBERT CHRISTIAN 78
WALTER BETHUNE 74	JOHN BETHUNE JR. 98	ALBERT CHRISTIAN 79
WALTER BETHUNE 75	JOHN BETHUNE JR. 99	ALBERT CHRISTIAN 80
WALTER BETHUNE 76	JOHN BETHUNE JR. 100	ALBERT CHRISTIAN 81
WALTER BETHUNE 77	JOHN BETHUNE JR. 101	ALBERT CHRISTIAN 82
WALTER BETHUNE 78	JOHN BETHUNE JR. 102	ALBERT CHRISTIAN 83
WALTER BETHUNE 79	JOHN BETHUNE JR. 103	ALBERT CHRISTIAN 84
WALTER BETHUNE 80	JOHN BETHUNE JR. 104	ALBERT CHRISTIAN 85
WALTER BETHUNE 81	JOHN BETHUNE JR. 105	ALBERT CHRISTIAN 86
WALTER BETHUNE 82	JOHN BETHUNE JR. 106	ALBERT CHRISTIAN 87
WALTER BETHUNE 83	JOHN BETHUNE JR. 107	ALBERT CHRISTIAN 88
WALTER BETHUNE 84	JOHN BETHUNE JR. 108	ALBERT CHRISTIAN 89
WALTER BETHUNE 85	JOHN BETHUNE JR. 109	ALBERT CHRISTIAN 90
WALTER BETHUNE 86	JOHN BETHUNE JR. 110	ALBERT CHRISTIAN 91
WALTER BETHUNE 87	JOHN BETHUNE JR. 111	ALBERT CHRISTIAN 92
WALTER BETHUNE 88	JOHN BETHUNE JR. 112	ALBERT CHRISTIAN 93
WALTER BETHUNE 89	JOHN BETHUNE JR. 113	ALBERT CHRISTIAN 94
WALTER BETHUNE 90	JOHN BETHUNE JR. 114	ALBERT CHRISTIAN 95
WALTER BETHUNE 91	JOHN BETHUNE JR. 115	ALBERT CHRISTIAN 96
WALTER BETHUNE 92	JOHN BETHUNE JR. 116	ALBERT CHRISTIAN 97
WALTER BETHUNE 93	JOHN BETHUNE JR. 117	ALBERT CHRISTIAN 98
WALTER BETHUNE 94	JOHN BETHUNE JR. 118	ALBERT CHRISTIAN 99
WALTER BETHUNE 95	JOHN BETHUNE JR. 119	ALBERT CHRISTIAN 100

CENSUS TRACT 12

OSKTON - WAMPETON  
BAND TRIBE  
OF THE  
LAKE TRAVERSE  
RESERVATION

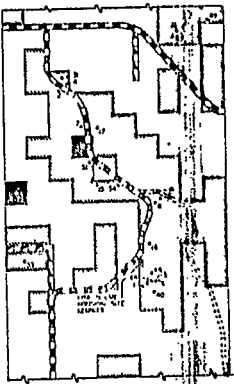
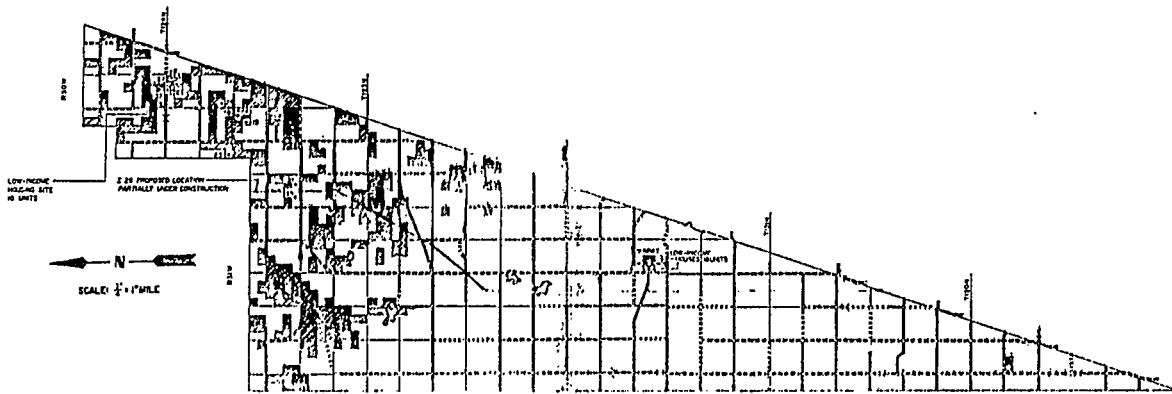
DISTRICT MAP-OLD AGENCY

PREPARED BY: \_\_\_\_\_ APPROVED BY: \_\_\_\_\_  
DATE: 11-27-71 DATE: \_\_\_\_\_

TRIGAL PLANNING

5





CHARLES ANDO	1	MARGARET BUNNING BAKER	36
BAILE ANDO	2	VIOLET THOMPSON	47
MARCE ANDO	4	WALTER ANDO	5
MORRY ANDO	5	DOMALIE BONDYFON	21
WILLIAM ENELEY	14	BIGAN THOMPSON	48
ETIA THOMPSON	15	TRINA LAWRENCE	52
CAROL JOHNS	22	FLOYD ARNOLD	53
DONALD LAWRENCE	24		
WYNN FLUTE	6		
ROY FRITZ	8		
CLARLE BATES	9		
LUCHAS HEMMER	17		
FRENCH HOFFER	18		
ALLEN HORN	19		
MARION B. JOHNSON	25		
WILHEM OVERHOLM	28		
EARL OWEN	31		
ETHEL BAKER	6		
LIZZIE SMALL	40		
ALBERT SPIDER	41		
ALFRED SPIDER	42		
MELINDA SPIDER	43		
PASTY TAMEL	44		
LAVELLE HALLIANS	49		
WYANCE SARGENT	24		
DORIS OWEN	7		
WYNN CASSEL	7		
NEWMAN LAWRENCE	23		
ELEAN LAWRENCE	25		
EDWIN PHILIPS	24		
FRED LAWRENCE	27		
WYNN BAKER	32		

- LEGEND**
- INDIAN INDIVIDUAL OWNED
  - TRIBAL OWNED
  - ⊠ INCORPORATED CITY
  - ⊕ DISTRICT CENTER SITE
  - ⊙ INDIVIDUALLY OWNED HOMES
  - ⊙ MUTUAL SELF HELP HOME OWNERSHIP
  - PRIMITIVE ROAD
  - UNIMPROVED ROAD
  - ===== GRADED AND DRAINED ROAD
  - ===== GRAVE SURFACE ROAD
  - ===== DIA ROAD
  - ===== BITUMINOUS SURFACE ROAD

CENSUS TRACT XXX

SISSETON - WAMPEYON  
SHOX TRIBE  
OF THE  
**LAKE TRAVERSE  
RESERVATION**

DISTRICT MAP - DO COURSE

DRAWN BY: C.M.S.      APPROVED BY:      DATE: 11-12-58      DATE: 1958

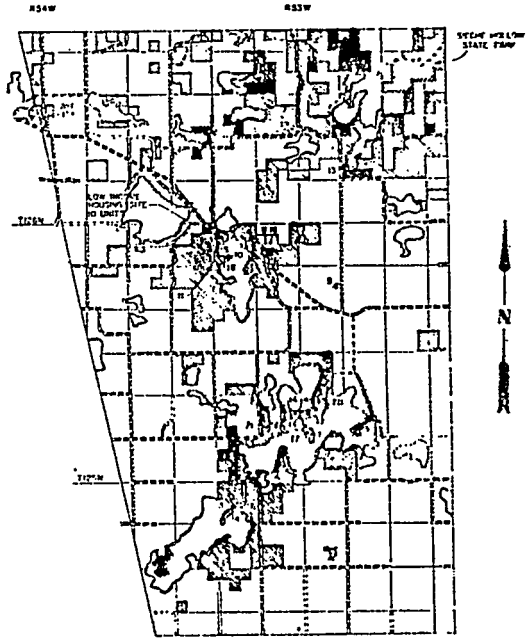
TRIBAL PLANNING

PAGE NO. 6

LEGEND

- ☐ INDIAN INDIVIDUAL OWNED
- ▣ TRIBAL OWNED
- ▤ INCORPORATED CITY or VILLAGE
- ⊕ DISTRICT CENTER SITE
- INDIVIDUALLY OWNED HOMES
- ⊙ MUTUAL SELF HELP HOME OWNERSHIP
- PRIMITIVE ROAD
- ==== UNIMPROVED ROAD
- ===== GRADED AND DRAINED ROAD
- GRAVE SURFACE ROAD
- SIA ROAD
- ===== BITUMINOUS SURFACE ROAD

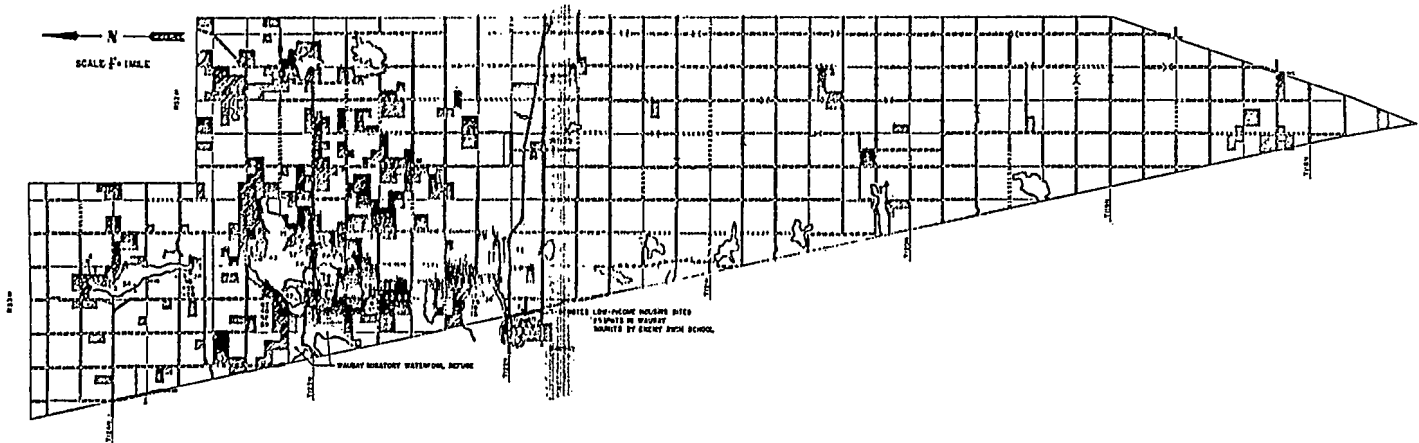
- PAULINE RYAN 15
- VICTOR SAUNDY 19
- FRANCIS CRAWFORD 4
- CHRIS JOHNSON SR. 12
- CHRIS JOHNSON JR. 11
- GILBERT GILL 7
- FRANK'S BRYANT 1
- MERCY DUFFY 2
- DALE CRANTFORD 3
- RAY EASTMAN 6
- LESTER JOHNSON 10
- PERRY NEEDS 13
- ANGIE LINCOLN 16
- DREZ OWEN 18
- BOBBY WARREN 17
- ORACE TITUS 20
- ANGIE WATNA 21
- BARRY JAMESON 8
- WANDA DREISZELER 9
- JESSE KING 14



SCALE: 1/4 MILE

CENSUS TRACT III

<p>SISSETON - WAMPETON SIOUX TRIBE OF THE LAKE TRAVERSE RESERVATION</p>	
<p>DISTRICT MAP - BUFFALO LAKE</p>	
<p>PREPARED BY: _____</p>	<p>APPROVED BY: _____</p>
<p>DATE: _____</p>	<p>DATE: _____</p>
<p>TRIBAL PLANNING</p>	
<p>MAP NUMBER <b>3</b></p>	



**LEGEND**

- INDIAN INDIVIDUAL OWNED
- TRIBAL OWNED
- INCORPORATED CITY
- DISTRICT CENTER SITE
- INDIVIDUALLY OWNED HOMES
- MUTUAL SELF HELP HOME OWNERSHIP
- PRIMITIVE ROAD
- UNIMPROVED ROAD
- GRADED AND DRAINAGE ROAD
- GRAVE SURFACE ROAD
- BLA ROAD
- BITUMINOUS SURFACE ROAD

ALAN BERNARD	1	FLY WHITE	63	ANDY WHELAN/GAI	65
MARCO BERNARD	3	BONNE G'NELLY	36	MARION WHELAN	6
BOB BURNIN	24	LO BEARBY	80P	SHARIS WHELAN	61
ELIANE EAGLE	36	DEWIS BELL	19	ELDA RUDY	5
SEA EAGLE	8	JERRY SHEPHERD	84	EVAPETINE BLACKTHAMER	70
WYCKE BELL	20	CHIC SHEPHERD	83		
		SAN BETHOBY	87	DAN CAMPBELL	9*
VEPER BLOOD	11	CALVIN BONDILL	67	MARION HITES	22
JAMES BOWERS	23			DELAN HOPKINS	25
WOLEY DOWAN	64	CHARLOTTE DAVIS	16	DELORES PULCH	20*
EMON BICEBLE	29	LACELLE DICKSON	1*	SAN LOVETON	32
LURDINE BICKLAND	24	WALLACE EARLE BL	17	SHEILA MULLER	27
ALBERT OMBROSE	32*	JACKIE BAY	8*	REVA MATHIE	27
AL OWEN	35	BALAN HOPKINS	24*	FRANK OWEN	27
FRAN OWENS	40			ROTH OWEN	34
GILBERT BENVILLE	42	ANDREW ROBERTSON	45*		
PULVAN BENVILLE	44	BLADYS CRANKFORD	121G	VALENE BONDILL	44
EMMETT BOWERS	43	OLGIV BELLA	52*	ESTHER BOND	33
ELIZABETH BOWERS	54	VIVIAN BOWSE	65	JAMES STANZE	30
EVY BOWERS	83	STELLA BICEBLE	28	MARION WALKER	61
HELEN BOWERS	84			JONES WHITE	61*
THOMAS BOWERS	87			JONES FLACKDUS	7
		JULIA OWEN	88	MARIL HOPKINS	25*

87 HOMES NOW 3 LOCATED IN WABAY, S.D.

CENSUS TRACT 202

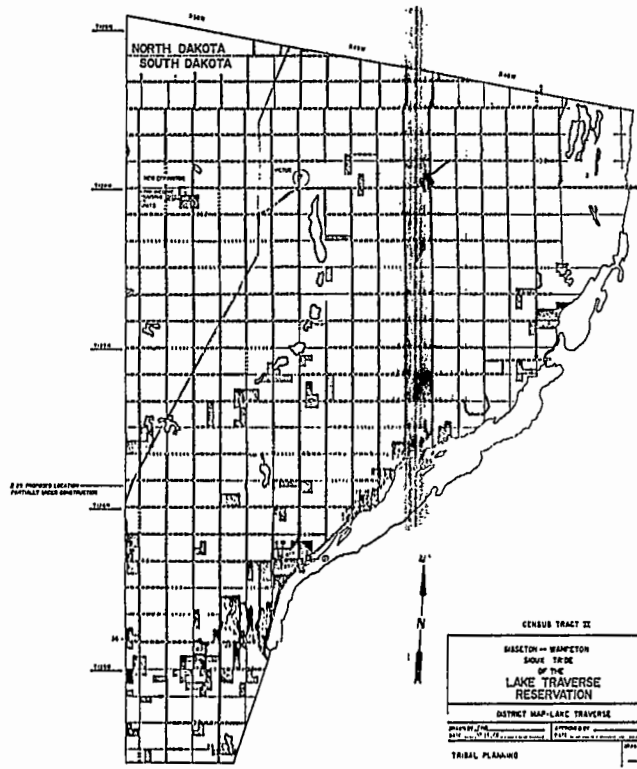
SISSETON - WABUPETON  
SIOUX TRIBE  
OF THE  
LAKE TRAVERSE  
RESERVATION

DISTRICT MAP - ENEMY SWIN

DRAWN BY: [Signature]	APPROVED BY: [Signature]
DATE: 11/1/77	DATE: 11/1/77

TRIBAL PLANNING

PAGE NO. 7



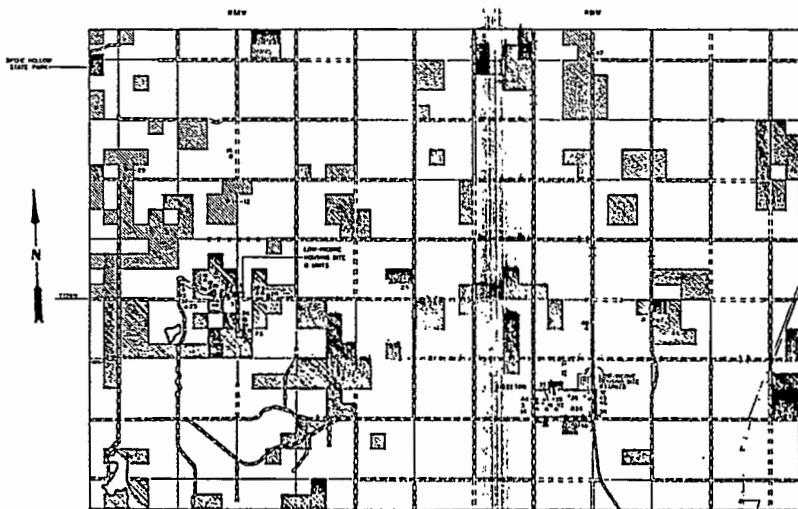
- LEGEND**
- SOLELY INDIVIDUAL OWNED
  - TRIBAL OWNED
  - ⊙ INCORPORATED CITY OR VILLAGE
  - ⊙ UNINCORPORATED CITY OR VILLAGE
  - ⊙ DISTRICT CENTER SITE
  - ⊙ INDIVIDUALLY OWNED HOMES
  - ⊙ NATURAL SELF HELP HOME, ONEHEADSP
  - PASSENGER ROAD
  - UNIMPROVED ROAD
  - GRADED AND DRAINED ROAD
  - GRAVE SURFACE ROAD
  - BIA ROAD
  - ENTANGLED SURFACE ROAD

- \*SECURITY FORCE LOCATED IN BROWN VALLEY, N.D.
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  - 100 00000 1
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  - 100 00000 100

CENSUS TRACT II  
 BASELINE - BEMPTON  
 SIOUX TRIBE  
 OF THE  
 LAKE TRAVERSE  
 RESERVATION  
 DISTRICT MAP-LAKE TRAVERSE

DATE: 11/1/54  
 BY: [illegible]  
 TRAIL PLANNING

2



SCALE: 1/8"=1 MILE

LEGEND

- INDIAN INDIVIDUAL OWNED
- ▣ TRIBAL OWNED
- ▣ INCORPORATED CITY
- ⊕ DISTRICT CENTER SITE
- ⋄ INDIVIDUALLY OWNED HOMES
- ⊕ MUTUAL SELF HELP HOME OWNERSHIP

- PRIMITIVE ROAD
- UNIMPROVED ROAD
- GRADED AND DRAINCO ROAD
- GRAY SURFACE ROAD
- DTA ROAD
- BITUMINOUS SURFACE ROAD

MELVIN GARDNER	0
FREDERICK GARDNER JR.	0
WILLIAM GARDNER	0
ROBERT GARDNER	0
PHIL PROBYN	0
LINDA LUNDGREN	34
HENRY SHAW	20
WALTER SHAW	21
WILLIAM SHAW	22
WALTER WILSON	23
WILLIAM WILSON	24
LEONARD WATSON	40
WALTER WATSON	41
WILLIAM WATSON	42
WALTER WATSON	43
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WALTER WATSON	45
WILLIAM WATSON	46
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WALTER WATSON	55
WILLIAM WATSON	56
WALTER WATSON	57
WILLIAM WATSON	58
WALTER WATSON	59
WILLIAM WATSON	60

SECTION - WASHINGTON  
SOUTH TRACT  
OF THE  
LAKE TRAVERSE  
RESERVATION

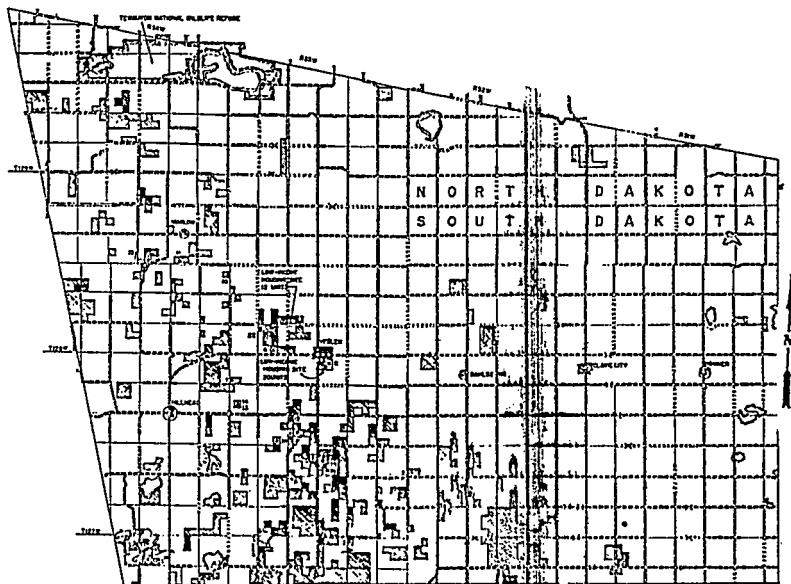
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DISTRICT MAP - LOWS HOLLOW

Drawn by: E. J. ...	Approved by: ...
Date: ...	Date: ...

TRIBAL PLANNING

4



SCALE: 1" = 1 MILE

**LEGEND**

- INDIAN INDIVIDUAL OWNED
- TRIBAL OWNED
- INCORPORATED CITY or VILLAGE
- ⊙ UNINCORPORATED CITY or VILLAGE
- ⊙ DISTRICT CENTER SITE
- ⊙ INDIVIDUALLY OWNED HOMES
- PREPARED ROAD
- UNIMPROVED ROAD
- GRADED AND DRAINED ROAD
- GRAVE SURFACE ROAD
- BIA ROAD
- BITUMINOUS SURFACE ROAD
- LAMPING LINES
  - UNDER CEMENT
  - UNDER ASPHALT
  - UNDER GRAVEL
  - UNDER BRICKS
  - UNDER STONE
- POWER LINES
  - 100000 VOLTAGE
  - 35000 VOLTAGE
  - 15000 VOLTAGE
  - 5000 VOLTAGE
  - 2500 VOLTAGE
- TELEPHONE LINES
- CABLE LINES
- RAILROADS
- CANALS
- DITCHES
- FLOOD CONTROL
- OTHER

<b>SECTION 26 - TOWNSHIP 106 NORTH</b>	
<b>RANGE 102 WEST</b>	
<b>OF THE</b>	
<b>LAKE TRAVERSE RESERVATION</b>	
<b>DISTRICT MAP-MAKER</b>	
DRAWN BY THE	APPROVED BY THE
DATE 6/21/20	DATE
<b>TRIBAL PLANNING</b>	<b>1</b>

*Exhibit No. 6*

No exhibit; misnumbering.

*Exhibit No. 7*

ORDINANCE 77-2  
HUMAN RELATIONS COMMISSION

1. Commission created.

There is hereby created for the City of Kadoka a human relations commission to be known as the Kadoka Human Relations Commission (referred to throughout this Ordinance as commission)

2. Membership; qualifications; compensation.

The commission shall be composed of six (6) members, four (4) members will be legal residents of the city who shall serve without pay, and shall be appointed pursuant to section three of this article. Minority races shall be represented to the extent of not less than the percent of population such group reflected in the most recent census of the city, and in addition, one member of the City Council appointed by the Council shall be a voting member. The mayor shall serve as an ex officio member.

3. Appointment; terms of members.

The mayor, with the approval of the common council shall appoint each member of the commission for a term of three (3) years provided that upon organization of the commission two (2) members shall be appointed for a three (3) year term, two (2) members for a two (2) year term, and two (2) members for a one year term. Thereafter appointment shall be made as they expire for the full term of three (3) years.

(a) All terms of office shall expire on July 1.

(b) The mayor shall submit to the common council the names of all appointees at least two (2) weeks in advance of any appointment.

4. Filling of Vacancy.

In case of any vacancy in membership of the commission due to death, resignation, or otherwise, a successor shall be appointed pursuant to the requirements of section two (2) and section three (3) of this article to fill the unexpired portion of the term of the member he replaces. If a member of the commission fails to attend three(3) consecutive meetings, his seat on the commission shall be termed vacant.

5. Purposes and powers.

The commission shall investigate any and all discriminatory practices based on sex, race, color, creed, religion, ancestry, or national origin with respect to employment, labor union membership, housing accommodations, or public services, and to effectuate the foregoing purposes the commission shall have the following powers:

(a) The commission may act to disseminate information, to engage in and cooperate with programs of research and education, to cooperate with persons or groups interested in similar objectives, to conduct public meetings.



## 6. Organization

The commission shall, at its first organizational meeting and at each first meeting in July of subsequent years, elect from its membership the officers it may deem necessary. The officers thus elected will appoint from among the membership of the commission subcommittees as they deem necessary and proper. Each subcommittee shall organize and appoint what officers it deems necessary, including a secretary within its membership.

## 7. Meetings

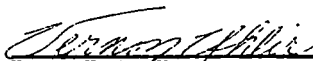
The commission shall meet at least quarterly at a regular time and place to be set by the commission.

## 8. Authorization to accept contributions and grants.

The commission is hereby authorized to accept contributions and grants to carry out its work. Any contributions and grants so received shall be subject to the administrative control established by the city finance officer.

## 9. Reports to council.

The commission shall make a report to the city council on or before January 1, 1978 and every six (6) months thereafter, and at such other times as the council may direct.

  
Vernon Uhler, Mayor

Attest: Nancy Hemmingson  
Finance Officer

1st reading March 8, 1977  
2nd reading  
Published

Vote of Council  
Coniec - Absent  
Dirks Aye  
Hart - Aye  
Parke - Aye  
Root Absent  
Stevens Aye

*Exhibit No. 8*

Office of  
STATES ATTORNEY  
Bennett County  
MARTIN, SOUTH DAKOTA  
57551

July 24, 1978

Mr. Harold Larson  
Member Bennett County  
Board of Commissioners  
Martin, South Dakota  
57551

U. S. Commission on Civil Rights  
1121 Vermont Avenue, NW  
Washington, D. C. 20425

Mr. Larson and Commissioners:

I was asked to write this letter to provide information to Mr. Larson and to the Commission with regard to the current status of the proposed Human Relations Commission to be established for the Martin, South Dakota Area.

Pursuant to the request, I provide the following information:

As an adjunct to the Wounded Knee Memorial Pow Wow, a meeting was held in Martin, South Dakota, on the 27th day of February, 1978, between representatives of the Bennett County Sheriff's office, the Bennett County State's Attorney's office, the Martin City Council and the Bennett County Commissioners, and local American Indians and representatives from the Wounded Knee Memorial Pow Wow. The meeting had been arranged by one Robert Yellow Bird and the purpose of the meeting appears to have been three-fold. First, to protest the incarceration of Ronald Two Bulls who was serving a one-year sentence in the Bennett County jail at that time. Secondly, to air grievances by members of the local Indian community with regard to the regulations regarding visiting hours at the Bennett County jail; and third, to request the organization of a bi-racial Human Relations Commission which the local members of the Indian community could to and have a local form to air complaints which they had about any number of things.

As a result of the meeting, representatives of the sheriff's office and the State's Attorney's office met with a selected group of Indian individuals from the local Indian community to discuss the revision of the visiting hours at the jail and to discuss the tentative organization and layout of a Human Relations Commission.

Larson/Human Relations

Page 2

A meeting was had a few days after the initial meeting in the State's Attorney's office in Martin with the sheriff and the State's Attorney present representing the local non-Indian community and several individuals, among them Bob Yellow Bird, Alice Flye, Charles Bettelyoun, Baptist DuBray, Albert Trimble, and a couple other individuals representing the local Indian community.

A tentative composition of the bi-racial commission was discussed, the composition being seven members representing the non-Indian community and seven members representing local Indian community. It was generally agreed that since the City of Rapid City had by City Ordinance adopted and created a Human Relations Commission and the City of Kadoka had adopted a similar ordinance creating a Human Relations Commission that the State's Attorney would contact these communities and obtain copies of the same and make them available to both side so that these ordinances could be examined and hopefully used as a framework upon which to submit a similar Human Relations Commission proposal to the Martin City Council.

Another meeting was to have been scheduled after those materials had arrived and further discussions were to have been had at that time. A further meeting has not yet been had. Mr. Yellow Bird was to have picked those materials up from my office; however, due to some complicating circumstances Mr. Yellow Bird has never picked up those materials. However, Mr. Baptist DuBray, a few weeks ago, called on my office and picked up copies and has had them since that time.

I have had no other contacts regarding the Human Relations Commission except for a phone call which I received a few weeks ago from Mrs. Alice Flye requesting that a further organizational meeting be had sometime after the 10th of July between myself and Mr. Baptist DuBray, Charles Bettelyoun, Alice Flye, and Emma Bettelyoun, representing the Indian community. I intend to schedule that meeting as soon as I return from my vacation, which will be the first part of August.

It appears to me that there is a substantial degree of interest from the Indian community in organizing some type of Human Relations Commission and the City Council representatives that I have discussed the matter with seems to be generally favorably inclined with regard to considering such an ordinance. So far as the State's Attorney's office is concerned, that is as much progress as I am aware of. I hope this letter will answer your questions regarding the current status of the development of the Human Relations Commission for the Martin, South Dakota area. If there are other questions, I will certainly be available to answer them.

Very truly yours

  
LAWRENCE E. LONG

*Exhibit No. 9*

## S T A T E M E N T

My name is Raleigh E. Barker; I am now living in Gordon, Nebr.

Our family began dealing with the Oglala Sioux on the Pine Ridge Reservation and we resided there until retirement in 1968.

I have been asked about transfers of ownership of land from the Oglalas to the white purchasers.

In the period before 1907 the occupants of tracts were given "Trust Patents" to their allotments. Originally, 640 acres to the head of the family, 320 acres to the wife and 160 acres to each child in the family. The area of land became exhausted before all children were allotted and the later children were listed as "unallotted." The trust patent specified the title was in the "United States of America in trust for (named allottee)" Also was included a provision that the trust patent would mature into a "fee simple patent" in 25 years.

Within two years after the issuance of the trust patents, some allottees made application for the fee simple patent, submitting "proof of competency" to care for their own business. If approved, such merchantable title was issued. These tracts were immediately offered for sale. Over 90% were sold; thus whites came into the Reservation as land owners. The Indian may have sold his home tract but he was not without a place for his home; he would move to his wife's allotment.

In 1918 some one in Washington conceived the idea that all Indians of 50% or less of Indian blood were competent. Fee simple patents were issued to all, without application. To my knowledge only five individuals refused to accept the patents and their land was returned to trust status.

Continued on page 2.

Statement Page 2

Before expiration of the 25 years period on the trust patents (1931) economic conditions justified cancellation of that provision and many tracts remain in trust status.

In cases of extreme need, the office accepted applications for "supervised sales" of allotments. These tracts were sold by the office under sealed bids, provided the highest bid exceeded the appraised value of the land, determined by a representative of the government. The proceeds were placed "in trust" and disbursed to relieve the emergency, with the balance usually paid out in monthly payments.

Thus it was my experience that tracts were placed on the market, offered for sale and the seller received the going market price at the time of the sale.

Many economic factors influence market price. To my knowledge many purchasers who had bought the land could not make a living during the 1930s. They, in turn, tried to sell, but no buyers. The government came to their assistance by appraising "sub-marginal" tracts and owners who had paid \$15, \$20 or \$25 per acre gladly accepted the appraised price of \$4, \$5 or \$6 per acre and surrendered the land to the submarginal program. These submarginal tracts are now under control of the Oglala Sioux Tribe. Others who had obtained Land Bank or Land Bank Commissioner loans could not make payments and abandoned the land to the lender. Others could not pay taxes and those tracts were claimed by the County. A few, through help from relatives or public assistance, who held on until after 1939, were rewarded. Rains came, crops were good, prices revived and the persistent few now have satisfactory homes. This is also true of many of the Oglalas.

In all of my observations I know of only one Indian who failed to get market price for his land. He liked race horses; he traded a quarter of inherited land (not his home) for two race horses. ---Later the purchaser lost the tract for taxes.

State of Nebraska  
County of Sheridan  
Signed and sworn to before me  
this 26th day of July, 1978.

REX L. STRONG  
GENERAL NOTARY  
State of Nebraska  
MY COMMISSION EXPIRES  
OCTOBER 10 1979

\_\_\_\_\_  
Notary Public

*Exhibit No. 10*

This exhibit was not received in time for publication

*Exhibit No. 11*















*Exhibit No. 12*

This exhibit is on file at the U.S.  
Commission on Civil Rights.

*Exhibit No. 13*

United States Department of the Interior  
 BUREAU OF INDIAN AFFAIRS  
 STANDING ROCK AGENCY  
 FORT YATES, NORTH DAKOTA 58538

IN REPLY REFER TO:

May 16, 1979

Marvin Schwartz  
 Office of General Counsel  
 U. S. Commission on Civil Rights  
 Washington, D. C. 20425

Dear Mr. Schwartz,

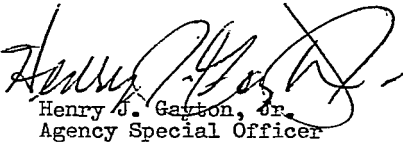
The period of January 1, 1977 to December 31, 1977 we had the following crimes.

Homicide	4
Rape	9
Assaults	30
Burglary	185
Larceny	132
Motor vehicle theft	24

January 1, 1978 to March 31, 1978.

Rape	4
Assault	1
Burglary	29
Larceny	20

We estimate that the United States Attorney declines about 15% of the cases which are presented to him.

  
 Henry J. Gayton, Jr.  
 Agency Special Officer

*Exhibit No. 13a*

## United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
 ABERDEEN AREA OFFICE  
 115 FOURTH AVENUE S.E.  
 ABERDEEN, SOUTH DAKOTA 57401

IN REPLY REFER TO:

Law Enforcement Services

JUN 8 1979

Mr. Marvin Schwartz  
 Office of General Council  
 U.S. Commission of Civil Rights  
 1121 Jermont Avenue N.W.  
 Washington, D.C. 20425

Dear Mr. Schwartz:

As you requested, the following information is a tabulation of offenses committed by non-Indian persons on each reservation in the Aberdeen Area since the Oliphant Decision as of November 28, 1978:

Cheyenne River	30
Crow Creek	32
Flandreau	5
Fort Berthold	30
Fort Totten	0
Lower Brule	2
Rosebud - warning tickets only	
Pine Ridge	2
Sisseton	1
Standing Rock	100
Turtle Mountain	0
Winnebago	1
Yankton - no response	

We are sorry for our delay in obtaining this information. If we can be of any further assistance, please contact us.

Sincerely,

ACTING Area Director

*Save Energy and You Serve America!*

*Exhibit No. 14*

In Reply, Please Refer to  
File No.

UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION  
392 Federal Building, U. S. Courthouse  
110 South Fourth Street  
Minneapolis, Minnesota 55401

July 5, 1977

Honorable David V. Vrooman  
United States Attorney  
Federal Building  
Sioux Falls, South Dakota 57102

Dear Dave:

Per your telephone call to me today, I am submitting the following revised prosecutive guidelines to you for your approval:

CRIMES UNDER THE JURISDICTION  
OF THE FEDERAL BUREAU OF  
INVESTIGATION (FBI) IN INDIAN  
COUNTRY IN THE STATE OF SOUTH DAKOTA:

1. Murder:

In each and every instance where FBI Agents receive complaints of an indicated murder, immediate investigation will be instituted.

2. Manslaughter:

In all instances where information is received regarding the death of an individual indicating the possibility of voluntary or involuntary manslaughter, initial investigation will be conducted by the FBI to determine if, in fact, it is a matter within our jurisdiction.

In both of these matters listed above, where there is an unattended death and no apparent information or indication that this death is attributable to a murder or possible manslaughter, no investigation will be conducted by the FBI. It will be the responsibility of local law enforcement to insure an autopsy is performed on these individuals if same deemed necessary.

3. Rape:

When a rape complaint is received, the FBI will interview the victim to determine if, in fact, the complaint is legitimate.



AK D.V.C. 7/4/77



In addition, it will be immediately established whether or not the victim would testify against her assailant and if she will submit to physical examination at the Public Health Service Hospital. In all instances where the report of rape involves a common-law or actual marriage relationship between raper and victim, no investigation will be conducted by the FBI. Whenever it is appropriate, the victim will be requested to submit to a polygraph examination.

4. Assault with Intent to Commit Rape:

Upon receipt of assault to commit rape complaint, the victim will be interviewed and results of interview will dictate if the complaint is legitimate or worthy of further investigation.

5. Incest:

Upon receipt of incest complaint, the FBI will immediately institute investigation and bring the matter to a logical conclusion.

6. Arson:

Upon receipt of a complaint regarding a violation of this type, preliminary investigation will be instituted to determine if, in fact, there is indication of an actual arson. No investigation will be conducted regarding the arson of any automobile. This should not be confused with destruction of Federal property or Federal automobiles.

7. Carnal Knowledge:

Same guidelines as set out in Item #3 (Rape).

8. Assault with a Dangerous Weapon:

Upon receipt of an assault complaint wherein a weapon is involved, the FBI will immediately institute an investigation when there was more than a minor injury or a firearm was discharged and there was obvious intent to inflict great bodily harm. The FBI will not investigate minor assault complaints where no weapon was utilized and no bodily harm inflicted or bodily harm insufficient to require medical treatment. In all assault cases pictures of the victim will be taken wherever possible.

#### 9. Assault Resulting in Serious Bodily Injury:

Upon receipt of an assault complaint involving serious bodily injury, the victim will be interviewed to establish if victim is willing to testify against assailant. In addition, it will be determined whether or not extensive medical treatment was necessary. If victim is willing to testify and medical treatment necessary, complete investigation by the FBI will be conducted.

#### 10. Burglary:

The FBI will institute investigation regarding all burglary complaints received which involve a loss of property over \$500. If the victim of a burglary is a non-Indian and no information indicating the suspects of the burglary are Indians, no investigation is to be instituted by the FBI. These matters should be handled by the local law enforcement agency. In the event their investigation determines an Indian is involved, the FBI should then institute a burglary investigation. Burglaries covered by the Assimilative Crimes Act shall be handled on a case-to-case basis. In addition, burglaries committed with intent to perpetrate felonies, other than larcenies, will also be handled on an individual basis.

#### 11. Larceny:

Same guidelines as set out in Item #10 (Burglary).

No investigation will be conducted by the FBI in burglary or larceny cases where the victim and the subjects are blood relatives unless specific intent on the part of the subjects to permanently deprive the victim of the stolen property can be established.

#### 12. Robbery:

Upon receipt of a robbery complaint, the FBI will institute investigation. In the past, the FBI has received numerous complaints regarding minor strong, arm-type robberies. In these instances, if personal property taken is minimal and the circumstances are not aggravated, no investigation will be instituted by the FBI.

#### 13. Assault with the Intent to Kill:

Mere threats to kill without the apparent present ability to carry out the threat along without a physical act manifesting intent to carry out the threat will not be investigated. Only cases where the threat is coupled with the present ability to carry out the threat and there is a physical act manifesting the intent to carry out the act will be investigated.

#### 14. Kidnapping:

Upon receipt of a kidnapping complaint, the FBI will immediately institute investigation and bring the matter to a logical conclusion.

GENERAL CRIMES UNDER THE  
JURISDICTION OF THE FBI  
THROUGHOUT THE STATE OF  
SOUTH DAKOTA

1. Thefts from Interstate Shipment:

No investigation will be conducted if the loss does not exceed \$750 in value in unknown subject cases.

2. Interstate Transportation of Stolen Motor Vehicle or Aircraft:

Departmental prosecutive guidelines will be completely observed and cases not falling within these standards for prosecution will be immediately presented to your office prior to any investigation being conducted.

3. Bank Frauds, Cases of Embezzlement, Abstraction, Purloining or Willful Misapplication by Bank Employees:

No investigation will be instigated in known subject cases unless the following exist: (1) the amount taken must be more than \$500 or (2) a total of \$500 must have been taken as a result of a series of thefts forming a pattern of activity. In no known subject cases the aforementioned dollar amount will be \$1,000.

4. Theft of Government Property:

Investigation will be instigated in thefts of property exceeding \$500 in value.

5. Crimes on Government Reservations other than Indian:

Investigation will be instigated in thefts of property and vandalism exceeding \$500 in value.

The same guidelines pertaining to our investigation of crimes in Indian country set forth above will apply to all Government reservations where we have jurisdiction.

6. Interstate Transportation of Stolen Property:

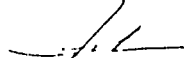
In check-type matters investigation will be instigated where there have been at least five checks passed in South Dakota and the total amount of money involved exceeds \$1,500.

We agreed these guidelines are in every instance subject to exception due to unusual or aggravated circumstances. Whenever these guidelines are invoked by the FBI in South Dakota, your office will be furnished with an appropriate communication for your record to assist you in handling any related inquiries concerning the course of action we took.

The proposed letter to the Tribal Chairmen and Tribal and BIA law enforcement agencies on reservations covered by the FBI in South Dakota that I enclosed with my initial letter to you dated June 29, 1977, will be accordingly revised before it is disseminated to them.

Thank you again for your prompt and enthusiastic assistance on this, Dave.

Sincerely yours,



JOHN E. OTTO  
Special Agent in Charge

*Exhibit No. 14a*

*In Reply, Please Refer to  
File No.*

UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION  
392 Federal Building, U. S. Courthouse  
110 South Fourth Street  
Minneapolis, Minnesota 55401

August 8, 1978

Mr. Paul Alexander  
Office of the General Counsel  
U. S. Commission on Civil Rights  
1121 Vermont Avenue, Northwest  
Washington, D. C. 20425

Dear Mr. Alexander:

I certainly appreciated the opportunity to testify before the Commission on August 4, 1978, at Rapid City, South Dakota. Upon conclusion of that hearing, you requested that I advise you the priority assigned to Crimes on Government Reservations or in Indian country under the FBI's Resource Management and Allocation Program. During my testimony, I indicated that the personal crimes on the Indian Reservations involving crimes of violence were Priority II matters. You pointed out that in your contact with FBI Headquarters in Washington, D. C., the Crimes on Indian Reservations were in Priority III. Please be advised that Crimes on Government Reservations or in Indian country are considered a Priority III investigative matter by the Federal Bureau of Investigation. I would like to reiterate my statement during my testimony that within the Minneapolis Division these crimes are considered a Priority I category crime.

Please be advised that the Commission's request for a profile on the minority employees assigned within the Minneapolis Division will be addressed by a separate communication which will be forthcoming from FBI Headquarters in Washington, D. C.

Very truly yours,

A handwritten signature in cursive script, reading "David A. Brumble", is written over the typed name.

DAVID A. BRUMBLE  
Special Agent in Charge

*Exhibit No. 15*

OFFICE OF THE DIRECTOR

UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

August 29, 1978

Mr. Arthur S. Flemming  
Chairman, U.S. Commission on Civil Rights  
1121 Vermont Avenue, Northwest  
Washington, D. C. 20425

Dear Mr. Flemming:

I have been advised that during hearings recently held in Rapid City, South Dakota, your agency requested the minority profile of all FBI employees assigned within our Minneapolis Division.

Regarding the minority breakdown of our Minneapolis Office, I regret to advise that it is incumbent upon the FBI to follow the policy of not divulging information concerning the staffing of individual field offices in order to preserve the security of our investigations and the safety of our personnel. Based on our experience, we believe that public dissemination of specific information concerning the complement and composition of individual field offices would provide information which could be used to the advantage of criminal and certain foreign intelligence organizations. This could lead to the identification of our Special Agents, compromise their activities, and reach a point of endangering their safety as well as the safety of their families. For instance, at any given time a number of our Special Agents, minority and nonminority, are serving in undercover capacities. The possibility of those desiring to thwart such Agents or detecting the undercover Agent is greatly increased if details as to staffing are publicized. It is possible, however, to provide information concerning minority data for the entire FBI work force.

The following data on our Special Agent and support work force is current as of August 28, 1978:



Mr. Arthur S. Flemming

Special Agents

Females	139	Asian Americans	39
Blacks	172	Total Minorities	398
Hispanics	171	Total Agents	7920
American Indians	16		

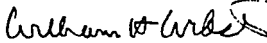
Support Personnel

Females	7507	Asian Americans	97
Blacks	2628	Total Minorities	3031
Hispanics	290	Total Support	
American Indians	16	Personnel	11,472

You may be interested to know that I visited the Minneapolis Field Office on August 23rd and at that time reemphasized the importance of our affirmative action program.

I hope that the foregoing will be of some assistance to you.

Sincerely yours,



William H. Webster  
Director

*Exhibit No. 15a*

United States Department of Justice

**UNITED STATES ATTORNEY**  
DISTRICT OF SOUTH DAKOTA  
SIOUX FALLS, SOUTH DAKOTA 57102

July 31, 1978

Mr. Paul Alexander  
Assistant General Counsel  
U. S. Commission on Civil Rights  
Washington, D. C. 20425

Dear Mr. Alexander:

Please find enclosed the letters which I received from the Public Health Service showing the extent of the drug problem on certain South Dakota reservations.

These you may remember were to be included in the committee records.

Sincerely,

David V. Vrooman  
United States Attorney

DVV:lsm  
Encl.







DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PUBLIC HEALTH SERVICE

March 27, 1978

See A-1 of Date: 6  
Pete Indian Hospital  
Rosebud, South Dakota 57570

8-10-1

Mr. Ed Driving Hawk  
President  
Rosebud Sioux Tribe  
Rosebud, South Dakota 57570

Dear Mr. Driving Hawk:

According to available statistics concerning Drug Abuse in Fiscal Year 1977, the following number of cases are being released per your request as of this date:

- 44 Cases of attempted suicide result of drug overdose.
- 20 Cases of attempted suicide resulted from drug overdose complicated by use of alcohol.
- 2 Cases involving self-inflicted gunshot result of drug overdose - both fatal.

In this reporting period we have had no fatalities involving drug overdose at this facility.

All cases involved with drug overdose were treated and released.

Sincerely yours,

*Sylvester C. Blings*  
Sylvester C. Blings  
Hospital Administrator

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE  
Public Health Service

*J. Lee* 114  
①

April 27, 1978

Mr. David V. Vrooman  
United States Attorney  
District of South Dakota  
Sioux Falls, South Dakota 57102

Dear Mr. Vrooman: RE: Abuse in using hard drugs on reservations

We do not have records that are specific to your request.

Our records indicate that during fiscal year 1977, we recorded 40 drug related attempted suicides of which 18 were alcohol related. There were also 9 accidental drug overdoses reported. It is apparently difficult to correlate suicide attempts through hard drug overdoses. Our records also indicate 6 alcohol related firearms accidents during FY77.

We do not have a program at the present time that indicates the use of hard drugs by members of this tribe. There are no local tribal ordinances barring use and/or sale of drugs on this reservation. This is not to say hard drugs are totally absent from the scene. We are reasonably sure it is present on this reservation and that the incident rate of use is climbing, but we have no statistical data to reinforce this assumption.

Sincerely,

*Robert C. Demery*

Robert C. Demery  
Service Unit Director (Acting)

cc: Rice C. Leach, M. D.  
Director  
Aberdeen Area Indian Health Service



## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PUBLIC HEALTH SERVICE  
HEALTH SERVICES AND MENTAL HEALTH ADMINISTRATION

Service Unit Director  
PHS Indian Hospital  
Pine Ridge, South Dakota 57770

4-25-78

In reply refer to:

Mr. David V. Vrooman  
United States Attorney  
District of South Dakota  
Sioux Falls, S.D. 57102

Dear Mr. Vrooman:

Thank you for your interest in the drug problem on the Pine Ridge Reservation. During the fiscal year of 1977, there were 31 hospital admissions for drug over-doses. Four of these were associated with alcohol intoxication as well. The out-patient figures are questionable, however, our records show that 26 additional patients were seen in the Emergency Room for drug over-doses and two of these were associated with alcohol intoxication. There were no gun shot wounds associated with a drug over-dose during the fiscal year 1977.

June, 1977, there were two break-ins to the Pharmacy and the first one Phenobarbital and aspirin with Codeine were stolen and the second break-in about 100 vials of Librium injectable plus assorted pills and tablets plus a vial of Anectine plus several vials of Valium injectable were stolen. Most of these drugs were found later; however, some remain to be missing.

I believe that the use and abuse of drugs on the Pine Ridge Reservation is a significant problem. I also believe, however, that socio-economic problems of the Reservation contribute greatly to this problem. We certainly appreciate your interest and are looking forward to hearing from you again.

*Petra Warren md*

Petra Warren, M.D.  
Acting Service Unit Director  
Pine Ridge IHS Hospital

PW:emb

RECEIVED

MAY 2 1978

UNITED STATES ATTORNEY  
SIOUX FALLS, S.D.



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PUBLIC HEALTH SERVICE

Service Unit Director  
FHS Indian Hospital  
Sisseton, South Dakota 57104

Refer to:

May 25, 1978

Mr. David V. Vrooman  
U.S. Attorney  
District of South Dakota  
Sioux Falls, South Dakota 57102

Dear Mr. Vrooman:

As you have requested, I would like to add our generalized statistics of the Sisseton Indian Health Service Unit in Sisseton, South Dakota. Our reservation does not approach the size of Rosebud Reservation, your index, concerning the abuse of hard drugs on the reservation.

In Sisseton, we see approximately one overdose of medications per month and perhaps one half to three quarters of this number are complicated with alcohol. Self-inflicted gun shot wounds are not frequent either related or unrelated to the use of drugs or medications. If we see one case per year, that would more than represent our case load of this latter problem. Overdose and overusage of alcohol, a drug in and of itself, continues to be the leading cause of medical problems as well as social problems on our reservation here.

If there is any further information which we can supply, please do not hesitate to request it.

Yours sincerely,

*Bertrand S. Duncan, M.D.*  
Bertrand S. Duncan, M.D.  
Clinical Director

RECEIVED

MAY 30 1978

UNITED STATES ATTORNEY  
SIOUX FALLS, S.D.

*Exhibit No. 16*

**DONOHUE AND DONOHUE**  
LAWYERS  
101 SOUTH MAIN SUITE 118 MEZZANINE  
SIOUX FALLS, SOUTH DAKOTA 57108  
TELEPHONE 606/834-1818

FARNELL J. DONOHUE  
MARY SUE DONOHUE

TESTIMONY BEFORE U.S. COMMISSION ON  
CIVIL RIGHTS  
RAPID CITY, SOUTH DAKOTA  
JULY 28, 1978  
BY: MARY SUE DONOHUE

I am Mary Sue Donohue, former Director of the South Dakota Division of Human Rights. What I have to say to you today, are results of some discrimination complaints filed with the Division, and other observations. The focus of your inquiry, I understand, is Indian, non-Indian relations in areas bordering reservations.

Let me give you a bit of background of the agency so that you can understand the cases in better perspective. The law under which the Division operates, prohibits discrimination in employment, houses, education, public accommodations, public services, and labor union membership. Bases covered are: race, sex, religion, and national origin. The Division handles about 140-150 cases per year, plus hundreds of inquiries. About 40% of those cases charge race discrimination, and most, by far, are filed by Native American complainants. Complaints by Native Americans tend to be in the areas of housing, public services, public accommodations, and employment. This is in contrast to complaints filed by females, the other large complainant class, which are more often in employment, employment benefits, and education.

**DONOHUE AND DONOHUE**  
**LAWYERS**  
 101 SOUTH MAIN SUITE 118 MEZZANINE  
 SIOUX FALLS, SOUTH DAKOTA 57108  
 TELEPHONE 606/834-1818

**FARNELL J. DONOHUE**  
**MARY SUE DONOHUE**

Few of the complaints filed, about 10-15%, reach the public hearing stage. At this level, the State Commission of Human Rights, holds administrative hearings to determine discrimination. As with most similiar agencies, 2/3 to 3/4 of the complaints filed, result in a finding of no cause to believe discrimination exists.

Selected cases that the Division has handled within the last year, are attached. It appears that the most likely areas for problems are in law enforcement and in health care facilities. Another case that may be of interest to you, is a complaint filed by one of the Commissioners against the Rapid City Police Department alleging discrimination in hiring and other employment practices on the bases of both race and sex. This is still being investigated. Because there are few cases, not many concrete conclusions may be drawn.

The purpose of the Division and Commission on Human Rights is to work at the elimination of discrimination. The budgetary constraints under which the Division has operated has limited efforts to handling cases and some public education. Brochures have been prepared for employers and educators covering discrimination on all bases.

A specific effort to develop a rapport with the Indian community in border towns, was productive. Efforts were made by Division staff to develop

**DONOHUE AND DONOHUE**  
LAWYERS  
101 SOUTH MAIN SUITE 118 MEZZANINE  
SIOUX FALLS, SOUTH DAKOTA 57108  
TELEPHONE 605/554-1818

**PARKELL J. DONOHUE**  
**MARY SUE DONOHUE**

contacts in White River, Yankton, and Martin.

I have always considered the role of the agency to be a balancer in the individual cases. And another important function is a change agent. So while the agency was to carefully and objectively gather information and evidence on individual cases, it was to be a leader and catalyst for opportunities for minorities and women. This aspect was exercised by the discrimination of information, drop in visits on large employers and school systems, and by the individual members of the Commission on Human Rights filing complaints.

It may also enhance your understanding to share some problems encountered in handling these cases. The problems were articulated by the two investigators for the Division. There were allegations with little or no documentation. Examples would be small-time landlord renting patterns or charges of being watched more closely than Whites in stores. This was sometimes compounded by difference of opinion as to a pattern of discrimination by a respondent. Inaccuracy of statistical data makes work force figures difficult to ascertain. There were many occasions when an individual Native American would contact the office and a complaint would be drafted but never signed or followed through, though efforts were made to secure contact.

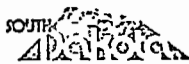
Do you have any questions?

SELECTED CASES FILED BY  
NATIVE AMERICANS

JULY 1, 1977 to JULY 1, 1978

<u>AREA</u>	<u>ALLEGATION</u>	<u>DISPOSITION</u>
EDUCATION White River	Unequal treatment in discipline	NC
PUBLIC SERVICES Pierre	Selective arrest - nontraffic	NC
HOUSING Winner	Failure to rent	NC
PUBLIC SERVICES Pierre	Arrest patterns - traffic point system discrimination Unequal treatment, issuance of permits	NC
EMPLOYMENT Pierre	Failure to hire	NC
HOUSING Aberdeen	Refusal to renew lease	NC
EMPLOYMENT Lead	Discharge	C - hearing in Sept.
PUBLIC SERVICES Mellette County	Arrest patterns, unequal treatment after arrest; unequal treatment for intoxication.	C - being conciliated
PUBLIC SERVICES Martin	Refusal by hospital to treat and discouraging patronage of Native Americans	C - set for hearing
PUBLIC SERVICES Martin	Same allegations as above, different complainant.	C - set for hearing
PUBLIC SERVICES Martin	Unequal treatment of Indians in jail	C - conciliated
PUBLIC ACCOMMODATIONS Rapid City	Unequal treatment at hospital and discouraging patronage	Under investigation



*Exhibit No. 17*

## Department of Commerce & Consumer Affairs

DIVISION OF HUMAN RIGHTS

State Capitol, Pierre, South Dakota 57501

Phone 605/224-3692

October 21, 1976

Dr. Don Dahlin, Secretary  
 Department of Public Safety  
 Public Safety Building  
 Pierre, South Dakota 57501

As we discussed here Monday, I believe any decision to eliminate the racial identification box on the Uniform Traffic Ticket form should be reconsidered. In my judgement, the reasons for retaining the racial identification outweigh those eliminating it.

I am aware that the Rapid City Human Relations Commission feels its use may give rise to a complaint of discrimination. To the best of my knowledge, however, the notation on race would not violate any civil rights law. This judgement is based on the fact that race and sex are recorded by an officer after an arrest is made. This is comparable to an employment situation. Race and sex should not necessarily be indicated on pre-employment applications, but may and should be included on data sheets completed upon employment.

Additionally, if the data is systematically gathered, it may be necessary to prove or disprove other complaints of discrimination. The data, of course, would hopefully be more accurate if gathered at the time of the arrest than secured at a later time from other sources.

It has been claimed that for a judge to have the race of a defendant before him would be inappropriate before the defendant appears. If this is perceived as a problem, perhaps that racial identification could be blocked out or scrambled on the form that reaches the bench. The information on the race and sex of arrestees in South Dakota should be available and very useful for social scientists; provided again that it is effectively and systematically gathered.

I suggest that you use the classifications; Black, Hispanic, Asian, American Indian or White. Perhaps this can be an incentive to systematically gathering this kind of information that you do collect.

*121*  
 MARY SUE DONOHUE, Director  
 Division of Human Rights

cc: Captain Cullen With  
 Chief Rae Neal  
 John J. Chisholm

## Exhibit No. 18

PROGRAMMED AMOUNTS - SOUTH DAKOTA  
 FY 1978 - OCT. 1, 1977 TO JUNE 30, 1978  
 BY RESERVATION

	TOTAL	Cheyenne River	Flandreau Santee Sioux	Pine Ridge	Rosebud
Indian Education	16,844.1	2,755.4	46.8	6,038.6	2,263.0
Johnson O'Malley	1,191.5	67.9	10.7	308.0	498.8
Social Service Grants	5,351.2	719.9		1,648.0	1,494.2
Social Services - Other	650.0	110.0		165.8	151.0
Tribal Gov't, Courts, Youth Work Learn, Ag. Ext., Housing, Law Enforcement	3,482.9	534.6	58.7	1,137.7	667.3
Contract Admin. & Support, Credit, Direct Employment	3,100.7	464.1	25.4	877.8	701.9
Road Maintenance	1,020.1	258.5	3.8	279.8	162.8
Agriculture, Water Resources, Minerals & Mining	4,404.7	1,324.7		1,567.0	952.1
Trust Responsibility & Svs.	820.1	152.6		223.2	207.4
Gen. Mgmt. & Fac. O&M	4,847.2	898.0		1,899.0	592.4
Administration	1,004.1	122.7	45.0	391.7	118.5
Education Title Programs	2,415.0	382.9		1,133.0	236.2
Road Construction	2,403.0	216.0		1,536.0	576.0
Highway Safety Program	92.4	7.0		48.0	37.4

PROGRAMMED AMOUNTS - SOUTH DAKOTA  
 FY 1978 - OCT. 1, 1977 TO JUNE 30, 1978  
 BY RESERVATION (Continued)

Yankton	Sisseton	Crow Creek	Lower Brule	Pierre Ind. Learning Cnt.	Flandreau School	USTS*
818.9	398.4	1,324.2	437.8	542.0	2,219.0	
83.6	174.4	34.2	4.5	9.4		
376.2	648.4	264.9	199.6			
50.4	82.7	52.7	37.4			
156.6	378.2	281.4	250.7			17.7
169.1	340.7	184.3	138.3			199.1
10.0	128.1	72.8	104.3			
88.8	309.5	162.6				
49.6	86.3	40.5	60.5			
2.8	112.3	202.0	249.3	200.0	691.4	
85.8	90.1	68.6	81.7			
99.7	34.5	147.7	158.4	46.0	176.6	
	5.0	70.0				

\*United Sioux Tribes of South Dakota

OBLIGATIONS INCURRED - SOUTH DAKOTA  
 FY 1977 - OCT. 1, 1976 THROUGH SEPT. 30, 1977  
 BY RESERVATION  
 DOLLAR AMOUNTS TO NEAREST HUNDREDS

	TOTAL	Cheyenne River	Flandreau Santee Sioux	Pine Ridge	Rosebud
Indian Education	16,220.7	2,519.6	36.2	5,668.1	2,498.0 <sup>1</sup>
Johnson O'Malley	1,445.4	116.6	15.6	162.3	680.3
Social Service Grants	6,443.4	809.8	.1	2,062.7	1,790.4
Social Service - Other	528.3	87.7		114.3	113.3
Tribal Gov't, Courts, Youth Work Learn, Ag. Ext., Housing, Law Enforcement	5,233.6	500.0	50.4	1,309.6	641.7 <sup>3</sup>
Contract Admin. & Support	2,406.5	337.6	38.1	674.9	575.6 <sup>11</sup>
IBDP, Credit, Direct Emplmt.	1,391.0	189.8	1.5	414.6	255.3
Road Maintenance	1,008.6	208.3	3.9	248.6	256.3 <sup>13</sup>
Agriculture, Water Resources, Mineral & Mining	1,435.4	248.4 <sup>15</sup>		448.0	422.4 <sup>17</sup>
Trust Responsibility & Svcs.	868.4	179.9 <sup>20</sup>		214.5 <sup>21</sup>	203.7 <sup>22</sup>
Gen. Mgmt. & Fac. O. & M.	4,624.3	918.2 <sup>25</sup>		1,781.1 <sup>26</sup>	599.9 <sup>27</sup>
Administration	640.2	107.6	37.1	133.0	104.5
Education Title Programs	882.1	1.8		230.0	63.3
Road Construction	5,233.5	1,356.7		2,036.0	1,287.2
Drought Emergency	5,071.0			1,070.4	2,200.0
Indian Loan Guarantee Fund	52.1				15.1
Highway Safety Program	3.5			3.5	
*United Sioux Tribes of South Dakota					

OBLIGATIONS INCURRED - SOUTH DAKOTA  
 FY 1977 - OCT. 1, 1976 THROUGH SEPT. 30, 1977  
 BY RESERVATION  
 DOLLAR AMOUNTS TO NEAREST HUNDREDS (continued)

Yankton	Sisseton	Crow Creek	Lower Brule	Pierre Ind Learning Ctr.	Flandreau School	USTSD*
817.3	584.0 <sup>2/</sup>	940.8	477.7	608.0	1,916.9	154.1
58.0	341.0	43.3	24.0	4.3		
642.3	623.1	274.6	240.4			
40.3	83.6	54.3	34.8			
844.8 <sup>4/</sup>	1,119.1 <sup>5/</sup>	259.1 <sup>6/</sup>	491.1 <sup>7/</sup>			17.8
89.3	210.5 <sup>10/</sup>	181.0	42.5	227.6 <sup>8/</sup>		29.4 <sup>9/</sup>
97.8	104.3	65.9	62.8			199.0
	125.7 <sup>14/</sup>	61.6	104.2			
40.5	70.7	71.8 <sup>18/</sup>	133.6 <sup>19/</sup>			
42.5 <sup>23/</sup>	104.1 <sup>24/</sup>	67.1	25.6			31.0
3.7 <sup>28/</sup>	78.4	165.5 <sup>29/</sup>	206.7	210.1	660.7	
62.4	55.7	58.0	81.9			
3.6	18.9	214.4	146.1		207.6	
	442.1	107.9				
		1,700.6 <sup>6</sup>	100.0			
14.2	12.7	9.2	9			

OBLIGATIONS INCURRED - SOUTH DAKOTA  
 FY 1976 - JULY 1, 1975 THROUGH JUNE 30, 1976  
 BY RESERVATION  
 DOLLAR AMOUNTS TO NEAREST HUNDREDS

	TOTAL	Cheyenne River	Flandreau Santee Sioux	Pine Ridge	Rosebud
Indian Education	15,201.5	2,420.0		5,643.0	2,312.1
Johnson O'Malley	1,456.9 <sup>2/1</sup>	72.5		122.4	622.8
Social Service Grants	5,243.5	728.5		1,552.0	1,641.6
Social Services - Other	493.9	85.4		107.2	116.6
Tribal Gov't, Housing & Law Enforcement	2,961.1	323.5 <sup>3/</sup>	51.8	1,070.3 <sup>4/</sup>	518.3 <sup>5/</sup>
Commercial Dev. & Emplmt. Assist. & Credit & IBDP	1,178.3	178.0	4.2	222.1	309.8
Road Maintenance	832.0	245.1		242.8	112.1
Agriculture, Water Resources, Minerals & Mining	975.3	198.9		249.3	287.3
Trust Responsibility & Svs. Gen. Mgmt. & Fac. Operation	646.4	124.1 <sup>10/</sup>		199.2 <sup>11/</sup>	132.2 <sup>12/</sup>
	3,704.2	722.3		1,432.8	476.8
Administration	594.8	102.6	5.7	124.4	100.5
Contract Support - Ele. 74	770.8	62.0	7.8	109.5	135.6
Education Title Program	2,471.8	298.0		1,272.7	264.5
Road Construction	4,824.8	1,314.0		1,958.6	890.3
Indian Loan Guarantee	52.7				10.6
Highway Safety Program	64.1			34.1	30.0
Job Opportunities Program	100.3			57.0	
*United Sioux Tribes of South Dakota					

OBLIGATIONS INCURRED -- SOUTH DAKOTA  
 FY 1976 - JULY 1, 1975 THROUGH JUNE 30, 1976  
 BY RESERVATION  
 DOLLAR AMOUNTS TO NEAREST HUNDREDS (continued)

Yankton	Sisseton	Crow Creek	Lower Brule	Pierre Ind. Learning Ctr.	FIandreau School	USTSD*
781.3 <sup>1/</sup>	479.4	897.7	433.2	452.1	1,782.7	
45.8	579.4					14.0
262.3	662.2	205.1	191.8			
41.3	65.7	52.7	25.0			
168.9 <sup>6/</sup>	400.8 <sup>1/</sup>	233.0 <sup>8/</sup>	176.7 <sup>2/</sup>			17.8
36.1	114.3	76.1	37.7			200.0
	71.1	62.2	98.7			
38.6	46.9	52.8	101.5			
42.5	78.3	53.7 <sup>13/</sup>	16.4			
2.5	64.5	155.2	180.7	168.7	500.7	
61.7	90.4	42.5	67.0			
19.1	127.1	63.6	79.0	65.3		101.8
142.8	15.0	171.6	93.9	24.0	189.3	
270.3	238.9	100.0	52.7			
5.9	12.1	10.4	13.7			
		43.3				

REPORT TO THE US COMMISSION ON CIVIL RIGHTS  
CONCERNING LAW ENFORCEMENT AND CIVIL IMPROPRIETIES  
IN THE STATE OF SOUTH DAKOTA



## TABLE OF CONTENTS

Introduction .....	1
General Law Enforcement .....	2
FBI .....	2
BIA and State Police .....	3
Incidents Involving Vigilantes .....	4
Murder and Manslaughter .....	5
Attorney General Janklow .....	7
The Sioux Falls Courthouse Riot .....	8
General Discrimination and Animosity .....	9
Harassment by Local Business .....	9
Harassment by Local Populace .....	10
Conclusion .....	11
Signatures and Notarization .....	12
Additional Informants .....	13 **

\*\* This information is considered classified except to members of the Commission and to responsible delegates. Therefore, it is placed at the back of the report for easier detachment.

## INTRODUCTION

Within the past few years, there has emerged within the State of South Dakota large scale improprieties on the parts of State Government, Law Enforcement System and certain civilian groups towards the Native American population residing in the state. Efforts by Indian leaders and concerned citizens to correct flagrant abuses of police power and delegated police power have been met with, at the very least, inaction and apathy by local and state officials, as well as the general populace. To many Native Americans, South Dakota is a police state with shades of dictatorial rule. "Equal Justice Under Law" has questionable recognition when applied to the Native American. Recognizing the right of free speech, as guaranteed in the U.S. Bill of Rights, we now take this opportunity to report to the Commission and to the public incidents of questionable legality and moral ethics which have occurred in this state within the last few years. We believe it is safe to say that any backlash or intimidations incurred by the writers will be as a direct result to the testimony contained herein.

## \* GENERAL LAW ENFORCEMENT \*

## Improprieties by FBI

After the occupation of Wounded Knee, there has existed on the Pine Ridge reservation a "reign of terror" imposed by the presence of the FBI.

The most recent questionable action on the part of the FBI concerns the extradition of Leonard Peltier from Canada. Peltier is charged with the murders of two FBI agents stationed on the reservation, a situation where logical analysis would reveal that Peltier could not have possibly have carried out this action by himself. Peltier fled to Canada, and was later extradited on testimony given by Myrtle Poor Bear. After the extradition, Ms. Poor Bear admitted that her testimony was false, and was given initially under pressure from the FBI. Myrtle Poor Bear was then allegedly "threatened by the FBI."

In January of 1976, Byron Desersa was shot to death at Wanbli. A family of Pine Ridge "goons" was implicated in the shooting. The BIA Police simply ordered the Winters out of town. The FBI was notified, but the Bureau allegedly did nothing except drive around the area. Winters were later picked up in Martin by the Martin Police Department.

## Improprieties by BIA and State Police

The BIA and State Police seem to make a habit of search and seizure without due cause and/or without a warrant.

On May 01, 1975, during the second occupation of the Wagner Pork Plant, Mr. George Bartlett was driving through town when he came to a roadblock set up by BIA and State Police. Mr. Bartlett and his passengers were ordered out of the car, and it was searched by the police. The police then asked Mr. Bartlett to open the trunk, and he asked them in turn if they had a warrant. The officer replied that they didn't need a warrant. Mr. Bartlett then informed the officer that he did not have a key to the trunk, so he was told to get back in the car and follow the trooper to the National Guard Armory. He was placed in a Division of Criminal Investigation (DCI) car, and they drove to his house to get the key. When Mr. Bartlett opened the trunk, it was searched by the police with no regard for personal property. His personal property was placed on the ground, and his Marine Corps uniform was dumped into the dirt from a seabag. Officers Jensen and Huber were there and helped search the trunk. Mr. Bartlett was then told to go home because a curfew was in effect. He was specifically told to "go home and park the car or be killed." The State Trooper who followed Mr. Bartlett home is quoted as saying; "You'd better head straight home, because I'm going to be right behind you like stink on shit."

Another incident of search and seizure without a warrant occurred near Mission, SD, in July of 1976. A letter which Mr. Bartlett sent to Mr. George Keller of the Bureau of Indian Affairs in Rosebud reads as follows:

"Mr. George Keller: April 6, 1977  
 I am writing this letter to you at the advice of my lawyer. This letter is also to complain about an incident which took place in July 1976. The incident took place on the corner of hwy. 18 and the corner of main st. Mission, S.D. A police officer by the name of War Bonnet stops my car and asks for my drivers license so I gave it to him. He sees my Winchester rifle on the floor of my car he asked for it so I gave it to him. He sat in his car for some time calling on his radio. He comes back to my car and ordered me and my passengers out of the car and stand to one side which we did he then searched my car and did not find anything in the front or back seat. He orders me to open my trunk which I did. War Bonnet searches my trunk and finds my case of beer which I just bought and did not yet open. Then War Bonnet confiscated my beer and told me that I could pick up my rifle at the Police Station in Rosebud which I did. But Mr. War Bonnet did not return my case of unopened beer, A clear violation of my constitutional right preferably the 4th amendment. War Bonnet illegally searched and seized without a warrant. What did he do with that case of beer? Can I get it back? He never gave me no receipt for that case of beer.....  
 Sincerely ..(signed) George Bartlett"

#### INCIDENTS INVOLVING VIGILANTES

From previous study, the Commission is well aware of the existence of the "Charles Mix County Civil Defense Squad." It is our personal belief that publicizing this group of domestic terrorists will only lead to more altercations once "Washington leaves town." Considering the air of distrust and general hate for the Indian population in Charles Mix County, we believe it is almost getting to the point where it is necessary to bring in Federal troops for protection from these so called "CD Squads."



cannot be true. Considering the State legal system, and the general atmosphere within the State, any Indian is going to think twice before killing a non-Indian. And cultural and socio-economic factors alone cannot account for the high rate of murders within the Indian population both on and off the reservations.

Some of the unsolved murders that have occurred in the last few years are as follows:

Larry Leavitt, Hot Springs, April 1978, no witnesses.  
 Alfred Gunhammer, Custer, March 1974.  
 Marvin Drapeau, Marty, May or June 1977.  
 Jan Cita Eagle Deer, found in Neb, April 1975.  
 Hobart Horse, Sharps Corner, Nov 1977.  
 Peter Bisonette, Pine Ridge, Oct 1973.  
 Clarence Cross, Batesland, June 1973.  
 Verlyn Dale Bad Heart Bull, Allen, Neb, Feb 1974.  
 Edith Eagle Hawk, Sharps Corner, Mar 21 1975.  
 Linda Eagle Hawk, Sharps Corner, Mar 21, 1975.  
 Earl Javis, Sharps Corner, Mar 21 1975.  
 Albert Coomis, Sharps Corner, Mar 21 1975.  
 Larry Arpan, Wagner, Dec 1974.  
 Orville Red Lightening Jr., Greenwood, Jan 1975.  
 Larry Standy, Chamberlain, Nov 1976.

In addition to unsolved murders, Mr. Bartlett relates that there have been Indian murders where the accused successfully pleads self defense, but with questionable grounds. Two of these are:

Wesely Bad Heart Bull, killed in Buffalo Gap, January of 1973. Sonny Wheeler and Darrell Schmitz claimed self defense. They are walking free today.

Norman Little Brave was killed in Norris around 1968. Baxter Berry claimed self defense. He is walking free.

## Attorney General Janklow

The actions of Attorney General William Janklow toward the Native American population are a disgrace to the U.S. Constitution.

While running for Attorney General in 1974, Janklow's major contention point was to get rid of AIM and other activists. He is quoted as saying that he would "put AIM in jail or under it."

There evolved an incident during this campaign concerning Janklow and a girl named Jan Cita Eagle Deer. Ms. Eagle Deer testified on television that Janklow had raped her while he was working for Legal Services on Rosebud sometime ago. Not too long after her television appearance, Ms. Eagle Deer was found dead in Nebraska. Evidence indicates that she was killed in South Dakota and hauled across the border into Nebraska. Her murder is still unsolved. (Greg Zepher of Wagner and KELO TV of Sioux Falls were at the scene).

In his most recent campaign for governor, (1978), Janklow made repeated use of pictures and videotapes of Courthouse Riots in an effort to convince the populace that AIM or any other Indian were no match for South Dakota Police Power and organization. This kind of campaign was most degrading to the Indian person, AIM or otherwise. Janklow gave the impression that before his election to Attorney General, that the Indians were all a pack of wild animals who had finally been whipped in subjection through his efforts. This is certainly not in accordance with the American System of Government. If a politician in any other state were to run a campaign "against" any other ethnic group



he would certainly not get away with it. Why is this allowed to happen in South Dakota? Where is all the opposition? Are they afraid of possible "consequences?"

#### The Sioux Falls Courthouse Riot

The Sioux Falls Courthouse Riot took place on April 30, 1974, after the trial of Russel Means, David Hill and Dewey Dubray. In a conversation with Mr. Bartlett, he related what he saw that day: "Before the Court proceeded, the news media was forced out of the hall by State Police in riot gear. Only 20 male adults from South Dakota were allowed in the courtroom. I saw women bystanders hit in the head and back by riot police after the Judge ordered the courtroom cleared. I also saw State Police on the roof armed with rifles."

\* GENERAL DISCRIMINATION AND ANIMOSITY \*  
TOWARDS NATIVE AMERICANS

The general feeling of ingrained hate toward the Indian can be seen in all facets of life here in South Dakota. In spite of the U.S. Bill of Rights, the U.S. Constitution, The State Constitution, EEO programs, and ad infinitum, it seems as though just being Indian is an automatic qualification for second rate citizenship in the eyes of many non-Indian residents of this State. We have witnessed on many occasions acts of intended provocation and plain simple discourtesies directed toward Native Americans in theatres, restaurants, bars, sports events and "on the street." Government programs simply cannot modify deeply ingrained animosity.

Harassment by Local Businesses

Sometime last winter, Mr. Bartlett took his car to [deleted] to have the headlights replaced. He had supervised the work on previous occasions at this same establishment, however, circumstances dictated otherwise at this time. When Mr. Bartlett picked up his car, he noticed several indentations on the windshield, mostly on the drivers side, which were not there when the car was initially brought in for repair. The mechanic told Mr. Bartlett that they were rock holes. Mr. Bartlett then

spoke to the manager, and he stated that he did not believe that his mechanics would "do such things." We have examined these indentations, and are of the opinion that they are not rock holes, since they were not there initially, and since rocks seldom form a consistent pattern on a windshield. While neither of us are experts in ballistics, we have never seen a BB make that type of hole in a windshield, either.

#### Harassment by Local Populace

During the Fall of 1977 and the Spring of 1978, a red Mustang, License number CU 3666 has been following Mr. Bartlett home and around town. This same driver also allegedly engages in exhibition and reckless driving in Mr. Bartlett's presence, and sometimes in the presence of the police, and nothing is done about it. At this time, Mr. Bartlett is not experiencing any more trouble with the driver of this car, in regards to following him home.

## CONCLUSION

While recognizing that no government of man is divine, we believe that the incidents related in this report illustrate the philosophy of the Governmental and Law Enforcement Systems within the State of South Dakota, with respect to the Native American Resident.

We expect reprisals not only from the government, but from the general populace as well.

Though we recognize the Commissions efforts , we feel that any recommendations made will be of questionable endurance on the part of the State Government.

It is hoped on our part that the Commission can prove to us and to the Native American Residents of the State of South Dakota that this is still a government "of the people, by the people and for the people."

SIGNATURES AND NOTARIZATION

\_\_\_\_\_  
Date

\_\_\_\_\_  
George Bartlett  
Custer, South Dakota  
Member, Cheyenne River Sioux Tribe

\_\_\_\_\_  
Mark Land  
Hill City, South Dakota  
Advisor and Associate

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public

seal

The letter attached to this exhibit  
is on file at the U.S. Commission on  
Civil Rights.

## INDEX

- A
- Affirmative action  
 FBI recruitment, 201-204  
 race data as necessary for programs, 228  
 subcontract requirement, 38-39
- Agencies, State, *See* political relations between Indians and State agencies
- Agriculture  
 cattle ranch programs, 240  
 expansion of farming operations plans, 42  
 training program, 43
- AIM, *See* American Indian Movement
- Alcoholic beverages  
 alcoholism problem on reservations, 43  
 intoxication violations  
 handling of, 118-119  
 jurisdiction conflicts, 68  
 sale on reservations, 13, 17
- American Indian Movement (AIM), 10, 37  
 FBI harassment of, 109-110
- American Indian Policy Review Commission, 166, 248
- Assimilative Crimes Act, 67, 184
- Attorneys, *See* Courts, jurisdiction of
- B
- Badlands National Monument, 84
- Bell, Griffin, U.S. Attorney General, 188, 199
- Bennett County, S.D., 95-96  
 checkerboard jurisdiction, 112, 114-115  
 complaints against police handling, 118  
 county and tribal police relations, 116-117  
 perceived discrimination in  
 business relations, 96-98  
 law enforcement, 98-100, 117-118
- BIA, *See* Bureau of Indian Affairs
- Bicultural programs, *See also* Education accomplishments, 58-60, 64
- Big Bend Dam, 51
- Bogue, Andrew W., judge, U.S. District Court of the Seventh Judicial Circuit, 189, 237
- Brule County, S.D.  
 law enforcement, 71-72
- Budgets  
 Oglala Sioux Tribe, 81  
 Rosebud Sioux Tribe, 152  
 Sisseton-Wahpeton Sioux Tribe, 30-31, 35
- Buffalo County, S.D., cross-deputization program, 69-70
- Bureau of Indian Affairs  
 activities, overview, 232  
 assistance in Indian land acquisition, 132  
 FBI, relationship with  
 crimes investigation, 26-28, 79-80, 171-173, 179-183  
 delegation of responsibility from, 195-197, 207-209  
 law enforcement  
 activities, overview, 18, 170-171  
 burglary cases, 185  
 officers' training in, 69, 171, 183  
 liability insurance for police officers, 161  
 police services contracted to Oglala Sioux Tribe, 86-87  
 problems of, 233
- Business relations with non-Indian communities  
 Chamberlain, 55  
 extension of credit, 82, 103, 107-108, 142-143  
 Kadoka, 81-84  
 Martin, 96-98, 101-104, 107-108  
 perceived discrimination, 96-98, 223-224  
 problem of debt collection, 82-84, 103, 224  
 Sisseton, 29-33, 43-47  
 Winner, 142-143, 153-154
- Busing to schools, 54

Buy Indian Act, 35

C

Cardenas, Leo, Director, Region VIII, Community Relations Services, Dept. of Justice, 146-147

Cattle, *See* Agriculture

CETA (Comprehensive Employment and Training Act), 152, 153

Chamberlain, S.D.,  
business relations with Indian community, 55

public school district, bicultural programs in, 58, 63-64

Checkerboard jurisdiction, *See also* Cross-deputization program

Bennett County, 112, 114-117

Cheyenne River Reservation dispute, 124-125, 127-128

citizen's arrest procedure, role of, 22, 70, 85, 86, 114-115, 158-159, 169-170

Federal jurisdiction as solution to, 178-179

problems arising from, 19, 22-23, 176-178

Roberts County, 20-26, 177

Shannon County, 115, 127

Todd County, 169

Tripp County, 157-161

Washabaugh County, 114-116

Cheyenne River Reservation, 196, 221

acquisition of land owned by non-Indians, 131-133

exterior boundaries, jurisdiction dispute, 124-125, 127-128

land ownership by non-Indians, 132

Cheyenne River Sioux Tribe, 215, 216, 222

economic development, 240

law enforcement systems, 239

Citizen's arrest, *See* Checkerboard jurisdiction

Civil Rights Act, 241

Civiletti, Benjamin R., Deputy Attorney General, 188

Commercial development, *See* Economic development

Commission on Civil Rights, U.S.

description and functions, 1-2

hearing procedures, 2-5, 149-150

urban Indians representation at hearings, 247-248

Community programs, *See also* Human relations commissions

bicultural programs, 58-60, 64

coordination efforts, 87, 213-214

Community Relations Service (CRS), 37, 146, 147

activities, overview, 229-230

law enforcement jurisdictional conflicts, 233-235

Pine Ridge Reservation police force, training of, 231

Contracts

contracting for Federal services, 62

Federal contracts, 35

subcontracts, affirmative action requirement of, 38-39

Corps of Engineers, Army, 49, 51-52

Corson County, S.D., 221

Courts, jurisdiction of

alcoholic intoxication, 68

burglary cases, 185

commercial transactions, 74-76

conflicts, 66-68, 73

jurisdiction on reservations, 221  
suggestions for resolution of, 225-226, 239

debt collection, 82-84, 224

Federal courts

apprehension of suspects, policy for, 200-201

cases, backlog of, 184

declination rate, 186-187

drug enforcement, 196, 210

guidelines to determine jurisdiction, 176, 185-186, 196

jurisdiction, specific, 184, 188-189

relationship with local courts, 189

relationship with State courts, 187

Federal policy changes, effect of, 212, 220-221

Fourth circuit court assignment to Crow Creek Reservation, 72

individual as Indian or non-In-



dian, criteria for determining, 75, 89

major crimes in Indian jurisdictions, 156, 162

*Oliphant*, effect of, 21-22, 84, 156-157, 160, 188, 189, 218

overview, 1950s, 162, 163

property value limitations, effect of, 176, 241

State courts, 84-85, 217-218

    relationship with Federal courts, 187

    relationship with tribal courts, 73, 79

traffic violations, 66-68

tribal courts, 84-85, 130, 155, 166, 168, 186, 221-222

    access to, non-Indians, 88-89, 224

    Indian attitude toward, 66, 236-239, 242-243

    non-Indian attitude toward, 125, 127-131, 133-134

    penalties limitations upgrading, proposal for, 188

    preferential treatment for suspects, 196-197

    quality of, 79, 185, 238, 241, 246-247

    relationship with State courts, 73, 79

    types of courts on reservations, 66

    victimless crimes, 156-157, 188-189, 215-218, 241-242

Credit extension, *See* Business relations with non-Indian communities

Cross-deputization program, *See also* Checkerboard jurisdiction

    Buffalo County, 69-70

    constable designation as alternative to deputy status, 164, 166

    game law enforcement, 237, 238

    Indian attitude towards, 71

    Marshall County, 19-20

    objections to, 20-26, 129, 237-238

*Oliphant*, effect of, 235-236

    procedure of, 18-19, 28

    sales tax collection, 237

    sheriff, liability for deputies, 85, 158, 161-164, 177

    State sanction for, 217, 222

    training in, 166-167

    Tripp County consideration of, 157

    Crow Creek Reservation, police force jurisdiction, 69-71

    size and composition, 68-69

    Crow Creek Tribe, 196

    background, 49-51

    education, 53

CRS, *See* Community Relations Service

Cunningham, John E., U.S. Congressman, Washington State, 14, 17

## D

Dakota Indian Foundation, 60-61

Dakota Mental Health Center, 54-55, 58-60, 64

Dam construction, impact on reservations, 51, 53

Daws Act, 9

Days, III, Drew S., Assistant Attorney General of the Civil Rights Division, 150

Debt collection, *See* Business relations with non-Indian communities

Department of, *See* names of specific departments

Discrimination complaints

    business relations with non-Indian communities, 96-98, 142-143, 223-224

    data breakdown by groups, 219

    health care, 52-53

    housing, 140-142, 144-146

    law enforcement, 56, 98-100, 117-118

    social relations between Indians and non-Indians, 222-223, 245-248

    treaties perceived as vehicles for inverse discrimination, 130-131

DOT, *See* Transportation, Department of

Drug enforcement, 196, 210

Drug Enforcement Agency, 210

## E

- Economic development, *See also* Employment  
 agricultural operations, 42-43  
 cattle ranch programs, 240  
 contracting for Federal services, 62  
 Federal contracts, 35  
 industrial development, problems, 33-35, 40, 43-45  
 land ownership, 41-42, 164-165  
 subcontracts, employment opportunities and problems, 38-39  
 tribal budgets and income, 30-31, 35, 81, 152
- Economic Development Administration, 33-34
- Education  
 bicultural program, Chamberlain school district, 58, 63-64  
 busing, 54  
 student performance, 53-54
- Employment  
 BIA Indian employees, 232  
 employment in non-Indian communities, 40-41  
 FBI affirmative action recruitment, 201-204  
 off-reservation jobs problems, 39  
 race data for affirmative action program, 228  
 unemployment rates, 39, 152-153  
 welfare as disincentive to work, 41
- Extradition agreements, 71, 73, 78, 89, 162, 246

## F

- Fair Housing Act, 150
- Farming, *See* Agriculture
- Federal Bureau of Investigation (FBI)  
 BIA relationship with  
 crimes investigation, 26-28, 79-80, 171-173, 179-183  
 delegation of responsibility to, 195-197, 207-209  
 case information release, effect on public image, 197

- categories of crimes, 189-190, 209-210  
 harassment of AIM, 109-110  
 hostility from Pine Ridge Reservation, 190-191  
 investigative practices  
 Indian perceived hostility of, 109-110, 191-193, 242  
 modifications for cultural differences, 193-195, 204-206  
 local political pressures, freedom from, 196-197  
 procedures for lodging complaints against, 206-207  
 recruitment, affirmative action in, 201-204  
 response times to occurrences on reservations, 199-200  
 responsibilities, 205-206  
 staff reduction, Rapid City, 122, 175, 182, 190  
 tort liability, 197-198  
 transfers within, 200  
 tribal police, relationship with  
 crimes investigation, 121-123, 173  
 delegation of responsibility to, 174-175, 195-197, 207-209  
 notification prior to investigation, 192-193  
 training programs, 176
- Federal courts, *See* Courts, jurisdiction of
- Federal Tort Claims Act, 198
- Fort Randall Dam, 51
- Fort Thompson, S.D., 49-50, 52-53
- Freedom of Information Act, 197

## H

- Health care  
 community health representatives' duties, 139  
 hospital facilities, 52-53  
 mental health services, 54-55, 59-60, 64  
 perceived discrimination, 52-53
- Hospitals, *See* Health care
- Housing, 36-37  
 perceived discrimination, 140-142, 144-146

Rosebud Sioux housing project,  
140-142  
substandard sanitary facilities,  
140-142, 144-145, 149-152

Housing and Community Development Program, HUD, 141, 151-152, 154

Housing and Urban Development, Department of  
Housing and Community Development Program, Winner, S.D., 141, 151-152, 154  
obligation to investigate FHA violations, 150  
Rosebud Sioux housing project, 140-142

HUD, *See* Housing and Urban Development, Department of

Hughes County, S.D., law enforcement procedures, 70

Human relations commissions,  
Kadoka commission, 92-95  
Martin commission, approval for, 105-107  
problems of, 220  
Rapid City commission, 220  
Sisseton commission plan, 37-38  
Winner Indian Council grievance committee, 146-147  
Winner commission, failure to form, 147-149

Human Rights, State Division of, 219-220

## I

Indian Civil Rights Act, 188

Indian preference law, 38

Indian Reorganization Act, 10, 239

Indian Self-Determination and Educational Assistance Act, 35, 233

Indian tribes, *See* Sioux Indian Tribes

Industrial development  
industrial park, 33-35, 43-45  
problems, 40

Interior, Department of the, 221  
relationship with Justice Dept., 198-199  
trust responsibility of, 198, 199

victimless crimes, 188

Interstate Congress for Equal Rights and Responsibilities, 124-126, 135

## J

Jackson County, S.D.  
cross-deputization program, 85  
jurisdictions within, 84, 113  
Sioux opposition to merger with Washabaugh County, 92, 94

Janklow, William, State attorney general, 159-160, 162, 189, 237, 238, 242-243, 246

Johnson-O'Malley Act, 58, 63

Joint Powers Act, 215, 216

Juries, Indian membership of, 76-78, 90-92, 167

Jurisdiction of courts over non-Indians, *See* Courts, jurisdiction of

Justice, Department of *See also* Community Relations Service  
guidelines to determine jurisdiction, 186  
litigating responsibility of, 198, 199  
Office of Professional Responsibility, 207  
relationship with Interior Dept., 198-199  
task force report on Indian affairs, 175, 187  
victimless crimes, 188-189

## K

Kadoka, S.D.  
business relations with Indian community, 81-84  
human relations commission, 92-95

## L

Lake Traverse Reservation, 19

Land ownership  
as source of conflict between Indians and non-Indians, 213, 240  
Rosebud Sioux Tribes, 164-165

Sisseton-Wahpeton Sioux Tribe, 41-42

Language  
 English not obstacle in court cases, 196  
 native language usage in law enforcement, 123, 174

Law enforcement, *See also* Checkerboard jurisdiction; Cross-deputization program  
 alcohol intoxication violations, 68, 118-119  
 Brule County, 71-72  
 citations from tribal police, inability of State to accept, 216-217  
 complaint procedure, 118  
 crime data breakdown by groups, 184  
 data not broken down by race, 226-228  
 decentralization of police force, 119-120  
 extradition, 71, 73, 78, 89, 162, 246  
 handling of major crimes in Indian jurisdictions, 26-28, 79-80, 121-123, 171-175, 179-183  
 Hughes County, 70  
 jurisdictional conflicts, CRS assistance in solving, 233-235  
 native language usage, 123, 174  
 perceived discrimination, 56, 98-100, 117-118  
 petition for improved jail treatment, 104-105  
 police review board, 120  
 tort liability of police officers, 197-198  
 training of officers, 69, 111-114, 172-173, 176  
 tribal systems, improvement of, 215  
 typical crimes, 72-73

Law Enforcement Assistance Administration, 215, 225

Laws, *See* Legislation

Legislation  
 Assimilative Crimes Act, 67, 184  
 Buy Indian Act, 35  
 Civil Rights Act, 241  
 Daws Act, 9

Fair Housing Act, 150  
 Federal Tort Claims Act, 198  
 Freedom of Information Act, 197  
 Indian Civil Rights Act, 188  
 Indian Reorganization Act, 10, 239  
 Indian Self-Determination and Educational Assistance Act, 35, 233  
 Johnson-O'Malley Act, 58, 63  
 Joint Powers Act, 215, 216  
 Major Crimes Act, 186, 241  
 Meeds bill, 61-63  
 Privacy Act of 1974, 197  
 Wheeler and Howard Act, 50

Liability, *See* Cross-deputization program; Law enforcement

*Liberty and Justice for All*, 6, 245, 248

Lindley, John Frank, founder of Dakota Indian Foundation, 60-61

Litigation, *See also* *Oliphant* decision  
*Little Thunder* decision, 91, 155, 156  
*Lone Wolf v. Hitchcock*, 130, 131  
*Newtown* decision, 242  
*Rosebud v. Kneip*, 130  
*U.S. v. Dodge*, 188  
*U.S. v. McBrattney*, 156  
*Wheeler* decision, 238  
*Little Thunder* decision, 91, 155, 156

Livestock, *See* Agriculture

*Lone Wolf v. Hitchcock*, 130, 131

Lower Brule Reservation, 51, 196

Lower Brule Tribe, 53

## M

Major Crimes Act, 186, 241

Marshall County, S.D., cross-deputization program, 19-20

Martin, S.D.  
 business relations with Indian community, 96-98, 101-104, 107-108  
 human relations commission, 105-107

Meeds bill, effect on Indian programs, 61-63

Mental health services, *See* Health care

Mondale, Walter F., Vice President,  
15, 16

## N

National Association of Counties  
(NACO), 165-166

National Congress of American In-  
dians, 10

*Newtown* decision, 242

## O

Office of Professional Responsibility,  
207

Oglala Sioux Tribe, *See also* Pine  
Ridge Reservation

annual budget, 81

membership, 81

opposition to Jackson and Washa-  
baugh Counties merger, 92,  
94

tribal police force, 86-87, 110-111

*Olyphant* decision

difficulties arising from, 65-66, 76

dissenting opinion, 189

effects of

cross-deputization program, 235-  
236

frequency of law violations, 86

jurisdiction of courts, 21-23, 84,  
156-157, 160, 188, 189, 218

## P

Pine Ridge Reservation, 196, 202-  
203, 212, 213, 223, 237

FBI hostility toward, 109-110,  
190-191

decentralization of police force,  
119-120, 231

decline of violence on, 89-90, 108,  
175

quality of tribal court, 246

sale of alcohol on, 13

Plea bargaining as alternative to  
jury trial, 77-78, 167-168

Police relations, *See* Law enforce-  
ment

Political relations between Indians  
and State agencies

cooperation, 215, 236-237

improvement, suggestions for,  
224-225

State Indian task force, 56-57,  
214, 243

State negotiating committee, 57,  
214, 243

Privacy Act of 1974, 197

Public Health Service, 210

Publications

*Liberty and Justice for All*, 6, 245,  
248

## R

Race relations, *See* Business rela-  
tions with non-Indian com-  
munities; Health care; Hous-  
ing; Human relations com-  
missions; Law Enforcement;  
Political relations between In-  
dians and State agencies; So-  
cial relations between Indians  
and non-Indians

Rapid City, S.D., human relations  
commission, 220

Reservations, *See* Cheyenne River  
Reservation; Crow Creek Res-  
ervation; Lake Traverse Res-  
ervation; Lower Brule Reser-  
vation; Pine Ridge Reserva-  
tion; Rosebud Reservation;  
Sisseton-Wahpeton Sioux Res-  
ervation; Standing Rock Res-  
ervation; Wounded Knee Res-  
ervation

Ramyke, Mildred, circuit court  
judge, 26

Roberts County, S.D., checkerboard  
jurisdiction in, 20-26, 177

Rosebud Reservation, 196, 227, 237  
boundaries after diminishment,  
154-155, 212

land ownership, 164-165

Rosebud Sioux Tribe, 215, 216

annual budget, 152

housing project for, 140-142

quality of tribal court, 246

unemployment, 152-153

*Rosebud v. Kneip*, 130

## S

- Schools, *See* Education
- Shannon County, S.D.  
 checkerboard jurisdiction, 115, 127  
 fire department fund-raising incident, 135-137
- Sisseton, S.D.  
 annual budget, 32  
 business relations with Indian community, 29-33, 43-47  
 human relations commission, 37-38  
 Indians, employment of, 40-41  
 industrial park development, 33-35  
 low-income housing project, 36-37
- Sisseton-Wahpeton Sioux Reservation, 196, 212
- Sisseton-Wahpeton Sioux Tribe, 216  
 agricultural operations, 42-43  
 annual budget, 30-31, 35  
 industrial park development, 33-35  
 land ownership, 41-42  
 organizational background, 35-36  
 unemployment, 39-40
- Sioux Indian Tribes, *See also* Cheyenne River Sioux Tribe; Crow Creek Tribe; Lower Brule Tribe; Oglala Sioux Tribe; Rosebud Sioux Tribe; Sisseton-Wahpeton Sioux Tribe  
 historical background, 8-10  
 legal problems of, 11  
 urban Indians, special problems of, 247-248
- Social relations between Indians and non-Indians  
 community communications efforts, 213-214  
 cultural differences, effects of, 211-213  
 Federal programs as enhancing segregation, 100-101, 109  
 perceived discrimination, 222-223, 245-248  
 race identification for solving problems, 137
- South Dakotans for Civil Liberties, *See* Interstate Congress for Equal Rights and Responsibilities
- Sovereignty of Indian nations. *See* Courts, jurisdiction of
- Standing Rock Reservation, 196, 212, 221
- State agencies, *See* Political relations between Indians and State agencies
- State courts, *See* Courts, jurisdiction of
- Statement  
 Background, Mary Ellen McEldowney, Vice Chairperson, South Dakota Advisory Committee to the U.S. Commission on Civil Rights, 7-11  
 opening and concluding statements, Chairman Arthur S. Flemming, 1-2, 248-249  
 rules, Commissioner Frankie M. Freeman, 2-5, 149-150  
 welcoming, Stanford Adelman, member, South Dakota Advisory Committee to the U.S. Commission on Civil Rights, 5-7
- State of South Dakota Department of Public Safety, 215
- Subcontracts, *See* Contracts
- T
- Taxes, collection agreements, 227, 237
- Todd County, S.D., *See also* Tripp County  
 Indian land ownership in, 165  
 unorganized county status, 154-156
- Tort liability, *See* Cross-deputization program; Law enforcement
- Traffic violations, jurisdiction conflicts, 66-68
- Training program, agriculture, 43
- Treaties  
 as perceived vehicles for inverse discrimination, 130-131  
 dilution of, 13-17, 51
- Tribal courts, *See* Courts, jurisdiction of
- Tribal police, *See* Law enforcement
- Tri-County Protective Association, *See* Interstate Congress for

Equal Rights and Responsibilities

Tripp County, S.D.  
 checkerboard jurisdiction, 157-161,  
 168-169  
 cross-deputization program, con-  
 sideration of, 157  
 Indian land ownership in, 165

U

Unemployment *See* Employment  
 United Sioux Tribes, 10  
 University of South Dakota, 214  
 Urban Indians, special problems of,  
 247-248  
*U.S. v. Dodge*, 188  
*U.S. v. McBrattney*, 156

V

Victimless crimes, *See* Courts, juris-  
 diction of

W

Washabaugh County, S.D.,  
 jurisdictions within, 84  
 law enforcement procedures, 114-  
 116  
 merger with Jackson County,  
 Sioux opposition to, 92, 94  
 Webster, William H., Director of the  
 FBI, 202, 204  
 Welfare, as disincentive to work, 41  
 Wheeler and Howard Act, 50  
*Wheeler* decision, 238  
 Winner, S.D.  
 business relations with Indian  
 community, 142-143, 153-154  
 human relations commission, fail-  
 ure to form, 147-149  
 Indian Council grievance commit-  
 tee, 146-147  
 Wounded Knee Reservation, 16, 125,  
 188, 191, 231-232