Hearing Before the United States Commission on Civil Rights

NATIONAL INDIAN CIVIL RIGHTS ISSUES

HEARING HELD IN
WASHINGTON, D.C.

MARCH 19-20, 1979

Volume II: Exhibits

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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, age, handicap, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, handicap, 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, *Staff Director*

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EXHIBITS

Exhibit No. 1

COMMISSION ON CIVIL RIGHTS

[6335-01-M]

PUBLIC 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 March 19, 1979, at Conference Room No. 1, 1100 L Street, N.W., Washington, D.C. 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 discrimination or 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 discrimination or 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 discrimination or 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., February 13, 1979.

ARTHUR S. FLEMMING,
Chairman.

[FR Doc. 79-5296 Filed 2-15-79; 10:23 am]

Exhibit No. 2

On file at the U.S. Commission on Civil Rights

Exhibit No. 3

On file at the U.S. Commission on Civil Rights

Exhibit No. 4

On file at the U.S. Commission on Civil Rights

Exhibit No. 5

On file at the U.S. Commission on Civil Rights

Exhibit No. 6

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

April 28, 1980

Mr. Paul Alexander
Assistant General Counsel
United States Commission on Civil Rights
Washington, D.C. 20425

Dear Mr. Alexander:

Reference is made to your letter to Director Webster dated March 25, 1980, which has been referred to me for reply. Enclosed with your letter was a copy of the testimony given by a Mr. Bellecourt, in which he alleged that ". . . today they (the FBI) have over 80 volumes of information that was gathered illegally against the American Indian Movement, numbering over 80,000 pieces of paper." Your letter asked for substantiation or comments.

I wish to take this opportunity to advise you that the Federal Bureau of Investigation (FBI) does not possess 80 volumes, numbering 80,000 pieces of paper, of information gathered on the American Indian Movement. In addition, no information has come to the attention of the FBI that would indicate that any such material was gathered illegally.

Sincerely yours,

Francis M. Mullen, Jr.

Francis M. Mullen, Jr.
Assistant Director
Criminal Investigative Division

Exhibit No. 7

On file at the U.S. Commission on Civil Rights

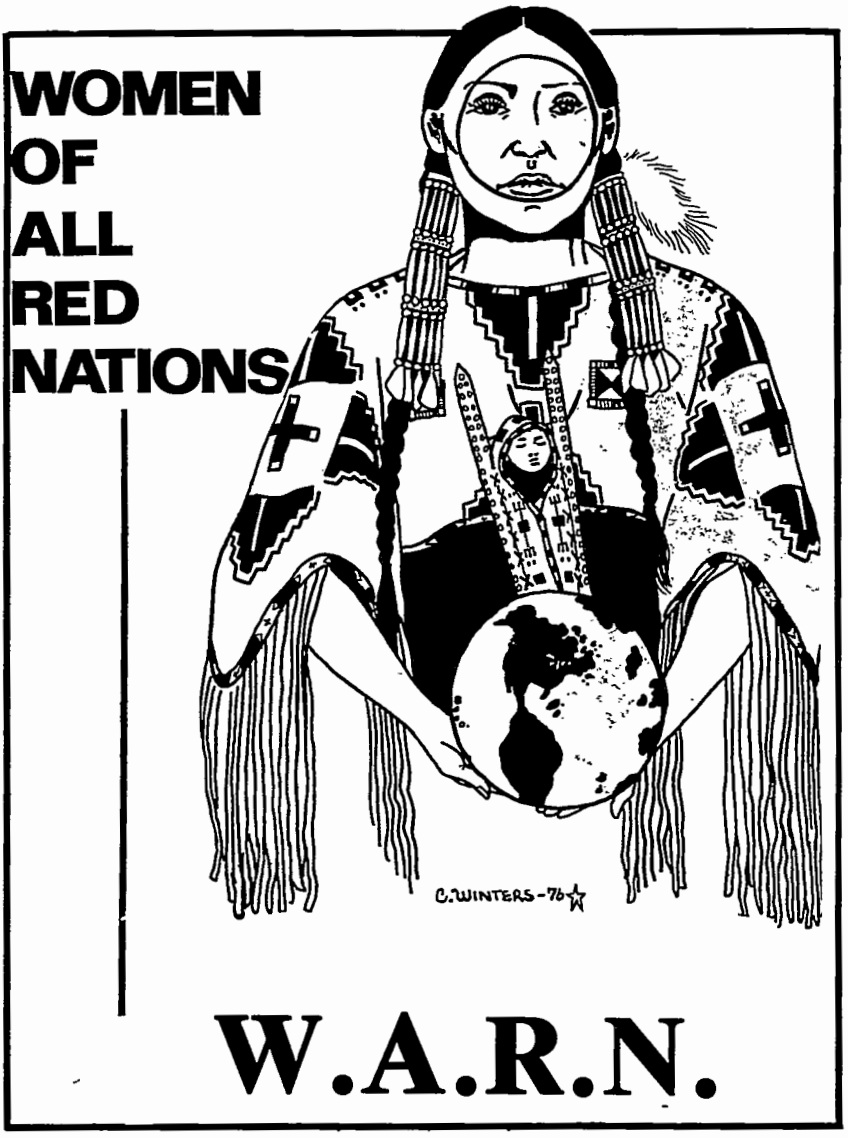
Exhibit No. 8

On file at the U.S. Commission on Civil Rights

Exhibit No. 9

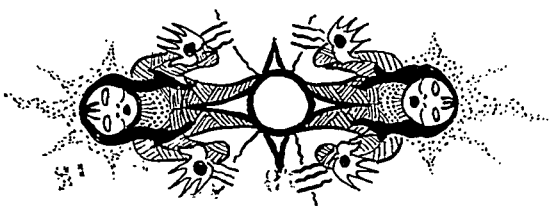
On file at the U.S. Commission on Civil Rights

Exhibit No. 10



Who Are These Women?

I've been asked many times, who are these Women of All Red Nations? Who are these women? What are they trying to do? I hear some people make comments about women's lib and make comments about all the women trying to take over now, I guess it looks like the women are trying to take over. Who are these women? They are the ones that have gone through the indescribable pain of bringing to us people such as Russ, Clyde and others that we recognize as leaders. They're the ones that bring us our chiefs, our headmen. They're the ones that have to carry the caskets of their sons and their daughters. They're the ones that have to look back and ask the question, why? They're the ones that must wonder, where is my son, where is my daughter? They're the ones that have had to experience the frustration and the pain of a court trial. Life imprisonment, or ten years or forty years or whatever. They're the ones that must watch their sons enter an institution such as this. And leave with their son a kiss or a hug. That is all that some of these brothers carry with them into that institution. But they're the ones also that provide us with the strength to continue forward in the face of all that we have been dealt. They are the backbone of our struggle. They're the backbone



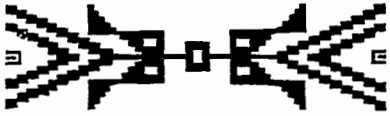
of the American Indian Movement. They're the backbone of the International Indian Treaty Council. They're the backbone of the Federation of Native Controlled Survival Schools. That's who the Women of All Red Nations are. And when they come together this week they are going to be trying to put together a strategy of how they can work in a more organized fashion, do even more than they have already done. To help provide a little more direction, a little more strength to our movement, and that, I myself, and I know you as well, are thankful for. This organization is important; it is important because it is an opportunity for many of those we never seem to have time for and we never really listen to, it is them that will be coming together to give us that direction. To give us another push to help keep us on that road to freedom. So I would encourage all of you, not just the women either, to come and listen to hear what they have to say and to be there to provide whatever kind of support they may need because without ever having to be asked, they are always there to do whatever we need, to support us in whatever way we need.

- Ted Means
American Indian Movement

Who We Are:

At the founding conference of W.A.R.N. in Rapid City, S.D., women had come from all across this land who were struggling for the future generations: women who worked in education for survival, women who wrote, women who worked with mothers and children, women who did audio-visual work; they were a conference of grandmothers, mothers, aunties, nieces, sisters. Some were veterans of the B.I.A. and Wounded Knee, some had participated in the Longest Walk, some had travelled to Geneva for the NGO Conference of Discrimination Against Indigenous Populations, some had participated in the International Women's Year Conference in Mexico, some whose son or daughter had given their life in struggle, some whose eyes and ears were just beginning to open to their duty as native women. W.A.R.N. is all these women. W.A.R.N. is the women who weren't able to make the long trip to Rapid City, S.D., but who are hungry for a meaningful way to combine their energy with other native women.
W.A.R.N. is all these women. W.A.R.N. is you.

Women from over 30 native nations were present at the founding conference of W.A.R.N. and it was unanimously recognized that truth and communication were among our most valuable tools in the liberation of our lands, people, and four-legged and winged relations. Truth, and the communication of that truth is a basic survival tactic, and for W.A.R.N. to succeed with this idea, getting accurate information on specific concerns to a broad base of support is one of our primary goals. The information that was presented at the conference on the issues most immediate—sterilization abuse, political prisoners, education for survival, the destruction of the family and the theft of our Indian children, the destruction and erosion of our land base—is presented again here for all to consider and use. A mailing list of conference participants and supporters has been compiled and included in this booklet. We feel our mailing list is incomplete until the names and addresses of women involved in all these different areas are added to it, and we urge you to help us in its completion.



"What are you doing to fulfill your duties as a sovereign Native American woman? What are you doing to channel the strength of the Great Power within you and all around you, your family, your nation, your planet? That's what working on the local-national-international levels means. As you read through this booklet, we'd like you to be thinking about these things, and about how you can join hands with other women to work on those local, national, and international levels to bring about meaningful action against the genocidal processes we face at every turn."

National organization

Besides the need for communication amongst ourselves as Native Women involved in different areas, a broad base of support will have to be developed nationally and internationally—sup port that is broad-based, well-defined and prin cipled. Rachel Tilsen of N.A.S.C. who has had much experience working with national and in ternational women's groups, was on hand in Rapid City to advise us of the history and pur pose of the organizations and ways in which we might work with them to bring powerful atten tion to the issues that concern us. At a con ference on Women and Global Corporations in Des Moines, Iowa shortly after the W.A.R.N. founding conference, several members of W.A.R.N. got to see first-hand the difficulties that face us in doing that. Soon after our arrival at the conference, it was obvious to us the major difference between Native American Women and the daughters of the immigrants. We remember our sacred duty to Mother Earth, our relationship to Grandma Moon, and our unborn generations, while they talk in Band-aid ter-minology—"How can we get OSHA to use non-carcinogenic chemicals in our production plants?" "How can we get cheap energy to the poor people," "How can we increase our wages and improve our working conditions?" While it's true that those questions are everyday reality in the lives of millions of people, it's also true that as long as Human Beings continue to ex-ploit Mother Earth for the sake of better wages, the real problem is never addressed. Because we know this land, and our People have struggled upon it for over 400 years against the inventors of the mulitnational corporation, our eyes see further ahead than next weeks' paycheck. It is important to remember our strength that way, and to carry that consciousness to every national forum.

At Des Moines, many women noted that it was the first time they had been to a conference where Native Americans were in attendance. Important connections were made with other minority women—farm workers, Puerto Ricans, Blacks, Hawaiians, and Phillipinos. In-formation on sterilization abuse, energy colonies on Indian lands, political prisoners, and survival education was shared with conference par-ticipants in the workshops, caucuses, and plenary sessions. We learned a lot too about the threatening omnipotence of the multinational corporation and how to research them. In the future, women of W.A.R.N. will be taking every opportunity to attend national conferences where we may bring attention to the issues that concern us and to establish a national base of support.

Political Organization at Home

"Only with strong Indian families, (throughout the Western Hemisphere) who are politically educating themselves, and organizing this awareness into the communities, can we hope to win this war."

This strength of Political Organization along with our spirituality must begin at home.

Ways in which to bring this about were discussed in our Working Session. One area was on the time women waste, gossiping with each other. This time could be utilized in discussing local Indian issues or international issues similar to those of Indian people. Many underground newspapers are available as well as Indian publications.

Another area is the formation of our children's minds and their education. A perfect example: A child of Movement parents is 9 times out of 10, more politically aware on issues than the average child. How we teach our children daily, is who they will be, and what strengths they will carry as adults.

There are many issues involved with Indian life. At this point, W.A.R.N. is a newly organized group of concerned people, who have been involved in these different areas for a long or short time. We are all going in the same direction in one way or another. We need to constantly communicate with one another, on new developments, about other struggles, and on any issues concerning Native people on all fronts.

Lorelei Means, Janet McCloud

Anna Mae: A Memory

"The lineal descent of the People of the Five Nations shall run in the female line. Women shall be considered progenitors of the Nation. They shall own the Land and the Soil. Men and Women shall follow the status of their Mothers."

This is said to us by Kaianerekowa, the Great Law of Peace given to the Iroquois. You are what your mother is. The ways in which you see the world and all things in it are through your mother's eyes. What you learn from the fathers comes later and is of a different sort. The chain of culture is the chain of women linking the past with the future.

The Iroquois People of the Longhouse know their Original Instructions given to them in the Beginning:

"We turn our attention now to the senior women, the Clan Mothers. Each nation assigns them certain duties. For the People of the Longhouse, the Clan Mothers and their sisters select the chiefs, and remove them from office when they fail the people. The Clan Mothers are the custodians of the Land, and always think of the Unborn Generations. They represent Life and the Earth. Clan Mothers! You gave us Life—continue now to place our feet on the right path."

Anna Mae Pictou Aquash was born and raised on the Micmac reserve called Shubenacadie in Nova Scotia. Her sister says that life in Shubenacadie is much better than that which the Western reserves in Canada and the U.S. experience: At Shubenacadie, *everyone* is on welfare. Since no one has a job excepting for pickup government jobs for a few months out of the year for a few people, having everyone signed up and receiving welfare is quite a social accomplishment for the bureaucracy.

Anna Mae had a talent for infusing humor into even the most grim of circumstances, and was considered a magician in turning government food commodities into very palatable meals. "She was a bright women," siad Nogeeshik, "spirit-minded and strong-willed. She wanted to make some sort of mark so that her children would not have to grow up the way she had been forced to live."

In time, living with her husband and two daughters, life on the reserve became too oppressive, too devoid of options. At Shubenacadie, an essential ingredient of life was in short supply: Hope. Nogeeshik explains how Anna Mae felt: "There isn't much hope in looking towards picking in the potato fields and blueberry fields for a proud people. The way the world is made her suffer, because she was sensitive and had strong feelings."

She had dreams to be educated someday and to get a job working with children, maybe as a teacher. To be a teacher of children is at the same time both the most prosaic and the most awesome of aspirations: For someone from Shubenacadie to aspire to an Anglo-certified teacher's degree was like seeking the Nobel Prize.

There are traditional migratory patterns that trace the paths of native peoples from their home communities to one city, and then perhaps another city and another—and of course, back again. Boston is a funnel from Canada and much of the northeast for those who do not go directly to New York City and Brooklyn. Anna Mae went south to Boston with her family when life at Shubenacadie failed to bring answers to their needs. She got a job as a teacher's aid in a pre-kindergarten child-care center for black children in the Roxbury area.

Unlike so many native children in Canada and

the United States, Anna Mae had not been removed from her family and shipped hundreds of miles away to a boarding school. She had escaped the aching loss of family and she had also avoided the indoctrination efforts of the boarding schools. Native children by the thousands in both countries serve time for as many as twelve years in federal schools geared to their gradual and eventual assimilation of the Anglo way of life, the ultimate solution to the "Indian Problem." Anna Mae did not have to choose between being a secretary, a domestic servant, a hospital attendant, or a cosmetologist—the traditional range of options for boarding school girls. She did not view her future as a choice between being employed as a menial or living on a reservation where even those minimal skills are superfluous.

Instead, Anna Mae Pictou dropped out of school in the ninth grade, perhaps it having had something to do with changing from an all-Micmac reserve school to a mixed high school with Anglos.

She became involved with the Boston Indian Center and was sent by the center to Broken Treaties when the Bureau of Indian Affairs headquarters was trashed. The white male-dominated media focussed their attention on who they determined were the leaders and organizers—that is, native males. Their cameras and tape recorders only grazed the faces of Martha Grass from Oklahoma or Ann Jock from Akwesasne, or the many strong women who like Anna Mae Pictou breathed life into an idea. They expressed themselves in this way:

"We are the Kwenonkwaonwe, the Indian women of this continent. Fom the female side of life, we extend our life support to our children of these territories in North America. We have much work to do. Our position is with our people and nothing can stand in our way to fulfill our job: To tell the people of this earth of our survival and to expose the genocide being done to Native American nations by the U.S. Government. We must do this for we care for our children."

Yet, credit for the love of all people for their children is sometimes not accorded as a universal sentiment nor is the commitment to the survival of one's children recognized by some people. For native peoples of North America, since the Pilgrims arrived, this has far too often meant the wholesale abduction of their children, to be raised by Anglos in their own image. Native peoples see no diminution of this fearsome practice.

Bernice Appleton, an officer of the Native American Children's Protective Council chartered in Michigan, tells us that "There is a shortage of white babies for adoption, so since not too many whites want black babies, they are coming for the next—and that's Indian. These agencies are going into Indian homes and telling them their homes are unfit because they have two children, or three children, sleeping in one bed. It isn't necessary for Indian children to have one bed apiece. I don't think it's good for children to sleep apart. Our children learn sharing right from the start."

In Canada, children needing homes are removed from their communities and extended families. "Often relatives are available to care for the children, but they cannot get financial support because the children are related to them. However, the agencies have to pay the white foster parents for the children, often adding on additional subsidy because the children are Indian and are 'hard to manage'."

There is another way to prevent children from being raised as the lifeblood of future native nations—prevent them from being born. Health care in Canada for native peoples has done in the light of day what the USPHS/IHS has been doing covertly: coercive sterilization of native women. Sterilizations are routinely done at the time of birth of the sixth child, often without the consent or knowledge of the mother.

In the U.S., Dr. Connie Uri, a Choctaw/Cherokee woman physician, reported from the small Claremore Indian Hospital in Oklahoma that in the single month of July, 1974, surgery was performed on 48 native women, most of them in their twenties, making it impossible for them to have more children. It was reported that "at the same time this sterilization campaign was being carried out, Indian patients were turned away by the hospital on the grounds that there were not sufficient funds to care for them."

Anna Mae returned from her experience in the Washington portion of the Trail of Broken Treaties a renewed woman, dedicated and determined to share in the hemispheric struggle

of native peoples.

The Second Battle of Wounded Knee found Anna Mae among the many young and old women who shared a common denominator: the loss of patience.

Throughout the Seige of Wounded Knee 1973, women organized, planned, provided support and material, and in effect, gave continuity to the endeavor. They travelled back and forth through the battlelines backpacking in the food to sustain the Oglala and AIM defenders.

In Dakota tradition, they were called "Brave-Hearted Women." In the media, these women were ignored. The cameras hummed and clicked upon the faces of male AIM members. And after the Battle, these AIM men were arrested, neutralized, or eliminated by one means or another. The white male enforcement officers, blinded by their own sexism, failed to recognize the power of the women and that the heart and soul of the women would carry the movement foward.

With so many males no longer functional, the American Indian Movement more than ever became a woman-run organization. One older woman observed that "It is sad how few men are involved in the movement. It's hard for just us little old ladies with our pop bottles [to sustain it]." The AIM offices were run by women as they had at the start. One said, "We are here because there is work to do."

The Wounded Knee aftermath continues to the present time like devastating seismic shocks bringing repercussions of violence and death. In a seige in July, 1975, at Oglala on the Pine Ridge Reservation, one native man and two Federal Bureau of Investigation agents were killed. A full-fledged military operation was launched which left Pine Ridge a living hell while some 150 FBI agents ransacked homes and ran search parties through fields and woods.

As of April, 1976, 35 deaths have occurred in this bleak poverty-stricken corner of South Dakota since Wounded Knee. The Government-supported political faction—the original cause of the Second Wounded Knee—has acted out its burning hostility against AIM and the traditional Oglala people who support it with an unrelenting series of beatings, shootings, car "accidents" and other destruction.

Dino Butler, while awaiting trial on the charge of first-degree murder (he was later acquitted) of one of the FBI agents, tells another chapter in Anna Mae's life:

> *"Anna Mae Aquash was arrested at Rosebud Indian Reservation, South Dakota, on Sept. 5, 1975. One hundred to 150 agents invaded Crow Dog's Paradise and Al Running's residence simultaneously. The Fbe agents identified her immediately as Anna Mae Aquash and though there was no warrant for her arrest, they handcuffed her and placed her under arrest. She was transported to Pierre, SD immediately where she underwent intensive interrogation for six or seven hours, being questioned about the June 26, 1978 Oglala shootout between Native Americans and foreign americans. She could not tell them anything because she was in Council Bluffs, Iowa, that day. The FBI agents made her the same offer they made me that day in Pierre after I too was arrested and transported from Al Running's home—'cooperate and live; don't cooperate—die.'"*

Anna Mae described her encounter with the FBI agents. "While I was standing there with a group of women, waiting, I was being verbally harassed by some of the agents. They were implying that they had been looking for me for a long time, and that they were very pleased that they finally found me."

Now that essentially all the media-prominent male AIM members and supporters were effectively neutralized—in hiding, in jail, in courtrooms or dead—the mid-70's was seeing a new pattern in battlefield sexism, the targeting of women by enforcement officers and vigilantes.

A foreshadowing of this occurred in the Northwest where Native People have struggled to preserve their traditional fishing rights. "In Washington State," one of the embattled survivors explained, "women have had to stand in [the men's] place because we are supporting them and supporting our unborn. There have been issues like fishing rights where our men were put in jail and all that was left was women to go out and fish. Yet the women were still treated the same, with the same harassment from the police, being beat up and going to jail, even women with children." Nor was death a stranger to the women along the banks of those rivers, sudden violent death.

In Wagner, Sioux Falls, Custer, Gordon, Rapid City, and of course, Pine Ridge, greater and greater pressure came down upon women as a new point of attack. Gladys Bissonette observed that "every time women gathered to protest or demonstrate [peaceably] they always aim machine guns at us women and children."

But with the work of the women, AIM did not die. Nor did the greater movement for natural rights of which AIM has always been but a part. As the Cheyenne people say:

A nation is not conquered
Until the hearts of its women
Are on the ground.
Then it is done, no matter
How brave its warriors
Nor how strong its weapons.

The women patriots who bore a heavy share of the task of physical and spiritual survival of their people through all the years would not now surrender. The list of native women who have been harassed, jailed, beaten, stabbed and shot grows long in this new campaign.

On February 24, 1976, the body of a young woman was found where it had lain for many days and nights along the highway north of Wanblee on the Pine Ridge Reservation. The coroner contracted by the BIA declared that death was caused by exposure, that is, natural causes.

FBI agents severed the hands from the body. They said they had to send them to the Washington office for identification. A week later, the body was buried in an unmarked grave at the Holy Rosary Mission. By that time, however, the identity of the young woman was known and communicated to family and then to friends. They insisted on an exhumation and a second autopsy. This time, the independent autopsy read differently, the horror of its statement blotting through its precise language: *"On the posterior neck, 4 cm. above the base of the ociput and 5 cm. to the right of the midline is a 4mm. perforation of the skin with a ° mm. rim of abrasion surrounded by a 1.5 x 2.2 cm. area of blackish discoloration. Surrounding this is an area of reddish discoloration measuring 5x5 cm. This area is grossly compatible with a gunshot entrance wound...Removed from the brain is a metallic pellet dark grey in color grossly consistent with lead."*

In its newsletter, the Boston Indian Council told of Anna Mae's burial, and her life with them in Boston:

"There was the sadness and mourning for a lost friend. There was the sense of pride and honor for a woman who had given her life for the sake of her people. And there was anger—an anger of not knowing why she had to die.

"Pine Ridge is a long way from Shubenacadie. But these two reservations serve as bookends for Anna Mae's life. She was different. She was special. At 25, Anna Mae began attending meetings to help organize an Indian Community Center. People who remember those times, the single room at 150 Tremont Street with its folding chairs and bad coffee, can still hear Anna Mae's voice. She spoke of Indian rights, of pride, and self determination. Poverty, alcoholism, unemployment, despair—these were the enemies she saw. And through her courage, she helped to give birth to an organization dedicated to combating these problems—the Boston Indian Council. It was

not an easy birth. There were many years of growing pains before the BIC was to be able to stand on its own, but without women like Anna Mae, it would never have been possible.

"And yet the streets of Boston were too narrow to hold her. Within two years, Anna Mae was carrying the same message of Indian pride across the nation. She became a member of the American Indian Movement. From that moment, her life would read like the newspaper headlines which followed her: the occupation of the BIA in Washington, the siege of Wounded Knee in South Dakota, the takeover of the Alexian Brothers Monastery in Wisconsin. Along with men like Russell Means, Dennis Banks, and Clyde Bellecourt, Anna Mae helped to bring the attention of the whole world to the Indian people of this nation. It was a life filled with the glare of cameras, but also with the emptiness of long highways.

Anna Mae travelled. She organized. She struggled against racism, intimidation, and hatred. She followed her vision, and called on other Indian people to do the same. Whatever opinion people had toward her work, one thing was sure: Anna Mae Pictou was a woman of conviction...

Anna Mae lived and died for all of us. Now we are entrusted with her vision. She is no longer here to carry on the work she did so well. But we are.

Anna Mae was a woman of courage, of dignity, and of pride. Will we forget her? Will we allow her death to be for nothing?

There is a lonely grave (at Oglala) that gives us our answer.

March 14, 1976, dawned windy, flinging snow upon those who had come to bury Anna Mae Pictou Aquash. "Creation was unhappy," one woman said.

Some women had driven from Pine Ridge the night before—a very dangerous act—"to do what needed to be done." Young women dug the grave. A ceremonial tipi was set up. Anna Mae's naked body was removed from the morgue's body bag. Her severed hands—from which the finger tips had also been severed—were returned to her. The women clothed her in a ribbon shirt and jeans with a jean jacket emblazoned with the AIM crest and an inverted American flag on the sleeve. Beaded moccasins were placed on her feet. A woman seven months pregnant gathered sage and cedar to be burned in the tipi. Young AIM men were the pallbearers: They laid her on pine boughs while the religious leader spoke the sacred words and performed the ancient duties. People brought presents for Anna Mae to take with her to the Spirit World. They also brought presents for her two sisters to carry back to Nova Scotia with them to give to her orphaned daughters.

The executioners of Anna Mae did not snuff out a meddlesome woman. They exalted a Brave Hearted Woman for all time.

The traditional leaders of Oglala released the following statement about her death before the second autopsy was performed:

"Anna Mae worked hard serving her Indian people and assisted in our efforts to shed the shackles of Government paternalism. she is with us. In her blood in Oglala. We consider her a friend. So therefore we are concerned because we feel that her involvement as our ally probably brought her death...We want to know the truth about Anna Mae's death and the possibility of the Government's involvement in it. Anna Mae Pictou was respected and loved by the people of Oglala. We mourn her, and we urge all law-abiding citizens to demand the real truth about her death."

The Brave-Hearted Women who remain to face the dangers of the Indian world have sadly been given a martyr, Anna Mae of Shubenacadie, Boston, Washington, St. Paul, Wounded Knee, Los Angeles, Oregon, and finally, a frozen grave site on a ridge in Oglala.

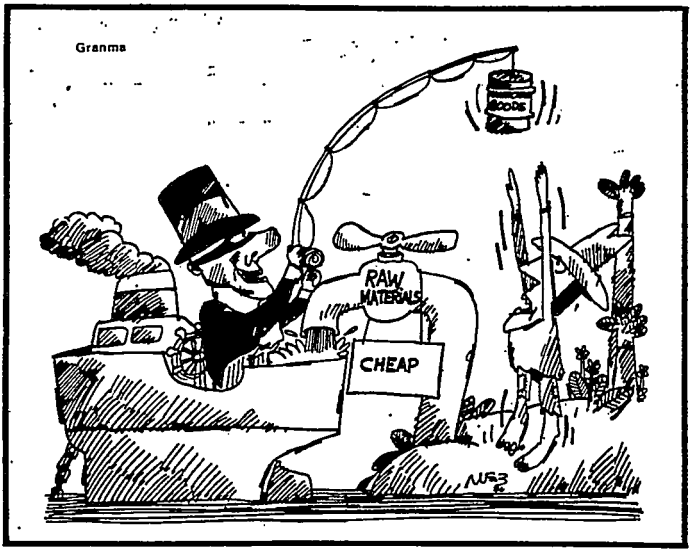
Among the Iroquois, it is the women who decide when the people will go to war, because when the war is done, it is the women who weep. Will the Brave-Hearted Women decide that, with Anna Mae's death, the war is over? Or will they decide with Lorelei Means who declares, "Hell, we're struggling for our life. We're struggling to survive as a people."

Anna Mae Pictou Aquash faces the sun's first light with the white, black, red and yellow streamers flapping overhead on poles placed in the Four Sacred Directions cornering her grave.

The Brave-Hearted Women have decided there will be war.

- Shirley Hill Witt

Resources Of Red Nations



I'm an Ojibwa from White Earth, born and raised off the reservation. I was alwyas taught to respect the ways of the people and encouraged to work in the Indian struggle. I've been working for the UUTC for two years now, mostly writing, researching and speaking about Indian resources.

Red people call resources (among other things) our land, people, food and unity. White people (including big U.S. companies and the government) call resources things which can be used (exploited) like land, coal, uranium, minerals, water. I consider both types of resources in my work.

Quite a few people ask me: "Why do you work on Indian resources?" I sat down and thought about it and realized we're all in this together. I mean when Indians have 3% of our original land base, and Indians own over one third of North American coal and almost 80% of North American uranium, among other resources, Indians have something the U.S. and Canada want. Coal and uranium are valuable "energy resources." Coal is used to generate electricity, and uranium fuels nuclear power plants and to make nuclear bombs. The U.S. and Canada have publicly declared that these "resources" will be exploited now until they are gone. Indians, however, who legally own the resources have never been asked.

Our lands and water are more valuable now than ever, since the U.S. has used up most of its legal resources.

Last century the federal government found oil in Oklahoma Indian Territory. Within a few decades, Oklahoma Indians had lost land, oil and lives so that the U.S. could grow strong. That was the last time we had an "energy crisis." This generation the federal government says that the U.S. has another energy crisis. The

oil companies which "sprouted" during the last energy crisis have expanded to become the largest corporations in the world. This time, the oil companies are interested in all energy sources, coal, oil, uranium, etc.—and are busy trying to restage the Oklahoma tragedy. If they succeed, Indians will lose land, resources and lives again and this time it's all we have left.

When I was at the W.A.R.N. founding conference we had a working session on resources. We all talked about our work in the area, and I spoke about my work in the Southwest. I work on an Environmental & Energy Education Project—geared for action—we work at Navajo and in the Pueblos of this area.

Navajos have the largest reservation in one piece of all Indians. Navajos also (from government perspectives) have about 5 billion tons of coal, 80 million pounds of uranium, and100 million barrels of oil on their land. Each year, Navajos export enough energy resources to supply the needs of New Mexico for 32 years. In turn they are paid pennies.

The Navajo Nation is an energy colony, like energy colonies in other parts of the world. (Arabs were an energy colony for many years until they began to receive fair payments for their valuable oil.)

Today at Navajo, 80% of the Navajo houses have no electricity—the electricity is sold to big cities by the federal government. Navajo land is strip-mined, and can rarely be reclaimed. Navajo air is polluted by big power plants burning Navajo coal. Navajos are forced from their fields and mountains to become uranium miners which causes death. To date 25 Navajo uranium miners have died from lung cancer, 26 more have lung cancer now. You see, uranium is radioactive, uranium kills as easily as a nuclear bomb.

The Navajo land, resources and lives are taken for the benefit of the federal government and energy corporations. Now the companies are busy trying to make other Indian nations into "an energy colony" like Navajo.

At the W.A.R.N. conference we talked about the fact that uranium was found on Ojibwa and Lakota lands (the Sacred Black Hills). The companies want to make sure that 1978 is no different than 1878 for Indians.

The B.I.A. and the companies are working hard, preparing to make all Indian land "useful" for the benefit of the U.S., not Indians. The time to act is now, since after "energy colonization" is underway, the process is harder to stop. It is harder to fight after the companies have started to rape the land, release radiation and relocate people. The fact is that once they take those resources, the land resources, air and water will be gone. Resources for Indian people are things for now and the future.

W.A.R.N. means to me a good chance to fight for air, land, resources, and future. W.A.R.N. means communication, organization and work-red women working on a local, regional, national and international level to protect what is ours.

Three percent of our lands is what we have left and in order to remain as Indians we have to fight to keep that. I want to have grandchildren born and raised on Indian land.

- Winona La Duke

The Theft Of Life

Mankato, Minn. — On a November day in 1972, a 26-year-old Indian woman entered a Los Angeles, California doctor's office and asked the doctor to give her a womb transplant. "A surprising request," the doctor thought. But not nearly as shocking as the history that provoked the request.

The woman told the doctor that she had heard about kidney transplants, and she desperately needed a womb because her future husband and she wanted to have children.

She had been "sterilized" for birth control purposes six years earlier with a complete hysterectomy. At the time she was an alcoholic with two children in foster homes. A doctor convinced her that to make the best of her life she should be sterilized. So, she did as the doctor advised.

But, at 26 years old, the woman was no longer an alcoholic. She was in love with a man and they were planning to marry. She was devastated when she learned that womb transplants are impossible. And the distress she and her husband suffered because of her inability to have children later led to a divorce.

The story was related to the *National Catholic Reporter* by the Los Angeles Doctor, Connie Uri, a Choctaw and Cherokee Indian. "At first I thought I had discovered a case of malpractice," Dr. Uri said. "There was no good reason for a doctor to perform a complete hysterectomy rather than a tubal ligation on a 20-year-old, healthy woman."

Later Uri learned that the incident was not an isolated one. She continued to hear from women who complained they agreed to sterilizations under duress or without information about the irreversible nature of the operation.

"I began accusing the government of genocide and insisted on a congressional investigation," she said. Senator James Abourezk requested a study of United States Indian Health Service (IHS) sterilization policies, and "unfortunately the study proved I was right," Uri said.

The U.S. General Accounting Office (GAO) study released in November did not indicate that women were forced to receive sterilizations. But it did reveal that Indian women may have

thought they had to agree to the operations.

In violation of federal regulations, the most widely used consent forms did not clearly inform Indian women that they had the right to refuse the operation.

The GAO studied four of the 12 areas serviced by the Indian Health Service—Albuquerqkue, N.M., Phoenix, Arizona, Aberdeen, South Dakota, and Oklahoma City, Oklahoma, and found that a large number of Indian women, relative to their population size, had been sterilized. Between 1973 and 1976, 3406 Indian women were sterilized. Among those were 36 women under 21 years old, who were sterilized despite a court-ordered moratorium on such operations.

The GAO confined its investigation to IHS records, and did not prove case histories, observe patient-doctor relationships or interview

women who had been sterilized.

But Uri, along with a group of Indian women (many of whom are employed by the government) have been conducting their own "quiet investigation." They have observed IHS procedures and interviewed numerous women who have been sterilized, Uri said.

Their investigation, along with the GAO report, had led Uri to believe that more than a quarter of all American Indian women have been sterilized, leaving only about 100,000 women of child-bearing age who can have children. "It is an extreme problem because there are so few Indians in existence; less than a million of us," she said. "We are not like other minorities. We have no gene pool in Africa or Asia. When we are gone, that's it."

Uri does not believe sterilizations are prompted by a government plant to exterminate American Indians. Rather, Uri said, they result from "the warped thinking of doctors who think the solution to poverty is not to allow people to be born. They have the wrong concept of life. They think to have a good life, you must be born into a middle-class standard of living. But most people in the world are not born into wealth. And I wouldn't have been born if this was a prerequisite for life." "Doctors have assumed a God-like authority, and think they are helping women by sterilizing them."

"Very few Indian women ask to be sterilized," Uri said. "In almost every situation, the woman is talked into it in a very authoritarian, or coercive manner." It is easy to do because the women have so much faith in the doctor, Uri said.

One woman told Uri that she went to the doctor after suffering from severe headaches. The doctor told the woman her head hurt because she was afraid of becoming pregnant, and advised sterilization. The woman agreed, but the headaches persisted. She later learned she had a brain tumor, said Uri.

Phyllis Ewen

Another woman with three children went to the doctor to be treated for stomach problems. "The doctor immediately assumed the woman was vomiting because she was pregnant, and yelled at her, "Why the hell don't you get your tubes tied so you won't get sick any more,"

A large number of women agree to sterilization operations because they are afraid their children will be taken from them if they refuse. Many also believe welfare benefits or services may be withheld from them, Uri said.

To avoid this misunderstanding, the IHS is required to inform women that their benefits

" They took our past with a sword and our land with a pen. Now they're trying to take our future with a scalpel."

– American Indian Journal

will not be withheld, and that numerous other birth control measures are available to them. But, IHS records lacked evidence that the women had been provided this information before agreeing to the operations, the GAO found. The IHS reportedly is now conforming with these requirements, a GAO spokesman said.

Most Indian women are sterilized at the time they are giving birth and their consent is often taken while they are heavily sedated, Uri contends. "Almost every woman having a Cesarean section is bound to be sterilized."

Consent received under such circumstances would violate federal regulations requiring women to be given a 72-hour waiting period between the time of consent and the operation.

Most Indian women do not realize the permanent effects of the operation when they give their consent, Uri adds. "And when they do realize they can't create life, they feel castrated and psychological problems result. It dawns on different women at different times. For some, the realization does not strike until many years later, but when it does, they often have a total nervous breadkown, try to commit suicide, go into prostitution or become alcoholics."

Families are torn apart by the woman's distress, and husbands often resent the operations done without their consent, Uri said.

Mother and daughters at the market, Otavalo, Ecuador.

NEW YORK (from LNS) - The United States plans to sterilize one-fourth of the world's women, according to Dr. R.T. Ravenholt, director of the US agency for international developments (AID) office on population control. In an interview with the St. Louis Post-Dispatch, Ravenholt said that as many as 100 million women might be sterilized if US goals are met.

justifies its interest in controlling population on the grounds that poverty and world hunger are the results of over-population.

According to Ravenholt, population control is necessary to maintain "the normal operation of US commercial interests around the world."

"Without our trying to help these countries with their economic and social development, the world would rebel against the strong US commercial presence," he said.

AID has spent more in population control programs in recent years ($125 million in 1973) than in agriculture and rural development planning combined. Primary funding for population control in the Third World today comes from AID.

Indications are that US interests lie in restricting population increase only among certain groups. Sterilization of poor women has been particularly pronounced in Puerto Rico, Brazil, Colombia, and India. Between 1963 and 1965 more than 400,000 Colombian women were sterilized in a program funded by the Rockefeller Foundation. In Bolivia, a US imposed population control program administered by the Peace Corps sterilized Quechua Indian women without their knowledge or consent, according to the Committee to End Sterilization Abuse (CESA). And statistics from the population studies department of Puerto Rico confirm that sterilization of poor women was practiced there as well.

In the US, the federally funded health, education and welfare (HEW) department has initiated sterilization campaigns since 1966. Between 1969 and 1974, HEW's family planning budget increased from $51 million to over $250 million. HEW now funds 90% of the sterilization costs of poor people. Since 1970, female sterilizations in the US have increased almost 300%, 192,000 to 548,000 performed each year.

But sterilization is not the only trauma that destroys American Indian families.

Once an Indian child is born, parents stand a one in four chance that they will lose their child.

An Association of American Indian Affairs (AAIA) study indicates that 25 to 35 percent of all Indian children are removed from their families and placed in foster homes, adoptive homes or institutions, and the number is growing in some states.

Deceitful and illegal means are often used to remove Indian children from good parents or relatives, evidence submitted to a Senate subcommittee indicates. Public and private welfare agencies apparently are operating under the assumption that most Indian children would be better off growing up non-Indian.

"Officials would seemingly rather place Indian children in non-Indian settings where their Indian culture, their Indian traditions, and in general their entire Indian way of life is smothered," Abourezk, chairing a Senate subcommittee on Indian child welfare, told the committee three years ago. To date, Congress has passed no legislation to prevent this kind of abuse.

"The federal government has been conspicuous by its lack of action," Abourezk said. "It has allowed these agencies to strike at the heart of Indian communities by literally stealing Indian children, a course which can only weaken rather than strengthen the Indian child, family and community. It has been called cultural genocide."

The greatest influence on Indian emotional life today is "the threat that their children will be taken away from them," William Byler, Executive Director of the AAIA told the subcommittee.

"Parents who fear they may lose their children may have their self-confidence so undermined, their ability to function successfully as parents is impaired," he said. "When the welfare department removes the children, it also removes much of the parents' incentive to struggle against the conditions under which they live."

Psychiatrist James Shore agrees: When Indian parents are informed that their children will be removed, they develop "a sense of hopelessness and despair," he adds. The parents often become withdrawn and depressed, and begin "intensive drinking." Social workers then interpret this "as a further lack of concern for Indian children," and additional justification for taking the children.

But some Indian parents claim their children have been taken from them with no advance warning. Indians told the subcommittee that they have left their children with a relative or babysitter, and returned home to find that a social worker had taken the children.

Some Indians have never been able to learn where the social worker took the children. Indians often are illegally excluded from court proceedings, or are not provided legal counsel, according to testimony before the subcommittee.

"Let us put our minds together and see what kind of life we can make for our children."

-Sitting Bull

A Book Review

The Genocide of Native American Children in 1977

The Destruction of American Indian Families, published by the Association on American Indian Affairs: 1977, 90pp., $3.50.

"To remove the child from the influence of its savage parents" was the goal spelled out in the 1890s charter of the first federal boarding school for Native children, on the Navajo Reservation. In 1977, these same goals are implicit in government policies that either direct or condone the removal of native children from their parents.

The Destruction of American Indian Families exposes the federal government's role in the native child welfare crisis and the genocidal effect of government policies on the native community.

And it is indeed a crisis. A staggering 25% to 35% of Indian children are taken from their families and placed in foster or adoptive homes or institutions, according to surveys conducted by the Association on American Indian Affairs, an independent, non-profit native advocacy organization.

HISTORICAL PERSPECTIVE

The historical precedent for the current situation is shown vividly in two reports submitted to the government in 1928 and 1930, reprinted in this book.

In his 1930 report entitled "'Kid Catching' on the Navajo Reservation," Dande Coolidge, an eyewitness to the practices of the time, described the yearly rounding-up of Indian school-age children, dictated by government policy: *"The children are caught, often roped like cattle, and taken away from their parents, many times never to return. They are transferred from*

photo by JEB

school to school, given white people's names, forbidden to speak their own tongue..."

It was not uncommon, wrote Coolidge, for parents to "hide their children at the sound of a truck," knowing that many of the children would die in the distant, disease-ridden schools."

"It is a condition easily solved," Coolidge wrote, "if day schools are installed and transfers to distant schools abolished."

TODAY'S CRISIS

Today almost 30,000 native children, thousands as young as six to ten years old, are living in federal boarding schools. And Indian parents face an even larger threat—the removal of their children to white foster homes. It is now white welfare workers and judges who decide that native parents are unfit to raise their own children, order the children's removal to white foster homes, adoptive homes or boarding schools, and often terminate parental rights.

The collection of 14 essays in this book makes it clear that present government policies regarding native child welfare reflect the same deeply white supremacist bias as did government programs 50 and 100 years ago.

"Child Welfare in Oregon," an article written by two natives in the mental health field, describes the racist bias of Oregon's Children's Services Division (CSD) in various case studies.

"The 'Indian ways' of raising children differ vastly from the middle-class, non-Indian norms often used in studies by non-Indian investigators," write Aileen Red Bird and Patrick Melendy.

In cases where CSD caseworkers persuaded Indian parents to voluntarily surrender their children, their research indicates that "intimidation, coercion and legal threats precipitated many of the voluntary surrenders. In a number of cases, racial prejudice is the major reason for terminating parental rights."

INDIANS DISQUALIFIED

Red Bird and Melendy also point out that prospective Indian foster parents are unjustly disqualified from obtaining state foster care

licenses: *"Of the Indian children in foster care in Oregon, 95% are in non-Indian homes. In the Portland area, there is only one Indian foster family certified by CSD. Other Indian families report that CSD foster family requirements virtually exclude them from qualifying.*

"For example, CSD requires that foster homes have a specified amount of space in bedrooms for foster children. Indian families are often large and live in small homes which do not meet the CSD space requirements...

"Another reason for the low number of Indian foster parents in Oregon is the CSD policy prohibiting the placement of a child with relatives. This policy directly conflicts with the native extended family social structure."

A case history in an essay titled "Ravage of Indian Families in Crisis," by Joseph Westermeyer, illustrates how this same policy is used in Minnesota against the Indian extended family even where they fulfilled the state's income requirements:

"CASE 3. The maternal grandmother and aunt sought to gain custody of an infant boy. The grandmother was employed at an Indian clinic and the aunt was a college student. Their extended family currently was caring adequately for other youngsters, and their finances were good. Nonetheless, the judge at a guardianship hearing ruled against the family."

In most cases, it is white, middle strata cultural norms rather than allegations of child abuse, that are the basis for removing Indian children from their parents. Red Bird and Melendy relate that in Oregon, *"Physical abuse of children is almsot unknown in native communities. These communities do, however, consider as a major problen the policies and practices of governmental agancies which abuse their rights to raise their children in a native cultural environment. These policies and practices result from prejudiced attitudes that are institutionalized in schools, social services, health care and the legal system."*

A recently published task force report of the American Indian Policy Review Commission, an agency of Congress, confirms that native children are removed from their families in far greater numbers proportionally than non-native children. *"These policies and practices result from prejudiced attitudes that are institutionalized in schools, social services, health care, and the legal system,"* the report said.

The Destruction of American Indian Families concludes with tribal resolutions adopted by the Navajo, Standing Rock Sioux, the Three Affiliated Tribes of the Fort Berthold Reservation, and the National congress of American Indians. These recommendation center on two points: First, that only a tribal court should be authorized to place Indian children either temporarily or permanently off the reservations and second, that government funds should be made directly available to tribes to administer their own family-welfare services, rather than through the U.S. Indian affairs bureau or the state welfare systems.

The essays in *The Destruction of American Indian Families* demand sweeping changes in government policies concerning Indian child welfare and an end to the racism underlying them.

"The continuing bias of government policy," states the preface, is to coerce Indian families to conform to non-Indian child-rearing standards.

"Indian tribes are asking state and federal governments to stop 'saving' Indian families in this way and instead, recognize and respect the rights and traditional strengths of Indian children, families, and tribes."

The Destruction of American Indian Families is available from the Association on American Indian Affairs, 432 Park Avenue South, New York, New York, 10016, for $3.50.

THE FUTURE IS THE FAMILY

When we talked about the decline of our culture, the old people pointed to the evidence of the decline of our families. Only a short time ago, our people had large, strong families. It is much less true today. Probably less than one half of the children under five years old are living in the same home with their natural fathers. Marriages do not last. The family, and with it the old ways, are under tremendous pressure.

The thoughts of the old people are strong. They said that all people needed to be happy was to learn to appreciate the things we have, to be grateful. And they pointed out that there was much to be grateful for. (Years later, I found myself looking up a dictionary definition of happiness. It was defined as a feeling of good fortune.) And one of the truths that the old people stressed was that the quest for material goods make people unhappy. All you need for a good life, they said, was a strong belief that the Creator has provided for the People, a good mind toward the People, and a will to help others.

Over the past seventy years, it seems that fewer and fewer people are in pursuit of that good life. The result, logically, has been a great deal of misery, which is arguably a contemporary reality. It is as though something enormous has happened, and that somehow people have been sold a "bill of goods," to the effect that everywhere we look we can see that people really aren't living natural ways.

There are a few sincere people who will argue that natural ways are not good ways. The natural way means living close to the earth. It means eating foods which are natural to the region you are living in, and which have not been processed. It means avoiding the use of harmful chemicals, chemicals such as refined

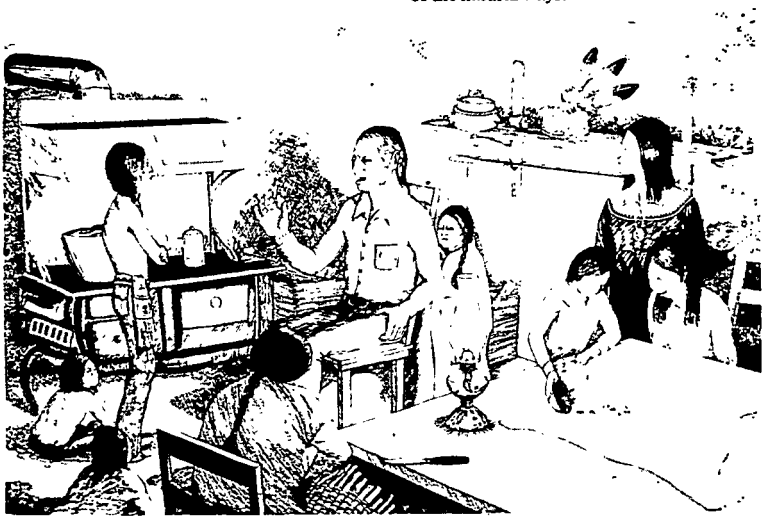
sugar and food preservatives. It means plenty of exercise and fresh air and much attention to the body. The natural ways require an abstinance from such things as alcohol. Ask anyone who knows anything about health—those ways are good for you, they will add many years to your life. These ways will keep you fit and physically active much longer, and help to keep people's minds healthy.

Most people in North America do not live those ways any longer. Over the past century, there has been a tremendous propaganda campaign to convince people that there are other, better ways. Since birth, most of us have been subjected to an argument that we should be drinking soda pop and eating canned spaghetti, and the effort has been successful enough that such things dominate our food culture. The reality is that most people have been motivated by advertising to be consumers of unnecessary and even undesirable products of modern technology.

We have always been told of the advantages of modern society. There is more wealth, more goods and services, more ease, less work. We have rarely been told the costs, in terms of people's lives and misery, which the modern society has extracted from each of us, even those people in North America who have seemingly benefitted from all the "advances." The "modern age" and its consumer values have altered, in very basic ways, the very structure of human society.

The older traditional people of the Longhouse say that the real ways of the People are nature's ways. And how do we come to know those ways? By observing Nature, by watching the birds and the animals, and the other beings of nature. It is an interesting method of viewing the world, and one which I am confident will stir mixed reactions among Western people.

The wolf, for example, is a hunter of the deer herd. He is monogamous, taking but one mate throughout life. And he is known as a very family-oriented species. It is said that the wolf-family is very close and affectionate, that they look to the well-being of their cubs as their first priority. It is also said that they raise cubs in a kind of group effort, and that they practice a kind of birth control. The old Indian people say that the wolf is a very intelligent amimal, and that he possesses something that, in English, we would call a "noble character." He is a follower of the natural ways.



People have a domestic cousin of the wolf in many households. The domestic dog, however, bears mostly a biological relationship to the wolf. The dog's behavior, from birth, is specialized to serve humans, not its own species. And the dog is not monogamous, in fact, it forms no real families at all. The dog is a total slave to humans, and cannot survive in most cases without humans. But whenever the domestic dog escapes, it begins to run in packs, to form dens, and to form something like families.

I point to the analogy, not to state that people should live like wolves, but to emphasize that the natural ways support behavior which promotes the survival of the species. Of course, the survival of the species depends on the survival of the young. The wolf's behavior is specialized to the survival of its young, the dog's is not.

People in modern society have a similar kind of problem. Their behavior is no longer specialized to the needs of the human species specifically. their behavior is specialized to the needs of modern technological Industrial society. That is why people today are such consumers. It is why they cannot move toward natural lifestyles. It is why families are not stable.

Modern Industrial Society does not require stable families any more than people require dogs to have stable families. In fact, the society is based on the need for children to learn highly specialized skills and to leave the home to practice those skills wherever the jobs may be. That is why the society is so mobile.

The traditional people urge the reestablishment of natural ways of life as a way of strengthening and promoting family unity. It is, as so many have attested, a hard life, but one which has its rewards. And it is a road which requires that we surrender some of our most cherished fantasies, especially in the area of love between mates.

Love has an appreciative quality. The spiritual ways are based on the belief that every living thing wants to know it is wanted and needed, including people. Love can be a thing to lift and motivate the spirit. But for love to be real, the things that are needed and appreciated need to be real also. Most love in our world is fantasy. It is based on things not real but apparent (appearance.) But it can be real. It can be based on things that other people do that support our lives, and on the feelings derived when we do things to support other people's lives. For it to be real, we must be functional human beings, and not simply consumers. We must be producers and not people who acquire. Love requires that we become specialized in our behavior to serve the needs of the people in our lives and not in service to the abstract, distant Industrial Society. We must, in short, relearn to serve our own species.

The old people said that the natural ways are the ways of Real People, and that if we leave those ways, our children will become confused and there will be much suffering. They also said that if we leave those ways, we might destroy all life on this earth. Whenever I thing of those teachings, I am always faced with some unnerving facts. When the U.S. government of the big corporations tell us not to worry about the drought or the oil shortage, they are telling us not to worry, to go on buying food and gasoline. They have something they want to sell to us.

But the traditional native people don't have anything to sell. When they tell us to follow the Creator's ways, to have families and to be good to children and to be faithful wives and husbands, there is nothing to buy, no buttons to wear, and no music in the background. When they urge us to live the right way, I know what they mean. And in this crisis-ridden time, it seems to be the best advice on the market.

- *Sotsisowah*

THE RIGHT OF OUR CHILDREN TO THEIR PEOPLE AND THE RIGHT OF OUR PEOPLE TO THEIR CHILDREN

"Adoption" has existed since life was created—it occured as a result of friendship, preference, esteem. It always happened by choice. And within the societies of natural peoples, there are extended families or clans, so that a child who loses both parents is still not an orphan, and neglect seemed impossible.

To take another person's son or daughter because of a temporary breakdown in a family, or to deprive a child of his own people without complete social investigation is child stealing. The genocide which took place in North America of native peoples, the imposition of an alien and destructive culture, and the oppression existing in native communities today has caused massive social disorganization in those communities. There is no denying the breakdown in families, and the need for deep concern for the well-being of native children. But for the same European societies which perpetrated the genocide, imposed their culture, and now oppress native people in the name of religion and progress—for those same societies to take away the children of native nations and place them in European homes selected on standards of material gain and "opportunity" is a gross hypocrisy as well as a crime against humanity.

European governments operating on North American soil have established "Bureaus of Indian Affairs" to see to the well-being, health, and education of native peoples. If they had done their job well, there would be no problem today over the adoption of native children. The fact that there is a crisis in child welfare in native communities is an indictment of those governments—and yet it is those same agencies which propose further "help" by placing native children in non-native homes—or in homes of native heritage, but separate from their peoples.

A basic tenent of native society is a concern for their children, and for the generations yet unborn. As traditional beliefs gave way under the pressure of imposed alien values, this concern was weakened. Yet among those who still hold to traditional ways, there is a deep and growing concern about the continuing loss of our children through legally-sanctioned "welfare" programs and agencies. If they are truly concerned and wish to be helpful, we suggest the following ideals. Failure to establish these ideals as priorities can only be interpreted as a further example of European arrogance—after all, whose children are we concerned with? Our own—and for them, we want the best.

We challenge all agencies to work WITH native communities to strengthen families who are having difficulty in caring for their children. If, as a last resource, alternative plans for the children are necessary, we challenge agencies to work WITH native communities (especially relatives) to find foster home and adoptive home placements. Many standards and ideas of confidentiality are perhaps necessary in Anglo society, but are meaningless in a non-Western-type native culture. If, for some reason, a community cannot provide plans for the children, then we challenge the agencies to work WITH native peoples throughout North America to provide a plan for the children. And, if somehow, this doesn't work, then native people will request Anglo agencies to find good people—of any nationality and race—to care for their young ones. We challenge any agency who must select this last resource to be prepared to certify that all the other steps were followed diligently and with full use of that agency's resources.

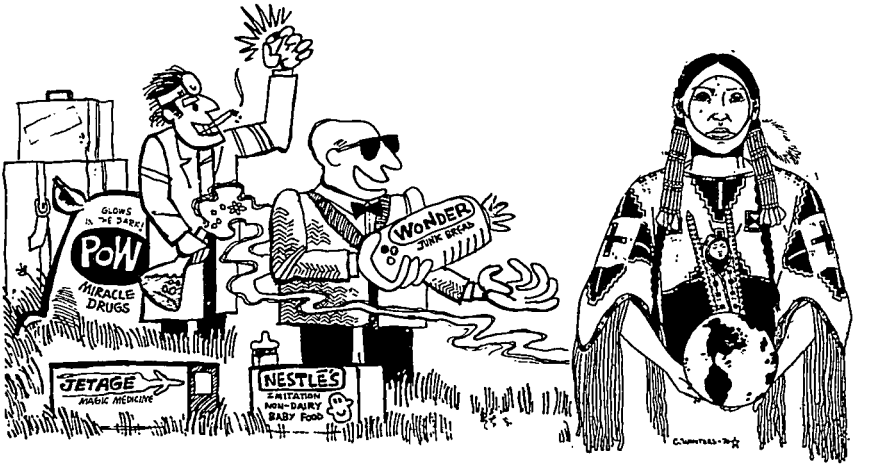
For those children of our people who have already been placed in Anglo homes, we hope that they are with loving parents, and we do not wish to disturb them. Instead, we offer our help to see that in addition to having these loving parents, our children also have their people. Perhaps we can find native grandparents to see that our children participate in their culture and that they do not lose sight of their people. Sooner or later, our children discover and understand their place in North America as part of this land—we do not want them to discover that they have been betrayed at the same time.

We urge agencies to reverse the damage which has already been done by educating their clients and public that "interracial" adoptions, while once believed to be a thoughtful reaction, are to be discouraged, and that a pledge has been made to instead strengthen native people's rights to a future.

To Take Back Our Power

The sterilization of Indian women is a concern much larger than just a political or medical one. The real issue behind sterilization is how we are losing our power, our personal sovereignty, in every facet of our duties as mothers of the future generations to the colonizer's institutions. His hospitals, his schools, his churches, his legal system, his economy—he has incorporated his greed and we are the victims of that corporate greed. In surrendering our womanpower—our ability to give and sustain life in a healthy and balanced world—to those institutions, we are becoming dependent in the most demeaning way; in an unknowing way every time we walk into the doors of one of those institutions we're taking our values and direction from a way of life that works to fragment our lives.

Sterilization. It's an awesome fact that one third of Native American women have been robbed of their ability to reproduce, their power to bring forth new life. Even more awesome is the fact that we are allowing the same institutions that work to destroy our Nations to influence us as women and mothers. In the same way that Humanity has lost its connection to Mother Earth, we as Native American women are losing our connection to our female power. We've always been told that we are related to the earth in a female way. In a traditional world Native American women understood their bodies in terms of the Earth and the Moon. They understood the Cycles of the Universe and the Cycle within and they walked "holding hands" with Grandmother Moon. The Women's Dance reminded them of their close relationship to the Mother Earth as their shuffling feet never left the ground, a reflection of their own power to give and sustain life. In the long ago days when western institutions did not exist on this land life was at times hard; at times gentle, but fairly in balance. In this scheme of things, supported by the Clans, the societies, and a communtiy in balance within the Creation, women had more to do with the health, education, well-being and survival of their Nations than all the federally-funded programs in today's world. We had that power, that woman power. We've got to understand our spiritual relationship, our practical relationship to the creation in more than just pretty words. It sounds nice, "Our



Mother the Earth." But what does that mean for us? You look at the Earth and the old people will tell you that everything we need for a good life is provided for us by our common Mother. Our laws, our education, our medicines, our religion, our food, shelter and clothing, everything came from the Earth, our Mother.

What are we doing, as mothers, to provide these things for our children? You look around in the Indian communities on the reservations and in the cities and you see how Indian women are losing their power on the female side of life. We have become more and more dependent on a way of life that does not belong to us. So dependent that breastfeeding, home births, parenting, and control over our own health and reproduction have become unfamiliar skills to us. As women and mothers we have to understand how we're tied in to the white man's corporations and how that undermines our sovereignty, our physical and spiritual sovereignty.

the consciousness of the Women's Dance, the awareness of our spiritual quality as women, and the concept of personal sovereignty, has to be the consciousness of our survival as women. We need to take back our power as Human Beings on the female side of life. As Women of All Red Nations we are concerned with issues that for Indian People are issues that mean our very survival: political prisoners, the erosion of our land base, sterilization, education, treaty rights, and the destruction of the family unit. We can't separate these issues into individual battles, although the battle is on all these fronts. We can't fragment the issues as the White man would have us do. We can't separate the birth of our children, the care and feeding of our children, from the health and education of our children. We can't be concerned with just the sterilization issue because the gross sterilization abuse committed against native people is a symptom of a basic problem, and that is that we Indian women aren't paying attention to our power, we have forgotten how to practice sovereignty over our own bodies. Many of us no longer understand the power of the purification process our bodies undergo with each lunar cycle. Many don't understand the meaning of that power or how it translates into spiritual reality in our own medicine ways. Many of those thousands of sterilization procedures occurred post-partum after women delivered their babies in the hospitial and were so groggy from drugs that they couldn't comprehend what was happening to them. When we were withing the circle of our woman power our babies were delivered at home with our relatives attending us and birth was a natural process and the white man could not interfere with the most intimate details of our power as women.

The white man takes what is sacred, what is the gift of the creation, and puts it in institutions. We used to have control over the production of our own food, and now our families are addicted to processed foods. The educational system we are processed through leaves us as lifeless as the white bread and white sugar we eat, and this processing has a debilitation effect on the minds and bodies of our People. The incidence of Diabetes, hypertension, poor nutritional status, obesity, alcoholism and other "civilized" diseases among native people is genocidal.

In an Inuit community in Alaska, a geneticist from the University of New Mexico began seeing Native children with physical abnormalities that couldn't be attributed to any previously recognized syndrome. The characteristics seen in these children included short,

squatty noses pointed upwards, low-set ears, low birth-weight, tendency for retardation and a longer, thicker upper lip. What was common in the medical history of the mothers of these children was that they all had had alcohol during their pregnancy. This set of circumstances has recently been described in medical literature as a specific syndrome called the Fetal Alcohol Syndrome. It has not yet been defined how much alcohol has an effect on the developing fetus, or at what trimester of pregnancy a fetus is most susceptible to the effects of alcohol. What is known, however, is that everything a mother consumes, whether it is alcohol, tobacco or drugs, affects the development of the fetus. The old people will tell you that even a woman's thoughts affect her unborn child, that the child hears through her ears and sees through her eyes, and that it is the duty of the pregnant woman's family to keep her happy, with only good thoughts. The fetal alcohol syndrome, the debilitating effects of a "civilized" diet on our People's health, and the debilitating effects of the white man's schools and churches on our People's spirits are just a few of the many ways that we are oppressed. This oppression saps the strength of our nations.

Another issue that concerns W.A.R.N. is the destruction of the family unit. In one generation the trend has changed from home deliveries to hospital deliveries, from breast feeding to bottle feeding. The bonding and the closeness that is shared by the family from natural practices are basic ways that we can build strength into ourselves, our children, and our families. We have allowed that connection to the birth of our children and to their care and feeding to be taken from us. We have been confused into believing that a ceremony as sacred as the birth of a child belongs in an institution. We are taking on the values of our oppressors, and by doing that, we oppress our own children, our own families, our own selves, by bottle-feeding, by childbirth techniques that are not natural, by missing out on the birth of our own children because we've been taught by the whiteman that childbirth is painful and that we need to use drugs, and we labor and deliver without realizing that our children are down the hall in a room full of crying babies and the fragmentation of our families begins the moment our children are born.

We need to get a firm grasp of the concept of personal sovereignty as it applies to us as women. Native women are being sterilized, and not understanding what that means. Many are undergoing Cesarean sections and not knowing why. Many are having hysterectomies and not understanding the full medical and emotional implications of such a procedure, and have no one they can turn to for accurate information and advice. Look at yourself. What do you know about your own fertility and how it relates to the moon? Do you know when you are not fertile? Do you have any physical problems that can be dealt with by a change in eating habits or lifestyle? What do you know about menopause? What do you know about the process of birth? What traditional medicines do know of to help you with menstrual cramps, labor and delivery, breastfeeding? For many of us, these things are left up to the Indian Health Service.

We let them deal with our "female complaints." I'm not saying that there is no way that we can use Western medicine or hospitals at all. As a matter of fact, the incidence of cervical cancer is so rampant among Indian women that a yearly pap smear should be part of any conscientious health maintenance program. What we need to keep in mind is that the medical corporations are just as profit-oriented as any other of the white man's corporations. And the medical corporations extract from us our womanpower.

A good example of how corporations weaken us are their campaigns over the past decade to hook Third World mothers into using packaged infant formulas. Subsequent formula misuse had been fatal to some infants in countries where Nestle's, Bristol-Myers, and other corporations pushed their products.

As women and mothers we also need to focus on preventative rather than curative medicine within our own families. Good preventative medicine integrates health with other aspects of our lives: how we treat each other, our education, the food we eat, how we support our existence on this Earth.

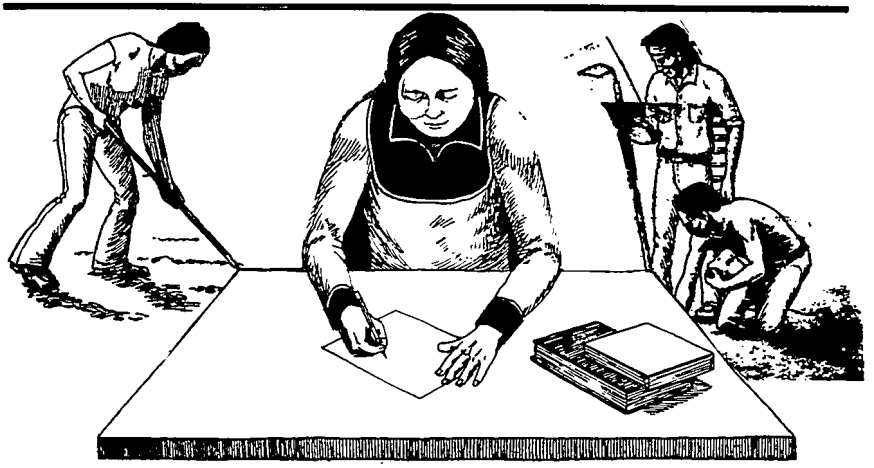
We need to be thinking about these things. The consciousness of the Women's Dance, the awareness of our spiritual quality as women, and the concept of personal sovereignty, is the real issue behind sterilization. We need to be thinking about all these things because it puts us face to face with our men. They need to be strengthened. They need to understand their duties and their power on the male side of life. As Sakokwenonkwas of the Mohawk Nation put it: "A man and a woman should be working together, pulling together like two work horses for the future generations."

- Katsitsiakwa

Education For Survival

Education for survival is a large topic. It involves much more than schools. We have a tendency when we think about education to think that it applies only to the children, how they're developing and what they're learning and what kinds of skills we can pass on to them to make their lives more productive and healthier. We think in terms also of the survival schools, how many there are, what they're teaching, what their attempts are to try to pull kids, Indian kids out of public schools, how they developed over the years. I think these efforts are important. People should think and try to understand what has come down with the survival schools, what they came out of and what their history has been. There have been many controversies surrounding the survival schools, both from without, from the outside, and within. I feel it's important to think about that, because within the problems that are reflected in the survival schools now I think that it may be possible to find answers to the problems that are reflected in the total Movement toward a better life for our People, and answers to the ways in which we ourselves have failed ourselves, our families, and our Peoples in trying to figure out an adequate path for survival.

What do we mean by survival? That's another question. What needs to survive? People will very often answer that question with, "What needs to survive is the culture, the Indian culture." Culture. We often hear that word. I have a question. What is culture? We have to understand that we've been taught many things as human beings, that we're all victims of the same process that right now we're attempting to pull our kids out of. When we focus on the kids, we're focusing on something that we ourselves went through and which helped mold us. There's a whole way of Life that we have been reared in which has a lot to do with the way the whole economy of this country runs, with the way the mass media is organized here, with the way the court systems are organized, with the way our consumption of goods and services, food, and materials we need to live, with the way that is all organized. It has to do of course with the way that the educational, the mass educational system in this country has become organized. We have been reared in a way to think much,



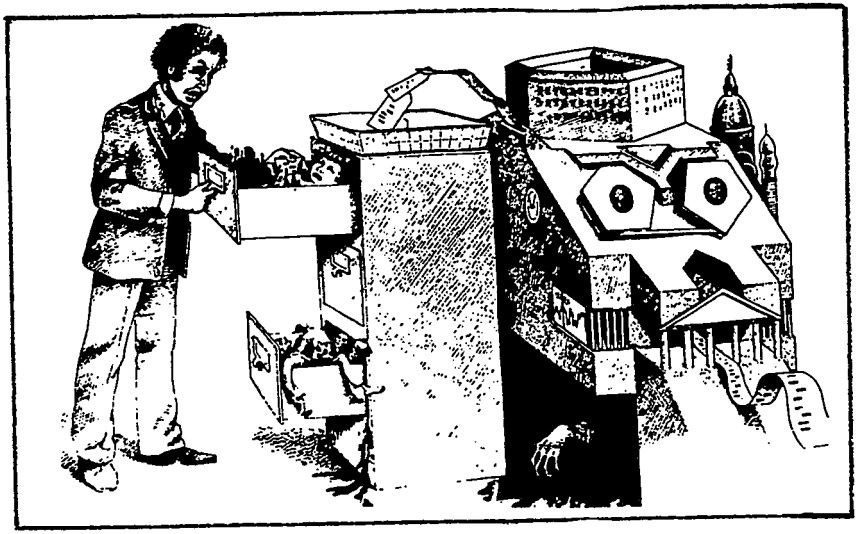
much more about superficial things than about real things.

We have been taught to be dependent. We have been taught that we have no way of controlling our immediate environment, that we have no way of really directing our communities: Why? We have been taught to fit into a system which bases itself on extractive technology which can pull resources, labor and materials from many different parts of the world and processes them for us, brings it to our table, to our clothes rack, and allows us to be fed and housed in ways that we don't understand or have any way of understanding. This means that we have been taught to be on the recipient end of a system which at the other end, the extracting end really exploits people and detroys the natural world. This is the reality. Something we need to understand. It is very confusing. It is meant to be confusing. Confusion is a tool of oppression. Misinformation is a tool of oppression. The constant way that we are fed misinformation is a tool of oppression. The constant way that we are fed misinformation and confusion and lies creates in us a reaction to life which can be called cynical. That too is a tool of oppression. It creates in us habits and ways of looking at the world and ways of interacting with our fellow Human Beings that create oppression. This can be seen in every community. We don't have to look far to find this.

We are living in the wealthiest society ever assembled in the history of the world. We are beneficiaries of that as much as we may deny it, at least materially. And yet we look around us and we see nothing but decadence. We are right to be alarmed. The thing to understand and the reason why to think in terms of survival is to get our minds a little bit more in tune with what is real, is that after the Nations were militarily conquered and fragmented and the People's culture was begun to be stolen from them, that it didn't end there. That the process that was capable of causing that much destruction was continued, that has grown in strength in military, and in ability to destroy. That strength has continued to unfold and the processes that destroyed the nations, the process that broke the circles of the nations, they have continued to take their tolls on our lives. First the nations were fragmented, then the families, and nowadays we come up against the fragmentation of the very individual. We see that reflected in mental diseases which have never been heard of before. People with different personalities, people with images in their minds they know not how to control. We're barraged the very moment we're born to the day we die with images, with conflicting arguments, with thousands of choices. Whole ways of being are laid before us that we have no way of judging whether they're good or bad. Life seems directionless. For many, it is. It's confusing. It's confusing for ourselves as adults and it's doubly confusing for the children. Children watch their parents and children watch the adults around them, children do this all the time. And when we think of children we have to understand that they're open to learning every minute. They're trusting. Once when the circle was still unbroken there was a quality that one carried throughout life, that trust, that ability to learn. Education was a process, an ongoing process that never ended. We have been taught so many devious ways of thinking about life that we even take something as sacred as that process of learning, that unfolding of our lives, we pigeonholed it and we put it into a particular space called a school. We have even been taught that culture can be put in a classroom. It's putting the cart before the horse, it's an ass-backward way of thinking. There is no such thing as even viewing culture, culture is everything. Once people had a circle, and in that circle was contained their culture and their culture was everything they did, the way they clothed themselves, the words they spoke, how they treated each other, what they ate, what they saw from morning until night. Everything was culture. Everything influenced you. Everything affected you. People grew up with an understanding of that and words were spoken not lightly. And people were impressed with the things that right now, in the way we live our lives, are seemingly very small. We have to understand that what's around us right now, the way we see the world, the way we clothe ourselves and everything about us, is also culture. The car we drive is culture. The MacDonald's hamburger we eat is culture. The bottle of beer that we drink is culture. The way we turn our backs on our friend, is culture.

The way we ignore our children is culture. We have been taught to fragment our very thinking about life and so we don't even see that. That's part of the way this whole thing has gone. That is why it's so difficult to figure it out.

When we talk about education what do we mean? What has to survive? Who has to survive? How will people survive? By alerting people to the need for survival, it is implied that something is happening which threatens to destroy them. I said a little bit earlier that we have been taught to fit into a whole way of being and that we are beneficiaries and recipients of a whole system of organizing the world that once, when we were on the frontiers of it militarily, broke us, conquered us, tried to destroy us. And as that system continued we've become part of it. What do we retain? What do the old people retain? What do we know to be true? What do we know to be real? We know this whole thing has continued and has developed into a way that is called the corporate way of life. It's what organizes America. We have been taught to be dependent on that way of life, we have been taught to identify our very survival with it. One way we have been taught that is through the public school systems. The public school systems belong to them. This is something that we must keep in mind. All this culture that I've been talking about belongs to them. The public school, when you look at it, is a big fortress. It's built in most cities, even in very small towns, with federal funding, and it looks just like the prison systems. It behaves like a prison system. And it serves, in some ways, very much the same purpose. Schools are part of the process of exraction. It exracts our children, it processes them to begin to think in ways in which they can serve the corporate culture. It begins to think and steer them in ways that will be beneficial to the culture. It teaches them not to be at home. It teaches the parents that because the schools exist they no longer have to care for their children for so many hours in a day, so they too can belong to the corporate culture. School teaches us to be bored with life. It puts us in a classroom and teaches us to sit for so many hours a day and stare at a wall. You don't have to do anything else but that to succeed in the public school systems. All your life you will be facing the same four walls. You are not free. Most schools are run by outside administrators, meaning, people who don't live in the same



communities that their students come from. People who come in the morning, teach their class, leave in the afternoon, then get in their cars and drive far away to another community. I should add, to another community where their kids are being taught by someone else because they belong to the system. If you identify yourself as the kind of person that doesn't, as the kind of person that has begun to get an understanding of where this system is heading then you can see where they're not the same as you. Survival Schools are undergoing a process right now. It is a process of pulling away as rapidly as possible and yet without ignoring the necessities of so many parents and so many children, of pulling away as rapidly as possible from this culture that doesn't belong to us. That is the process being undertaken by the survival schools. To view that situation fully is to understand the concrete reality of our dependence on this system. It is to understand how truly difficult it is to be sovereign. It is to understand how very necessary sovereignty is to the survival of the people.

The question boils down to this: We either identify with the way of Western Civilization, with the industrializing way and we identify our survival with it—we identify ourselves with those who are fearful of the energy crisis, who are fearful of the problems of this way of life, or we identify ourselves, positively, wishfully—with the process of purification, the only true revolution that will ever take place in North-America—that of the land itself fighting back to regain its nurturing power.

It's an either/or situation: you can go either way—but you can't go both ways at once. A focus on survival, a focus on the strength and the reality, of what the purification is going to entail—helps us to provide ourselves with a more clear vision of what we need to do.

- Jose Barreiro

Political Prisoners

Because of the invasion by a more destructive people than ourselves, Indian people have been political prisoners for centuries. In the existing system, we have no control of our own lives and are forced into a foreign way of life. This placement of our people keeps us dependent on that enemy which holds us prisoner. Because of the disgrace our people are forced into, many of our warriors (men and women) have chosen to face the enemy and defend the rights of our people. In return they are forced to pay an even greater suffering by being locked up in the white man's cages and labeled criminals. People such as Russell Means and Leonard Peltier have been taken as prisoners of war.

This is the generation who resisted the system. They gave us the American Indian Movement, Wounded Knee, and the International Treaty Council, and have brought us along to find our traditional and original way of life.

As caretakers of Mother Earth and all brothers and sisters, we can't ignore this inhumane treatment of our people. As a people, we aren't totally free until everyone of us is free. It is our responsibility to ourselves to work towards total freedom.

Inside the walls of institutions all over this country, *you* have brothers and sisters who are confined. You can do something today.

We all realize that religion and life are one thing to an Indian. It is important for the pipe, sweat lodge and sacred ceremonies to be a part of everyday life no matter where you are.

House Joint Resolution 738 was signed as a law. This is the American Indian Religious

Freedom Act. This act states that our own religion is indespensible and irreplaceable and necessary for Indian people. Therefore it is the law that freedom of religion can be carried out inside institutions.

W.A.R.N. continues to accept this responsibility in bringing this about for our people inside. We cannot forget our people who fought so hard for us.

Find out about''your people inside the institutions in your area.

Organized your people who are outside.

Help to supply them with the information they need. Raise money to bring in respected elders and spiritual people for direction.

This should be done to strengthen our people inside. It will bring us freedom.

We are in the process of compiling a list of Native American prisoners, support groups, defense committees, etc. Please send information from your area. It is important to distribute a contact list of this information to get organized and effective, nation-wide.

W.A.R.N.
Lakota Harden
We Will Remember Survival Group

A Message

To the Indian women at the founding conference of W.A.R.N.

Who were the leaders in bringing the people together at Wounded Knee? Everyone knows it was the women. Who brought up the issues of sterilization and child-snatching? The women. Indian women did most of the solid work at our conference in the United Nations in Geneva. On the international level women in the Treaty Council have played a very important part over the years. But let's face it, sometimes they have had to argue with the men in the Treaty Council at the same time.

Also, let us face all of our problems head on, in an honest way; in A.I.M. and the Treaty Council we have had the problem of women—form reservations and from off-reservation—doing things very individualistically, starting rumors and backbiting, etc., the same as with men. There is only one way to solve those problems, and that is for the women to be accountable to each other and to the Treaty Council as a whole in a way that means discipline and organization. Walking a straight path all together.

We need an organization of women. All of the other liberation organizations—in Africa, the MidEast, Asia, and South America, have organization of women. And they are winning their fight for freedom. So for me the question is always, "Do we want to be free or not?" If so we need a strong national organization, that begins on a community level and answers community needs while doing national and international work. For that to happen, one of the things we must have is a strong women's organization. It should begin in communities and reservations, but it will only work if it is a nation-wide and continent-wide organization. That is because even though we feel our oppression most strongly in our local communities, it is a nation-wide problem that needs nation-wide strategies to win. We have always had *either* local organizations or national organizations. Now we need to put them together

We need organization, not just in communities or reservations, or even nations. All of the people of all the nations must organize themselves together into one fist. When Tecumseh said "Let our affairs be conducted by warriors," did he mean just the men? I don't think so. With my people there is a word, "Ghigau". It means "beloved woman", or "warrior woman", in other words, a woman who has seen her duty in troubled times and has chosen to be an active fighter. I think Tecumseh meant that our affairs should be conducted by all of the people who have decided to live their lives for the good of the nation—for the freedom of the whole people.

- Jimmie Durham

Declaration Of Continuing Independence

By the First International Indian Treaty Council At Standing Rock Indian Country June 1974

A long time ago my father told me what his father told him. There was once a Lakota Holy man called Drinks Water, who visioned what was to be; and this was long before the coming of the Wasicus. He visioned that the four-legged were going back into the earth and that a strange race had woven a spider's web all around the Lakotas. And he said, "When this happens, you shall live in barren lands, and there beside those gray houses you shall starve."

They say he went back to Mother Earth soon after he saw this vision and it was sorrow that killed him.

- Black Elk, Oglala Sioux Holy Man

PREAMBLE

The United States of America has continually violated the independent Native Peoples of this continent by Executive action, Legislative fiat and Judicial decision. By its action, the U.S. had denied all Native people their international Treaty rights, Treaty lands and basic human rights of freedom and sovereignty. This same U.S. Government which fought to throw off the yoke of oppression and gain its own independence has now reversed its role and become the oppressor of sovereign Native people.

Might does not make right. Sovereign people of varying cultures have the absolute right to live in harmony with Mother Earth so long as they do not infringe upon this same right of other peoples. The denial of this right to any sovereign people, such as the Native American Indian Nations, must be challenged by truth and action. World concern must focus on all colonial governments to the end that sovereign people everywhere shall live as they choose, in peace with dignity and freedom.

The International Indian Treaty Conference hereby adopts this Declaration of Continuing Indepence of the Sovereign Native American Indian Nations. In the course of these human events, we call upon the people of the world to support this struggle for our sovereign rights and our treaty rights. We pledge our assistance to all other sovereign people who seek their own independence.

DECLARATION

The first International Treaty Council of the Western Hemisphere was formed on the land of the Standing Rock Sioux Tribe on June 8-16, 1974. The delegates, meeting under the gui-

dance of the Great Spirit, represented 97 Indian tribes and Nations from across North and South America.

We, the sovereign Native Peoples recognized that all lands belonging to the various Native Nations now situated within the boundaries of the U.S. are clearly defined by the sacred treaties solemnly entered into between the Native Nations and the government of the United States of America.

We the sovereign Native Peoples charge the United States with gross violations of our International Treaties. Two of the thousands of violations that can be cited are the "wrongfully taking" of the Black Hills from the Great Sioux Nation in 1877, this sacred land belonging to the Great Sioux Nation under the Fort Laramie Treaty of 1868. The second violation was the forced march of the Cherokee people from their ancestors from their ancestral lands in the state of Georgia to the then "Indian Territory" of Oklahoma after the Supreme Court of the United States ruled the Cherokee treaty rights inviolate. The treaty violation, known as the "Trail of Tears," brought death to two-thirds of the Cherokee Nation during the forced march.

The Council further realizes that securing United States recognition of treaties signed with Native Nations requires a committed and unified struggle, using every available legal and political resource. Treaties between sovereign nations explicitly entail agreements which represent "the supreme law of the land" binding each party to an inviolate international relationship.

We acknowledge the historical fact that the struggle for Independence of the Peoples of our sacred Mother Earth have always been over sovereignty of land. These historical freedom efforts have always involved the highest human sacrifice.

We recognize that all Native Nations wish to avoid violence, but we also recognize that the United States government has always used force and violence to deny Native Nations basic human and treaty rights.

We adopt this Declaration of Continuing Independence, recognizing that struggle lies ahead—a struggle certain to be won—and that the human and treaty rights of all Native Nations will be honored. In this understanding the International Indian Treaty Council declares:

The United States Government in its Constitution, Article VI, recognizes treaties as part of the Supreme Law of the United States. We will peacefully pursue all legal and political avenues to demand United States recognition of its own Constitution in this regard, and thus to honor its own treaties with the Native Nations.

We will seek the support of all world communities in the struggle for the continuing independence of Native Nations.

We, the representatives of sovereign Native Nations, unite in forming a council to be known as the International Indian Treaty Council to implement these declarations.

The International Indian Treaty Council will establish offices in Washington, D.C. and New York City to approach the international forces necessary to obtain the recognition of our treaties. These offices will establish an initial system of communications among Native Nations to disseminate information, getting a general consensus concerning issues, developments and any legislative attempt affecting Native Nations by the United States of America.

The International Indian Treaty Council recognized the sovereignty of all Native Nations and will stand in unity to support our Native and international brothers and sisters in their respective and collective struggles concerning international treaties and agreements violated by the United States and other governments.

All treaties between the Sovereign Native Nations and the United States Government must be interpreted according to the traditonal and spiritual ways of the signatory Native Nations.

We declare our recognition of the Provisional Government of the Independent Oglala Nation, established by the Traditional Chiefs and Headmen under the provisions of the 1868 Fort Laramie Treaty with the Great Sioux Nation at Wounded Knee, March 11, 1973.

We condemn the Untied States of America for its gross violation of the 1868 Fort Laramie Treaty in militarily surrounding, killing, and starving the citizens of the Independent Oglala Nation into exile.

We demand the United States of America recognize the sovereignty of the Independent Oglala Nation and immediately stop all present and future criminal prosecutions of sovereign Native Peoples. We call upon the conscionable nations of the world to join us in charging and

prosecuting the United States of America for its genocidal practices against the sovereign Native Nations, most recently illustrated by Wounded Knee 1973 and the continued refusal to sign the United Nations 1948 Treaty on Genocide.

We reject all executive orders, legislative acts and judicial decisions of the United States related to Native Nations since 1871, when the United States unilaterally suspended treaty-making relations with the Native Nations. This includes, but is not limited to, the Major Crimes Act, the General Allotment Act, the Citizenship Act of 1924, the Indian Reorganization Act of 1934, the Indian Claims Commission Act, Public Law 280 and the Termination Act. All treaties made between Native Nations and the United States prior to 1871 shall be recognized without further need of interpretation.

We hereby ally ourselves with the colonized Puerto Rican People in their struggle for Indepence from the same United States of America.

We recognized that there is only one color of Mankind in the world who are not represented in the United Nations; that is the indegenous Redman of the Western Hemisphere. We recognize this lack of representation in the United Nations comes from the genocidal policies of the colonial power of the United States.

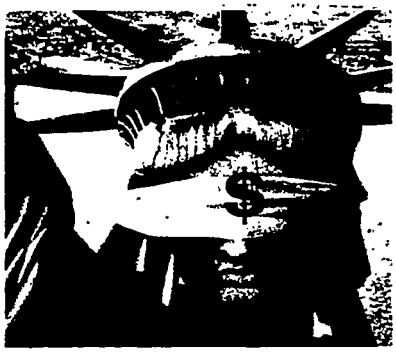
The International Indian Treaty Council established by this conference is directed to make the application to the United Nations for recognition and membership of the sovereign Native Nations. We pledge our support to any similar application by an aboriginal people.

This conference directs the Treaty Council to open negotiations with the government of the United States through its Department of State. We seek these negotiations in order to establish diplomatic relations with the United States. When these diplomatic relations have been established, the first order of business shall be to deal with U.S. violations of treaties with Native Indian Nations and violations of the rights of those Native Indian Nations who have refused to sign treaties with the United States.

We the People of the International Indian Treaty Council, following the guidance of our elders through instructions from the Great Spirit, and out of our respect for our sacred Mother Earth, all her children, and those yet unborn, offer our lives for our International Treaty Rights.

In following the Declaration of Continuing Independence in the 1st International Indian Treaty Council of Standing Rock, 1974,—We Women of All Red Nations, continue to realize that our struggle in this hemisphere is unique. Our land base is guaranteed through international treaties. Our culture and way of life has survived through resistance to foreign domination. Our fight today is to survive as a people. Indian women have always been in the front lines in the defense of our nations. Today we are targets of the colonial governments of the western hemisphere. Our young are being attacked through the racist educational system of governments and churches. Our unborn are attacked through programs of genocide called sterilization. We value our young for they are the very foundation of our future generations. Only by throwing off the yoke of colonization with the strength of our spirituality will we survive as Peoples Nations. We will work on local, national and international levels to obtain our goals of true liberation and freedom.

We, the Women of All Red Nations will take our place and stand proudly with our sisters in the world in the common struggle for all basic rights.



A Central Committee has been organized for W.A.R.N. and the names and addresses of volunteers on the committee appear below. These women are responsible for the dissemination and collection of information in their home area and in their main area of interest. If you wish to pursue any of the issues discussed in this booklet further or have information you with to share with W.A.R.N., please contact one of the women on the central committee.

Other copies of this booklet can be obtained from:

Lorelei Means/
Madonna Gilbert
We Will Remember Group
Porcupine S.D. 57772

A $5.00 donation requested

WOMEN'S HEALTH:
Katsi Cook
3232 Elliot Ave. So.
Minneapolis, Mn. 55407

EDUCATION FOR SURVIVAL
Lorelei Means
Madonna Gilbert
We Will Remember Survival Group
Porcupine, S.D. 57772

WOMEN'S HEALTH
Peggy Bellecourt
2429 18th Ave. So.
Minneapolis, Mn. 55404

EDUCATION FOR SURVIVAL
Vickki Howard
1209 4th St. S.E.
Minneapolis, Mn. 55414

TREATY COUNCIL WORK
Diane Burns
777 United Nations Plaza
New York, N.Y. 10017

STERILIZATION:
Phyllis Reyna
P.O. Box 69
Ft. Yates, N.D. 58538

POLITICAL PRISONERS:
Yvonne Wanrow
P.O. Box 49
Inchelium, Wash. 91138

COMMUNITY ORGANIZATION:
Agnes Williams
1812 27th Avenue
Oakland, CA 94601

FISHING RIGHTS
Janet McCloud
Rt. 3, Box 3218
Yelm, Wash. 98597

FAMILY, LEGAL
Pat Bellanger
643 Virginia Ave.
St. Paul, Mn. 55104

"We're tired! We're tired of seeing our men driven by despair, turn to alcohol, commit suicide or end up in penal institutions. We've reared our children only to see them brainwashed by an alien system, with a genocidal policy, which destroys our language, customs and heritage.

We're tired of seeing our brothers and sons go off to war only to come home and be slain by United States Government forces.

After 438 years, we are tired—damn sick and tired.

So we are standing up next to our men.

We are standing up and taking up the battle. Here and now. To protect our young so their unborn can know the freedom our Grandparents knew.

The future of our young and unborn is buried in our past. We are today who will bring the rebirth of spiritualism, dignity and sovereignty.

We are Native American women!

- Regina Brave

Exhibit No. 11

On file at the U.S. Commission on Civil Rights

Exhibit No. 12

STATE OF MICHIGAN

WILLIAM G. MILLIKEN, Governor

DETROIT OFFICE
State of Michigan Plaza Bldg.
1200 Sixth Avenue
Detroit, Michigan 48226
Telephone (313) 256-2570

DEPARTMENT OF CIVIL RIGHTS

Stoddard Building 125 W. Allegan St.
Lansing, Michigan 48933
RUTH RASMUSSEN, DIRECTOR

TELEPHONE (517) 373-7634

March 19, 1979

TO: Mr. Arthur S. Flemming
and Members, U.S. Civil Rights Commission

Statement - Mrs. Olive R. Beasley, Director, Public Service, Michigan Department of Civil Rights and member, Michigan State Advisory Committee, U.S. Civil Rights Commission - Hearing - Indian and Non-Indian Relations.

Thank you for this opportunity to participate in the hearings you are conducting regarding various aspects of American Indians and their relationships to the other segments of the communities in which they reside in Michigan.

It is my understanding Mr. John Bailey, Executive Director, Michigan Indian Commission, will also be appearing at this hearing and he will probably cover some of the issues my comments are directed to, plus others for which he has information.

I am speaking from the personal experiences of myself and other members of staff of Michigan Department of Civil Rights in regard to matters brought to our attention by American Indians and in which we have been involved in assisting them to achieve satisfactory resolutions of the problem.

Community

During the past several years incidents offensive to American Indian residents of the Flint area have been brought to my attention:

1. An incident involving a large supermarket chain, Meijers Thrifty Acres. During a special sales promotion event, sales personnel were dressed in costumes depicting early American periods. A non-Indian salesperson was observed by Indian residents who was dressed in a costume to represent Indian dress that was not an authentic representation. They also observed a black salesperson dressed in Aunt Jemina costume. I reported this to the Personnel Director of Meijers Corporate headquarters in Grand Rapids who conducted an immediate investigation which sustained the allegations. Reprimands were given to local Meijers management and a letter of apology sent to Mrs. Viola Peterson, President of Genesee Valley American Indian Association.
   Exhibit attached.

2. In 1972, the Genesee Valley American Indian Association made a formal protest and request to Flint City Council regarding a short business street named Manitou, the name of an Indian deity. Located on this street were four private residences and one major private business college, Baker Business University and Michigan Blue Cross-Blue Shield. Two of the residents and the businesses objected to name change because it involved changing addresses on business stationery and the residents drivers' licenses, deeds and other recorded items. The name was changed. Similar protests resulting in changes of names and pictures and symbols in Pontiac, Michigan and other cities have been made also.

Education

This is an area I am sure the U.S. Civil Rights Commission is aware that illustrates the insensitivity, callous disregard to the history and culture of Native Americans and constitutes one example of the pervasive attitudes that the Indian is irrelevant to American culture. I am aware some dramatic changes have taken place in the treatment of American Indians. Accounts of white deceit and of Indian culture, heritage and contributions to society are more widespread but there is room for much further progress. References to the Indian in contemporary society are frequently missing and those that do appear rarely give accurate appraisals. The improvements are mostly related to historical references. I am aware also of remedial action through federally funded programs for Indian education and legislation in some states including Michigan. In 1966, the Michigan Legislature enacted an amendment to Public Acts of 1955 to require inclusion of recognition of achievements and accomplishments of ethnic and racial groups and select those textbooks which fairly include such achievements and accomplishments. Unfortunately, however, no administrative state agency wasdesignated toadminister and enforce this legislation. The Michigan State Board of Education does conduct Annual Reviews of compliance and publishes its report.

(Copy of Amendment and one report in attached exhibits)

My involvement with other school related issues involve complaints for Indian parents in regard to textbooks and materials used in the Flint school district.

1. A textbook used in the 6th grade entitled "Open Highways" contained a section "The Adventures of Thomas O'Toole" was brought to my attention by an American Indian parent. This was a series of anecdotes regarding Mr. O'Toole, an Irishman in a western state with heavy concentration of Indian population. These anecdotes grossly misrepresented Indian culture and observances in regard to their origin. For example, certain Indian dance forms were credited to Indians who observed Mr. O'Toole jumping around in pain when he had dropped a large stone on his foot.

There were other text materials this parent, Mrs. Shomin, brought to my attention where the word "squaw" was freqently used. Mrs. Shomin advised me this term is derogatory as to Indians it means "whore."

Meetings were held with appropriate Flint School personnel who with some reluctance agreed to circulate memos to teachers and administrators that these materials were inappropriate. A black teacher in the class that was using Open Highways was sensitive to its offensiveness and tried to overcome it by explaining to her class the O'Toole section anecdotes were satires. She also brought the book to the attention of Indian parents.

2. In 1977, Mrs. Barbara Shomin, American Indian parent, and Officer of Genesee Valley American Indian Association brought to my attention a textbook entitled "The American Frontier" being used in Flint high schools. The Flint Board of Education has a formal procedure regarding challenges on text or library books and materials. After reviewing the book, our Education Consultant and I concurred with the objections raised. The Affirmative Action Coordinator of Flint Board of Education also concurred. Informal preliminary discussions with school officials by parents and representatives of Michigan Indian Commission did not resolve the matter and the challenge procedure was invoked and a hearing scheduled. I advised Mr. Hemingway, Coordinator, Humanities and Language Arts of the interest of Department of Civil Rights in a satisfactory resolution of this matter and we would have a representative present at the hearing. School personnel at the hearing were generally very defensive about the propriety of use of this textbook although there was divided opinion. Those who defended the use of the book contended it was not used as a book about Indians, but one that accurately depicted that period in American history; although the passages cited were derogatory, they accurately reflected the attitudes and feelings of the early western frontier settlers toward Indians; faculty attempted to make this clear.

There were a few present who agreed that given general societal attitudes about Indians, students at an impressionable age might disregard these cautions by faculty and therefore stereotypical and prejudiced attitudes could easily be reinforced.

The concession made by school officials at first was to remove the book only from list of basic texts but retain it as supplementary optional material lists provided to students. It was subsequently removed. Further details are revealed in attached exhibit on this incident.

The Flint Board of Education maintains an Instructional Materials Center in a facility separate from the administrative buildings plus IMCs in individual schools.

During periods when text selections are in progress, annually materials offered by publishers are on display at the central IMC and invitations are extended to parents and community leaders to review these materials which are usually on display for one full week. I usually visit the display.

In 1977, on such a visit I saw one text book which had a very offensive chapter in it. It was entitled "Freedom's Ground" and designated for 5th year level reading. The chapter "Mocassins on City Streets" related a story of an Indian girl who had moved to Chicago. The principal is quoted "this school is in a changing neighborhood - you Indian people move around a lot;" "you haven't been in school long enough to go in 7th grade where you belong, I'll have to put you in 4th grade." "A boy behind Susan whispered loudly - she's one of those wild Indians, she had better not be in my room." Another yelled - lets tie her to a stake and burn her." Other remarks - "Reservation is a place where government keeps lazy Indians and feeds them because they won't work." Teacher Mr. Clark to Susan when she wore her moccasions to school hoping they would make other students proud of her, "Don't you want gym shoes." In gym class Susan unaccustomed to running in the type of shoes worn by other students made a poor showing. Later she wore her moccasins and won the race but the teacher is quoted as saying to a white student "come on Earl - beat the Indian girl." The story concludes that after winning the race, Susan was accepted with cordiality and pride by other students.

Hoping this was intended to demonstrate historic and/or contemporary contempt for Indians I examined the teacher's study outline the publisher had provided. The suggested questions were:

1. Why do you suppose Susan's family moved from the Indian reservation to Chicago?

2. Do you think people should change to fit into a new neighborhood or way of life? Should Susan's family have changed their name from Bearskin to Baskin?

This text was pointed out to Director of IMC. To the best of my knowledge it was not selected for use in Flint schools.

I cite it here as one illustration of the way textbook publishers persist in offering textbooks which are blatantly offensive to public school purchasers.

This is a matter the Commission may wish to address.

The Department of Civil Rights successfully assisted a male Indian student through a formal complaint in an incident involving severe disciplinary action because of violation of rules regarding length of hair.

There are other school related issues that surface from time to time to which the Department of Civil Rights assists Indian parents and students.

Details regarding the two textbook incidents in Flint schools are included in attached exhibit.

3. Day Care Centers

I also received a complaint from Genesee Valley American Indian Association regarding a private Day Care Center in a suburb adjacent to Flint. The Center had a sidewalk sale as a fund raising event. Indian parents who visited the display noted a very offensive picture - a caricature of an Indian with an inscription "See How Funny Indians Look." Mrs. Peterson had been treated very discourteously by the Director and one of the teachers of the Center when she made a protest. Their response was "we will not be dictated to or coerced by any community group."

I contacted the Director after contacing first the division of State Department of Social Services which funds Day Care Centers. The Director of the Center claimed there was a misunderstanding. She removed the picture as soon as it was brought to her attention; she had invited Mrs. Peterson to meet with faculty and explain Indian culture and heritage.

The Director explained to me the picture represented part of the teaching process and was designed to help the Center students learn to identify facial features, spell names, etc. Children's drawings at this age are often very crude and distorted. When I inquired what in-service training was provided for faculty to sensitize them to cultural pluralism, she admitted this had never been done.

I was later invited to speak to a state conference of Day Care Center Directors and faculty. Some were very receptive and requested copies of reference materials I had used. Others were not. After the meeting while I was waiting for a taxi to go home, the Director of the host Center asked me why Indians and other minorities were insistent on preserving their culture and traditions. He felt strongly they should assimilate and abide by the majority culture.

There were no non-white students enrolled at this Center although they claimed they had made efforts to recruit them. One or two black families had indicated interest but after initial interview did not enroll their children.

Government

There have been incidents of local government insensitivity to Indians and their history in the Flint area. The City of Flint is engaged in extensive downtown redevelopment and Flint riverfront beautification projects. A California firm, Alpern and Associates, was engaged as consultants on design of riverfront beautification. The private sector business and industry is involved in financing. The architect suggested on first visit that citizens be invited to tour the area with him and his staff and make input by suggestions for design. Invitations were issued to a broad cross section of citizens to make the tour by the Downtown Business Corporation. Mrs. Peterson brought to my attention no Indians were invited despite the rich history of Indians fishing and residency at the site. Indians also had reason to believe bones and other artifacts might be buried beneath the buildings scheduled for demolition and would be destroyed during excavating. She appealed to the Mayor to allow Indians to dig surface before heavy equipment was used and was told it was too late, contracts had been signed.

When I checked on this I learned from Director of Department of Community Development, Army Corps of Engineers would do excavating and would not be starting for some time. I also requested a meeting be scheduled for representatives GVAIA, Department of Community Development and the architect on his next scheduled visit to Flint. This was arranged and the architect was very responsive; stating his firm had incorporated into design in other areas of U.S. which had Indian history. The City had only been interested in lumber and auto industry being reflected in design. The Mayor agreed to appoint two representatives to Citizens Advisory Committee on riverfront development and Mrs. Peterson and Mr. Daughtery Johnson, Director of Indian Center were appointed. The design at present is not wholly satisfactory to Indians but will include some pathways and other features reflecting early Indian history here.

On another occasion when the Mayor issued Columbus Day proclamation and text included calling on "all citizens to observe Columbus Day with a sense of gratitude" I wrote him a letter advising of insensitivity of this language in view of fact Indians do not share this sentiment.
(Copy in attached exhibit)

There is also included in exhibits copies of other correspondence relating to problems with CETA funding, alleged police misconduct, etc.

Mrs. Barbara Shomin related an experience she had with former Sheriff of Genesee County when she visited him in regard to an Indian prisoner. The Sheriff opened conversation by asking "where is your tepee" and his parting remark was "you are the first sober Indian I have ever talked to."

I had a discussion with him about this and his defense was he was only kidding and meant no offense.

These are just a few examples of experiences urban Indians encounter daily.

Media

1. I am attaching in exhibits a copy of letter from Mrs. Peterson regarding syndicated columnist Lloyd Jenkins article which appeared in Flint Journal.

   Mrs. Shomin brought to my attention one episode of Donnie and Marie T.V. series ABC network in which a totem pole was used and referred in a ridiculous manner.

   I arranged a meeting with General Manager and staff of Channel 12 WJRT-TV local ABC affiliate. They were concerned but explained they have no direct control over network programs but can and would bring to attention of network such complaints.

   Channel 12 TV has a Minority Advisory Committee on which two American Indians are represented.

2. This involved both media and a religious institution, a prestigeous white church whose congregation is most affluent and includes many top corporate, business, industry and public officials. The church put a quarter page advertisement in the Flint Journal announcing the next Sunday's service would be a program at which an authentic Indian Chief would demonstrate how Indians scalped white settlers. The ad urged families to attend and bring their children.

A delegation in which I participated consisting of black and white clergy, ACLU, NAACP, Urban League and other community organizations met with Editor and Advertising Manager of the Flint Journal. Both were very apologetic about accepting the ad, stated the ads are usually screened carefully to avoid offensive content and someone on staff advertising department slipped up on this one. The editor stated he would make a public apology in the paper and he wrote a half page editorial which in addition to public apology, cited typical stereotypes and inaccuracies about Indian culture and heritage.

Whenever misleading or inaccurate reporting occurs in media, it is brought to their attention by Department of Civil Rights.

Religion

In addition to the flagrant incident cited above, the general societal attitudes ignore the fact that Indians do have their own religion although some embrace other faiths. Flint area Indians have brought to attention of Department of Civil Rights hostility and harassment of Indians who wear symbols of their religious faith although there have been no complaints about this in the Flint area or Michigan to my knowledge.

The Department of Civil Rights is gratified that federal legislation has been enacted to protect rights of Indians to observe their traditional religion without harassment or interference.

Department of Civil Rights

The Department staff in Executive Office and in all District Offices are kept apprised of and render assistance in matters within our jurisdiction when issues involving American Indians are brought to our attention.

The Department has included in its legislative priorities for 1979 sent to the Governor and the Michigan Legislature our interest in:

1. Onominese Cemetery - bills introduced in last two terms of legislature for purchasing private land for access to Indian burial ground. The $40,000. appropriation is still needed.

2. Indian Arts and Crafts

A bill similar to one introduced last year to assure authencity of Indian crafts.

Indian jewelry and other craft items are heavily in vogue. Jewelry and major department stores constantly run ads and do a heavy volume of sales in Indian jewelry at very high prices. The Department is aware some of these items may not be authentic plus even where they are authentic, it constitutes in some instances exploitive practices by wholesalers and retailers who purchase them from Indian craftsmen with thom they bargain for the lowest possible prices and reap rich mark up profits when they offer them for sale to the public.

I have cited matters in which I have been personally involved with Flint area Indian problems. Time of invitation to this hearing did not allow me to compile information from the other District Offices the Commission has in ten communities throughout the state.

There was recently brought to my attention allegations about difficulties a concentrated American Indian community in Harbor Springs, Michigan which may be similar in nature but on a smaller scale to the situation Sault Ste. Marie which Michigan SAC investigated and held hearings published a report of its findings and recommendations. Harbor Springs is located in what is generally a resort area of the state and adjacent to a wealthy resort area where summer homes of affluent families are located. The Indian community residents allege there is a desire by city and county officials to relocate them elsewhere. They alleged families were offered $25,000. for purchase of their lands and property to relocate out of the area. When they declined this offer, a HUD grant was secured for rehabilitation of homes, installation of sewers, etc. A dispute arose when an under run of the grant occurred which the City proposed to use for capital improvements, streets and park in other areas of the city. The Indians feel there is need for these funds to be used for further improvements in their area. According to reports I received, as of last week this matter is being resolved through negotiations between the Indian residents and the City. We will continue to ascertain the final resolution. Senator Riegle's Cadillac, Michigan office is maintaining contact with the complainants.

The Department will apprise you of other matters in which we are directly involved or have knowledge that may be of mutual interest as further developments or resolutions occur.

I have brought with me today copies of report Status of Civil Rights In Michigan 1973-1978 which the Commission released at a press conference March 12. Section V of which relates to American Indians.

We have recently analyzed President Carter's Budget message at the request of Governor Milliken for recommendations as to items he may support. We recommended support of the President's proposed outlays of $600 million in 1980 to provide direct medical services to American Indians and Alaskan natives and that the Governor request such funds when available for medical services to American Indian population in Michigan.

I have also brought copies of the Commission's 1976-77 Annual Report.

Again, thank you for this opportunity to share information with you.

MEIJER INC.
OFFICE: 2727 WALKER, N.W. • GRAND RAPIDS, MICHIGAN 49504
TELEPHONE (616) 453-6711

August 12, 1974

Ms. Viola Peterson
2443 Hutchison
Flint, Michigan

Dear Ms. Peterson:

This letter is intended as a follow-up to our conversation last Wednesday.

Again, it is the policy of Meijer, Inc., to afford each individual the dignity he or she is entitled to regardless of race, creed, or color. Obviously, these are the kinds of statements most companies make; but it is my hope that we go beyond this and put these words into practice. It is the assistance we get from individuals like you that helps us improve our performance in this area. The fact that a mistake is made does not represent an excuse for the act. What is most important is that these matters be recognized and alleviated.

I want to thank you for bringing this matter to my attention.

Sincerely,

MEIJER, INC.

John Hodge

dlp

Indians Had Objected

Planning Commission Recommends Manitou Be Named Mandan

11-11-72

By ROGER VAN NOORD
Journal City Hall Reporter

A street in southeast Flint would be changed from Manitou, the name of an Indian deity, to Mandan, the name of an Indian tribe, under a recommendation made Tuesday night by the Flint Planning Commission.

If the City Council approves the change, the persons who live in the four residences on the street would have to change the addresses on their driver's licenses, deeds, and other items, including correspondence.

A name change from Manitou is being sought by the Genesee Valley Indian Association, which has about 100 members, according to its president, John V. Bailey.

BAILEY TOLD the commission that "Manitou is the god of our religion. We ask that our Indian deity be given the same respect that the gods of other religions receive.

"We see no reason why the name should not be changed," Bailey said. "The name Manitou Avenue is just as offensive as Jesus Christ Street or Allah Avenue."

According to Planning Com. Frederick W. Shaltz Jr., the name Manitou has existed since the plat for that area was recorded in 1918.

TWO OF THE residents of the street said they opposed a name change.

Besides the four residences on the street, there are also two businesses with Manitou addresses, Baker Business University and Michigan Blue Cross-Blue Shield.

Planning Com. William L. Elgood made the motion that the name be changed from Manitou to Mandan. He selected Mandan, he said, because it was the name of an Indian tribe that is closest to the word Manitou.

"I hope that the action (the naming of the street Manitou in 1918) was taken through ignorance and not insensitivity," Elgood said.

The lone objector to the action on the commission was Earl E. Hagen.

"I don't like to tell anyone what to do," Hagen said. "and you're causing these people (the residents of the street) to go back and change a number of things."

One of the Indians present reacted by saying that the change "would cause four people a little inconvenience. I'm very insulted that the name of my god is bandied about on street signs."

58

PUBLIC AND LOCAL ACTS

OF

THE LEGISLATURE

OF THE

State of Michigan

PASSED AT THE

REGULAR SESSION OF 1966

ALSO OTHER MATTERS REQUIRED BY LAW
TO BE PUBLISHED WITH THE PUBLIC ACTS.

COMPILED BY

JAMES M. HARE

SECRETARY OF STATE

AND THE

LEGISLATIVE SERVICE BUREAU

PRINTED BY SPEAKER-HINES AND THOMAS, INC., LANSING, MICHIGAN

1-L

rights, powers, duties and privileges; to provide for registration of school districts, and to prescribe powers and duties with respect thereto; to provide for and prescribe the powers and duties of certain boards and officials; to prescribe penalties; and to repeal certain acts and parts of acts," as amended, being sections 340.1 to 340.984 of the Compiled Laws of 1948, by adding a new section 365a.

The People of the State of Michigan enact:

Section added.

Section 1. Act No. 269 of the Public Acts of 1955, as amended, being sections 340.1 to 340.984 of the Compiled Laws of 1948, is amended by adding a new section 365a to read as follows:

340.365a Social studies textbooks; selection and approval; recognition of racial and ethnic groups; annual survey and report. [M.S.A. 15.3365(1)]

Sec. 365a. Whenever the appropriate authorities of any private, parochial or public schools of the state are selecting or approving textbooks which cover the social studies such authorities shall give special attention and consideration to the degree to which the textbook fairly includes recognition of the achievements and accomplishments of the ethnic and racial groups and shall, consistently with acceptable academic standards and with due consideration to all required ingredients of acceptable textbooks, select those textbooks which fairly include such achievements and accomplishments. The superintendent of public instruction shall cause to be made an annual random survey of textbooks in use in the state and submit a report to the legislature prior to January 15 of each year as to the progress made, as determined by such random survey, in the attainment of the foregoing objective.

Approved June 23, 1966.

Flint Community Schools

ADMINISTRATION BUILDING
923 EAST KEARSLEY STREET
FLINT, MICHIGAN 48502

March 1, 1977

Mrs. Barbara Shomin
222 W. Belvidere
Flint, Mi. 48503

Dear Mrs. Shomin:

In response to your request to have the book Life on the American Frontier by Louis B. Wright withdrawn from circulation in our public school system, the responsibility for this request has been assigned to me by Dr. Leonard P. Murtaugh, Director of Instructional Services.

In accordance with our Procedure for the Challenge of Instructional Materials, a representative committee has been organized to read and evaluate the book. The committee wishes to meet with you on Thursday, March 31, 1977 in the Community Education Conference Room (215) in the Administration Building at 1:45 p.m. to present their evaluation and recommendation(s).

I hope you will find this convenient with your home schedule and am looking forward to a positive session.

Sincerely,

Charles C. Hemingway

Charles C. Hemingway
Coordinator, Humanities
and Language Arts

CCH:ls

"I feel this is discrimination according to Title IX and that the Flint School District signed an agreement with HEW to not discriminate against sex."

March 17, 1977

Rita Scott, Education Consultant
cc: Ruth Rasmussen, John Ferris, Vivian Pope and Melvin Harris

Olive R. Beasley, Director, Public Service

Challenge - Barbara Shomin - Flint Schools Textbook

I tried to reach you by phone today but you were in Jackson. I am enclosing some subsequent correspondence.

Mrs. Shomin advises me she understands the Review Committee's response to her challenge will be a denial to withdraw the book and the rationale for that decision will be that it is a text about the American frontier not about American Indians.

Mrs. Shomin also advises me no copies of the book are available at school libraries, Public Library which Board of Education operates or IMC Centers and no copies are included in the collection which is supposed to have all text books used in Michigan schools at Michigan State Library. Paul Johnson, MEA, has been trying to get a copy and cannot get one.

I plan to visit IMC to see the books that are currently being considered. I will probably also be talking to Helen prior to March 31 conference with Mrs. Shomin.

ORB:mw
3/17/77

Enclosure

Flint District Office
411 Metropolitan Building
432 North Saginaw Street
Flint, Michigan 48502
Phone: 235-4653

March 8, 1977

Mr. Charles C. Hemingway
Coordinator, Humanities
Flint Community Schools
923 East Kearsley Street
Flint, Michigan 48502

Dear Mr. Hemingway:

I am writing to advise you that the Michigan Department of Civil Rights is officially interested in the challenge Mrs. Barbara Shomin, a Native American parent, has filed requesting the discontinuance of the use of the textbook "Life On The American Frontier" which she alleges is being used in Flint High Schools and some Junior High Schools.

We have reviewed the Procedures 630.3 for Challenges of Instructional Materials which was supplied to Mrs. Shomin. Please advise us if the Ad Hoc Committee which is being convened to review Mrs. Shomin's challenge includes a Native American member.

Also, please advise us of the date, time and place scheduled by the Ad Hoc Review Committee for a conference with Mrs. Shomin

Mr. Charles C. Hemingway
Page 2
March 8, 1977

in order that we may have a representative of the Department of Civil Rights present.

Sincerely yours,

Mrs. Olive R. Beasley
Director, Public Service

ORB/mw

cc: Dr. Peter Clancy
Mrs. Helen Harris
Mrs. Barbara Shomin

Flint Community Schools
ADMINISTRATION BUILDING
923 EAST KEARSLEY STREET
FLINT, MICHIGAN 48502

March 11, 1977

Mrs. Olive R. Beasley
Director, Public Service
Department of Civil Rights
Flint District Office
411 Metropolitan Building
432 N. Saginaw Street
Flint, Michigan 48502

Dear Mrs. Beasley:

In response to your letter concerning the challenge Mrs. Barbara Shomin has filed requesting that the Flint Community Schools discontinue the use of Life on the American Frontier, Mrs. Shomin has been informed in a written communication that the meeting with the Ad Hoc Committee will take place on Thursday, March 31, 1977 at 1:45 p.m. in the Community Education Conference Room of the Administration Building.

The committee that will meet with Mrs. Shomin includes teachers representing the four high schools, a librarian, an administrator, the Coordinator for Educational Services and Mrs. Mary Gibson, Indian Program Assistant for the Flint Community Schools. Mrs. Gibson is a Native American.

Sincerely,

Charles C. Hemingway

Charles C. Hemingway
Coordinator, Humanities and Language Arts
Flint Community Schools

cc: Dr. L. Murtaugh
J. Wargo
Mrs. Helen Harris
Dr. Peter Clancy
Mrs. B. Shomin

STATE OF MICHIGAN TRANSMITTAL

TO:	NAME	TO:	NAME
1.	Mr. James Granberry, Affirmative Action Coordinator		
2.	Flint Board of Education	6.	
3.		7.	
4.		8.	

FOR ACTION AS INDICATED

☐ SIGNATURE	☐ REPLY-MY SIGNATURE	☐ NOTE AND FORWARD
☐ APPROVAL	☐ REPLY-COPY TO ME	☐ NOTE AND FILE
☐ ACTION	☐ PLEASE SUMMARIZE	☐ NOTE AND RETURN
☐ COMMENTS	☐ PLEASE INVESTIGATE	☐ PLEASE PHONE ME
☐ INFORMATION	☐ FORWARDED PER REQUEST	☐ PLEASE SEE ME

REMARKS:

Enclosed for your information as per your request are copies of correspondence regarding Mrs. Shomin's challenge requesting discontinuance of use of textbook - Life on American Frontier. I am also enclosing a copy of passages in the book which Mrs. Shomin has cited as being offensive to Native Americans.

FROM	Olive Beasley, Director Public Service	DATE	3/17/77

FORM 10580 11

STATE OF MICHIGAN TRANSMITTAL

TO: NAME	TO: NAME
1. ~~Mrs. Helen Harris,~~	5 President, Flint Board of
2.	6. Education
3	7.
4.	8.

FOR ACTION AS INDICATED

☐ SIGNATURE	☐ REPLY-MY SIGNATURE	☐ NOTE AND FORWARD
☐ APPROVAL	☐ REPLY-COPY TO ME	☐ NOTE AND FILE
☐ ACTION	☐ PLEASE SUMMARIZE	☐ NOTE AND RETURN
☐ COMMENTS	☐ PLEASE INVESTIGATE	☐ PLEASE PHONE ME
☐ INFORMATION	☐ FORWARDED PER REQUEST	☐ PLEASE SEE ME

REMARKS:

For your information. I am also enclosing a copy of the passages Mrs. Shomin had marked in the book. We are officially concerned that the passages cited do not meet the test of Michigan law regarding treatment of minority groups in instructional materials.

FROM	DATE
Olive R. Beasley, Director Public Service	3/8/77

FORM 10580 11

Inter-Office Memo

THE FLINT PUBLIC SCHOOLS

March 23, 1977
DATE

From James E. Granberry *Subject* : "The American Frontier" Textbook

To Joe Wargo

As indicated in Cabinet today, Joe, after reading "Life on The American Frontier" textbook by Louis B. Wright, it is my recommendation that the book be withdrawn voluntarily by the School District without going through the hearing process. The reasons for this recommendation are:

1. The book presents a very biased and insensitive view of the American Indian.

2. Neglects to mention positive Indian contribution to early settlement of America.

3. Neglects to put in perspective the numerous treaties made with the Indians and then broken.

4. And finally, to remove the book voluntarily without the hearing would show that we are sensitive to the special problems of the American Indian, as a minority group, and are interested in presenting history from an "enlightened" viewpoint.

I have not seen the letter from the group challenging the book. Therefore, my observations are based on my independent judgment. I would encourage you to refer to the first three chapters of the book and review the following pages, in particular, to see how I arrived at the above recommendation:

Page #	Reference
15	..... "Indians lurked ready to brain the unwary with a tomahawk."
19	..... Hoplessness of attempting to educate the Indians
21	..... "These same trees also hid dangerous animals and savage men."
23	..... How Indians were exploited
30	..... "The danger of death from the tomahawks of marauding Indians."
32	..... Picture and remarks
33	..... Settlers were brave, hardy souls who risk their lives . . . . .
34	..... Picture and remarks
37	..... Indian warfare picture from a white concept
38	..... "died at the hands of the Indian sometimes after hideous torture."
47	..... picture - Indians plundering
51	..... Boone outwitting the Indians, etc. (implication - whites are smarter).

March 23, 1977
To: Joe Wargo
Page 2

Page #	Reference
52	"with nobody to hinder them except marauding Indians."
54	reference to "scalping" and "robbing"
56	"hundreds of families were wiped out by marauding Indian bands."
57	picture
59	"skulking Indians"
61	general comment on whites and Indians
93	general comment on whites and Indians
94	Indian women "generous with their favors"
95	lazy and shiftless Indian
102	Indians dirty, thievish, and a nuisance

Now, to comment on the book that the Indian group is recommending - "Behind the Trail of Broken Treaties", authored by an American Indian. This book presents history from the Indian point of view, using a contemporary incident as a jumping-off point. Frankly, I don't see any real problem in using this book, other than there may be a better book available. The book that I would recommend for consideration would be "Bury My Heart at Wounded Knee" by Dee Brown, also an American Indian.

In summary, Joe, it is my recommendation that we voluntarily remove the aforesaid book without a hearing and select another text in its place, perhaps one of the two mentioned above.

If I can be of any assistance, please let me know.

LIFE ON THE AMERICAN FRONTIER - By Louis B. Wright

Page 13 - "Nowadays it may recall to addicts of television the wagon trains, Indian attacks."

Page 15 - "And all were terrified of the deep woods, where Indians lurked ready to brain the unwary with a tomahawk."

Page 19 - "Harvard, William and Mary, and Dartmouth had illusions about educating the Indians and made some attempts in that direction, but soon abandoned their efforts as hopeless. Few Indians were interested in Latin or theology."

Page 21 - "A dense growth of trees might be proof of fertile soil beneath, but these same trees also hid dangerous animals and savage men."

Page 23 - "Frenchmen pushed into the interior, sometimes became adopted members of Indian tribes, took Indian squaws to wife, learned their languages, and became important factors in the development of the fur trade."

Page 30 - "But the danger of death from the tomahawks of marauding Indians could not stop the tide of pioneers who continued to pour into the backcountry.

Page 32 - "The Scottish immigrants followed the Germans and pushed on beyond them to a more distant-- and a more dangerous--frontier. They were hardy, courageous, and uncontaminated by the pacifist doctrines to which many of the Germans subscribed. Willing to equate the Indians with the Canaanites, these Scots were ready to slay them and take their land -- all with Biblical authority."

Page 38 - "The Indians, on their part, were suspicious and often treacherous."

Page 41 - "The men, for their parts, just like the Indians, impose all the work upon the poor women."

Page 51 - "Some Indians also hunted in this region, and a man had to be wary to escape with a scalp on his head, but Boone believed that he could outwit the red man--and did."

Page 52 - "But many of the immigrants to the new country saw no reason to pay him anything when they could stake out farmlands for themselves with nobody to hinder them except marauding Indians. They expected their trusty rifles to take care of that problem."

"Kentucky now had a semblance of legality and the forms of civilized government, though it remained a wilderness harassed by Indian raids and the lawlessness characteristic of every frontier region.

Page 54 - "Some failed to return, for Cherokee, Shawnee, and other Indians also hunted in the same region and were not always hesitant about taking a white man's scalp. At other times the Indians contented themselves with robbing the hunters of their furs and equipment."

Page 56 - "The Indians did not give up their hunting grounds without a struggle. Encouraged by the British during the Revolution and even afterward, they waged bloody war on frontier settlements. Hundreds of families were wiped out in Kentucky and Ohio by marauding Indian bands, sometimes supported by British soldiers."

Page 59 - "And other debris might capsize or smash their flatboats. From the banks, skulking Indians sometimes fired on the boats and sneaked out in canoes to murder the passengers and make off with their goods. No easy path led to the promised lands in the West."

Page 61 - "The axe and scythe ... were kept at night under the bed as weapons of defense in case Indians should make an attack. In the morning, the first duty was to ascend a ladder leaning behind the door to the loft and look through the cracks for Indians lest they might have planted themselves near the door to rush in when the strong crossbar should be removed and the heavy latch raised from its resting place."

Page 65 - "When the danger of thievery by Indians was not too great, cattle and hogs were left to roam fields, woods."

Page 82 - "Here is a map of the country painted red and yellow, extending to the Pacific Ocean, and including the dogribbed Indians."

Page 88 - "But Clark was adept at handling boats, an excellent woodsman, and skillful in dealing with the Indians. For years afterward he was remembered by the Indians for his flaming hair and called the Red Head."

Page 92 - "One of the objects of the expedition was to inform the Indians that the whole land now belonged to the Great Father in Washington and that it was his wish for them to live in peace with one another and with their white brothers."

Page 93 - "Occasionally, however, Indians were unfriendly and threatening, but firmness on the part of the leaders and the obvious readiness of the men to defend themselves staved off attack."

"They encountered hostile Yankton Indians."

Page 94 - "York, the strong black servant of Captain Clark, was a particular favorite with the Indian women, said Lewis, for they "desired to preserve among them some memorial of this wonderful stranger."

Page 102 - "And the Indians were dirty, thievish, and a nuisance."

Page 104 - "Lewis and his men encountered hostile Blackfoot Indians and, in a fight, killed two of them. During the entire journey, outward and back this was the only encounter that resulted in the killing of Indians by men of the expedition. Lewis and his group left the scene as fast as their horses could carry them to avoid further trouble with this tribe, but the enmity that the killings precipitated lasted for years to come."

Page 111 - "Wyandots dressed like white men, and a few wretched Kanzas wrapped in old blankets, were strolling about the streets, or lounging in and out of the shops and houses.

Page 115 - "And the remaining essential portion of our attire consisted of an extraordinary article, manufactured by a squaw out of smoked buckskin.

Page 117 -"Numerous squaws, gayly bedizened, sat grouped in front of the rooms they occupied; their mongrel offspring."

Page 119 - "This obviates the necessity of admitting suspicious Indians for purposes of trading, into the body of the fort."

Page 120 - "These newcomers were scarcely arrived, when Bordeaux ran across the fort, shouting to his squaw to bring him his spyglass. The obedient Marie, the very model of a squaw, produced the instrument."

Page 127 - "The wild Indian is turned into an ugly caricature of his conqueror; and that which made him romantic, terrible, and hateful, is in large measure scourged out of him."

Page 133 - "Proved a courageous Indian fighter, as well as a shrewd diplomat in dealing with the savages, and was given command of a group of trappers."

Page 136 - "The Indians' appetite for "firewater" was their undoing, for when they were a little drunk, unscrupulous traders diluted the drink with water and cheated them out of their furs for the least possible outlay in alcohol. The mountain men themselves frequently squandered their earnings on liquor, trinkets, and cloth for the Indian women or in gambling."

Page 141 - "Here trappers and traders mingled, swapped yarns, and made their deals. Here, too, Indians were admitted, as many as the commander of the post thought discreet. Here on occasion were held dances and frolics in which Indian women joined.

Page 147 - "He followed much the same route into California that he had taken the previous year, but this time the Mojave Indians proved hostile and treacherous."

Page 155 - "By the 1830's Americans were taling of moving to Oregon, and in 1834 a small body of missionaries, intent upon saving the souls of Indians, settled in the Willamette Valley."

Page 202 - "Sometimes they crashed against boulders, turned over in some perilous pass, or wre riddled by bullets from Indians or highwaymen."

Page 211 - "Only buffalo and heathen Indians roamed this great expanse, which God surely intended Christians to occupy.

Page 212 - "Sometimes the federal government was able to purchase by treaty the Indians' rights, sometimes by sharp practice drunken chiefs were persuaded to cede lands and agree to move to reservations."

Page 216 - "Penned on their reservations, the Indians had to subsist on such cattle as they could raise or beg from the government."

Page 222- "Part of the route led through territory still occupied by Indians who were not averse to stampeding the herds and picking off strays for their own use. Even when friendly, the Indians sometimes exacted a fee of 10 cents or more for each head of cattle that crossed their land."

Page 235- "Where buffalo and Indians roamed less than a century ago, now one may find the campuses of some of the great universities of the country. These did not merely happen. They are a symbol of the hard work, the aspirations, and the dreams of a vigorous and determined people anxious to create a civilization in which they could take pride.

Page 242 - "Indians, too, wrapped in blankets, with stolid, emotionless faces, stalk silently "round among the whites, or join in the gambling and horse racing."

Book Challenge - Life on the American Frontier
by Louis B. Wright

Thursday, March 31, 1977
1:45 p.m. - 3:00 p.m.

Community Education
Conference Room
(Room 215)

A G E N D A

1. Introductions
2. Background by Dr. Leonard P. Murtaugh
3. Review of challenge procedure
4. Challenge submitted by Mrs. Barbara Shomin
5. Course Overview - "American Frontiers"
   - Course Description
   - Performance Objectives
   - Basic Materials
6. Remarks by Mrs. Barbara Shomin
7. Response by the Committee
8. Discussion
9. Recommendation to the Director of Instructional Services

ls
3/30/77

FORM FOR CHALLENGE OF INSTRUCTIONAL MATERIALS

Author Louis B. Wright Type of Material (Book, Film, etc.) Book

Title Life on the American Frontier

Publisher Capricorn Books-G.P. Putnam's Sons Copyright Date 1968

Request initiated by Barbara E Howin

Telephone 235-1325 Address 222 W. Belvidere

City & State Flint, Mich Zip Code 48503

Initiator represents

himself

Flint Indian Parent Comm (name of group)

Bd of Directors FWIA ~~(name of agency)~~

1. Did you read the entire book or material? yes If not, what parts?

2. Are you aware of the judgement of this book or material by literary critics? No

3. What do you believe is the theme of this book or material? The title is self explanatory. However the view of life on the frontier is confined to the white point of view.

4. What do you feel might be the result of reading this book or material? Students will continue trivia Indians as the Hollywood stereotypes.

5. What do you specifically object to in this book or material? Indians are presented in a very negative fashion, no mention made of Indian contributi. Indian presented as savages, murderers, a very racist book

6. For what age group would you recommend this book or material? no one

Is there anything good about this book or material? no

7. What would you like your school to do about this book or material? (Check answer below)

Do not assign it to my child.

✓ Withdraw it from all students as well as from my child.

8. In its place, what book or material of comparable literary quality do you recommend Which would convey as valid a picture and perspective of our civilization?

Behind the Trail of Broken Treaties by Vine Deloria

Date Feb 14, 1977 Signature of Initiator Barbara E Howin

BASIC TEXTBOOK EVALUATION FORM
Flint Community Schools

Title _____ Publisher _____ Author _____

Evaluation Date _____ Copyright Date _____ Edition _____

Cost _____ Readability Level _____ Course Name _____

Rate each aspect of this particular title on a scale 1-5 (poor to excellent). Comment in the last column in cases where your judgment has been affected by a particular point. Items 10, 11, and 12 must be completed and the form signed by the reviewer.

Area	5 Exc.	4 Good	3 Adv.	2 Fair	1 Poor	Comments
1. Content (relationship to our curriculum)						
2. Organization (chapter sequence, set-up)						
3. Interest Level						
4. Multi-Ethnic (reverse side)						
5. Illustrations (charts, graphs, drawings, photos, color)						
6. Index (use, convenience)						
7. Glossary						
8. Teacher Aids (guides, questions, bibliography)						
9. Overall rating of this book						

10. Main strengths of this particular title for the subject area studies _____

11. Main weaknesses of this particular title for the subject area studies _____

12. Recommendation: Accept ____ Reject ____ Adoption Date ____ Distribution: 1/pupil ____ Classroom Set ____
Grade Level _____ ☐ Consumable ☐ Non-Consumable

If this title is rejected for basic but might be listed on the Supplementary Textbook Requisition, please complete the Supplementary Textbook Form.

Related Materials to be adopted with purchase:

		Cost	Consumable	Non-Consumable
____	Teacher Edition _____			
____	Workbook Title _____			
____	Work Sheets _____			
____	Tests _____			
____	Misc. (list) _____			
	_____			
	_____			

Evaluator's Name _____ School _____

Subject _____ Grade _____

(Please return evaluation forms by March 1 to assure formal adoption for the ensuing year)

BASIC TEXTBOOK ADOPTIONS

I. How are minorities represented?

A. Does the book present minorities in pictures? ____ yes ____ no
Comments: _____

B. Does it present minorities in pictures throughout the book? ____ yes ____ no
Comments: _____

C. Does the book present minorities in both positive and negative relationships? ____ yes ____ no
Comments: _____

D. Are the minorities pictured as an interwoven part of the story being read? ____ yes ____ no
Comments: _____

II. Are the minorities heard from?

A. Does the book include positive and negative roles portrayed by minorities? ____ yes ____ no
Comments: _____

B. Are minorities presented as an interwoven part of the story rather than in special sections? ____ yes ____ no
Comments: _____

III. Are the minorities included as a totally interwoven part of the entire book?

A. Are the stories of the minorities presented in separate chapters or in supplements to the book? ____ yes ____ no
Comments: _____

B. Are the stories of the minorities included in the main body of the book rather than in special columns? ____ yes ____ no
Comments: _____

IV. Is there fair representation of both sex roles in this material? ____ yes ____ no

Conclusion: _____

1-3-74

Procedure: 630.3
December 1973

SUBJECT: CHALLENGE OF INSTRUCTIONAL MATERIALS

In order to provide a systematic procedure to comply with Board of Education Policy relative to the challenge of instructional materials, the following steps are to be utilized.

I. Initiation

Proposals or requests to discontinue the use of instructional materials may originate with any individual, group, or agency concerned with these materials. All such challenges shall be submitted on a challenge form through the principal to the Director of Instructional Services.

II. Examination

Upon receipt of the completed challenge form, the Director of Instructional Services will assign the challenge to the appropriate coordinator, consultant, or staff specialist who will convene and chair an ad hoc committee to study the challenge.

A. In addition to the chairman, the committee membership will include:

1. The principal of the school involved or his designee.
2. The staff specialist for school libraries and textbooks.
3. A school librarian
4. Four classroom teachers of the subject or grade level in which the materials are used.

B. Each committee member will evaluate the challenged instructional materials and submit his evaluation to the chairman within 15 days.

C. Upon receiving the evaluations, the chairman will prepare a summary of the evaluations and, within a week, will schedule a conference between the committee and the individual or groups who challenged the material. The summary will be reviewed at this conference.

III. Recommendation

A. During the course of the challenge, the materials will remain in use at the discretion of the Director of Instructional Services. If the challenge is sustained, such materials will be removed in accordance with the committee recommendation.

B. The committee will forward its recommendations to the Director of Instructional Services who will report them to the Director of Community Education Services. If the challenger is not satisfied with the recommendations of the committee, he/she may appeal to the Director of Community Education Services who will schedule an appeal conference with the Director of Instructional Services and the challenger. Subsequent to the conference, the Director of Community Education Services will forward a recommendation to the Superintendent of Community Education.

C. Material which has undergone a challenge may not be rechallenged until one calendar year after the recommendation of the challenge committee is forwarded to the Director of Community Education Services.

Flint District Office
411 Metropolitan Building
432 North Saginaw Street
Flint, Michigan 48502
Phone: 235-4653

April 13, 1977

Mr. John W. Dobbs, Jr.
Special Assistant to Superintendent
Schools and Community Relations
Michigan State Board of Education
Box 420
Lansing, Michigan 48902

Dear Mr. Dobbs:

You may recall our recent telephone conversation regarding a challenge filed by a Native American parent requesting the discontinuance of use of a textbook entitled "The American Frontier" which is used in the Flint school district high schools.

I am enclosing for your information a xerox copy of the book plus a copy of the passages cited by Native American parents that are offensive and a copy of the procedure established by Flint Board of Education in regard to challenges of text and library materials.

I attended the meeting March 31 at which the ad hoc review committee met with Mrs. Shomin, the challenger, and other representatives of Native American organizations. Also, present at that meeting was Mr. James Granberry, Affirmative Action Coordinator, who had reviewed the textbook and recommended that it be withdrawn as either a basic or supplemental text. The ad hoc review committee members were divided in their reaction to the challenge. Some defended its use on the basis it was a textbook about life on the American frontier not a book about Native Americans and as such represented an accurate account of that period in history and expressed their opposition to its withdrawal. Others indicated they felt it should be withdrawn because it constituted stereotyping and the recurrence of derogatory terms throughout the text constituted a cumulative effect that would reinforce adverse stereotypes.

At the conclusion of the meeting we were advised that the ad hoc committee would meet again and reach a concensus and transmit the Committee's recommendations to Dr. Leonard Murtaugh, Director of Instructional Services.

Mrs. Shomin, the challenger, has advised me she has received a letter indicating the decision is that it will be discontinued as a basic text but retained as a supplementary text. Mrs. Shomin plans to appeal this decision to Mr. Joseph Wargo, Director of Community Education Services and a conference is scheduled for April 25. If that appeal fails, Native Americans plan an appeal to the Board of Education.

You indicated during our telephone conversation about the matter that if it would be helpful, you would write a letter to appropriate parties at the administrative level. I think it would be helpful but you can decide whether you wish to do so at this point or after the total administrative procedures have been exhausted by the challengers.

This is one of several complaints I have received during the past several years about textbooks that had content offensive to Native Americans. It is my experience that the treatment of Native Americans in textbooks here is the worst in the treatment of all minorities. There seems to be no inclination on the part of those responsible for selection of textbooks to scrutinize them for such offensive references.

A book which Mrs. Shomin and several other Native American parents brought to my attention in 1972 was a section "The Adventures of Thomas O'Toole" in a book "Open Highways" used in 6th grade. I met with Dr. Murtaugh at that time and I was given to understand appropriate action would be taken. (See copy of letter enclosed). In this instance the teacher who was black had endeavored to interpret to her class it was a satire. While I applauded her sensitivity, I questioned that 6th graders were sophisticated enough to understand satire and the net result might be their retention of these anecdotes as being a true representation of Native American culture.

During the discussion at the March 31 meeting, I tried to make the point that, while as those who supported retention of Life On American Frontier contended, the book may accurately reflect the attitudes of frontier settlers it did not reflect the reasons for Indian attitudes towards their treatment by the white settlers and the abuses the Indians suffered during that period.

Confidentially, Mr. Granberry has told me he was asked to participate in reviewing books that were being selected a year ago and the several that he recommended against were all adopted. I think this speaks to the good faith of those who make the final determinations on book selections.

I am also enclosing a copy of the memo from James Granberry to Joe Wargo. Please treat this as confidential as it was given to me by Mr. Granberry. He referred to it during the March 31 meeting but it was not circulated to all those present.

With kindest regards,

Mrs. Olive R. Beasley
Director, Public Service

ORB/mw

Enclosures

April 23, 1975

Viola Peterson, President, Genesee Valley American Indian Association

Olive R. Beasley, Director, Public Service

Meeting - George Ursuy and Architects Riverfront Beautification

I have had the meeting rescheduled for Friday, May 2nd at 9 A.M. in George Ursuy's office, Flint Department of Community Development. His office is on upper level old Health Department Building. Seventh Street entrance to City Hall where the little bridge or overpass leads into the building is the direct entrance for Department of Community Development.

We can get together before then perhaps early next week to plan for it and prepare any written material you want to submit.

I am enclosing form for you to sign for nomination to U.S. Civil Rights Commission, Michigan State Advisory Committee. Please return it to me right away.

ORB:mw
4/23/75

Enclosure

cc: Daugherty Johnson

Flint District Office
614 Commerce Building
114 West Union Street
Flint, Michigan 48502
Phone: 239-2691

June 2, 1975

Mr. Michael Kiefer
Executive Director
Greater Flint Downtown Corporation
610 Beach Street
Flint, Michigan 48502

Dear Mr. Kiefer:

This is to advise you that I received a complaint from Genesee Valley American Indian Association regarding their omission from list of persons invited to participate with representatives of Halprin and Associates in walking the downtown riverfront area and making input into suggestions for planning and design of riverfront beautification project.

The matter has now been resolved as a result of a meeting I arranged with representatives of Genesee Valley American Indian Association, George Ursuy and Mr. Baxter. Mayor Visser has agreed to appoint two representatives of Genesee Valley American Indian Association to Citizens Advisory Committee and I believe these appointments were concurred in by City Council last week.

I am sure the omission was an unintentional oversight, but due to the historical significance of the Flint River to American Indians, they did feel offended. It would have been a disservice not only to them but to all citizens of Flint to have considered only the historical significance of the river as it relates to the lumber and auto industry. Not long ago some student archaeologists I believe in Fenton discovered a number of Indian artifacts during excavations along the river banks. Michigan history starts with American Indian history.

I am bringing this to your attention not as a criticism for the oversight, but to suggest that perhaps the Flint District Office of the Michigan Civil Rights Commission be regarded as a resource when civic projects are being

considered in order that we can assist in ensuring that all segments of the population and their respective interests and contributions will be adequately reflected and represented.

Our Program Services and Community Relations Division has a responsibility to work for harmonious community relations among all segments of residents and to achieve recognition in all aspects of daily communal living that we are a pluralistic, multi-ethnic, multi-racial society.

Sincerely yours,

Mrs. Olive R. Beasley
Director, Public Service

ORB/mw

Flint District Office
614 Commerce Building
114 West Union Street
Flint, Michigan 48502
Phone: 239-2691

April 4, 1975

Mr. George Ursuy
Deputy Director
Department of Community
Development
1101 South Saginaw Street
Flint, Michigan 48502

Dear Mr. Ursuy:

I am writing to confirm our recent telephone conversation regarding a complaint I received from Mrs. Viola Peterson, President of Genesee Valley American Indian Association regarding the omission of American Indian representatives from the list of Flint citizens invited to walk the area of the Flint river front beautification project with the architectural consultants the city has engaged.

I appreciate your agreement to arrange a meeting with representatives of Genesee Valley American Indian Association and the architects during their next visit to Flint. I hope this meeting can be arranged as soon as possible as you have indicated the design plans are fairly well advanced and we will have an opportunity to correct the oversight for Flint American Indian citizens to apprise the architects of the historical significance of the Flint river to American Indians and provide an opportunity for their input into the planning.

Please advise me of the date a meeting can be arranged. Perhaps you could apprise the architects by mail of this request in order that plans will not be finalized before a discussion between the interested parties

can be arranged.

Sincerely yours,

Mrs. Olive R. Beasley
Director, Public Service

ORB/mw

cc: Dan Boggan
Edward Badgett

Flint District Office
614 Commerce Building
114 West Union Street
Flint, Michigan 48502
Phone: 239-2691

April 4, 1975

Mrs. Viola Peterston, President
Genesee Valley American Indian
Association
2443 Hutchinson Lane
Flint, Michigan 48507

Dear Mrs. Peterson:

I am writing to advise you that I have contacted Mr. George Ursuy, Deputy Director, Flint Department of Community Development in regard to the omission of American Indian representatives in the list of invitations extended to Flint citizens to accompany the architectural consultants for the river front beautification project in walking through the area and making input into plans.

Mr. Ursuy advised although he did not compile the list for the invitations he would have to take the blame for the oversight. Mr. Ursuy has agreed to notify me of the next date the architectural consultants will be in Flint and arrange a meeting with them for me and you and any other persons you deem appropriate.

He also indicated that the plans are fairly well advanced and apparently at present they will reflect the auto and lumber industries involvement along the riverfront.

I will let you know as soon as a date is confirmed when the architects will be available.

Cordially yours,

Mrs. Olive R. Beasley
Director, Public Service

ORB/mw

cc: Daugherty Johnson

Group to experience the environment'

Architect is 'positive' about Flint

1-29-75

By LAWRENCE R. GUSTIN
Journal Staff Writer

To an outside architect's eye, Flint has some esthetic features you may have never thought about.

Such as a brick main street and some interesting architecture, including the Mott Foundation Building, the Capitol Theater building, and even some warehouses near the riverfront.

"Some of these warehouses have a lot of potential," said Dal Williams. "They are handsome buildings and could be used for a number of activities."

Williams is an official with Lawrence Halprin & Associates, a San Francisco architectural firm that has landed the job of developing a beautification plan for the banks of the Flint River downtown in conjunction with the flood control project of the Army Corps of Engineers.

He has taken a positive attitude toward Flint, yet he is quick to acknowledge he is still learning about the city.

And part of the learning program is in a Halprin-staged workshop that will run Thursday through Saturday.

The workshop, according to Williams, will not be the ordinary type of seminar, in which people sit around and discuss a project.

In this one, about 65 Flint persons, from many walks of life, will work together.

The first thing they will do, said Williams, is "experience the environment."

They will do this by walking around downtown in the riverfront area, stopping at cafes and restaurants for a meal for $2 or less, asking people in the area what they think of downtown Flint, perhaps having a beer in the old Durant-Dort Carriage Co. office building — a historic building that now is the private tavern of a veterans club.

The people who will take part in all of this will include a wide range of figures, from the president of the Mott Foundation to a welfare recipient, from the mayor of Flint to a high school student, from supporters to critics of riverfront beautification.

One thing Williams said they will find in their wanderings is that it is cold out there.

This might suggest, he said, that they will want something along the river that is indoors.

Later in the workshop, those involved will be asked to share their ideas, perhaps by sketching things on paper, or in general discussion, or perhaps trying to answer questions that require some dreaming.

For example, a member of the workshop might be told that it is now 1990, that a Flint man has been elected president of the United States and that Flint, therefore, has a lot of federal money at its disposal. What should it do with that money?

It's all hypothetical, but it's the kind of thing that stimulates imagination. And hopefully, out of all this, the Halprin firm will get some ideas for its beautification project.

It's possible that, during the next few days, you might see more people than usual wandering around downtown, jotting things in notebooks.

It could be that they are people from the Halprin workshop, looking at downtown Flint with new eyes, and hoping to come up with ideas that will be of use to the planners of Flint's riverfront beautification.

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STATE OF MICHIGAN

WILLIAM G. MILLIKEN, Governor

DETROIT OFFICE
State of Michigan Plaza Building
1200 Sixth Avenue
Detroit, Michigan 48226
Telephone (313) 256-2570

DEPARTMENT OF CIVIL RIGHTS

117 W. Allegan St. Lansing, Michigan 48933
JAMES H. BLAIR, EXECUTIVE DIRECTOR

Telephone (517) 373-7634

Flint District Office
411 Metropolitan Building
432 North Saginaw Street
Flint, Michigan 48502
Phone: 235-4653

October 2, 1975

The Honorable Paul Visser
Mayor, City of Flint
c/o Comins, Shomsky and Associates
225 E. Fifth Street
Flint, Michigan 48503

Dear Paul:

I do not wish to be unduly critical of your fulfilling one of the duties of your office - namely, the issuance of Proclamations, most of which I realize are in response to citizens or organizational requests. Also, I would take this opportunity to commend you for the sensitivity you have shown in this regard to most of the ethnic and racial groups and organizations in this community during your term of office.

It is because I am aware of your personal commitment of freedom and justice for all people that I bring to your attention my concern about the Columbus Day Proclamation you issued last Monday.

I am aware of course that this is an established national holiday. When I was in elementary school in Chicago, students were dismissed from classes and taken down to the lake front for Columbus Day observance. The historical museum had replicas of the three ships Columbus commanded which sailed down Lake Michigan each year on Columbus Day. I was taught or rather mistaught that Columbus discovered America, etc. However, today our history is being more carefully reviewed and some of the myths corrected in the interests of accuracy. Whether or not you accept or reject the popular traditional account and its accuracy is beside the point. My concern is about calling on all citizens to observe the day with gratitude to Columbus. It has been cited in numerous studies on treatment of minorities in text books that someone could hardly discover a country when the discoverer was met at the boat by native residents. Flint area (Genesee County) has the second largest concentration of American Indians in Michigan. They do not share the views of white Americans about Columbus or what the discovery of

America and the settlement of the colonists meant to those whose lands were confiscated and the brutal mistreatment they have endured to the present time. Most white Americans do not know, for example, that American Indians observe Thanksgiving Day as a day of mourning and fasting. It is therefore painful to them to hear a Proclamation calling on all citizens to observe Columbus Day with a sense of gratitude.

Flint schools and other school districts are receiving commendations for their efforts to correct some of the myths most of us were taught when we were youngsters in the interest of accuracy and in recognition of and deference to our pluralistic society.

I would suggest that in the future, consideration be given to the impact our traditional customs may have on any particular segment of our population. The American Indians in this area have just gone through a very traumatic experience due to the callous disregard of propriety by one of our principal religious institutions which thanks to the sensitive, responsible action of Flint Journal in making a public apology for having accepted and printed the offensive advertisement and debunking the myths and inaccuracies of customs attributed to early American Indians provided a real education for the total reading public the Journal serves. Your Proclamation may have inadvertently opened some old wounds. I am sure this was not your intent, but it serves to illustrate that we must all always be alert to possible offense.

Sincerely yours,

Olive

Mrs. Olive R. Beasley
Director, Public Service

ORB/mw

STATEMENT - MRS. VIOLA PETERSON
PRESIDENT GENESEE VALLEY AMERICAN INDIAN ASSOCIATION
FLINT CITY COUNCIL JANUARY 13, 1975

Mr. Mayor, Mr. City Manager and Council Members:

My name is Viola Peterson, 2443 Hutchinson Lane, Mundy Twp. Flint mailing. I am a Native American - or American Indian. My reason for being here tonight is to let the Council members and the public at large know of the treatment, neglect that Indians have endured by the Genesee, Lapeer and Shiawassee Manpower Consortium. This past summer the State Commission on Indian Affairs became a prime sponsor for manpower funds for all Indians in the State of Michigan. Our pitifully financially inadequate Genesee Valley Indian Association (with assets of about $200.) of which I am President decided to try to avail ourselves of our share on the state level. With only 2 staff members of the Cmmission on Indian Affairs to serve the entire state, members of organizations such as ours tried to learn whatever we could about manpower programs. Indians of GLS needed and still need one particular spot and one phone to call to get services or information necessary to sustain themselves in their need. Therefore, our group, the Genesee Valley American Indian Association applied for our share (approx. 10,000?). We are on the census rolls as having 589 Indians in Genesee County, 78 in Shiawassee and 46 in Lapeer County, total 713. Many were reported as Caucasians. Therefore, this census count is highly inaccurate as attested to by the fact that when Indian parents went into the Flint public school system to identity Indian children for the Indian Education Act they, alone, came up with almost 800 Indian students. So, to continue, we knew all along that 100's of Indians were not counted. With the pressing need for social, health, housing and educational services, the only phone available to Indians was mine. We decided to try to open an Indian Center with part of our manpower money as soon as we knew we could get manpower money. I contacted and met with local manpower officials and that was the beginning of nothing. We needed advice and help urgently to even begin taking part in the bureaucratic process of manpower. Finally, today, negotiations were opened to put an Indian person in the manpower office for training.

The Indian community has been treated like outcasts. How can we learn if we are not given a chance to learn? How can we help ourselves if we are not taught the ways of bureaucracy. We need a spot on the Manpower Advisory Councils. In the beginning, we asked for "in-kind" services and not even sure of what it meant but that too, elicted no response. I should say here that other Indian organizations around the state have received many extra services to help Indian groups with their program - to name one -Detroit.

If anyone here would presume that the Indians of this area do not need help out of a poverty existence, or on an education level, let me refer you to a survey made by U. of M. - Ann Arbor and the Mott Foundation which resulted in a publication called Michigan's Minorities at the Mid 70's. It will prove to anyone that the Indian community is at the bottom of any kind of statistical survey whether it be employment, housing, health, education or just plain poverty. I ask your immediate attention to this dereliction of duty to America's First Citizens. It is a national disgrace that the aboriginal people of this country have been neglected, downtrodden, riduculed and oppressed. And history has shown that the encrouhment on our rights has usually come from local people - whether intentional or not.

We are a proud people. I, therefore, had hoped to overcome this neglect by my personal contact - but it wasn't to be. So I am forced to come before a public body to demonstrate what a monstrous situation exists. Before things get any worse, I ask you to see that the Native Americans are given at least their fair share of manpower funds and a place on the Manpower Advisory Council. We will run our own affairs but we need help and training. We have all the "big brother" attitude we need. We are unique in the fact that we have hundreds of laws affecting us that affect no one else. We can and will handle an Indian Center for our people. (we are incorporated and have received our tax-exempt status) if we can climb over the mountains of paperwork and bureaucratic shuffling of responsibility. As one more item, I have read and heard where more than $650,000 of local money will spent on an historical village for the bicentennial. Where in the world are the priorities?! We - the American Indians are living today. We need and want a building for our Center (and not a dingy hole in the wall, either). We need operating money for phones and office equipment. How ironic that that kind of money can be raised while Indians suffer. Just for once in 200 years, how about making the American Indians' well being top priority in Flint, Genesee, Lapeer and Shiawassee Counties? When Crazy Horse saw the final defeat of our people, he predicted it would be 10 generations before the Indians could rise as a nation again. Prophetically, this is the 10th generation. As an Indian person, I know we have many friends in this area. And believe me, my friends, now is the time to come to the aid of the American Indian.

Reply due re: Involvement of C. Strader in Indian Situation

Glen Valley Comm Dev Assoc

OCT 9 1974

G. R. G.

October 7, 1974

George Taylor, Director
Community Relations Program

Vivian Pope, Deputy Director
Program Services Division

GRAND RAPIDS INDIAN INCIDENT

This will clarify our earlier conversation of today.

While you were at lunch, I received a telephone call from Olive Beasley who in turn had been contacted by Mrs. Viola Peterson (phone - 655-8492). Mrs. Peterson is president of the Genesee Valley American Indian Association. Mrs. Peterson called Mrs. Beasley regarding a situation which occurred in Grand Rapids last week.

It appears there was a fight between two Indian individuals outside a bar which is frequented primarily by Indians. Police were called to the scene and reportedly responded by sending 12 scout cars and using undue force. Reportedly, there was some brutal beating on the part of the police which resulted in some Indians being very seriously injured. One of them, a young man in his teens, Larry Kenny, was beaten and is still hospitalized; and it was his mother who reported the situation to Mrs. Peterson.

Presently, the Indian Commission is involved and attempts are being made to rally support from around the state to address this problem. The preliminary hearing on those Indians who were arrested is scheduled in Grand Rapids for tomorrow (10/8/74) morning.

Mrs. Beasley further stated that Mrs. Peterson advised her that she believes a report was made to the Grand Rapids office also. This could not be substantiated at this time. I would suggest that you make immediate contact with Curtis Strader who should be aware of this problem and already involved.

I would like a report from you regarding what his involvement has been to date, his knowledge of the situation, and his planned activities with regard to the situation. Also, as we discussed, I think it most important for Mr. Strader to attend that preliminary hearing tomorrow morning.

VP:cf

cc: Don Bauder
Olive Beasley

Com. Cristina

Grand Rapids Inter-Tribal Council

756 Bridge N.W. 49504 Phone: 774-8331

RECEIVED JAN 2 3 1975 C. R. C.

Dale

Our original agreement — It is working well Howard

May 8, 1974

Mr. Jerry Bosworth
Human Resources Department
300 Monroe N. W.
Grand Rapids, Michigan 49502

Dear Mr. Bosworth:

This is to confirm our conversation on 5-7-74, regarding our participation in the Grand Rapids Area Manpower Planning Council's Comprehensive Manpower Plan and grant application for FY75. Our discussion specifically concerned the participation of the Grand Rapids Inter-Tribal Council in the Comprehensive Employment and Training Act of 1973.

Those also attending the meeting were Mr. Willard Lambert, Michigan Commission on Indian Affairs; Mr. Henry Medawis, Vice Chairman of the Grand Rapids Inter-Tribal Council; Miss Courtney Scherer, Office of Human Development, Department of Health, Education and Welfare, Region 5 Office, Chicago, Illinois. Commissioner Rienstra also attended part of the meeting.

Under Title III of the Comprehensive Employment and Training Act Special Indian Programs, the American Indian population of those counties served by the Grand Rapids Area Manpower Planning Council will be the recipients of $70,000.00. It is anticipated that the Michigan Commission on Indian Affairs will be designated as the prime sponsors for Title III.

In a letter from Mr. Anthony E. Martinaitis of the G.R.A.M.P.C. staff dated 5-1-74, the deadline for submission of applicants for participation was 5-9-74. Due to the time constraint it was suggested that, as an organization, we submit a letter of intent to your office as soon as possible.

RECEIVED
MAY 8 1974
HUMAN RESOURCES DEPARTMENT

Since time limits any thorough planning on our part at this time, we have elected to use funding we receive under Title III, to buy into the Manpower Program formulated by your office under Title II. These purchased slots will be in addition to those slots we would normally be eligible for under the Manpower Program administered by your office.

Thanks for taking the time to meet with us.

Very truly yours,

Chester J. Eagleman

Chester J. Eagleman, Chairman
Grand Rapids Inter-Tribal Council

cc Willard Lambert, Commissioner on Indian Affairs
Henry Medawis, Vice Chairman of G.R.I.T.C.

CJE/rab

Flint Journal

Columnist labeled a 'racist'

7-24-75

IT WAS with extreme distress that I read in The Journal a syndicated column by Jenkin Lloyd Jones that was the most vitriolic article I have ever read pertaining to American Indians. The words "prejudice" and "racist" are too mild to use when referring to his column. It is a vicious unwarranted attack on native Americans. To think that you — The Flint Journal — should be a party to such a publication is beyond comprehension.

To begin, he makes himself out to be a self-styled expert on Indian history, countrywide yet! I have been doing extensive research in all areas regarding Indian history for approximately eight years now and I have only touched the surface. How he can equate 1200 A.D. with the Shiprock, N. M., problem only a warped mind could conjure up. He refers to AIM "redhots." I am not nor probably ever will be a member of AIM but his use of adjectives shows his full-blown prejudice. In his bias, he goes on to state that white men set aside reservations and handed them elaborate welfare programs.

Any student of history knows that the reservations Indians got were what the white man didn't want and as far as pillaging is concerned, non-Indians took the gold from the Black Hills, non-Indians got and are still getting water from Pyramid Lake, on the Navajo reservation while Navajo people often have to travel 30 miles to get water. Non-Indians have this whole country and its resources. In November, I was in Phoenix and went to the Gila River-Maricopa reservation. Fine homes in Phoenix had green lush lawns and many citrus trees on the lawns loaded with grapefruit and oranges. These yards required much irrigation but the Pima and Maricopa people had desert! So when Mr. Jones speaks of "ripoffs" he surely doesn't mean Indian ripoff. His thinking is as out of joint as his history.

I could go on paragraph by paragraph showing his distortions, but for the people of Flint who know that I have lived in Flint for 56 years and what I stand for in the Indian community. I can only deplore this racist kind of editorializing by Mr. Jones.

I will never believe that freedom of the press means that any syndicated columnist can viciously attack the whole race of native Americans and I, as a native American, bitterly resent the entire article. Are cowboys and Indians now syndicated columnists and Indians, I wonder? "The brave man does it with a sword, the coward with a gun."

Viola Peterson

Letters submitted to this column must include the writer's signature and address. The name of a writer will be withheld only when satisfactory justification is submitted. The Journal reserves the right to condense letters.

MICHIGAN DEPARTMENT OF EDUCATION APRIL 1971

A SECOND REPORT ON

THE TREATMENT OF MINORITIES IN AMERICAN HISTORY TEXTBOOKS

State Board of Education

	Term Expires
Edwin L. Novak, O.D., *President* Flint	Jan. 1, 1973
Michael J. Deeb, *Vice President* Detroit	Jan. 1, 1977
Dr. Gorton Riethmiller, *Secretary* Chelsea	Jan. 1, 1975
Thomas J. Brennan, *Treasurer* Dearborn	Jan. 1, 1979
Marilyn Jean Kelly Detroit	Jan. 1, 1977
Annetta Miller Huntington Woods	Jan. 1, 1979
Dr. Charles E. Morton Detroit	Jan. 1, 1973
James F. O'Neil Livonia	Jan. 1, 1975

Dr. John W. Porter, *Superintendent of Public Instruction,*
Chairman, Ex-Officio

William G. Milliken, *Governor*
Member, Ex-Officio

Michigan Department of Education

A SECOND REPORT ON THE TREATMENT OF MINORITIES IN AMERICAN HISTORY TEXTBOOKS

April, 1971

CONTENTS

PART I

Introduction

Legal Basis

In June, 1966, the State Legislature enacted the so-called "Social Studies Textbook Act" (Act 127, P.A. 1966) which required that:

> Sec. 365a. Whenever the appropriate authorities of any private, parochial or public schools of the state are selecting or approving textbooks which cover the social studies, such authorities shall give special attention and consideration to the degree to which the textbook fairly includes recognition of the achievements and accomplishments of the ethnic and racial groups and shall, consistently with acceptable academic standards and with due consideration to all required ingredients of acceptable textbooks, select those textbooks which fairly include such achievements and accomplishments. The superintendent of public instruction shall cause to be made an annual random survey of textbooks in use in the state and submit a report to the legislation prior to January 15 of each year as to the progress made, as determined by such random survey, in the attainment of the foregoing objective.

1968 Survey

In response to this legislation, the State Superintendent of Public Instruction appointed an Advisory Committee to conduct a study of the social studies textbooks in use in the state. In the summer of 1968, the Department issued a report on the Advisory Committee's work, which was entitled, "A Report on the Treatment of Minorities in American History Textbooks." The Report contained the following elements: (1) a background statement; (2) a summary of reviews of American history textbooks in regard to their treatment of minority groups; (3) guidelines for evaluating social studies textbooks in relation to their treatment of racial and ethnic minorities, particularly Negro Americans; and (4) conclusions and recommendations.

The general conclusion of the Report was that when a sampling of a group of widely used American history textbooks were reviewed by professional historians, these reviews strongly suggested that these textbooks were seriously deficient in terms of their fair recognition of the achievements and accomplishments of ethnic and racial groups.

The Department's Response to the Study

After the Report was issued, the Department took several steps to implement the recommendations and guidelines contained in it:

1. Over 7,500 copies of the document were distributed within the first year of its publication. Most went to school officials, teachers, and textbook selection committees. In addition, the Report was distributed to public libraries, colleges of education, and interested citizens.
2. Staff of the Department and members of the Advisory Committee participated in numerous inservice training sessions sponsored either by school districts or groups of school districts. These meetings were designed to fully acquaint and familiarize school personnel not only with the Report itself, but with the entire area of treatment of minorities in textbooks.
3. Reports concerning the study were issued to the news services; and a great many newspapers in the state carried stories concerning the findings of the study.
4. The State library prepared and distributed a number of bibliographies on black studies to assist districts in selecting materials to supplement their American history programs.

5. The Department issued the Report to all textbook publishers doing business in Michigan, and staff members met with a number of representatives of publishing houses.

In addition, approximately a year after the Report appeared, the Department conducted a survey of over 300 school districts in Michigan in order to determine the extent to which the Report had influenced the decisions of local curriculum personnel. The results of this survey may be summarized as follows:

1. Most school districts reported that they had not changed their textbook adoptions since the Report was published. For this reason, a year after the textbook study was issued, many of the books reviewed in the Report were still in use.
2. Most school officials reported that they were familiar with the Report and would use it when they purchased new American history textbooks.
3. The districts that had changed their textbook adoptions since the appearance of the Report said that they had used the Report as a guideline for choosing new books.
4. Virtually all of the districts that took part in the survey reported that they were attempting to supplement their social studies programs with non-textbook materials that deal with minority contributions.
5. A majority of the districts in the survey reported that they had instituted programs to increase their teachers' ability to select classroom materials in regard to minority contributions with a greater degree of fairness.
6. A number of districts reported that they had prepared guidelines of their own in this area and had used the state guidelines as a model for their own.

Hence, according to the results of this survey of over 300 school districts, the Report had had some impact on local curriculum personnel, although at that point in time, the actual textbooks in use in the classrooms had not changed significantly. Considering the severe indictment of the American history textbooks that was contained in the Report, the fact that students in the state were continuing to use these textbooks was a disturbing finding. However, the study was conducted only a year after the Report was issued; and considering this brief period of time, the fact that little had changed in regard to textbooks in use could be considered understandable, if lamentable.

PART II

The 1970-71 Study

The Survey of School Districts

In the fall of 1970, the Department of Education conducted a second survey of a sampling of school districts in the state, in order to determine: (1) the impact the Report had had on them since its appearance in 1968; and, (2) the names of American history textbooks in use in their schools at the present time. (The survey instrument appears in the appendix.) The survey form was sent to a sampling of fifty school districts in the state. These included the one school district in Michigan with a school population of over 50,000; all of the school districts with school populations of from 20,000 to 49,999 students (9 school districts); all of the school districts with populations of from 10,000 to 19,999 (23 school districts); and four school districts with populations of from 5,000 to 9,999. The remaining 12 school districts included in the survey represented those with student populations of under 5,000. Thus, the 33 largest school districts in the state were all included in the survey, and representative districts were chosen from the smaller districts. All geographic areas of the state were represented in the sample. Of the 50 districts that received the survey form, four did not return them.

One part of the 1970 survey form requested that the respondents again indicate the extent to which their districts had been influenced by the Guidelines that appeared in the Report. The results of this inquiry are as follows:

1. 50% of the respondents indicated that the Guidelines had influenced them in their choice of social studies materials.

2. None of those who knew of the existence of the Guidelines indicated that the Guidelines had not influenced them in their choice of social studies materials.

3. 20% indicated that the Guidelines had had some effect in their choice of social studies materials, but not much.

4. 5% indicated that they did not know about the Guidelines.

The main purpose of the survey was to determine what American history textbooks are in most widespread use in the state. In responding to this phase of the survey, respondents were asked to indicate the particular edition of the book that the district was using, since the analysis to be made of the books was to include those books in actual use, not necessarily the latest editions of these titles.

The survey forms were to be returned by December 1; thus, the responses indicate books in use around the state during the fall of 1970.

Basic Assumptions

In identifying the American history books in widespread use throughout the states, the following assumptions were made:

1. American history textbooks in use should be identified rather than social studies books in general, in order that it might be determined the extent to which books of this type had improved since the first Report, in regard to their treatment of minorities.

2. Because some of the textbooks widely used in 1970 will be found to be the same as those that had been chosen for the first Report, whenever the same titles were identified again, more recent publishing dates should be chosen. (Note: Four books that appear in the present study appeared in the former study.)

3. As much as possible, the books chosen for study should represent the work of a variety of publishing companies. (Note: The twelve books identified in this study represent eleven publishing companies.)

4. Only those editions of books in very widespread use in the state should be chosen for the study, and whenever possible, the more recent editions should be selected.

The Textbooks Chosen for Study

In terms of the stated assumptions, the twelve books for study represent titles that are in very great use throughout Michigan. As far as could be determined, these American history textbooks are among the most frequently used by the secondary school students of this state. Thus, this report does not concern merely a group of books that were chosen because they are either particularly good or particularly bad; rather, the study concerns books that appear to be in greatest use.

It must be said, further, that it is not the Department's purpose to either promote or derogate particular American history textbooks. Also, this report is not designed to suggest to local textbook selection committees those books that they should consider purchasing, or those books which they should not consider. Rather, these books have been reviewed in this report because they are not only the ones that happen to be in great usage in Michigan, but are also probably representative of the American history textbook genre. It should be obvious, then, that the books not included in this study cannot be assumed to be either better or worse, in respect to treatment of minorities, than this present group of books.

The Selection of Historians

Following the pattern established by the Advisory Committee that conducted the first study, the twelve very widely used American history textbooks that were identified through the survey were then submitted to a group of twelve historians. Each historian thus received one textbook to review. The historians chosen for the study were selected on the basis of the following:

1. All the historians who had taken part in the first study were asked to serve again. Several were able to do so. These historians had been originally recommended by a group of eminent American historians for this purpose.

2. The History Department chairmen of several large universities were asked to suggest a staff member whom he felt would be qualified to take part in this kind of study. All of the historians recommended by these department heads were asked to serve as reviewers.
3. Several members of the initial Advisory Committee that had been appointed by the State Board were asked to recommend an historian to serve, and these recommended were asked to review a textbook. In addition, Dr. James Banks of the University of Washington, who had served as a resource person to the first Advisory Committee, was asked to recommend a reviewer, which he did.
4. One reviewer was chosen on the basis of the fact that he had spoken on the subject of "the treatment of minorities in history textbooks" at the 1970 National Convention of the National Council for the Social Studies.

On the basis of this procedure, then, the twelve historians were chosen. Each is considered to be a highly qualified person to review history books in terms of their adequate and fair treatment of minorities. Each historian was given a copy of P.A. 127, a general set of directions, and a set of the guidelines previously published by the Department in the 1968 Report. They were instructed, however, not to focus exclusively on the fair treatment of any one minority group, but on the question of how a particular book dealt with minorities in general. Each reviewer was allowed to develop his review in his own style or pattern. The twelve historians who were chosen were:

Mrs. Margaret Ashworth, Wayne State University

Professor Jimmie Franklin, Eastern Illinois University

Dr. John Higham, University of Michigan

Dr. William Hixson, Michigan State University

Professor W. Sherman Jackson, Miami University of Ohio

Dr. Shaw Livermore, Jr., University of Michigan

Dr. George McCully, Swarthmore College

Mr. Harry A. Reed, Michigan State University

Mr. Benjamin Solomon, King-Kennedy College (in Chicago)

Mr. Richard Thomas, Michigan State University*

Dr. T. Harry Williams, Louisiana State University

Dr. Harold D. Woodman, University of Missouri

The historians each received a copy of the textbook he was to review (chosen for him at random), and they were given approximately six weeks to complete their work.

*Mr. Thomas was assisted in preparing his review by Maurice Ndukwu, also of Michigan State.

PART III

Conclusions and Alternative Actions Being Considered by the State Board of Education

When the twelve reviews of the twelve American history textbooks are considered as a whole, the over-all evaluation is on the negative side. Seven of the reviews are almost totally unfavorable, two are only partially favorable, and only three could be considered on the favorable side. The following generalizations may be made of the reviews as a whole:

1. While most of the textbooks do include mention of minority contributions, according to the reviewers these references are not often enough presented as an intrinsic part of the total text, but, rather, tend to suggest items that are mere attachments, placed into the text as afterthoughts.
2. These reviewers indicate that the history textbooks suffer from shortcomings that seem almost to be an essential aspect of the textbook genre itself--that is, there is almost a complete absence of any attempt to deal with controversial events in the American past, virtually all negative events in the past (and present) have been glossed over, the past is distorted through omissions of vital information, and in the attempt to achieve a kind of historical "objectivity," the textbook writers have only succeeded in presenting a kind of bland, amoral, and over-simplified view of the American past that serves, these reviewers say, as an inadequate introduction for the student to his responsibilities as a citizen.
3. While the historical contributions of some minorities are fairly included in the textbooks, others are nearly completely neglected.

Further, the multi-ethnic nature of our society, as well as this society's roots in multi-ethnicity, are not clearly enough described. Further, say a number of these reviewers, the textbooks do not come close enough to adequate descriptions of the roots of prejudice and racism in our society.

For these reasons, then, it would appear that on the basis of the present twelve reviews, one would conclude that insufficient progress, in terms of the legislation, has been made in the past several years in the area of the treatment of minorities in American history textbooks.

Therefore, in light of this finding, the State Board of Education is giving consideration to the following alternative actions:

1. That the Board continue to make annual studies of social studies textbooks in use in the state in order to determine the degree of progress being made in terms of their treatment of various minorities, as required by the present law. While the initial response to the law has been to study secondary American history textbooks, future studies would focus on elementary books as well, and on other types of social studies textbooks, such as geography, world history, and economics books. The results of such studies would again be reported to the Legislature, as is now required. In addition, the results would be issued to local districts and textbook publishers in order to keep them apprised of progress being made in terms of adequate treatment of minorities, and also in order to annually reinforce to educators and publishers the extreme urgency of improving textbook materials in this regard.
2. That the State Board seek funds from the Legislature to support the functions of a Social Studies Textbook Advisory Commission that would be comprised of educators from diverse areas and on various educational levels to study social studies textbooks available for sale in

Michigan; and that on the basis of such study, the Department would issue evaluations and reviews of selected social studies books to local districts and the Legislature, in terms of the textbooks' accurate treatment of the ethnic involvement in the American experience, both past and present.

3. That the State Board request the Legislature to amend the provisions of the present law so that the Board would be given the authority to issue to local districts lists of specific social studies textbook titles that are considered to be either adequate or inadequate in terms of the intent of the Legislation; and that the Legislature be requested to provide funds for this purpose.
4. That the State Board request that the law be amended to provide for a policy of state adoption of social studies textbooks, so that local districts would be legally entitled to purchase only those books approved by the State Board of Education.

APPENDIX A

GUIDELINES FOR EVALUATING SOCIAL STUDIES TEXTBOOKS IN RELATION TO THEIR TREATMENT OF RACIAL AND ETHNIC MINORITIES PARTICULARLY NEGRO AMERICANS

Historical Accuracy

The first consideration in any evaluation of American history textbooks is their historical accuracy. In other words, if a textbook does not give to the student an accurate picture of historical events, it cannot be considered acceptable. But even though all would agree that a textbook that gives an inaccurate picture of the past should not be used with students, there may be somewhat less agreement on the precise meaning of historical accuracy. Hence, at the outset it is necessary to examine this critically-important concept.

There is a commonly held assumption that anything that appears in books, especially textbooks, must be true. But in many cases where textbooks have been found to be generally unacceptable and to deal inadequately with minority populations, their authors have simply erred in the facts--they have failed to examine their factual data rigorously enough and have, therefore, presented an erroneous content. And in regard to Negro Americans in particular, the question of historical accuracy is especially relevant. Myths concerning Negroes have been passed along as historical facts for so many generations that the reviewer must make a special effort to make certain that the "facts" presented in the text are indeed facts. Thus, on one level, historical accuracy is a matter of presenting the correct facts.

Facts, of course, are not history; and the 19th Century idea that a completely objective, factual history exists--or can exist, if the historian merely "sticks to the facts"--has long since been repudiated by professional historians. Facts are simply the raw material of an historical account. Thus, even if the historian is factually accurate, this does not mean that what he writes will necessarily be judged to be good scholarship by professional historians. In other words, history is more than factual accuracy; and though there may be serious and frequent errors in factual content, even greater shortcomings of textbooks are found in the selection, organization, and interpretation of facts. For in the ordering of the facts, in the choosing from the vast numbers of facts the ones to be included so as to give a fair and representative picture of an historical event, in designing of the total context in which the facts are presented, in determining the point of view from which the facts shall be shown, and in deciding which facts should be given greater "play" in relation to others--these are the areas in which those who write history textbooks may most often err in regard to historical

accuracy. Thus, even though the facts presented are quite valid, American history texts may present a picture that is slanted, distorted, and unfaithful to the events they are attempting to recapture.

If the reviewer of a textbook is to do an adequate job in examining American history textbooks in regard to their treatment of Negro Americans, then, he must not only be attentive to the accuracy of the facts themselves, but, further, must examine closely the presentation and interpretation of the facts. The historical accuracy of the textbook is contingent upon both of these factors.

But even further, history is not only more than the "facts" and the adequate ordering of the "facts;" it must also be seen as an interpretation of the past in terms of contemporary perceptions. The great Italian historian, Benedetto Croce, said that all history is contemporary history, meaning that history consists essentially of seeing the past through the eyes of the present and in the light of its problems; and a British historian has observed that "history is the historian's experience." In other words, it is "made" by no one but the historian himself, and to write history is the only way to "make" it. It seems apparent, then, that the history written by an historian at the turn of the century will be quite different from a history written in the 1930's, in the 1960's, or in the 1980's, not because the "facts" have changed, but because historians in different eras are writing from the viewpoint of very different milieus.

In conclusion, it can be said that in regard to historical accuracy a reviewer of textbooks must, first, not only be certain that the raw facts of the text are accurate and, second, that they are presented and interpreted in the light of available historical research; but also, third, that the historical account presented is in keeping with the perceptions, attitudes, and concerns of the times as they relate to human dignity. To write history textbooks today more in keeping with the tenor of the times of 1904 rather than 1968 is a form of "historical inaccuracy." And when this concept is applied to textbooks in regard to their treatment of black Americans, it can be said that if a book published in the mid-1960's deals with Negroes in the manner of a textbook published in 1925, then that book must be considered inaccurate and unacceptable. Thus, history that is considered to be adequate by professional historians does reflect the age in which it is written. And if it can be said that our contemporary society is deeply concerned with the problems of ensuring human rights for all people, then our history books and our textbooks should reflect this paramount social concern.

Realistic Treatment of the History of Minorities in America

Few, if any, textbooks in American history present the history of race relations in this country in a thoroughly realistic way. The reader of the textbooks gets the impression that this phase of American development has been marked by progressive harmony and has led up to a current situation that appears to be only slightly troubled. The point to be stressed here is that textbooks that present an idealized, almost romanticized view of America's past do not measure up to standards of historical accuracy. If they do not

include the conflicts, the problems, and the controversial issues involving minorities, they cannot be considered to be either realistic or accurate. In fact, by scholarly standards of judgment, they are poor historical works.

History should be presented in accordance with the best current historical research; and where our nation has sometimes failed to live up to its own ideals of democracy, these failures should not be glossed over or hidden away in historical closets. Indeed, particularly in American history textbooks--as distinguished from history written for the consumption of professional historians--such events should be discussed in terms of the disparity between democratic ideals and what actually occurred, for one role of a textbook is to give the student an understanding of the problems involved in applying the principles that underlie and guide a democratic society. It is not enough that textbooks be historically accurate and treat the subject realistically, they must also give the student a conception of his role in the American society. They must, therefore, reflect basic human values that are intrinsically a part of a democratic society.

To take a specific example, it is an indisputable fact that during the hundred years that followed the Civil War, black people were exploited economically and were consistently discriminated against in every sector of our society. Such facts should be discussed in textbooks. A textbook that extenuates this part of our history--or overlooks it entirely--is at fault not only because it idealizes the past and because it is historically inaccurate, but because it does not make use of historical events to show a failure to extend democratic principles to all segments of society. Students may learn from the failures of the past as well as from the successes.

In evaluating American history textbooks, a textbook selection committee may make use of certain criteria or guidelines. Following are listed some recommended general guidelines with subcriteria that relate specifically to Negro Americans:

A. Backgrounds of minorities in the United States

The textbook should:

1. Give an adequate account of highly developed cultures in Africa prior to the discovery of the New World.

2. Adequately depict the stark realities of the slave trade.

3. Describe the life of the slave of the "Old South" as current research shows it to have been, rather than in a romanticized way that reinforces the stereotype of the "contented slave."

4. Show that in the decades immediately following the Civil War, black Americans made significant progress in establishing themselves as an integral part of the American social fabric; and it was only with the establishment of the rigid Jim Crow system following the Reconstruction Period that the development of a multiracial society was drastically reversed.

B. Inclusion of achievements, accomplishments, and contributions of minorities with specific mention of individuals being members of particular minorities.

The textbook should:

1. Cite the significant contributions made by Negro Americans in a diverse number of areas, rather than mention perfunctorily such figures as Crispus Attucks and George Washington Carver.

2. Point out to students that though Negro Americans have made many contributions in a number of areas of human endeavor, the number of different fields in which opportunities are open to them has been severely limited by social restrictions. Thus, Negro Americans have found it possible to succeed as entertainers and athletes, where openings were available and which, therefore, were often filled by outstanding Negroes; but such areas as corporate business, the professions, organized labor, and the skilled trades have been essentially closed to Negroes.

C. The struggle of minorities against opposing forces for freedom, human rights and equality of opportunity.

The textbook should:

1. Reveal that current research suggests that due to the oppressive, antidemocratic conditions under which they lived, and the inhumane treatment they often received, pervasive unrest existed among the slaves prior to their emancipation, and that this unrest was manifested in part by slave escapes and organized rebellions, such as the one led by Nat Turner.

2. Explicitly discuss the various social institutions and factors that kept, and are keeping, Negro Americans in a subservient position. In fact, no social institution is exempt from its share of the blame in keeping Negroes from partaking of their full rights as citizens.

3. Discuss the demonstrations and other manifestations of civil unrest that have occurred in the past and that are occurring today and describe the conditions that caused them.

4. Show the student that the black man's struggle for freedom, human rights, and equality of opportunity has been especially difficult because massive white retaliation against his struggle has been consistently supported by all of the major institutions of our society.

5. Include the views of well known civil rights leaders, both Negro and white leaders of the past and present, as well as the philosophies and programs of the various civil rights organizations.

D. Racism in contemporary urban society.

The textbook should:

1. Deal with the unique impact of enforced residential isolation on Negro Americans.

2. Discuss the problems of the exodus from the core cities of middle class white Americans, as well as the in-migration in those same communities of minorities.

E. The significance of social reform for all people.

The textbook should:

1. Discuss the broad significance of the current press for social reform by black people, not only in terms of Negroes, but in terms of all Americans with enforced disadvantages.

2. Show students that the contemporary spirit of social reform is not limited to America, but is an emerging social pattern throughout the world.

3. Stress that the current reform spirit is on-going and comes from a long and proud history.

The Concept of "Race"

Whatever scientific usefulness the concept of race may have had once has now been obscured, and today the term "race" is used more often with vague and ambiguous meanings than with precision. Indeed, the entire concept of race has such questionable validity, and the data related to this concept are of such a highly controversial nature, that even the use of the term itself is almost bound to be misleading; and even more serious, may often result in socially destructive outcomes. The program of genocide as carried out in Germany in World War II (Hitler's systematic extermination of millions of Jews because of alleged "inferiority") is perhaps the most hideous of all examples of how a totally erroneous concept of race has been used for inhuman purposes. And yet today, efforts are still being made to keep black people in a socially and economically inferior position on the basis of the erroneous belief that skin color is somehow related to "inferiority" and "superiority."

Thus, a textbook must handle the term "race" with great caution. In fact, the term probably should be used in the text as sparingly as possible. But,

above all, it is essential that the textbook avoid using the term in any way that would suggest to students that it is a scientifically sound one; and, further, it would do well to alert students to the idea that the concept has a socially destructive potential.

The Total Effect of the Textbook's Treatment of Minorities

In reviewing a textbook, it is not enough to examine the individual parts. The total effect of the book must also be analyzed--and perhaps this is the quality most difficult of all to specify in guidelines. And yet, since the holistic quality of the book is of such critical importance, a set of guidelines would be incomplete without a discussion of it.

First, a value system that makes explicit the dignity and worth of the individual should permeate the entire textbook. Such a value system should be implicit as well as explicit throughout the book--in the text itself, in the illustrations, in the captions, in the headings; and if the idea of the dignity and worth of the individual does indeed pervade the book, then minority populations as a whole or as individuals will not be depicted in a derogatory, sentimental, condescending or stereotypic manner. In other words, the textbook should present to the reader a value system which encourages the idea that regardless of ethnic background and social or economic condition, every human being has a right to be respected as an individual with intrinsic dignity and worth.

Scholars, with their extensive training, broad understanding, and highly developed critical skills, have traditionally been looked upon as men and women who can view affairs with a high degree of objectivity, perceptiveness, and sensitivity. Hence, the historian is in a position to do more than simply reconstruct the past; as a scholar, he can use the breadth of his knowledge and understandings to critically appraise historical events, as well as simply describe them. In fact, if the historian is writing textbooks, he has an obligation to do more than reconstruct the past for students. He must also present the past in terms of his critical and scholarly judgments. It has already been suggested that a writer of textbooks must reveal in his work a value orientation that is consistent with democratic principles. It can be said further that not only should the textbook reveal such a set of values, but also these values should be the basis for the author's critical appraisal of the events he discusses in his textbook.

A textbook, then, should freely point out to students that while some of the occurrences in our past and present clearly exemplify the value system that underlies the highest ideals of our society, other events are obviously not in accord with our Constitution and Bill of Rights. For example, where the textbook deals with slavery, it need not--in fact, should not--give an uncritical account which fails to point out that the very concept of one human being owning another human being as a piece of property is a flagrant violation of democratic principles. A textbook that chooses to present an uncritical account of slavery abrogates its responsibility to show the disparity between avowed principles of human freedom and actual practice. Slavery, along with any other part of our past that was a denial of human rights, should be described for what it was--an affront to human dignity.

In considering the total effect of the textbook, then, reviewers must evaluate the degree to which the book presents explicit interpretations of the value system of the society being portrayed and the extent to which these values are used as a basis for a critical review of historical events. Further, the total textbook should convey the idea that the genius of American society lies in part in the fact that it is pluralistic, having developed out of many different ethnic and religious groups and being made up of people with a great diversity of thought. The dynamic quality of American society is certainly due in some measure to its pluralistic nature. Societies seem to thrive on diversity in the same way that organisms do. It is vital, therefore, that students come to understand that their country is what it is largely on the basis of the contributions and accomplishments of a highly diverse populace; and throughout its pages, a textbook should not only make this clear to readers, but also should suggest that minorities contribute to this healthy diversity of their society. Too often, young people think of minorities as "problem people" rather than as vital and creative contributors. The textbook must stress that minorities are an essential aspect of the pluralism and diversity of our society, and, therefore, have contributed to its dynamic nature.

Further, the textbook should discuss minority populations as an integral part of the whole, rather than in appended sections, isolated entities, or parenthetical asides. Representative pictures should be included of minorities with recognizable ethnic features.

The total tone of the textbook should also reflect a humanized view of history; that is, a view that portrays the feelings of people. In regard to Negro Americans, for example, one anecdote that would lead the reader to a personal insight into how it felt to be a slave, or one statement from a contemporary Negro on what it is like to be Negro in America today, perhaps would be far more effective in helping young people to understand the social issues involved than lengthy philosophical expositions. Quotations from such Negro writers as James Baldwin, selections from William Styron's "The Confessions of Nat Turner," or vignettes chosen from diaries and journals written by Negro Americans are examples of works from which quotations can be drawn to humanize, and thus render more vivid, American history.

These, then, are elements that affect the totality of the textbooks, one might say its total "tone," and they are extremely important considerations in reviewing American history textbooks.

Guideline Summary for American History Textbook Selection

In order to be suitable for use in the schools of Michigan, an American history textbook should:

I. Be historically accurate

A. The "facts" themselves should be correct.

B. The facts should be interpreted fairly and in the light of current historical research.

C. The historical accounts should be presented in keeping with the perceptions, attitudes, and concerns of the times.

II. Present realistically the accomplishments and contributions of minorities in the past and today. Specifically, this means that it should include discussion of:

A. The backgrounds of minorities in America;

B. The achievements, accomplishments, and contributions of minorities, with minority persons being clearly identified as such;

C. The struggle of minorities against opposing forces for freedom, human rights, and equality of opportunity;

D. Racism in contemporary urban society;

E. The significance of social reform for all people.

III. Indicate that its authors have shown great caution in their use of the term "race."

IV. Through its total effect or tone, convey to the student certain values basic to the American system that are both implicitly and explicitly stated.

APPENDIX B

Following is a list of the twelve widely used American History textbooks that have been reviewed for the purpose of this study:

Allen, Jack and Betts, John, History: U.S.A., American Book Company, 1967.

Bragdon, Henry and McCutchen, History of a Free People, The Macmillan Company, 1969.

Branson Stimmann, Margaret, American History for Today, Ginn and Company, 1970.

Current, Richard N., Dante, Harris and DeConde, Alexander, United States History, Scott, Foresman and Company, 1967.

Eibling, Harold, Harlow, James, King, Fred and Rayback, Robert, History of Our United States, Laidlaw Brothers, 1966.

Gavian, Ruth and Hamm, William, United States History, D.C. Heath and Company, 1965.

Graff, Henry F., The Free and the Brave, Rand McNally and Company, 1968.

Knownslar, Allan O. and Frizzle, Donald B., Discovering American History, Holt, Rinehart and Winston, 1967.

Reich, Jerome and Biller, Edward, Building the American Nation, Harcourt, Brace and World, 1968.

Schwartz, Melvin and O'Connor, John, Exploring American History, Globe Book Company, Inc., 1968.

Todd, Lewis Paul and Curti, Merle, Rise of the American Nation, Harcourt, Brace and World, 1969.

Wilder, Howard, Ludlum, Robert and Brown, Harriet, This is America's Story, Houghton, Mifflin Company, 1966.

APPENDIX C

STATE OF MICHIGAN

DEPARTMENT OF EDUCATION

Lansing, Michigan 48902

November 13, 1970

Dear Colleague:

Act No. 127 of the Public Acts of 1966 reads as follows:

> Sec. 365a. Whenever the appropriate authorities of any private, parochial or public schools of the state are selecting or approving textbooks which cover the social studies, such authorities shall give special attention and consideration to the degree to which the textbook fairly includes recognition of the achievements and accomplishments of the ethnic and racial groups and shall, consistently with acceptable academic standards and with due consideration to all required ingredients of acceptable textbooks, select those textbooks which fairly include such achievements and accomplishments. The superintendent of public instruction shall cause to be made an annual random survey of textbooks in use in the state and submit a report to the legislature prior to January 15 of each year as to the progress made, as determined by such random survey, in the attainment of the foregoing objective.

In compliance with this Act, the Department of Education is conducting a survey of 50 school districts in regard to the social studies textbooks currently in use in the state. Specifically, this year we are interested in identifying the American history textbooks that are in greatest use at the secondary grade level (grades 7 through 12) in Michigan.

In order to help us complete this survey, will you supply us with the names of the American history textbooks that have been adopted for current use in your district? We have provided spaces for a listing of up to four American history textbooks you are currently using, but if you have more than four adoptions, you may list the additional ones on the back.

1. Title of book _____

   Authors _____

   Publishing Company _____

   Grade level at which book is used _____

   Edition that is currently in use (year) _____

   Approximate number of students who use the book _____

2. Title of book _____

   Authors _____

   Publishing Company _____

   Grade level at which book is used _____

   Edition that is currently in use (year) _____

   Approximate number of students who use the book _____

3. Title of book _____

   Authors _____

   Publishing Company _____

   Grade level at which book is used _____

   Edition that is currently in use (year) _____

   Approximate number of students who use the book _____

4. Title of book _____

Authors _____

Publishing Company _____

Grade level at which book is used _____

Edition that is currently in use (year) _____

Approximate number of students who use the book _____

In addition, we would like to determine the extent to which the "Guidelines for Evaluating Social Studies Textbooks in Relation to their Treatment of Racial and Ethnic Minorities" have been used throughout the state. These "Guidelines were contained in the "Report on the Treatment of Minorities in American History Textbooks," which appeared in the summer of 1968. Will you check one of the following:

____The Guidelines have influenced us in our choice of social studies materials.

____The Guidelines have not influenced us in our choice of social studies materials.

____The Guidelines have had some effect on our choice of materials, but not much.

____We have not chosen new American history textbooks since the Guidelines appeared.

____Do not know about the Guidelines.

If you would care to make any further comments, please do, in the space provided below:

Exhibit No. 13

Department of Justice

STATEMENT

OF

JOHN E. HUERTA
DEPUTY ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

BEFORE

THE

UNITED STATES COMMISSION ON CIVIL RIGHTS

CONCERNING

THE CIVIL RIGHTS OF AMERICAN INDIANS AND
THE ROLE OF THE OFFICE OF INDIAN RIGHTS

ON

MARCH 19, 1979

I would like to take this opportunity to express my appreciation to the Commission for this chance to discuss Indian issues generally and the protection of Indian civil rights in particular. On two recent occasions we have been interviewed at length by Commission staff members and my written testimony is an effort to address the many issues raised during those discussions. Should the Commission need further information as a result of this morning's testimony, I will be happy to make whatever information I have available to the Commission.

I. The Civil Rights Division's Office of Indian Rights

The Office of Indian Rights was created five years ago in response to a six-month study which found that widespread racial discrimination played a significant role in the serious social and economic deprivation suffered by American Indians. The study group also found that the unique legal status of Indians, a result of the federal government's treaty and trust responsibilities, complicated the application of federal civil rights statutes and policy. The Indians' special status, demonstrated principally by their right to self-government, often leads to novel and complex questions. Important Indian interests, including the right to vote, the right to an education, and the right to medical care, have been disregarded or denied

by state and local governments on the theory that reservation residents do not have the same rights as other residents because they are not fully subject to state jurisdiction. The purpose of the Office of Indian Rights is to meet these and other issues involving the civil rights of Indians in a manner consistent with their unique legal status and special place in this country's history and culture.

Prior to the creation of the Office of Indian Rights in 1973, the Division participated in few, if any, cases where Indians were the principal victims of civil rights violations. Subsequent to the creation of the Office, the Division has been able to participate in more than sixty lawsuits designed to protect the civil rights of Indians.

The Office of Indian Rights has used a variety of methods to receive information and advice from the Indian community and to discover violations of civil rights statutes under the jurisdiction of the Civil Rights Division. Under the mandate given the study group which preceded the Office of Indian Rights, general surveys were undertaken of a number of reservations across the country to assess the extent of Indian civil rights problems. The Office has continued to use this method, frequently in conjunction with litigation-

related travel, to maintain contact with the Indian community and to gather new information. Including the surveys conducted by the Study Group, we have made 93 visits to cities with significant Indian population and reservations. Personnel from the Office have also attended a number of conferences sponsored by Indian organizations in order to explain the work of the Office and to receive information from them as to civil rights violations. We have taken part in recruiting efforts to bring more Indian attorneys to the Department of Justice. Exhibits A, B and C list the trips taken and their purposes.

In addition to field surveys, personnel from the Office maintain regular telephone contact with persons who may have information pertinent to the mission of the Office and who have indicated a willingness to help. Several organizations have also on occasion provided translators and other support. The Office has subscriptions to a number of Indian oriented newspapers which are systematically reviewed for pertinent information. Additionally, we have used a newsclipping service to forward articles which contained information keyed to Indian concerns and related to civil rights.

Attorneys in the Office of Indian Rights are assigned in teams to regions of the United States, Northwest

Southwest and East. Each attorney is responsible for maintaining an up-to-date contact file of persons who are knowledgeable about Indian problems.

II. Objectives and Priorities of the Office of Indian Rights

The objectives of the Office of Indian Rights are as follows:

(a) Enforcement of those provisions of the Constitution and federal statutes which seek to secure certain federally protected civil rights of American Indians. Specifically, those federally protected civil rights which fall within the following areas: (1) education, (2) employment, (3) federal programs, (4) housing, (5) public accommodations, (6) public facilities, (7) voting, (8) due process and equal protection, and (9) criminal;

(b) Enforcement of the federal interest in Title II of the Civil Rights Act of 1968, 25 U.S.C. 1301, et seq.; (see discussion at pp. 7, 17-18);

(c) The promotion and protection of the religious and cultural identity of American Indians and the concept of tribal self-determination;

(d) The defense of federal officials charged with violations of the civil or constitutional rights of American Indians in those circumstances when such a defense would promote the overall advancement of Indian civil rights in a manner consistent with the Constitution and federal laws and, at the same time, provide the federal officials involved a defense to which they are entitled under law;

(e) Promotion and participation in public information activities in order to learn the problems of Indians and to acquaint them with the federal laws and regulations relating to the civil, constitutional and treaty rights of American Indians; and

(f) Participation in the development of Department of Justice legislation and policy which affects American Indians.

Our objectives were developed in response to our perceptions of the civil rights problems of Indians; our extensive discussions with Indian leaders (see the attached Exhibit A outlining field surveys and Exhibit B, the conferences attended); our complaint flow; our budgetary limitations; our jurisdictional limitations; and our understanding of what others, such as the Native American Rights Fund, were doing in the area of civil rights. In setting priorities among these objectives, we made every effort to stress fundamental rights such as the right to vote. We sought out those violations which affected the largest number of individuals. We concentrated on what we believed were the most difficult issues and those which were not being handled by public defenders, legal aid or other means. We concluded that priority should be placed on the right to vote, the right to equal employment opportunity and the right to equal access to state supplied services.

We have placed major emphasis on the civil rights problems of Indians who live on or near reservations. The summary of our litigation and the attached exhibits detailing our surveys underscore our interest in this area. Fully four-fifths of our cases involve complaints alleging racial discrimination practiced against reservation Indians. Many Indians who live on reservations are geographically isolated and do not have access to the legal services available to those who live in urban areas. In addition, many border towns have a reputation for an anti-Indian bias. Such problems were well documented by the Commission in its Farmington Report. Incidentally, we have initiated four major investigations or lawsuits in Farmington in response to the discriminatory practices uncovered by the Commission.

We accomplish our mission by enforcing federal civil rights statutes insofar as they protect Indians. Although we spend the majority of our time on litigation related matters (indeed litigation is what differentiates our responsibilities from those of other federal agencies) we make every effort to employ conciliation, negotiation and other non-litigative measures to further the civil rights of Indians.

The Civil Rights Acts of 1957, 1960, 1964, 1968, the Voting Rights Act of 1965, as amended, and related statutes and regulations

The Office of Indian Rights is authorized to enforce all statutes within the jurisdiction of the Civil Rights Division insofar as they affect Indians. As a practical matter, this authority is usually exercised jointly with the various sections of the Division.

Title II of the Civil Rights Act of 1968, 25 U.S.C. 1301, et seq.

Title II was intended to afford persons subject to tribal jurisdiction freedoms which are basically comparable to those protected by the first ten amendments to the United States constitution. Congress passed this statute to fill the void left by Talton v. Mayes, 163 U.S. 376 (1896), which held that the Constitution did not limit the activity of Indian tribes. Although the Act remains a valid restraint on the powers of tribal governments, the right of private persons to enforce its provisions in federal court was severely limited by the Supreme Court in Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978). The extent to which the United States may enforce this Act in federal court is under consideration by the Division.

28 C.F.R. 0.50(g)

This regulation authorizes the Civil Rights Division to represent federal officials in litigation arising under statutes pertaining to civil rights.

III. Litigation

The Office of Indian Rights has been involved in a wide variety of litigation since its inception. Attorneys with this Office are responsible for coordinating their activities with other sections when statutes enforced by those sections are at issue.

Voting

Voting rights cases have received priority since the creation of the Office. The first major case we brought was United States v. State of Arizona, 417 F.Supp. 13 (D. Ariz. 1975), aff'd sub nom., Apache County v. United States 97 S. Ct. 225 (1976), which challenged the apportionment of county commissioner districts in Apache County, Arizona. We obtained a court ordered reapportionment plan which gave Indian voters the opportunity to control county government. In recent years we successfully blocked an attempt by the Town of Bartelme, Wisconsin, to deannex the Stockbridge-Munsee reservation and thereby disenfranchise Indian voters.

United States v. Town of Bartelme, Wisconsin, Civ. No. 78-C-101 (E.D. Wisc. 1978). This Office also obtained a federal court order requiring Humboldt County, Nevada, to specially register residents of the Fort McDermitt reservation prior to the September, 1978, primary election. United States v. Humboldt County, Nevada, Civ. No. 78-0144 BRT (D. Nev. 1978).

Presently, we have four voting rights cases in litigation. In United States v. South Dakota, et al., Civ. No. 78-5018 (D. S.D. 1978), we challenged the refusal of state and county officials to allow residents of unorganized Shannon County an opportunity to be candidates for those county offices which serve Shannon County. Unorganized county residents are predominantly American Indian and had previously established their entitlement to vote for county office. We also enjoined enforcement of a reapportionment plan for county commissioner districts in Tripp and Todd Counties, South Dakota. The plan had not

received preclearance as required by Section 5 of the Voting Rights Act of 1965, as amended. We recently filed a motion for supplemental relief in this case in an effort to force the defendants to devise and preclear a new reapportionment plan. United States v. Tripp County, South Dakota, Civ. No. 78-3045 (D. S.D. 1978). In United States v. Board of Supervisors of Thurston County, Nebraska, we challenged the legality of at-large elections for electing county commissioners on the theory that this type of system diluted Indian voting strength. The defendants have indicated their willingness to change the system to single-member districts in 1980 and in future election years. A negotiated settlement is a possibility. Lastly, we represent the United States in a suit filed by Apache County High School District No. 90 which seeks to validate the results of a school bond election. The Attorney General had objected to the election pursuant to Section 5 of the Voting Rights Act because he determined that the school district had not complied with

the minority language provisions of the Voting Rights Act in its conduct of the election. Apache County High School District No. 90 v. United States, Civ. No. 77-1815 (D. D.C. 1977).

It is likely that voting rights cases will continue to demand a substantial amount of the resources of this Office for the immediate future. We recently received approval for two more voting rights suits, one alleging failure to provide adequate bilingual assistance and one alleging dilution of Indian voting strength in a system used to select county commissioners. We know of several other potential voting rights violations which are in the early stages of review.

Access to State and Local Services

This Office has also devoted substantial effort to insuring that Indians enjoy access to state and local services. We have settled two cases which challenged the legality of local hospitals referring Indians who sought

emergency room treatment to nearby Indian Health Service hospitals. The settlements specified the conditions under which referrals could be made to IHS facilities and required certain safeguards to insure the well-being of the patient when a referral is warranted. United States v. Board of Trustees of Anadarko Hospital, Civ. No. 74-300 D (W.D. Okla, 1974); Penn and United States v. San Juan Hospital, Civ. No. 74-419 (D. N.M. 1974). In United States v. City of Oneida, New York, Civ. No. 77-CV-399 (N.D. N.Y. 1977), we obtained a consent decree which requires the City of Oneida to provide fire and police protection to a tract of Indian land located within the city's boundaries. Most recently, we negotiated a settlement with the City of Sault Ste. Marie, Michigan, which requires the city to provide sewer and water services to a HUD-financed Indian housing project located within the city limits. United States v. Sault Ste. Marie, Michigan, Civ. No. M 78-33 (W.D. Mich.1978). We are currently investigating two other instances involving the denial of sewer and water services to proposed Indian housing projects.

Correctional Institutions

This Office has been instrumental in improving conditions in five local detention facilities that have predominantly Indian populations. In Cotton and United States v. Scibles, Civ. No. E-75-10 (S.D. Miss. 1976), we achieved a negotiated settlement which resulted in the closing of the Kemper County, Mississippi, jail and a transfer of prisoners to constitutionally adequate facilities. Since the decree was signed, the county has opted to construct a new jail which meets the standards articulated in the decree. We obtained a consent decree which required the Jackson County jail in North Carolina to provide better medical care and supervision to inmates and particularly to those who are intoxicated when incarcerated. United States v. Jackson County, North Carolina, Civ. No. B.C. 77-14 (W.D. N.C. 1977). As a result of our investigative efforts and negotiations, we have persuaded three other detention facilities, one local and two tribal, to improve

medical care, supervision and general jail conditions in their facilities. One of the tribal facilities is presently planning a new detention facility.

Representation of Other Federal Agencies As Defendants

Upon occasion this Office has represented other federal agencies in lawsuits which raise important civil rights issues affecting Indians. In Finnesand v. Kleppe, Civ. No. A-75-42, (D. Alaska, 1975), we persuaded the Department of the Interior to change a rule regarding Bureau of Indian Affairs general assistance in Alaska in order to enable households headed by female Alaskan Natives to receive such assistance. We assisted the Solicitor General's Office in preparing a brief in Morton v. Mancari, 417 U.S. 535 (1974), which upheld the validity of Indian preference in the Bureau of Indian Affairs. Thereafter, we represented the Department of the Interior in other cases involving challenges to Indian preference and obtained dismissals in those cases. Nogle v. Morton, Civ. No. 74-199-D (W.D. Okla. 1974; Frazier v. Morton, Civ. No. 74-1006 (D. S.D. 1974). In Whiting v. United States, et al., Civ. No. 75-3007, (D. S.D. 1974),

we persuaded the Bureau of Indian Affairs to enter a consent decree which provided for use of the tribal laws defining membership for Indian preference purposes. We also supported the tribe's position in Wounded Head v. Oglala Sioux Tribe, et al., 507 F.2d 1079 (8th Cir.), by arguing that the 26th Amendment did not compel the tribe to permit 18 year olds to vote in tribal elections. In White v. Califano, 437 F. Supp. 543 (D. S.D. 1977), aff'd, 581 F.2d 697 (8th Cir. 1978), we unsuccessfully attempted to persuade the court that the State of South Dakota had the authority and the obligation to involuntarily commit Indian residents of reservations to state mental hospitals when the tribal courts had signaled their acquiesence in the process by appointing a guardian for the incompetent.

Criminal Prosecutions

In previous years this Office has prosecuted police officers for violating the civil rights of Indian citizens. We obtained three convictions in such cases. United States v. Litzau, Crim. No. 73-1027 (D. S.D. 1974); United States v. Gates, Crim. No. CL-74-72 (D. N.D. 1974); United States v. Boni, Crim. No. 75-460 PHX-WEC (D. Ariz. 1975).

We also obtained six convictions and one acquital on assault charges stemming from an attack on lawyers for Indian activists which occurred on the Pine Ridge reservation in South Dakota. United States v. Wilson, et al., Civ. No. 75-5040 (D. S.D. 1975).

Due to a turnover in personnel with criminal experience and an increasingly heavy caseload in civil litigation, this Office no longer has any direct involvement in criminal cases. When we learn of a possible criminal violation, we forward this information to the Division's Criminal Section which, in turn, keeps us apprised of any action it plans to take.

Amicus Participation

The Appellate Section of the Civil Rights Division handles all briefs filed by this Division in courts of appeal. The trial units recommend whether to appeal from adverse decisions involving the United States or a client agency and whether to file amicus briefs in cases of interest to the United States. This Office informs the Appellate Section of important Indian law cases and assists that section in developing the position of the United States. We recommended that the United States file an amicus brief in Oliphant v. Suquamish

Indian Tribe, 435 U.S. 191 (1977), Tonasket v. Thompson, 419 U.S. 871 (1974), and in Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978). [1/] Additionally, we persuaded the Department to file amicus briefs in cases involving the question of whether Indian students and Indian prisoners have a first amendment right to wear traditional hair styles. New Rider v. Pawnee County Board of Education, 480 F.2d 693 (10th Cir. 1973); Teterud v. Burns, 522 F.2d 357 (8th Cir. 1975). We also filed a brief in Schantz v. White Lightning, 502 F.2d 223 (8th Cir. 1974), on the issue of whether a federal district court had jurisdiction to hear an action arising out of an automobile accident on a state highway passing through a reservation.

Indian Civil Rights Act

Prior to the Supreme Court's decision in Martinez, supra, which greatly limited the role of federal courts in enforcing the Indian Civil Rights Act of 1968, this Office took the position that the United States could sue for violations of this statute in federal court. However, we followed a policy of attempting to negotiate changes in tribal practices prior to suit in order to minimize federal court involvement in tribal affairs. For example, we persuaded the Warm Springs reservation in Oregon to abandon its prohibition on allowing licensed attorn

1/ The United States filed a brief in Martinez but did so belatedly, and it was not considered by the Court.

to practice in tribal court. In United States v. San Carlos Apache Tribe, Civ. No. 74-52-GLD (JAW) (D. Ariz. 1974), we negotiated a consent decree which provided for certain changes in tribal election procedures. We also expended a great deal of effort in attempting to persuade the Navajo tribe to reapportion prior to the 1978 tribal elections.

After the Martinez decision was handed down, we had to reappraise the question of whether federal courts could entertain actions by the United States based on alleged violations of the Indian Civil Rights Act. We voluntarily dismissed United States v. Red Lake Band of Chippewa Indians, Civ. No. 6-78-125 (D. Minn. 1978), alleging a refusal on the part of the tribe to allow criminal defendants in tribal court access to an attorney, pending a resolution of the question. The Assistant Attorney General for the Civil Rights Division is presently considering whether the Martinez decision allows the United States to seek equitable relief in federal court for violations of the Indian Civil Rights Act.

IV. Unresolved Problems Which Hamper Civil Rights Enforcement for American Indians

Federal Indian policy has created some unique challenges for those whose task it is to enforce civil rights statutes in the Indian context. Civil rights legislation is essentially integrationist, whereas the emphasis in Indian law is on avoiding assimilation and promoting greater self-determination for tribal governments. Despite these contrasting goals there is a role for an office such as ours. Greater self-determination is not necessarily inconsistent with the purposes served by federal civil rights laws. Tribal members have an interest in participating in decisions that affect their lives. Such decisions are made at all levels of government; therefore, it is essential that Indians have access to the political process in local, state and federal elections. Indians often seek employment, education, and public accommodations in off-reservation areas. Therefore, we must not equate life on a reservation with total isolation from the mainstream of non-Indian society. Even though the federal government has abandoned its policy of assimilation, the natural progression of events makes it inevitable that reservation Indians will increasingly come in contact with other communities.

It is probably accurate to say that the reservation system has retarded Indian interest in civil rights enforcement so that today this minority group is in a position comparable to that of other minorities in the

late 1950's or early 1960's. There is really no Indian civil rights movement comparable to that which blacks forged in the 1960's. Most Indian interest groups are primarily concerned with establishing political and economic control over reservation areas. The primary emphasis is on protecting and exercising treaty rights while seeking further social and economic benefits directly from the federal government. Most Indian organizations devote very little, if any, attention to whether state and local governments are offering their members the same benefits and services that other residents may enjoy. Nevertheless, the fact remains that most Indian children attend local public schools. Indeed, approximately half the Indians in this country live in urban areas and are as dependent on state and local governments for social services as other minorities. Most Indian organizations have largely ignored the needs of this part of the Indian community.

The practical consequences of the above observations are several. First of all, it is difficult to learn of civil rights violations involving Indians because the Indian community is not yet fully alert to these problems. We devote a considerable amount of our time and resources to attempting to identify such problems and to educating

the Indian community about our existence and enforcement authority. It is obvious that a small unit within the Department of Justice is no substitute for an organized grass-roots effort to promote Indian civil rights.

Secondly, federal policy towards Indians has shifted frequently over the decades. The goal of self-determination is far from being achieved. Reservation Indians are not fully independent of state and local services and whether they will ever achieve such independence is problematical. State and federal agencies are often confused as to their respective responsibilities for Indians with the result that Indian needs are often not met. This uncertainty poses problems for civil rights lawyers because first one must establish whose responsibility it is to provide the service and then prove that the failure to provide the service was racially motivated. Such cases occasionally pose a dilemma. Congress may not have obligated a federal agency to provide a particular service which is available from the state, yet any attempt to disavow federal responsibility (however well founded in law) and enforce the state obligation is subject to being perceived as anti-Indian. Confusion as to the various responsibilities of each level of government can also serve to undermine a claim that services or rights were denied on account of race. For example, should hospital planners be entitled to count on an Indian

Health Service hospital serving Indian needs and accordingly plan a limited expansion for a local hospital based on that premise? If such planning considerations are legitimate, is it also legitimate for the local hospital to refer Indian patients to the IHS facility if they are operating at full capacity?

Thirdly, there are some very difficult and troublesome questions which can be raised about federal Indian policies, especially as they are implemented in urban areas. Should the federal government promote essentially all Indian residential complexes in urban areas? How do we justify the construction of Indian hospitals in urban areas which have hospitals which could be used to serve the needs of the Indian populace? This is not to suggest that Indians do not need improved health care or housing assistance, but one can legitimately ask whether the means we have chosen to provide assistance are always consistent with the best interests of Indian citizens. Federal agencies should consider whether their endeavors truly foster self-determination of distinct tribal groups or merely encourage segregation, racial discrimination, and denial of services to Indians by state and local communities.

Another major concern of this Office is the absence of any federal court review of tribal actions vis a vis members of the tribe except in the context of a habeas corpus proceeding. The Martinez decision precluded private actions for equitable relief under the Indian Civil Rights Act, and it may preclude suits by the United States. This Office has received more complaints concerning alleged violations of this Act than any other civil rights statute. This is not to suggest that tribal governments are more likely to violate constitutional guarantees than others but, as one would expect, the government which most directly affects the lives of a group of citizens is apt to be the most frequent object of criticism.

Might I suggest that this Commission can make a valuable contribution by conducting hearings on the impact of Martinez in reservation areas. To my knowledge, you have never explored the operation of this civil rights statute.

Lastly, I believe there is need for the federal government to improve its own performance in assuring that the programs it operates and the persons and governmental

agencies with which it contracts respect the civil rights of Indians and meet constitutional standards. Our Office has experienced its share of frustrations in dealing with other federal agencies although, to be fair, our efforts have often proven worthwhile. Part of the problem is that we must rely on our powers of persuasion when dealing with them and hope that the policy makers in those agencies will be sufficiently concerned to spend time resolving the issues we raise. We do not have the resources to review all of the programs that serve Indians for possible civil rights violations and therefore have limited our efforts to those problems which have become apparent to us through litigation. Of necessity we must rely on the civil rights units within federal agencies to review their own programs and eliminate discrimination. Perhaps one way to insure that this is done would be to require civil rights impact statements for each federal program that may affect the Indian community. This would force federal policy makers to address the types of issues I raised previously, and it might lessen the possibility that Indian needs will be overlooked by both federal and state governments.

The Civil Rights Division is committed to the vigorous protection of the civil rights of American Indians.

I appreciate having had the opportunity to address the Commission and welcome any suggestions you may have as to how I might improve the efforts of the Office of Indian Rights.

EXHIBIT A

OFFICE OF INDIAN RIGHTS

FIELD SURVEYS

TRIP DATE	RESERVATION	LOCATION
11/15/72	Navajo	Coconino County, Arizona
11/15/72	Navajo	San Juan County, Utah
2/11/73	Gila River	Arizona
2/11/73	Papago (incl. San Xavier)	Arizona
2/11/73	Cocopah	Arizona
2/11/73	Colorado River	Arizona
2/11/73	Salt River	Arizona
2/11/73	Fort McDowell	Arizona
2/11/73	San Carlos Apache	Arizona
2/11/73	White River Apache	Arizona
2/11/73	Yaqui Communities	Tucson, Arizona
2/26/73	Fort Hall	Idaho
3/05/73	Leech Lake	Minnesota
3/05/73	White Earth	Minnesota
3/05/73	Red Lake	Minnesota
3/18/73	Crow	Montana
3/18/73	Blackfeet	Montana
3/18/73	Devils Lake Sioux	Fort Totten, North Dakota
5/02/73		Anadarko, Oklahoma
6/15/73	Navajo	McKinley County, New Mexico
6/18/73	Navajo	San Juan County, Utah
6/27/73	Winnebago	Wisconsin Dells, Wisconsin
6/27/73	Winnebago	Wyettville, Wisconsin
6/27/73	Winnebago	Black River Falls, Wisconsin
6/27/73	St. Croix Chippewa	Sand Lake, Wisconsin
6/27/73	Lac Courte Oreilles	Hayward, Wisconsin
6/27/73	Red Cliff	Bayfield County, Wisconsin
6/27/73	Bad River	Ashland, Wisconsin
6/27/73		Madison, Wisconsin
6/27/73	Potawatomi	Forest County, Wisconsin
6/27/73	Mole Lake	Forest County, Wisconsin
7/08/73	Coeur D' Alene	Plummer, Idaho
7/08/73	Nez Perce	Lapwai, Idaho
7/08/73	Flathead Lake	Dixon, Montana
7/08/73	Fort Peck	Poplar, Montana
12/15/74	Navajo	Window Rock, Arizona
5/09/75	Pine Ridge	Pine Ridge, South Dakota
5/00/75	Navajo	San Juan County, Utah
6/00/75		Klamath Falls, Oregon

FIELD SURVEYS, CONT'D

TRIP DATE	RESERVATION	LOCATION
6/00/75	Muckleshoot	King County, Washington
6/00/75	Lummi	Whatcom County, Washington
6/00/75	Tulalip	Snohomish County, Washington
6/00/75	Swinomish	Skagit County, Washington
6/00/75		Seattle, Washington
10/00/75		Alaska
10/13/75	Pine Ridge	Pine Ridge, South Dakota
1/18/76	Navajo	New Mexico and Arizona
5/05/76	Omaha	Thurston County, Nebraska
5/05/76	Rosebud Sioux	South Dakota
6/00/76	Southern Ute	Ignacio, Colorado
6/00/76	Navajo	Coconino County, Arizona
6/00/76	Navajo	Navajo County, Arizona
8/00/76	Santa Ynez	Santa Barbara County, Califor
8/00/76	El Capitan	San Diego County, California
8/00/76	Barona	San Diego County, California
8/00/76	Los Coyotes	San Diego County, California
8/00/76	Pechanga	Riverside County, California
8/00/76	Santa Ysabel	San Diego County, California
8/00/76	Rincon	San Diego County, California
8/00/76	Mesa Grande	San Diego County, California
8/00/76		Los Angeles, California
9/00/76	Gila River	Maricopa and Pinal Counties, Arizona
9/00/76	Ak-Chin	Pinal County, Arizona
9/00/76	Fort Apache	Arizona
9/00/76	San Carlos Apache	Arizona
10/31/76	Rosebud Sioux	South Dakota
11/00/76	Navajo	Coconino County, Arizona
11/00/76	Navajo	Navajo County, Arizona
1/25/77	Lummi	Whatcom County, Washington
6/22/77	Warm Springs	Oregon
6/22/77	Crow	Montana
6/22/77	Northern Cheyenne	Lame Deer, Montana
7/00/77	Hoopa Valley	California
7/00/77	Big Lagoon	California
7/00/77	Trinidad	California
7/00/77	Round Valley	California
9/00/77	Mescalero Apache	New Mexico
9/18/77	Yakima	Washington
9/18/77	Puyallup	Pierce County, Washington

FIELD SURVEYS, CONT'D

TRIP DATE	RESERVATION	LOCATION
9/18/77		Rapid City, South Dakota
10/00/77		Oklahoma City, Oklahoma
10/00/77		Tulsa, Oklahoma
10/18/77	Warm Springs	Oregon
10/18/77	Turtle Mt.	Rolette County, North Dakota
4/00/78		Los Angeles County, California
8/00/78	Navajo	Navajo County, Arizona
8/06/78	Navajo	Window Rock, Arizona
9/10/78	Navajo	Navajo County, Arizona
11/00/78	Pine Ridge	South Dakota
1/00/79	Papago	Arizona
1/00/79	Gila River	Arizona
1/00/79	Navajo	San Juan County, New Mexico
2/26/79	Flathead	Lake County, Montana

EXHIBIT B

OFFICE OF INDIAN RIGHTS

CONFERENCES

TRIP DATE	LOCATION	NAME OF CONFERENCE
9/29/74	Spokane, Washington	National Congress of American Indians Northwest conference
10/16/74	Las Vegas, Nevada	Indian Affairs Seminar
1/00/75	Phoenix, Arizona	U.S. Attorney's Conference on P.L. 280 (Jurisdiction over Indians
11/20/75	Portland, Oregon	National Congress of American Indians Conference
2/25/76	Albuquerque, New Mexico	National Tribal Chairmen's Association conference
10/00/76	Salt Lake City, Utah	National Congress of American Indians National Conference
1976-77	Washington, D. C.	Monthly Luncheons of Americans f. Indian Opportunity
2/23/77	Lincoln, Nebraska	Nebraska Indian Conference together with N.A.R.F. and A.C.L.U
3/16/77	Greensboro, North Carolina	North Carolina Indian Conference
9/25/77	Denver, Colorado	Meeting with N.A.R.F.
3/23/77	Ukiah, California	Regional Indian Conference
3/24/77	Eureka, California	Regional Indian Conference
3/25/77	San Francisco, California	Western Federal Regional Council Re: Federal Officials and Native Americans
8/00/77	Milwaukee, Wisconsin	American Medical Association Conference on Jail Medical Care
10/18/77	Seattle, Washington	Hearing U.S. Commission on Civil Rights
11/03/77	Minneapolis, Minnesota	National Indian Education Association-National Convention
4/19/78	Phoenix, Arizona	Federal Bar Association Conferenc

EXHIBIT C

RECRUITMENT OF INDIAN LAW STUDENTS

TRIP DATE	LOCATION
6/22/76	San Francisco, California
11/04/76	Omaha, Nebraska
11/06/76	Tulsa, Oklahoma
10/00/77	Oklahoma City, Oklahoma
10/00/77	Tulsa, Oklahoma
10/00/77	Washington, D. C.
10/27/77	Denver, Colorado
10/28/77	San Francisco, California
10/29/77	Los Angeles, California
10/31/77	Albuquerque, New Mexico
2/00/78	Denver, Colorado
10/00/78	San Francisco, California
10/00/78	Washington, D. C.
2/00/79	Albuquerque, New Mexico

EXHIBIT D

Analysis of Complaints
Office of Indian Rights

Since the Office was established in 1973, we have processed 1,640 complaints through our docketing system. This card indexing system is used to record complaints received through the mail and personal contacts made by office personnel. Complaints are classified by the nature of the allegations, the statute involved and the judicial district where the complaint originated. All statistics cited in this testimony and accompanying exhibits were derived directly from this card system. Due to time limitations we were unable to undertake a more comprehensive review of our files.

At the present time, the Office has 239 active matters and cases, 1,401 matters and cases have been closed, and 24 matters have been referred to other sections of the Civil Rights Division or to other agencies. The greatest number of complaints received by the Office has come from South Dakota (250), followed by Arizona (136), Oklahoma (136), Montana (116), California (112), Washington (102) and New Mexico (94). Table I shows a breakdown of all complaints by state.

This Office has received 305 complaints alleging police misconduct, 114 against tribal police officers and 191 against other police officers. We have received 94 complaints of voting discrimination; 40 complaints alleging violations of equal educational opportunity; 73 complaints of employment discrimination and 52 complaints of housing discrimination. Table 2 shows the breakdown of these complaints by the target of the complaint. Table 3 shows a breakdown of our complaints received by year and by target of the complaint.

TABLE 1

NUMBER OF COMPLAINTS RECEIVED BY STATE

Alabama	1	Nebraska	58
Alaska	13	Nevada	15
Arizona	136	New Mexico	94
Arkansas	1	New York	58
California	112	North Carolina	39
Colorado	15	North Dakota	55
Connecticut	1	Ohio	12
District of Columbia	11	Oklahoma	136
Delaware	6	Oregon	37
Florida	21	Pennsylvania	7
Georgia	10	Rhode Island	3
Hawaii	2	South Dakota	250
Idaho	17	Tennessee	7
Illinois	5	Texas	18
Indiana	3	Utah	21
Iowa	12	Vermont	2
Kansas	14	Virginia	5
Kentucky	1	Washington	102
Louisiana	6	Wisconsin	63
Maine	10	Wyoming	4
Maryland	10		
Massachusetts	12		
Michigan	30		
Minnesota	68		
Mississippi	13		
Missouri	6		
Montana	116		

TABLE 2

COMPLAINTS RECEIVED BY ALLEGATION AND TARGET

Voting Discrimination	Total	94
	Tribe	42
	Public	52
Employment	Total	73
	Tribe	10
	Public	34
	Private	14
	Unidentified	15
Education	Total	40
	Tribe	1
	Public	39
Housing	Total	52
	Tribe	7
	Public	10
	Private	30
	Unidentified	5

TABLE 3

NUMBER OF COMPLAINTS RECEIVED BY TARGET OF COMPLAINT

Public	866
Private	190
Tribe	296
Unidentified	288
Total	1,640

NUMBER OF COMPLAINTS RECEIVED BY YEAR

1973	93
1974	233
1975	286
1976	261
1977	392
1978	330

Exhibit No. 14

U.S. Department of Justice

DSD:JMS:flh

Washington, D.C. 20530

9 - MAY 1980

Ms. Ruth Harthoorn
Legal Assistant
United States Commission on Civil Rights
Washington, D. C. 20425

Dear Ms. Harthoorn:

This is in response to your letter of March 25, 1980, requesting that we supply certain information concerning a recent 25 percent budget cut in the Office of Indian Rights. Mr. Huerta is presently out of the country and has asked me to respond to your request in his absence.

As you know, federal budgetary regulations currently require programs to be divided into funding levels and each level or package priority ranked. Among several factors considered in this ranking process is whether one or more decision units share the same or similar functions. Where, for example, a decision unit may overlap the jurisdictional area of another, one unit or package must be ranked lower than the other. Such was the circumstance with the Office of Indian Rights. As important as the work of that Office is, it shares concurrent jurisdiction with several other sections of the Civil Rights Division. For this reason then, one package or funding level for the Office of Indian Rights was ranked lower than some other Civil Rights Division units. A consequence of the relative ranking by the Division, the Department and the Office of Management and Budget, was that part of the Office of Indian Rights budget fell below a total funding cut-off level and the section received only 75 percent of its then current budget.

The 25 percent reduction was arrived at by the application of routine budgetary considerations. Because there was insufficient money to fund all Civil Rights Division decision units at current or enhanced levels, certain decision units, based on their relative ranking, reverted to minimum funding levels. Minimum funding was defined at that time as 75 percent of current funding.

We want to assure the Commission, however, that all of us here at the Civil Rights Division remains committed to enforcing the federal statutes which protect the civil rights of Indians. To the extent the Office of Indian Rights will not be able to accomplish as much as it might otherwise, we will take the steps necessary to see that other units within the Division enforce the civil rights of Indians.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

By: James M. Schermerhorn

James M. Schermerhorn
Director
Office of Indian Rights

Exhibit No. 15

REPORT FROM MASHPEE

A Study of the Impact of the Wampanoag Land Claim on the Economy of Mashpee, Massachusetts.

Edmund WAKAWATASE #142
Exhibit #15

AMERICAN FRIENDS SERVICE COMMITTEE

National Office
1501 Cherry Street
Philadelphia, Pennsylvania 19102

New England Regional Office
2161 Massachusetts Avenue
Cambridge, Massachusetts 02146

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For further information contact at the appropriate address (see cover) the following: Kathleen Gooding-C, Associated Executive Secretary, New England Regional Office or Ed Nakawatase, National Representative, Native American Affairs, AFSC national office.

INTRODUCTION

The American Friends Service Committee (AFSC) is an organization founded in 1917 as a corporate expression of Quaker beliefs. Basic to those beliefs is a desire to get at the roots of conflict and to work for a society where people can live and work together in justice and harmony. To implement these beliefs, AFSC carries out program work throughout the United States and in many countries around the world.

In this context, AFSC has been concerned to establish the facts of the economic impact of the claim of the Wampanoags of Mashpee to over 15,000 acres of undeveloped land. The non-Indian residents of Mashpee have been told on one hand that the suit, entered in August, 1976, will affect them adversely. Rumors and exaggerated statements abound. On the other hand, they are assured by the Indians themselves that no economic damage is intended. What are the facts in the case? Has there been, or will there be, an adverse economic impact on the citizens of Mashpee? If so, will it be on the small landowner or the large developer? What about unemployment? Taxes? Credit? To the extent that there are economic problems in Mashpee, to what degree is the land claim responsible for them?

Believing that shared knowledge of the true situation will help to relieve fears and permit everyone concerned to approach a solution to the problem with clear heads, AFSC has tried to take a careful and objective look at the actual impact of the suit on the economy of Mashpee. Our study discloses that the land claim suit has had some negative impact and that there are some hardships, but that both may be resolved by specific programs or partial settlement. The case, however, raises another large question: For whom and to what end should the land be developed?

A word about the scope of our study: In order to identify those individuals or businesses which were said to have suffered damage as a result of the suit, the AFSC team reviewed news clippings, reports, and studies on the Mashpee situation, transferring to a file card system pertinent aspects of the situation. Interviews were then arranged with all those cited by the press or townspeople as having some degree of hardship. In addition, the local telephone book was used to make a list of every business in Mashpee, from individual contractors to the largest employers, from hairdressers to electronic component manufacturers. Team members attempted to contact businesses to discuss the effect of the suit upon them.

In addition, an analysis was made of real estate activity before and after the suit, of bank practices and of figures on population, employment, and the general economic situation of Mashpee. State and Federal legislators and members of agencies involved in the suit were interviewed. Altogether the AFSC team acquired more than 2500 five-by-seven cards and nearly 400 pages of notes and interviews.

The first part of this report is a narrative account of our findings; the second part is in the form of appendices, including lists and analyses of interviews, economic and other statistics for the Mashpee area, and footnotes.

A dedicated team of AFSC staff and local volunteers carried out this study. They recognized the need for the report and worked long hours collecting the endless detailed information necessary to accurate research. On the Cape, Friends and friends contributed their knowledge of the local scene. This helped the research move more rapidly and with greater insight into the issues involved than would otherwise have been possible. Tony Kaliss served ably as Research Director. A panel of AFSC staff and committee members reviewed the research findings and drafts of the report. Karel Kilimnik received the final draft material and undertook the task of putting it together in form for the AFSC's print shop. The result is here. It is our hope that the following material can be of help to those interested in formulating an objective response to the immediate and long-range questions involved.

Gerda Conant
Project Coordinator
New England Regional Office
American Friends Service Committee

July, 1978

REPORT FROM MASHPEE

HISTORY AND CURRENT BACKGROUND. The history, past and present, of Mashpee cannot be separated from the history of Cape Cod generally and vice versa. The filing of the suit August 26, 1976 highlighted two long-standing questions of Cape history. What is the nature of the relationship between Indian and non-Indian on the Cape? And to what extent, for whom and for what purposes should the Cape be developed?

The Wampanoags have the distinction of being the people who welcomed the Pilgrims. History records that without the friendly help of the Tribe the Pilgrims would never have survived their first winters in the New World.

But it was not long before some among the non-Indians saw gains in the taking of Indian lands. The pattern they established resulted in the Indian people losing all but a tiny part of their lands and a great deal of their population in the process.

Indian people formed one of the earliest settlements on the Cape recognized by European law. This happened when their deeds to the Mashpee area were recognized by the Plymouth Colony Government in 1671.

Mashpee was the last area of the Cape to be incorporated into a town - this in 1870.[1] Mashpee remained an Indian-dominated community until the early 1960's. Research indicates that from 1834 to 1962 all but one selectman of the town were Indian or married to an Indian. In 1962 Kevin O'Connell was the first non-related, non-Indian elected to the Board in recent times.[2]

The year 1963 marks a turning point in the social and political composition of Mashpee as will be seen below. Before that time the Indian people and the smaller Black population were left alone by the growing non-Indian population. Unquestionably, prejudice was involved. The Indian people can cite many instances to show that "We have always been excluded from the social and economic system around us."[3] Mashpee always had and still does have the highest percentage of non-whites of any town on the Cape, about 13% at the present time.[4]

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[1] Bourne was incorporated in 1884 but this was a split from Sandwich which had already been incorporated in 1639.

[2] One such person did serve in the 1920's.

[3] Russell Peters, Cape Cod Times - CCT 10/17/77.

[4] U.S. Census data and updates based on U.S. Census.

"Located as it is, on Cape Cod, the town is part of one of the most famous resort areas on the East Coast," reported a Massachusetts Department of Community Affairs (DCA) study on the growth in Mashpee.[5] However, the first areas to be developed with the resort trade in mind were the Lower and Mid Cape regions.

Dwelling units authorized by building permits in the Lower and Mid Cape areas increased in the ten-year period of the 1960's over that of the 1950's by 85% and 52% respectively. The increase in the Upper and Outer Cape regions was 26% and 32%.[6]

In the 1970's this pattern has been reversed. In the first eight years of that decade alone, the increase in the number of building permits over that in the ten years of the 1960's was 53% and 60% in the Upper and Outer Cape and 27% in both the Lower and Mid Cape regions.[7]

Mashpee has prime water front even if the interior is not - except for the lakes - as attractive as some areas of the Outer and Lower Cape. The Chace family, based in Rhode Island with substantial holdings outside of Mashpee, including Rhode Island Hospital Trust, noted this early, and in 1963 under the name of the New Seabury Corporation began building a planned high-cost development on some 2700 acres. New Seabury owns all the shoreline of Mashpee with the exception of a parcel donated to the Town. This was the first big step. Other developers were not long in following and in a relatively few years the social and political composition of Mashpee was altered.

Population statistics illustrate this change. Between 1965 and 1975 Mashpee became the fastest growing town on the Cape and in the Commonwealth of Massachusetts.[8] Mashpee's population grew no less than 361% from 1960 to 1978, rivaled only by Sandwich, a neighboring town, which grew 270% from 1960 to 1975. By comparison, the Cape's population grew 82% in the period 1960 to 1975.[9]

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[5] Developing a Land Use Management Process - Case Study Mashpee, Mass. Mass. Dept. of Community Affairs, Office of Local Assistance; Local Assistance series 4. December, 1975.

[6] U.S. Census data and updates based on U.S. Census. (Mashpee is in Upper Cape.)

[7] U.S. Census data and updates based on U.S. Census.

[8] Phoenix 10/18/77 (Boston).

[9] See Appendix C.

New Seabury's development brought in large numbers of upper-income people, so that by 1970 Mashpee had the highest percentage of homes both under $10,000 and over $50,000 of any town on the Cape. This change in income level was reflected in per capita income in Mashpee, which ranked ninth in 1969 and sixth on the Cape in 1974 even though Indian incomes have not increased to any such extent.[10] Other developments with less expensive homes brought in more families with children. The school population went up 332% from 1960 to 1978. This is but one sign of the increased burden on town finances which has driven up the tax rate from $11.90 in 1959 to $18.24 on an equalized evaluation in 1978.

The 1975 DCA study quoted earlier also noted, "Longtime residents are now in the minority and fear that Mashpee is losing its historic identity and that the community is losing its distinctive qualities."[11] This is by way of saying that the Indian people were disturbed by the changes. In 1963 they first lost their majority on the Board of Selectmen and today find themselves a minority on all important town committees. The non-white population of Mashpee has dropped from about 50% to about 13% at the present time, although their actual number of people has not changed greatly.[12]

THE WAMPANOAG SUIT. These changes were in large measure behind the Wampanoag decision to file suit. The suit, filed in the U.S. District Court for the District of Massachusetts on August 26, 1976, sought return of land located in Mashpee. It was based on Federal statute protecting tribal lands. The Tribe voted to offer a negotiated settlement for the undeveloped land, but the town of Mashpee chose to stay in court rather than to negotiate.

At the time the suit was filed, the Tribe stated their position on a number of issues as follows:

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[10] A better comparison would have been to 1960 before the major development but per capita income figures were not given for towns under 2500 in the 1960 Census. Unpublished data might be available for aggregate income from the Census Bureau in Washington. Figures given here are from Table 1 in 1973 (revised) and 1975 Population Estimates for Counties, Incorporated Places and Selected Minor Civil Divisions in Massachusetts. U.S. Bureau of the Census. Current Population Reports Series P-25 # 669, May 1977.

[11] DCA study cited above, p. 2.

[12] U.S. Census data updated.

1) The purpose was to "regain control of the land in order to preserve the ecology and to curtail the overdevelopment of the land."

2) It was "not the intent ... to reclaim possession of homes of any residents...."

3) If they won, the Tribe would work out a way to provide services and exercise jurisdiction.

4) If the Tribe became responsible for providing all services, a way would be worked out for payments (rents) in lieu of tax payments from residents.[13]

As stated by Russell Peters, President of the Tribal Council, "There has been a tremendous change in the town. We have lost political control. Lands are being turned over to the developers. We want the return of that land before it is covered with asphalt and single family houses for the upper middle class."[14]

The question of political control and its relation to the amount and kind of development that is to and will take place over the Cape is an important and serious question of concern to all residents, Indian and non-Indian. Unfortunately this question became lost in the events which followed the filing of the suit.

THE REACTION. The tone and nature of the issues raised since then are best understood by some sample quotes from those who oppose the suit. The two non-Indian selectmen are both strong opponents. Both are realtors.

-- *Bulletin mailed to New Seabury property owners by The Peninsula Home Owners Association: "This is a reminder of the very critical town meeting to be held at the Catholic Church...to vote funds for legal defense against the suit being brought by the Wampanoag Indian Council. Failure to attend may put the fate of your home or property in serious jeopardy." (Falmouth Enterprise - FE -9/28/76)*

-- *Selectman Benway: I am getting calls: "This can't be happening to me." (FE 9/31/76)*

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[13] CCT 9/8/76 .

[14] CCT 10/17/77 .

-- *Selectman O'Connell: He wants the Congressional delegation to take "the little private property owner off the hook." (FE 11/2/76)*

-- *Selectman O'Connell: "They're trying to take away my home." (FE 11/23/76)*

-- *1976 Annual Report of the Town referring to the seriousness of the suit and "the straight (sic) jacket it puts on the town." (FE 9/14/76)*

-- *Samuel Sirkis, former President of Mashpee Action Committee(MAC) [15] : "Well, we're being legally murdered here." (Boston Globe - BG - 1/3/77)*

-- *Selectman O'Connell: referring to Mashpee people, "the mental anguish these people are going through." (CCT 2/28/77)*

-- *Selectman O'Connell: "Mashpee is perhaps the most economically depressed town in the Commonwealth." (FE 9/30/77)*

Nearly all the alleged difficulties are related to economics. The cloud on titles, which is a legal consequence of the filing of the suit, has led, it is claimed, to most if not all the problems faced by Mashpee. This can be seen in the following representative quotes:

-- *Selectman Benway: The suit would"...take the real estate tax base away from the Town and give it to the (Tribal) Council." (BG 9/10/76)*

-- *Mashpee Action Committee delegation to Senator Kennedy: "Young business people with families are financially ruined." (Barnstable Patriot - BP - 1/27/77)*

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[15] Reactions to the suit have led to the formation of two organizations in Mashpee. One is the Mashpee Action Committee (MAC) which opposes the suit very strongly. It is correctly described in a local paper as " a group whose membership includes many of the wealthier property owners." It is also supported by a substantial number of people in the development-related businesses. The other is the Mashpee Coalition for Negotiation (MCN) whose members, as the name suggests, favor a negotiated settlement of the claim. They see a common point with the Indian people in concern for preservation of the remaining land and preventing overdevelopment.

-- *Frank Leonardi, Town Moderator: He blames most of the financial troubles on the suit. Before the suit "Mashpee had the world by the tail." (FE 11/1/77)*

-- *Samuel Sirkis, former MAC President: "Estates can't be settled, elderly can't sell their homes...unemployment has skyrocketed and a number of local businesses are facing bankruptcy." (CCT 8/4/77)*

-- *State Senator John Aylmer: "This small community is literally dying on the vine." (New Tribune - NT - 12/15/77)*

-- *William Clendenin, Town Assessor and President,Mashpee Action Committee: "It's killed the economy. The town has the highest unemployment rate in the Commonwealth. There are no mortgages, no building, no federal grants." (CCT 10/17/77)*

-- *State Representative Jerry Cahir: "Many people just do not have the money to pay taxes." (CCT 12/14/77)*

-- *Stephen Olesky, Town Attorney: "The dominant and most immediate problem in the town of Mashpee is clearly identifiable: the economic chaos resulting from the cloud on titles created by the plaintiff's claim." (Mashpee Lands: Hearing before the U.S. Senate Select Committee on Indian Affairs; 95th Cong. 1st session, on S.J. Res. 86, October 21, 1977. p. 59)*

-- *Selectman Benway: "...people aren't buying steaks at Christy's." (BG 1/8/78)*

-- *Selectman O'Connell: "Mashpee lost millions of dollars over the last 18 months...Many people went bankrupt because of it (the suit)." (Herald American - HA - 1/7/78)*

-- *Senator Brooke and U.S. Representative Gerry Studds, telegram to Vernon Weaver, head of the Small Business Administration (SBA)"...unimaginable economic hardship for nearly an entire year." (CCT 7/28/77)*

-- *Indian spokemen counter that most of the difficulties have been vastly overstated, and that the Indians are being used as "scapegoats" for problems that existed long before the law suit was ever filed.*

-- *Selectman Benway says that the state study* [16] *"... will prove that the Indian's contention that their suit is not responsible for the town's problems is pure B.....t." (Banker & Tradesman - B & T - 1/19/78)*

The last quote raises the question this working paper seeks to examine. To what extent is the land suit responsible for the current economic problems of Mashpee?

THE CONSTRUCTION INDUSTRY. The change in Mashpee's population is dramatically reflected in the numbers of housing units authorized by building permits issued. The average authorized from 1950 thru 1962 was seven, and from 1963 thru 1969 it was 103, or an increase of 1371%. In short, the jump took place sharply and was unequaled anywhere on the Cape. From 1970 through 1976, including the three months of the suit in latter 1976, the average number of dwelling units increased to 177 a year.[17]

Obviously there was money to be made, and about 15 large developers began to make it. In addition there have been a fair number of people operating on a small scale. The great majority began their development work in the latter half of the 1960's and throughout the 1970's. A few go back a good many years and represent the first substantial non-Indian building efforts in Mashpee. Along with the developers came the realtors, building contractors, subcontractors and workmen.

All of this activity depended on three things: the ability of people to buy houses; the willingness of banks to provide mortgages; and the availability of land. The first has generally been present to a degree large enough to provide some excellent earnings for the building industry.

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[16] Massachusetts State Governor Dukakis set up a state task force headed by Wm. Flynn, Communities and Development Secretary, to investigate the situation in Mashpee. It began work in Dec.1977 and has been compiling information. At this time (April, 1978) the state task force has made no public report.

[17] Construction figures from Cape Cod Planning and Economic Development Commission and Mass. Department of Economic Development publications. See Appendix C.

In Mashpee and the surrounding towns permits increased almost every year until a very sharp decline in 1974 nearly wiped out some of the smaller or overextended developers. But this slump ended quickly. Both the Cape and the towns surrounding Mashpee are now building at a rate only slightly reduced from the highs of the early 1970's.

The availability of mortgages in Mashpee came to a near halt with the filing of the suit in 1976. Reactions from the real estate industry were immediate. Alexis Hanson, a builder, exclaimed, "What is our recourse to this devastating suit that has taken our livelihood from us?... Where are our rights?" [18]

Although it was not possible to get exact figures on how much real estate and construction business was lost in Mashpee, the Washington Post estimate that real estate earnings were down 90% appears realistic. [19] If, based on past years' rates in Mashpee and in neighboring towns, one assumes that 150 more homes would have been built in Mashpee than the 14 that were built and that the houses had an average value of $40,000, then at least six million dollars were passed up. They were not necessarily lost to the area, however, in that the increase in home building in the surrounding towns exceeded by a large number the 150 that might have been built in Mashpee.

The increase in dwelling units authorized by permits in the three surrounding counties of Barnstable, Falmouth and Sandwich in 1977 was 505. That figure is almost three times the maximum amount (170) that trends indicate might have been built in Mashpee had the suit not existed. In addition, the value of permits issued for new commercial construction in the three surrounding towns increased by $1,957,000 or 47% from 1976 to 1977. This figure is easily 10 times the amount that might have been expected to be constructed in Mashpee in 1977 without the suit.[20]

BANKS AND TITLE INSURANCE. Twenty-three banks whose names appeared in the media were contacted. They hold the great majority of mortgages in Mashpee. They were asked about their experiences and policies on mortgages, loans, foreclosures and for any general comments. [21] Eighteen banks were reached. Two would not talk on the phone. Of the others, all report normal or near to normal payback

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[18] CCT 10/27/76.

[19] Washington Post - WP - 8/28/77.

[20] From Cape Cod Planning and Economic Commission. See details in Appendix C.

[21] Names of banks and details appear in Appendices A and B. State Banking Commissioner Greenwald issued a list of 58 banks with some involvement in Mashpee.

on loans and mortgages. Only four to five loans and one mortgage are suit-related. A total of eight foreclosures were reported with one being suit-related. Foreclosure proceedings were stopped in one other case. The bank is using forbearance.

In general, no new mortgages are being given since the suit. The exceptions are when the bank already owned the property or had a mortgage on a home or property before the suit. The banks indicated that, while they were not forbidden by law from granting mortgages, their own policies and attorneys would not permit it. Four banks, however, suggested that special arrangements might be possible, if not probable.

The banks were very uncertain about title insurance but the consensus seemed to be that there was just too much uncertainty about the title in Mashpee and with the terms of title insurance that have been made available. This is particularly in reference to the attempts made last year to provide title insurance through two title insurance companies, Lawyers of Richmond, Virginia and Chicago Title Insurance Company. Several said they might give a mortgage with adequate title insurance.

With one exception those banks that do give consumer loans - including home improvement loans - on the Cape say that they are continuing to make such loans with no problems. Cooperative banks can give home improvement loans only on houses in which they have mortgages.

Part way through the survey it was thought to ask if there would be a rush of foreclosures after the suit. Of the banks asked, all said there would be no problem out of the ordinary since there is none now. Thus the statements made by some that there existed "...the beginning of a deadly trend," due to alleged increasing foreclosure rate, was not substantiated by these banks. The same can be said about the statement by Town Attorney Stephen Olesky at a U.S. Senate Hearing in October, 1977, "Real property foreclosures and bankruptcies have increased substantially."[22]

The research team did not come across any bankruptcies in the course of over 200 interviews that could be proven to be suit-related. One person did claim to know of someone who had a suit-related bankruptcy, but the latter had left Mashpee and could not be located.

There is some debate as to how much home values have fallen for those who have sold during the suit and about how much values will stay depressed after the suit is completed. It is important to note that some real estate activity continued, although on a reduced scale.

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[22] SST 1/16/77; Senate Hearing, p. 59.

The Town devalued its assessments by 21% for the 1978 fiscal year taxes. This was based on a 1977 analysis by the Board of Assessors which they claimed showed that sales values were running 21% less than assessed values.

Some of the developers interviewed assert that even after the suit is settled one way or the other, values will remain up to 25% below fair market value for several years. On the other hand, Massachusetts Institute of Technology (MIT) Professor of City Planning Phillip Herr, who is also a planning consultant to the Cape Cod Planning and Economic Development Commission (CCPEDC), feels that the values will rise to full value when the suit ends.[23]

It is hard to see why values should remain depressed since land on the Cape is highly desirable, especially land within commuting distance of Boston. The banks now worry about good and safe investments in Mashpee. Given the prevailing economic boom on this area of the Cape, that same concern will in all likelihood lead to active investment in Mashpee when the suit is settled and no further title cloud or claim exists.

Finally, in the discussions that have taken place to date in regard to a negotiated settlement of the law suit, the issue is not the existing homes or even a certain amount of building in the existing subdivisions. Rather it is the amount of undeveloped land to be returned to the Tribe. A new building market would continue to exist. How much and for how long it exists depends again on how one answers the question of how much and for whom should Mashpee be developed.

DEVELOPMENT. In the course of the study 95 developers, realty agents, builders, self-employed skilled workers, and businesses related to construction were called. Three out-of-town businesses were also contacted. They are listed in Appendix A. Eleven of the top twelve taxpayers in the town are developers.

The developers were most certainly hard hit. Most of them who had employees have laid some off and all are doing a reduced business that in a few cases borders on none at all. Most of the developers are behind on their taxes. The research team was told that in some instances tax delinquency is because of lack of funds, in others it is a point of principled protest, and in some cases both.

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[23] FE 8/26/77 .

To some degree hardship can be related to size and diversification of developers. C. Burden, President of New Seabury Corporation, stated that "We're just hanging on by our toe nails." [24] It should be reiterated that New Seabury Corporation is part of the extensive Chace family holdings. Similarly several of the other developers appear to be diversified with holdings and interests other than in Mashpee.

On the other hand individual family developers who have all or most of their money tied up in Mashpee and were extended on mortgages and loans at the time of the suit were caught short and have had to take on other work to make a living.

Therefore, with the exception of several cases of financial hardship, the main loss to developers is in the area of profits not made. (That loss is certainly substantial. But when the suit is settled, the developers will still hold the land. They will then either be able to sell it or they will get some kind of break-even compensation with much of their loss being tax deductible. Some developers have expressed interest in such a settlement.)

Some of the developers have apparently overextended themselves and could find themselves in real difficulty after the settlement when their outstanding loans and mortgages are called up for payment. Yet, bank policies during the suit and the forecast of the banks give a good indication that they will not be seeking to foreclose immediately on outstanding mortgages. Furthermore, the bank responses indicate that there are very few people in such a position.

Finally, it must be noted that not all the developers were in perfect financial health before the suit. People, both for and against a negotiated settlement, point out that several of the developers might have been overextended and would run into trouble in any case. This is a fair question to raise when all financial troubles are blamed on the suit.

REALTORS AND BUILDERS. Realtors, to the extent they are not also developers, are less tied to the land or to one area. But because there are many small realtors who tend to do business in one area or town, a number of the real estate agents talked with said they had been hit hard. An example here would be Selectman Benway's business. About half those contacted said they now are doing some business outside Mashpee as well as some, much reduced, in Mashpee. Several others had interests in a number of towns and therefore suffered some loss but not major hardship.

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[24] CCT 8/21/77

The remaining groups, that is the builders, subcontractors, tradesmen and related businesses,are in a different category. They can go where the construction is and there has been plenty of it in neighboring towns, as well as on the Cape generally.

There was a good deal of work available in the area. Furthermore, the groups in question do continuously cross town lines to seek work, unlike the developers and some realtors who by necessity and practice tend to have their business in one place.

The increase in construction is reflected in the response obtained from the builders, subcontractors, tradesmen and related businessmen. Their experience may be summed up as varying degrees of initial difficulty followed by finding work elsewhere, and then some even in Mashpee. Responses from those interviewed varied from "suffered some loss but am working" to "more work than I can handle". In a number of cases people said they would be much happier and financially better off doing their old work in Mashpee but the basic point is that after the initial shock they are now making a living.

To be sure there are exceptions, especially for those whose business was mostly in Mashpee. The New Seabury Design Studio closed for lack of new business from new houses. Mashpee Lumber was closed in part for lack of business but also because its owner is moving his interests out of state. The fuel oil companies in Mashpee are not getting any new business and the same can be said of Highwood Water Company. In addition, the Indian-owned fuel company, Peters Fuel, has suffered because some customers are boycotting him because he is a Tribal member. This was directly stated to Mr. Peters in letters and also to a member of the study team in his interview with several opponents of the suit.

OTHER BUSINESS ACTIVITIES. Construction is not the only business in Mashpee. It is claimed that many other businesses have been hurt. "Restaurants, retail stores and gas stations have gone out of business. Tourism is down and prospects for the coming seasons are bleak," said Stephen Olesky, Town Attorney, at a U.S. Senate hearing in October, 1977.[25]

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[25] Mashpee Lands : Hearing before the U.S. Senate Select Committee on Indian Affairs ; 95th Congress 1st Session, on S.J. Res. 86, October 21, 1977. p. 60.

An attempt was made to contact every business listed in the phone directory with offices in Mashpee to ascertain the effects of the suit on them. While the research team was unable to reach some establishments it does not appear that there were any restaurants, retail stores or gas stations that went out of business solely because of the suit. The rate of failure seems about normal. Conversations with those who experienced closings make clear that the suit was one of several factors in a few cases and not at all in the others.[26]

Tourist business appears to be excellent. It should be noted as Selectman O'Connell has said that "We're not a tourist town" unlike some parts of the Cape.[27] Nevertheless, Mashpee does have several very attractive lakes, summer rentals, a few motels and a major resort facility, the Poppenesset Inn.

The Cape Cod Chamber of Commerce representative we talked with said that the suit had made no difference at all in recreation business in the town. This was confirmed by the experience of the Poppenessett Inn last summer. One realtor interviewed said he has in some part made up for the loss of new home business by very active summer rentals.

The great majority of businesses reported little or no loss of business. The rest reported some loss. The biggest employer in Mashpee, Augat, Inc., reported its best year yet and is building a 20,000 sq. foot addition to its facility. Christy's Market, the only supermarket in Mashpee, is doing well and is now building an extension. They also report excellent steak sales. The U.S. Post Office which opened in 1976 reports its best business yet of all kinds.

On the other hand, two restaurants which claim severe hardship report loss of customers whom they say were construction workers. One of the restaurants was recovering when it was burned down. The owner's hardship has been increased by the near impossibility of getting financing to rebuild. He finally obtained a private mortgage and still needs loans to equip the new facility fully.

East Coast Fisheries appears to be one of the hardest hit because of the impossibility of obtaining much needed loans to expand. The owner did build his initial building with his own funds, intending to then raise money by a mortgage for further expansion. This fell through due to the suit. He then worked out a package with one of the main banks and the Small Business Administration (SBA) with the help of the Wampanoag Tribal Council which felt his expansion offered job opportunities to

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[26] See Appendix B for details of interviews with businesses.

[27] BG 1/8/78.

Indian people. But at the last moment the bank decided it could not go ahead because of the suit even though its share of the deal was small.

One of the dentists reports that patients are not having any major work done, so much so that he is planning to move. He blames this on the suit.

Two other businesses who are affected are a law firm which states that they suffered a serious though not severe loss due to a great fall in real estate-related business; and a small shellfisher whose plans have been frustrated by the inability to get business loans.

One enterprise, if it may be called that, which faced a major suit-related problem was the Little League. It reported the loss of backing from certain businesses because of the presence of Indians on the team. Several businesses objected to having two players in uniform out in front collecting for the team if they were both Indian. A compromise was reached by having one Indian and one non-Indian.

The 14 businesses which reported "some effect" generally report some drop or loss in business due to the suit. In some cases the drop is still felt; in others it has passed by.

One business that was hard hit is an Indian-owned restaurant. It now reports that business has returned to better than normal, but it was the target of a boycott by opponents of the suit as was another Indian-owned business, Peter's Fuel Company, mentioned earlier.

An attempt was made to find out what happened to the concerns that had closed since the suit. Of the 11 identified, the research team was able to locate three owners. Information on the others was drawn from the media and knowledgeable people in the Mashpee area. We didn't know the normal failure rate.

Of the 11, it appears that eight closed for reasons unrelated to the suit. One of these, the Wampanoag Trading Post, plans to reopen elsewhere in Mashpee. The owners of the Red Top Steak House died and the parent to whom it was willed could not sell it and it went to the bank. But there are both a restaurant and a lounge on the premises now and both are doing a good business.

The three closures that were in some part affected by the suit were A. B. Roberts Boutique, Mashpee Lumber, and Primpas and Fitch - Optometrists. The husband of the person running the Boutique apparently was a builder unable to find work after the suit. This seemed to be the main reason for moving and it is not clear if the Boutique itself was that much affected by the suit. Mashpee Lumber was closed by its owner who anticipated the effects of the suit. He is also moving his businesses, many of which are outside of Mashpee, out of state. The optometrists

moved their business because they felt due to the stoppage of building there would not be the needed growth in Mashpee which they had counted on.

Finally the list of "Opened Since Suit" was drawn from the general business list. Of the 12, two were not contacted. Of the other 10 one opened and closed since the suit. Of the remaining nine, eight say they are unaffected by the suit and one reported some effect. Twelve businesses closed and twelve opened since the suit.

UNEMPLOYMENT. There can be no question that the construction industry has supplied many jobs to Mashpee residents. Selectman O'Connell said recently, " Most of our non-elderly people, including the Indians, work in construction or one of the jobs that gets its money from real estate."[28] Our study, however, leads us to believe that construction is much more a generator of money and business for firms outside Mashpee than it is for jobs in Mashpee. Although there are no studies of the labor market and economy in Mashpee and the surrounding towns, our research team was able to gather some statistics that help to place construction in the context of other activities in the town.

Augats, an electronic component maker, is far and away the largest employer in Mashpee with about 270 employees. Next the Town itself has about 140 employees. Then there is Pilgrims Pride Nursing Home with 87, for a total of 497 employees.

The construction and development industry probably directly employs full time not more than 200 people. This is based on adding the number of realtors and developers whose interests are mainly in Mashpee to an estimate from three contractors of the number of men who would find employment in building 150 houses a year.

Thus while the construction development activity is an important source of employment it is by no means the only one or the biggest one in Mashpee. And while it generates a large sum of money, probably six million or more a year assuming 170 houses, at least 50% to 60% goes for materials purchased outside Mashpee and a good part goes to the earnings of the developers and realtors. Finally, construction must sooner or later come to a halt unlike the other large employers mentioned above.

Then it must be mentioned that people freely cross town borders seeking work in the Cape area. This became very clear in the survey of the businesses in Mashpee. This is especially true of the construction industry. There are also a number of commuters to Boston.

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[28] BG 1/8/78 .

Unemployment in Mashpee has always been higher than on the Cape generally, possibly related to the large minority population.[29] Non-white groups everywhere in the United States have higher unemployment rates in general and Mashpee is no exception.

In 1976 the unemployment rate for Mashpee averaged 23%; in 1977 it averaged 21.5%. Only in the winter months of 1977, 1976 and 1975 did it go over 30%. The winter rates of 1977 (January), 32.7% , were actually lower than those of 1976 well before the suit. These figures are high but well outdistanced by the 1977 winter rate of Provincetown which was 47% in January and 45.6% in February. Details of the unemployment statistics are found in Appendix C. The unemployment figures cited are based on the 1970 Census patterns in Mashpee, and will not be changed until the 1980 Census. Therefore no one has really accurate statistics on current unemployment in Mashpee.

As to the Indian people, out of the slightly over 200 adults for whom information was gathered, 24% work out of town, 30% work in town and 31% were unemployed. Of those working in town only eight people worked in construction-related areas. Conversation with Indian representatives say this pattern of employment and unemployment is nothing new and has not changed very much due to the suit.

As to non-Indians, the three largest employers have been relatively unaffected by the suit so far as the number of employees goes. Since they together employ around 497 people, which represents the great majority of available jobs in the town, it is hard to see how there could be an over 30% unemployment rate among non-Indians, as has been charged.

Furthermore, the conversations with development, realty and construction-related people make clear that, while there were some serious problems of unemployment in the first six months of the suit, most people have found other jobs in the surrounding area. The research team was told of only four or five people who have actually left the area altogether.

This accords fully with the statistics of home and commercial building which show a great increase in the surrounding towns of Falmouth, Barnstable and Sandwich.

We will take here another approach which is not tied to the unupdated Mashpee figures above. If one takes the 566 employees totaled in the survey of non-development-related businesses and adds to that the 140 town employees and another 200 for construction and realty activities, the total comes to 906. It appears that most of the realty and construction-related people have found other jobs or are doing the same work on a somewhat reduced basis. But even if one assumes that half of them are still unemployed it would yield a town unemployment rate of 11%.

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29 See Appendix C.

In other words, what appears to be the case at the time of this report (March-April 1978) is that there is an approximately 11% unemployment rate for whites and a 31% rate for Indians, which when combined comes to about a 15% rate for the whole town. This is reasonably close to the Barnstable County rate for all races combined of an average 11.7% for 1977. But all this reasoning is based on the assumption that all these workers live in Mashpee, which is not true at all.[1]

It must be stressed that this is an estimate based on incomplete data. But it is an educated estimate based on a good sample of Mashpee employment. It does seem much more realistic than the 30-35% rates that have been cited by two of the town selectmen and some others.

When asked about the high rates they are giving out, one of the selectmen replied that they were including estimates of people not eligible for unemployment payments. However, a person at the Cape Cod Planning and Economic Development Commission stated that they do attempt to estimate such persons in the unemployment figures.

SENIOR CITIZENS. Senior Citizens received much attention in the press and have been publicized widely by those opposed to the suit. An attempt was made to contact all cases mentioned in the media. All persons contacted were, in turn, asked if they knew of others, and so on until no further names were forthcoming. Undoubtedly some may have been missed but it is not for lack of asking all parties involved for names.

Some quotes will indicate the publicity concerning personal hardships:

-- *Senator Ted Kennedy stated that the "Cloud on the title is an enormous hardship to those powerless people in our society, particularly the elderly and a number of the poor people who live in that area and have inhabited that community over a period of years.*

"They are the ones, as well as some of the smaller industries and perhaps some of the developers, who have really borne the brunt of this question of challenge and clouding of the title." (U.S. Senate Hearing, p. 21. See p. 12 for full reference.)

-- *Samuel Sirkis, former President of MAC, said that there was much mental strain on Senior Citizens and that this was "...the most terrible injustice brought about by the suit." (FE 9/30/77)*

-- *MAC delegation on a visit to Senator Kennedy's office said that the suit is a burden on widows and the sick and that the mental strain on the elderly is unbearable. (BP 1/27/77)*

> -- *A MAC delegation to Senator Kennedy said that one-third of Mashpee's population are senior citizens. Selectman O'Connell stated the same figure to Senator Brooke. Selectman Benway cited 35% to one of the AFSC team and Town Assessor and MAC President Clendenin stated 60% to 70% to another of the project team.*[30]

In fact Mashpee not only has the lowest percentage of senior citizens of any town on the Cape, it has a lower percentage than the State average.

In 1975 the percentage of population over age 60+ and 65 was the lowest on the Cape at 15.6% and 11.2% respectively. The Cape percentages for those age groups were 25.4% and 19% while the State percentages were 16.2% and 11.6% respectively.

Taking the highest estimate from the Mashpee Senior Citizens Center for 1977 the percentages over 60 actually fell to 15% from 19.4% in 1970.

PERSONAL HARDSHIPS. The project team identified 34 cases of persons, including some senior citizens, who were supposed to have been affected by the suit: ten of these names were found in the media and 24 came from personal references. The list is in Appendix A.

Of the 24 cases, 15 are senior citizens. Eleven of the senior citizens wanted to move and could not sell. Of the other four, one was very ill and could not sell, one wanted to sell to raise money to help a relative establish a business, one wanted to sell to cover medical bills and one has been very much discomforted and is included here only because of media attention.

At the present time all but two of the senior citizens are getting along but are very worried about what might happen if the suit is not settled and if one of the couple dies or if serious illness sets in before the suit is settled.

Among the non-senior citizens a whole variety of reasons were given. They include job transfer, need to build a larger house and several who wanted to sell but changed their minds.

The details of the personal interviews are given in Appendix B. It should be noted that the 34 cases represent .8% of Mashpee's population.

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[30] BP 1/27/77; BP 3/3/77; the Boston Globe gave almost 50% BG 1/8/78.

TOWN FINANCES. It has been said that the suit is ruining the township finances. In fact, the biggest loss to date is the result of township efforts to oppose the suit. Legal fees, travel expenses, and extra salaries to two non-Indian selectmen who are working full time against the suit, add up to $400,000 spent in this manner.

Mashpee township finances are in trouble, but the difficulties can be traced to other reasons. The enormous growth in population needing school and other township services, and the fact that Mashpee lacks a commercial, not to mention a manufacturing tax base comparable in size to that of nearby towns, are central factors. Lack of such a base is mitigated by income from summer residents who don't use a full complement of services.

In 1960 the town budget was $262,421, in 1970 $1,093,005 and in 1978 $3,764,442. This represents a budget increase from 1960 to 1978 of 1334%.

Taxes levied in those years went from $148,552 or $171 per capita in 1960 to $679,484 and $528 per capita in 1970, and in 1978 to $2,885,930 or $721 per capita.

In 1960 there was virtually no debt.[31] In 1970 the debt was $88,000, mostly for an addition to the school and a new library. In fiscal year 1978 the debt amounted to $ 549,100. [32]

The Stabilization Fund which over the years gradually grew to a high of about $304,000 in 1976 has been wiped out by the withdrawal of $300,000 for legal fees in the land claims case. It is only by drawing on this fund that the town has so far avoided a nearly $2 increase in the tax rate in addition to the increase that did take place this year. The Stabilization Fund under Massachusetts law is a fund that may be set up for use in capital construction. It requires special legislative permission for other uses. By choosing to legally contest the land claims of the Wampanoag Tribe and drawing on the Fund for the costs involved, Mashpee has lost a large sum that might have helped to finance much-needed capital improvements.

The tax rate has gone from being one of the lowest in the state and the lowest on the Cape in 1959 to the point where, in 1978,it is higher than ten other Cape towns.[32a] The increase in the tax rate is largely due to the pressures of enormous growth in a short time in a town with a largely residential and undeveloped land tax base. School population, for example, has risen 332% since 1960, forcing the building of a new middle school and sale of the first bond issue in the town's history.

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[31] $4,000 for fire-fighting equipment.

[32] See Appendix C.

[32a] See Appendix C.

To make things more difficult the major developers who, taken together, form some 12% to 15% of the town's tax base are either behind in paying their taxes or not paying at all. All of the top twelve taxpayers except the United Church Village (housing complex) are behind. The other eleven are developers. The non-payment is both a form of protest, as the project team was told by several developers, and is in some cases due to real hardship. This refusal has a major destabilization effect on the town finances. There is a 8% penalty tax on back due taxes, but those developers who can pay but are not doing so can invest their withheld funds elsewhere. The town does not appear to be taking any action to distinguish cases of real economic hardship from those which are not, and to collect from the latter.

On the other hand most individuals and non-construction-related businesses are paying.

Tax collections are behind almost to the exact percent that the major developers represent of the town's taxes. Tax collections were 15% behind for the 1977 taxes which were due by June of last year. Also as of April 1, 1978 the present year taxes were 60% behind. When compared to uncollected tax amounts at the end of previous years it appears that taxes will again be down by 15% or so. This estimate is confirmed by the Town Treasurer. [32b]

Taxes are usually due on November 1 and May 1 of each fiscal year. This year the tax bill was not sent out until December 23 and taxes were due January 28, 1978. The result is that the town found itself very cash short in the last months of 1977. This led to the borrowing of $300,000 November 1, 1977 when the taxes would normally have been coming in.[33]

In mid-December 1977 the selectmen and State Representative J. Cahir told Governor Dukakis that the town was $300,000 in the red and "... may be $1 million in the hole by February."[34] In point of fact Mashpee was not then or now, in debt. The Mashpee budget is not yet spending more than it is taking in, though it is definitely hurt by the 15% of the tax payments not yet made.

The Governor appointed a special task force to look into the situation. That task force has not yet issued a public study, but in relation to the town's cash flow situation it did indicate in late January 1978 that it felt that the cash flow may well have been related to the tax bills' not being sent out until late December and thus not due until three months after the normal time.[35]

[32b] See Appendix C.

[33] FE 11/1/77

[34] News Tribune - NT - 12/15/77.

[35] Christian Science Monitor - CSM -1/30/78.

The town says that the late billing was due to the lengthy process involved in reaching the conclusion to devalue assessments by 21%. Comments on the necessity of doing so were made on page 10 above.

There are predictions that the town will be in the red by the middle of the year, but this seems to depend largely on how much the town chooses to spend on legal defense and if the suit continues.

In short, the combination of the legal fees, tax delinquency, the lack of a commercial tax-paying base, and the extraordinary growth of population has placed an enormous burden on the town and, in turn, on the homeowners to finance the necessary services and capital construction. It should be noted that homeowner taxes alone rarely are enough by themselves to provide all town services.

All this could lead to a collapse in the town finances. The attitude of some of the developers with whom the research team talked was that this would not be such a bad thing because it would force the State and Federal governments to get involved. They find the alternative of the town's not continuing to spend for legal defense or the negotiation of a settlement as unthinkable. As Samuel Sirkis, MAC former president, put it: if the state won't help in legal fees, people won't pay their town taxes, let the town go bankrupt and State take over.[36]

STATE AND FEDERAL AID. There have been a number of proposals for State and Federal economic aid to persons having difficulties due to the suit and for the town itself.

State involvement first occurred in connection with the issuance of bonds by the Town to pay for the new middle school. At the time of the suit the Town was just about to issue the bonds. While there was no direct harm, it was felt the bond issue would not sell because buyers would worry that the taxes to pay them off might not be collectable if the Indians won. This attitude ignored the fact that the Tribe disclaimed any intention of taking built-up lands, which form the bulk of the tax base.

A more substantial concern was that the site of the school was in an undeveloped area the Tribe intended to claim. In a demonstration of what can be done to solve problems, within four weeks the State passed a law guaranteeing the bonds, the Tribe agreed formally that the school site would not be claimed, and the Selectmen did not protest Indian involvement. The bonds were then sold and the school built.

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[36] FE 9/30/77.

In April 1977 J. McLean of Falmouth helped get legislation filed that would provide mortgage guarantees by the Massachusetts Home Mortgage Finance Agency (MHMFA) which would be available in Mashpee. This bill, however, died due to objections raised by the Agency. It feared that since the Agency bonds are guaranteed by the State and are in practice only as good as the mortgages the bonds provide money for, the Agency might not be able to sell its bonds.

The State did use its influence through State Banking Commissioner Greenwald, beginning in late 1976, to ask banks to be forebearing and not foreclose on anyone having suit-related difficulties in making their mortgage payments.

In the fall of 1977 the Town got legislation introduced in the State Legislature that would have the State contribute $200,000 to the legal defense against the suit. This was much debated and caused the holding of a hearing in Mashpee by the State House Ways and Means Committee where many issues around the suit were raised. But in the end the legislature felt that contributing monies would be setting a precedent for state aid that was unwise.

What the State did instead was to grant permission for the town to transfer $300,000 from its Stabilization Fund for use as legal fees if the town wished to so vote. It did so at a special town meeting November 2,1977.

Selectmen Benway and O'Connell pressed the Federal Congressional delegation for aid and in April, 1977 a $1 million amendment that would provide emergency mortgage relief through the Federal Housing Administration (FHA) was proposed to the Housing and Community Development Authorization Act of 1977. The legislation passed but with no financial authorization.

The Carter Administration has made clear its opposition to any proposals that the Government undertake to guarantee all titles in Mashpee. This, it was felt, would leave the Government responsible for compensating all owners at fair market value if the Indians won the suit and sought all the land.

In October 1977 the Congressional delegation (Senators Kennedy, Brooke and Representative Studds), which has always supported a negotiated settlement to the suit, worked with both sides in a major attempt to reach an agreement. This activity led to the Hearing before the Senate Select Committee on Indian Affairs October 21. The agreement would have cleared title to all developed areas and some undeveloped lots in developed areas. Negotiations broke down about undeveloped lots in developed areas. A mutual understanding was not reachable and the efforts towards a negotiated settlement were shelved until very recently.

Finally the SBA was requested by the Governor of Massachusetts to consider Mashpee a disaster area. The first step towards this was the passage of an amendment broadening the definition of a potential disaster area of SBA. Then the Governor of the State requested aid at the urging of the selectmen, on information provided by them. He referred to "...a virtual paralysis of normal business activity."

In January, SBA held a public meeting in Mashpee. They then proceeded to take applications. As of the beginning of April, 16 applications have been submitted. Six were approved, six rejected and four are in process. SBA can lend only to profitable businesses that were in existence before the suit. Also it can lend only for working capital processes.

SOME CONCLUSIONS. It is clear that the impact of the suit is selective.

1) The great majority of individuals and businesses are feeling very little if any effect. Unemployment appears to be no higher than normal. No bankruptcies could be proven to be primarily suit-related. Only one foreclosure was reported to be suit-related.

2) The Town's finances have been affected in two ways:
   (a) by the percentage of tax withheld by developers, about 15%, creating a cash flow problem; and
   (b) by the large amount spent by the selectmen for legal fees, expenses and extra salary to the selectmen for activities in connection with the land claim.

3) The clouding of titles has placed a burden on the development industry.

Some burden has also fallen on some small homeowners, including some senior citizens, and businesses not involved in real estate. The fact that the suit has continued for 18 months with no negotiated settlement has clouded their titles and made it hard to borrow money. If an agreement could be made to release from dispute the built-up areas, then houses could be bought and sold and small businesses could obtain needed loans.

Even if this cannot be done, surely the State and Federal governments are creative enough to find ways of aiding homeowners and small businesses who are in special difficulties. Certainly aid to senior citizens could be provided without a long fight with the government agencies.

It is the position of the developers and realtors that without their activity Mashpee would cease to exist. Selectman Benway, himself a realtor, put it well: "It is our contention that if all the remaining (undeveloped) acreage or a substantial amount, is put aside, the town in essence, with no growth, would become stagnant and die."[37] Therefore government loans to help small businesses are not really of much help - at least to the developers. In regard to SBA loans Selectman Benway said a loan "...doesn't help realtors. We need land and not another debt."[38]

It is understandable that the developers should oppose the suit. As Selectman O'Connell, who is also in real estate, has pointed out, 43% of the town's land is owned by developers and only 23% is actually developed.[39] Actually the built-up portion is much smaller still, about 1,000 to 1,500 acres or 9% using the larger figure. Selectman Benway says "We make no distinction between developers and home owners. Their private property rights are identical."[40] Certainly their property rights are identical, but is their use of the land identical?

The two selectmen also see an identity with the banks who "own" most of Mashpee in the form of mortgages. In February of last year they met with a group of fifty bankers to urge them to contribute to the town's legal defense fund. Selectman O'Connell told them that "We're already defending you by virtue of the fact that 70% or 80% of the property is mortgaged. You're being sued indirectly right now."[41]

The result was that two banks of some 56 involved in Mashpee gave a total of $1500.[42] The reason for the low involvement was expressed by Bass River Savings Bank President R. Wheeler who said that, because so few of their loans in Mashpee were in any danger, "We could not find any justification for supporting the legal defense effort."[43] This is in line with the experience of all the banks contacted by the research team as summarized on page 8 above and detailed in Appendix B.

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37 U.S. Senate Hearing, p. 66.

38 BG 1/8/78.

39 FE 9/30/77.

40 Selectman Benway on WQRC, Hyannis 3/9/78.

41 BG 3/24/77.

42 FE 1/10/78.

43 FE 1/8/78.

Selectman Benway says that construction is the "...backbone of Mashpee's economy." That it has been an important activity is true, but it is neither the only one nor the largest one in terms of employment. Furthermore a backbone is, or ought to be, meant to last. Sooner or later, even if Mashpee is built up wall-to-wall, construction must come to an end. What then?

The 1975 DCA study Developing A Land Use Management Process, Case Study - Mashpee concluded that planned and controlled growth was essential for Mashpee especially because it lacks an industrial and/or large-scale commercial base and is unlikely to get one, thus putting the tax burden on residential home owners. The study went on:

> *In order to do so, Mashpee's environment must remain attractive and the Town's rate of growth must be controlled. If the rate of growth is not controlled, residential construction will escalate service and capital improvement needs, causing the tax rate to sky-rocket. Further it is likely that such construction will cause Mashpee's environment to deteriorate. As a result, Mashpee would lose what advantages it now has in competing for fiscally lucrative development.*

The authors of the above study noted in a newspaper interview last fall that the suit had put an effective check on rapid, uncoordinated growth. The suit "...has given the town a chance to sit back and analyze the growth in the community."

The Indian people add that their stake in the economy of Mashpee is that the lands on which they have traditionally lived, hunted and fished remain useful for such activities. The Tribal Council said in September of 1976 that they intended that their claims should not hurt home owners in the disputed areas. "On the contrary," they said," we feel that the Mashpee Tribe's action will renew a healthy concern for the land and resources in Mashpee."[44]

Surely this is a question of concern for all people in Mashpee as well as throughout Cape Cod and much of the coastal area of the Eastern United States.

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[44] CCT 9/8/76.

We end our report with the following observations and questions:

1) *The suit has been a means of asking some important questions about the future of Mashpee. How much growth do the people of Mashpee want? For whom and to what end should the land be developed? How many of their tax dollars do the people of Mashpee wish to spend to defend the development business in Mashpee?*

2) *Not all groups concerned with land in Mashpee have the same interest or intention for the future use of that land.*

3) *The State and Federal governments have a clear responsibility to provide mortgage aid to hardship cases, especially to the elderly, and to industries that will create long-term employment.*

4) *A partial settlement that releases individual land owners from clouded title is painfully necessary. The suit should then be allowed to proceed through the courts if a negotiated full settlement cannot be reached.*

5) *An effort is needed on the part of both Indians and non-Indians to see the many points in which their concerns parallel and often join.*

APPENDICES:

REPORT FROM MASHPEE

LIST OF INTERVIEWS BY CATEGORY

PEOPLE AND AGENCIES CONSULTED

Averett, Hannah

Benway, George - Selectman
Bingham, Amelia - Past Director Indian Museum
Bingham, George - Past Police Chief
Borowski, Klare
Borowski, Robert - Past Finance Committee

Clendenin, William - Board of Assessors
Collins, Harold - Building Inspector
Coombs, Kenneth - School Principal
Coombs, Selena

D'Antuono, Anthony - School Superintendent
Debarros, Brenda - Assistant Accountant
DeLory, Robert - Board of Assessors

Ehrisman, Henry
Faxon, Sandy
Fermino, Hazel
Fitzgerald, Marie - Town Secretary

Graham, Robert - Board of Assessors
Grant, Bernice - Town Clerk
Greelish, Deidre & Steven

Hendricks, Marilyn - Town Treasurer
Hendricks, Ralph
Hicks, Frank - Executive Secretary
Hurlburt, Walter - Finance Committee

Jacobson, Carol - Municipal Site and Building Committee

Keliinui, Clare - Board of Appeals

LeClair, Mary
Lopez, Vernon
Lucas, Florence - Tax Collector, Treasurer

Maxim, Robert - Selectman

O'Connell, Kevin - Selectman

Peters, Betty
Peters, John
Peters, Ramona
Peters, Russell
Peters, Shirley
Pocknett, Lansing

Scalley, Marie and Robert
Simpson, Elizabeth
Sirkis, Samuel
Sloan, Peter

Thomas, Jean - Town Administrator, Assistant to Board of Selectmen

BANKS INTERVIEWED

Barnstable County National Bank
Bass River Savings Bank
Brockton Savings Bank
Cape Cod 5¢ Savings Bank
City Savings Bank
Coolidge Corner Cooperative Bank
Fairhaven Savings Bank
Falmouth Bank and Trust
Falmouth Cooperative Bank
Falmouth National Bank
First National Bank of Cape Cod
First Penn Mortgage Trust
Home Federal Savings
Hyannis Cooperative Bank
Mayflower Cooperative Bank
North Adams Bank
Northampton Savings Bank
Plymouth Savings Bank
Provident Institute for Savings
Sandwich Cooperative Bank
Springfield Institute for Savings
Vanguard Savings Bank
Workingmen's Cooperative Bank

PERSONAL HARDSHIP

Mr. and Mrs. A. Anderson
Anonymous - 4 cases are included here for which names could not be found.
Mr. and Mrs. J. Bain
R. Berke
T. Bourgeois
J. Boyle
Mrs. Carlsson
Mr. and Mrs. D. Carpenter
H. Church
V. Debruyn
Mr. and Mrs. R. DeLory
Mr. and Mrs. G. Doherty
Mr. and Mrs. J. Fitzgerald
Mr. and Mrs. J.N. Fitzgerald
D. Geele
A. Halloran
E. Hatcher
J. Hathaway
W. Hurlburt
Mr. and Mrs. MacGregor
Mr. and Mrs. P. McGuire
W. McKay
A. McKinley
Mr. and Mrs. P. Muse
Mr. and Mrs. R. Rockwell
R. Shea
Skostrom
J. Tame
R. Thorman
K. Williams
Mr. and Mrs. R. Zuwallack

GENERAL BUSINESSES CALLED

Abeona Hair Design
Aerographics of Cape Cod
American Breeders Service (cattle)
Andy's Liquors & Sports Shop
Antiques
Attaquin Hotel - Mother's Lounge
Gina's Kitchen
Augat, Inc.
The Barn
Barnstable County National Bank - Mashpee branch
Beauty by Barb-ee
Bobby Byrne's Pub
Brent Wyatt Assoc. (sales company)
Butch's Wrecker & Repair Service
Butler's Pantry
Butterworth & McGee (Attorneys)
Camp Farley 4H
Cape Cod Book Center
Chop N'Block
Christy's Market
Clean Tech of Cape Cod
Costa's Auto Repair
Creative Photos
Dan & Bill's Drive In Restaurant
Dare School
G. Day, Jr. (music copyist)
M. Day (signs)
Del Sol Motel
Dick & Ellie's Driving Range
Dick & Ellie's Mini Golf
Dr. F. DiIorio
East Coast Fisheries
Falmouth Truck Center,Inc.
The Farm (restaurant)
J. Ferguson (caterer)
Dr. J. Fitch (optometrist)
The Flume, Inc.
Dr. S. Green (dentist)
A. Grossach (child's apparel)
E. Heyland (CPA)
R. Houle (attorney)
E.F. Hutton Co. (financial management)
Lakeside Trailer Park
Land O'Lakes Cottages

Lawrence Cleaning Service & Aqua Jet Cleaning Service
Liquor Warehouse
Little League (Babe Ruth League)
Mashpee Auto Body
Mashpee Exxon Station
Mashpee Taxi
Mashpee United Church Village
Mashpee Veterinary Hospital
M. Murphy (shellfishing)
New Seabury Country Club Pro Shop
New Seabury House & Garden
New Seabury Inn, Country Club & Restaurant
New Seabury Pharmacy
New Seabury Twin Cinemas
W. Oakley (Manager, Town Dump)
Ockry Trading Post
On The Rocks
Otis Trailer Village
Pilgrims Pride Nursing Home
Pizza
Popponesset Beach Laundromat
Popponesset Inn
Popponesset Store
Process Systems International (export business)
Quashnet Valley Golf Course
Raven, Drs.
Red Rooster Lounge
Sequoia Insurance
Shady Pines Guest House
Shell Service Station
Dr. J. Shwartz (dentist)
Dr. P. Smith (dentist)
Sun & Surf Hair Styles
Terry, Dunning & Terry
Tidbit Restaurant
Tisit General Store
U.S. Post Office
Wampanoag Trading Post
Whitehall Cape Cod Co., Ltd. (liquors)
The Wigwam
R. Wilson (rentals)
Winslow Nurseries of Needham
Dr. Zeigler (dentist)

DEVELOPMENT AND CONSTRUCTION BUSINESSES

The businesses in the list are divided into groups because it became clear that the impact of the suit has differed on each group. Essentially the difference depends on how much the given kind of business is movable and, then, within each group how much of their business a particular person or firm was conducting in Mashpee. Nine of the top ten taxpayers in the town are developers and are indicated in the list as (top ten).

Developers

N. & D. Blakeman (top ten)
Stuart Bornstein (Holly Tree Development)
J. Condon & Whited
J. & J. Fitch
A. Garguilio (Greenwood Development Corp.) (top ten)
H. Labute (top ten)
L. & O. Associates (K. Lapio & D. Oman) (top ten)
R. & M. Makepeace, W. Atwood, T. Otis (Wiljoels Lands)
J. Manoog (top ten)
E. Marsters (Redbrook Corp.) (top ten)
R. McNutt
D. Morse
New Seabury (Fields Point Mfg. Co.) (top ten)
V. Porciello (Ockway Bay Development Co.)
J. Umina (top ten)
J. Warner, N. Barrett,Jr., McManus
P. Whitcomb
E. & R. Wasil (top ten)

Builders

A. & T. Builders
Acme Construction
Better Builders
A. Delancey
J. Fellouris, General Contractor
B. Fulton
A. Hanson
W. Hanson
C. Hendricks
Hometech, Inc.
H. Labute, Inc.
Mashpee Construction Co.
Massasoit Crossing
Nova Construction Co.
W. Oakley
Vanderbil
Wildwood Construction Co.

Real Estate

Arid Realty Corp.
J. Callahan, Jr.
Cape Realty
R. Gallipeau
Great Neck Realty
Greenwood Realty
L. Hendricks
W. Henry
C. Howland
R. Jonas
Kopp-Benway
Lakeside Real Estate
Latessa Realty
New Seabury Real Estate
J. Peters
S. Peters
M. Romaine
L. Rowe
Seagull Realty
Smith Realty
G. Thierry

Subcontractors and Tradesmen

J. Clark, builder
I. Comeau, carpenter
P. Cronin, electrician
N. Dias, laborer
B. Fulton, painter
G. Gaulberto, painter
W. Hail, painter
E. Hendricks, Jr., builder
T. Hennigan, engineer
P. Jacobson, electrician
R. Jonas, laborer
M. Jones Assoc.,Inc.
C. McDonald, carpenter
E Mendonca, carpenter
J. Peters, heavy construction
D. Roddy
R. Scalley, carpenter
C. Stone

Other Home and Building-Related Businesses

Aboo Cesspool Service
Aqua Jet Well Drillers
Cape Cod Asphalt Paving
Cape Wide Forms
Costa's Oil
J. Cotton, plumbing supplies
J. Ellis, drywall
Highwood Water Company
E. Johnson, concrete forms
Labute Lakeside Lumber & Hardware Store
Mid Cape Concrete Forms
New Seabury Design Studio
Niemi Oil Company
T. Leary, welding and drilling
Ockway Landscaping
Peters Oil Company
Z. Robinson, draperies
R. Scalley, landscaping
L. Swart, building consultant
W. Tavares, landscaper
S. Van Tol, landscaping

Out-of-Town Businesses Affected

Cape Wide Welding (Bourne)
Falmouth Lumber Company (Falmouth)
United Concrete (Bourne)

AGENCIES AND OFFICIALS

American Friends Service Committee
Senator Brooke's Office
Banker and Tradesman
Cape Cod Chamber of Commerce
Cape Cod Planning and Economic Development Commission
CETA
Committee Against Discrimination
Counsel for the Defense
Department of Community Affairs
Department of Employment Security
Federal Regional Task Force on Indian Affairs
Governor's Task Force to Study Mashpee Situation
Senator Kennedy's Office
Massachusetts Home Mortgage Finance Agency

Massachusetts Taxpayers Association
Small Business Administration
Representative Studds's Office

BUSINESSES CLOSED SINCE SUIT

A.B. Robert's Boutique
Candlelight Restaurant
Golden Barn Pizza
Golf Shop & Gallery
Jim's Package Store
Management Dynamics Institute
Mashpee Discount Foods
Mashpee Lumber
Mini Business
Primpas & Fitch
Red Top Steak House

BUSINESSES OPENED SINCE SUIT

Antiques
Brent Wyatt Association
Chop N'Block
Costa Auto Repair
Creative Photos
Ferguson's Catering Service
Mashpee Auto Body
Mashpee Discount Foods (now closed)
Niemi Oil Service
Ockry Trading Post
Red Rooster Lounge
Tidbit Restaurant

REPORT FROM MASHPEE

ANALYSIS OF INTERVIEWS AND CONTACTS

NOTE: Each interview or contact in the following pages has been numbered for sake of privacy. All those interviewed are listed in Appendix A.

KEY

SC = Source : M= media; P= person; T= tax valuation or telephone book.

RES = Response : NA= no answer; R= refused to talk; C=confidential; DC= disconnected phone.

TTP = Top Tax Payer (11 of the 12 Top Tax Payers in Mashpee are developers).

PTAX = Paying taxes.

DEVELOPERS

Case	*SC*	*RES*	*TTP*	*PTAX*	*Reasons for hardship - other comments*
1.	M		X	No	Just managed to pull through construction recession when suit filed - now being assessed 10% late charge on back taxes - children dropped out of school - deeply in debt.
2.	M	R			FE 9/21/76: Requested court to grant relief -case dismissed - now building in many other parts of the Cape.
3.	M			No - Protest	Knew about suit and cut losses - has basically closed down land and business interests in town and Boston - has sold since suit but at some loss - is moving to Florida where he has another development - partner has moved out of state.
4.	P			No - Protest	Feels fortunate because has other full-time professions -does not live in town - no hope for expected profit on land investment.
5.	M	NA	X		FE 9/28/76: Being represented by own firm - 2-3 transactions dropped because suit - 50% of lots already sold.

REPORT FROM MASHPEE

DEVELOPERS

Case	*SC*	*RES*	*TTP*	*PTAX*	*Reasons for hardship - other comments*
6.	T	NA	X		Although is one of top ten land tax payers and perhaps affected by the suit, much development took place the past 4 decades - has many other business interests as well.
7.	T		X	No - Protest	Forced to sell motel in another town to carry Mashpee land - cannot sell home so is moving into it (without financial loss).
8.	T	R			(Has large land holdings and may have been affected by the suit but was active long before.)
9.	M		X	No	Owns much land elsewhere - banks forcing him to pay interest because of this - cannot sell Mashpee land.
10.	P	R	X		(Has many land and development interests in town but also some in other towns.)
11.	P	R			(Understood not able to sell land.)
12.	T	NA			(Large land owner - started just before the suit - may have been affected.)
13.	M		X	No	Some building with private financing - some reselling at discount -15-20% of normal brokerage business - 20-30% staff laid off - plans for 4,000 more living units - large corporation with many holdings in and out of town.
14.	T	NA	X		(Large land owner - may have been affected.)

REPORT FROM MASHPEE

DEVELOPERS

Case	*SC*	*RES*	*TTP*	*PTAX*	*Reasons for hardship - other comments*
15.	M		X	No	Large interest payments - forced to take another job for income - deeply in debt - may lose Florida development - had plans to build 3,000 more homes.
16.	T	C	X		(Large land holdings.)
17.	M		X		Cannot sell even at a large discount-wants to leave.
18.	T	R			(Old Cape family - large land holdings.)

REPORT FROM MASHPEE

REAL ESTATE

Case	*SC*	*RES*	*PTAX*	*Reasons for hardship - other comments*
1.	T		Yes	Hired 2 more employees - more business but less profit - doing business out of town now.
2.	T		Yes	No problem - summer rentals are covering the 90% loss of sales.
3.	T		Yes	Sales good because of location -sells all over Cape - feels property values have been maintained - plans to build in town after suit settlement.
4.	T	NA		
5.	T	NA		
6.	T	NA		
7.	P		Yes	Definite need to move to larger home and cannot - working twice as hard for same amount of business - some business out of town but not enough.
8.	P		Yes	Lost his business - trying something else in town now.
9.	T		Yes	Sells in town - people take over the mortgages - works plenty.
10.	P		Yes	Not in any want - would like to move lots but have other income.
11.	M		No	See # 15 Developer.
12.	M			Laid off 4 - has not paid rent for months - behind on mortgages - town salary is now only income - another office has just opened in Sandwich.

REPORT FROM MASHPEE

REAL ESTATE

Case	*SC*	*RES*	*PTAX*	*Reasons for hardship - other comments*
13.	T	NA		
14.	T			Problem replacing tenants - some behind on rent.
15.	M		No	See # 13 Developers.
16.	P		Yes	Never did push the business - sold only if asked.
17.	T	NA		
18.	P	NA		
19.	P	C		Could have sold 5-7 houses but attorneys said not to - pressing monthly payments - cannot start over.
20.	T			Some business out of town - business in town is increasing.
21.	P			Income cut 1/3 - has a few sales - attorneys advised against buying - has had to borrow finances.
22.	T		Yes	No Real Estate business but is covered by some other work.

BUILDERS

Case	*SC*	*RES*	*PTAX*	*Reasons for hardship - other comments*
1.	T		No	Lost business in town - now building business in another town but very difficult - unable to pay bills.
2.	P	DC		
3.	P	DC		
4.	P		Yes	Not able to borrow - customers not paying - many problems.
5.	T	NA		
6.	T		No - Protest	Had just started business - all money tied up.
7.	M	NA		
8.	M		No	Is now building two houses - could be employed elsewhere also but is refusing on principle - has debts.
9.	T		Yes	Lost large town job - took second job to cover expenses - beginning to get some work out of town now - family need to move to larger house and cannot.
10.	T	DC		
11.	T		Yes	Forced to go off Cape for work.

BUILDERS

Case	*SC*	*RES*	*PTAX*	*Reasons for hardship - other comments*
12.	T		Yes	Building in town stopped.
13.	M			Just started - lost sales agreements - rentals do not cover tax or other expenses - problems are not all related to suit but cannot get out from under now.
14.	T	NA		
15.	P		Yes	Is busy - most business is out of town.
16.	T	NA		
17.	P		Yes	Cannot sell house says family member.

SUBCONTRACTORS/TRADESMEN

Case	*SC*	*RES*	*PTAX*	*Reasons for hardship - other comments*
1.	T	NA		
2.	T		Yes	Has work -feels comfortable but lucky.
3.	P		Yes	Works all over Cape.
4.	T		Yes	No problems - working in town.
5.	T		No - Protest	Never had all business in town - has much repeat business - put notice in paper for hiring but got no response from Mashpee workers.
6.	T		Yes	Does not do business in Mashpee - has not been affected.
7.	T			Was affected but retired three months ago.
8.	T	R		
9.	T		Yes	Even though has lost some jobs in town is not hardship case.
10.	M		Yes	Business is now mainly out of town - is holding on but doing jobs otherwise wouldn't do - does not keep own stock now - is able to pay bills originally thought he couldn't.
11.	P		Yes	Last 3-4 years has benn slump in work - now unemployed - worried about paying bills.
12.	T	DC		

SUBCONTRACTORS/TRADESMEN

Case	*SC*	*RES*	*PTAX*	*Reasons for hardship - other comments*
13.	T		Yes	Worked in town before suit - worked out of town after suit - now getting business in town again.
14.	P	DC		
15.	T		Yes	Works mostly throughout the state.
16.	T		Yes	Decline in hours - has started another business.
17.	T		Yes	Bad last year but booming this year - business all over Cape.
18.	P		Yes	Had to do some work out of town and off Cape - business a little better than last year.

RELATED BUSINESSES

Case	*SC*	*RES*	*PTAX*	*Reasons for hardship - other comments*
1.	M		Yes	Some hurt - possible discrimination.
2.	T		Yes	Booming business all over Cape as well as in town says employee.
3.	T		Yes	Hired 2 more this year-would like to move,however, and cannot.
4.	T	DC		
5.	P			No capital left - bills rising - can't build own shop - customers not paying - just starting to do business in other towns.
6.	T	NA		
7.	T			Cannot use house as equity - many bills - working out of town more hours to keep up - could have declared bankruptcy but decided not to.
8.	T		Yes	No growth - working at 60% capacity.
9.	T		Yes	Forced to work outside of town but has been lucky with jobs - bought house just before suit but can't do anything with it - has large crew but had to drop some.
10.	T			Some drop in business.
11.	T		Yes	Works mostly outside of town.

REPORT FROM MASHPEE

RELATED BUSINESSES

Case	*SC*	*RES*	*PTAX*	*Reasons for hardship -other comments*
12.	T	DC		
13.	M		No	Closed due to suit.
14.	M	NA		Somewhat hurt but most business outside of town.
15,	M		Yes	Discrimination boycott.
16.	T		Yes	Somewhat affected but does business elsewhere.
17.	P		Yes	Political discrimination but has other work.
18.	M			All work has stopped - bought house day after suit and cannot sell.
19.	T		Yes	Has plenty of work.
20.	P		Yes	1/3 work now outside of town - not too worried.

RELATED BUSINESSES - OUT OF TOWN

Case	*SC*	*RES*	*PTAX*	*Reasons for hardship - other comments*
1.	P			Lost Mashpee business - has been hurt but cannot say how much.
2.	P			Lost Mashpee business but has business elsewhere.
3.	P			50% of business was in Mashpee - now getting business elsewhere.

REPORT FROM MASHPEE

w = winter ; s = summer Date = when the business began

OTHER BUSINESSES - OPERATING

Case	*SC*	*RES*	*Date*	*# of Employees*	*PTAX*	*Reasons for hardship - other comments*
1.	T		1968		Yes	No effect - hard to get trained people - would hire Indians if trained - none have applied.
2.	T	NA				
3.	T		1974	2	Yes	No effect - have sales in 11 states.
4.	T		1963	3w/4s	Yes	No problem with taxes.
5.	T		1977	2	Yes	Does no local business.
6.	T		1975	3		70% less business - customers mostly construction workers - had to drop 4 employees.
7.	M		1967	270	Yes	Business has nothing to do with Mashpee - financial records were set in 1977.
8.	T		1977	6	Yes	Not affected.
9.	T	NA				
10.	T	DC				
11.	T		1972	15	Yes	Business is the same.
12.	T		1977	3	Yes	Certainly would employ Indians.

REPORT FROM MASHPEE

OTHER BUSINESSES - OPERATING

Case	*SC*	*RES*	*Date*	*# of Employees*	*PTAX*	*Reasons for hardship - other comments*
13.	T			3	Yes	Laid off 4 people - not as much work - customers not paying bills - will work only on cash basis now -cannot borrow from bank.
14.	M		1977	25	Yes	Just started business -catered to construction workers - closed for winter because of business decrease but also because of high heating bills and poor insulation - difficult paying taxes.
15.	P		1973	4	Yes	Definite drop in Real Estate business - now flat out.
16.	T		1938	5w	Yes	No effect
17.	T		1948	2	Yes	No effect.
18.	T		1976	4	Yes	Getting mortgage to start business.
19.	M		1970	18	Yes	Business is booming - in process of expanding - told media steak sales were fine but they still printed the reverse.
20.	T	DC				
21.	P	NA				
22.	T		1977	1	Yes	No effect.

REPORT FROM MASHPEE

OTHER BUSINESSES - OPERATING

Case	SC	RES	Date	# of Employees	PTAX	Reasons for hardship - other comments
23.	M			9w/30s	No	Closed '76 due to lack of construction worker customers - reopened Feb. '77 - applied for SBA loan then decided didn't need - would have been fine if not burned out Aug. '77 - rebuilt with private mortgage - now depending upon SBA loan to complete - owes many bills.
24.	T		1972	18	Yes	No effect.
25.	T			1	Yes	No effect at all.
26.	T				Yes	No effect - most work outside of town.
27.	T	NA				(Summer business only.)
28.	T	NA				(Summer business only.)
29.	T	NA				(Summer business only.)
30.	T			2	Yes	No effect at all.
31.	M		1976	15		Wanted to expand - worked out plan with Tribal Council and SBA but bank withdrew its support - dismissed 15-20 workers - wants to leave.
32.	T	NA				
33.	T					No effect.
34.	T		1976	6	Yes	No problems.

OTHER BUSINESSES - OPERATING

Case	SC	RES	Date	# of employees	PTAX	Reasons for hardship - other comments
35.	T		1976			No growth - planning to move.
36.	M		1972	15		Those who have been boycotting have been replaced by other customers - business is fine - no difference in gross sales.
37.	T	NA				
38.	T	NA				
39.	T		1976	1	Yes	Mashpee business has dropped.
40.	T	NA				
41.	T	NA				
42.	T	NA				
43.	T		1928	2	Yes	Not as many inquiries but most business is repeat - unable to sell a house however.
44.	T	NA				
45.	T		1973	3		Dropped 4 employees - making less but cannot say how much.

REPORT FROM MASHPEE

OTHER BUSINESSES - OPERATING

Case	SC	RES	Date	# of Employees	PTAX	Reasons for hardship - other comments
46.	P					Businesses and individuals did not give as much support as before because of Indians on the team - MAC offered donation if a team would wear its tee shirts - children shouldn't be used.
47.	T		1977		Yes	Business is fine - no complaints.
48.	T		1972	3	Yes	No effects because of type of business and all white employees.
49.	T	NA				
50.	T		1976	6	Yes	Difficulties have nothing to do with suit.
51.	T		1976	2		
52.	P		1975			First year lost money - second year came the suit - no loan from bank or SBA - gear is rusting - would sell and move if could - unemployed now.
53.	T		1964	2	No	Dropped 2.
54.	T	NA				
55.	T	NA				(Summer business only.)
56.	M		1967	6		10% drop - more difficult to cover heat and minimum wage costs - media and Town Officials did not contact them about news on drop of novelty and magazine sales.

OTHER BUSINESSES - OPERATING

Case	*SC*	*RES*	*Date*	*# of Employees*	*PTAX*	*Reasons for hardship - other comments*
57.	T	NA				
58.	M	NA				
59.	T				Yes	Job in jeopardy due to possible discrimination.
60.	T		1977	3	Yes	Business is better than before.
61.	T	NA				
62.	T	NA				
63.	T		1974	87		
64.	T	NA				
65.	T	NA				(Summer business only.)
66.	T					Last year's summer business was excellent - most summer tourists don't seem to know about the suit.
67.	T	NA				(Summer business only.)
68.	T			2	Yes	Export business - no problems.
69.	T	NA				

OTHER BUSINESSES - OPERATING

Case	SC	RES	Date	# of Employees	PTAX	Reasons for hardship - other comments
70.	P			2	Yes	Bought land - wanted to build clinic - lost money on house sale and holding the mortgage but do not consider themselves hardship.
71.	T				Yes	Doing very well.
72.	P		1972	3		Some business loss - dropped 1 worker.
73.	T	NA				(Summer business only.)
74.	T		1969	4	Yes	Problem getting customer payments - debts piling up.
75.	P		1975	1	Yes	People not spending money on dental work - is planning to move.
76.	T		1974	3	Yes	People putting off major dental work.
77.	T		1974	1w/7s	Yes	No problems.
78.	T		1974	6		No business from Real Estate but have other customers.
79.	T		1977	20	Yes	People are not eating out as much.
80.	M		1956			First winter has closed - depended upon construction workers for business recently - land suit is not only factor-competition from the newer stores also causing problems.

REPORT FROM MASHPEE

OTHER BUSINESSES - OPERATING

Case	SC	RES	Date	# of Employees	PTAX	Reasons for hardship - other comments
81.	T		1976	6		Business better than ever - more money spent on special mailings and business parcels - more box applications than ever.
82.	P		1975		Yes	Moved because of high heating bills to new location in town - temporarily closed for building repairs.
83.	T		1974	5	Yes	Would like to expand, however, and cannot.
84.	T					Some property tied up - also people seem to have a chip on their shoulder which affects the business - possible discrimination.
85.	P					Difficulty obtaining loans for necessary repairs.
86.	T	NA				
87.	T		1970	3		

REPORT FROM MASHPEE

OTHER BUSINESSES - CLOSED SINCE SUIT

Case	*SC*	*RES*	*Comments*
1.	P	NA	It is understood from friends that the store did well the first summer - wished to expand. The husband, however, was in the building trade with no hope for business which was primary reason for move.
2.	M	NA	Reports indicate serious financial problems before the suit.
3.	T	NA	Consistent reports indicate poor business management.
4.	M	NA	Financial and other problems not related to suit- FE 12/31/77; FE 1/20/78; FE 2/24/78.
5.	T		Moving and had nothing to do with the suit.
6.	P	NA	Consistent reports indicated poor business management. Opened and closed within a few months.
7.	P		Business was related to building trade and closed because of lack of business after the suit.
8.	T	NA	Those related to the business say it did not close because of the suit.
9.	T		Is not really a "business" - used Mashpee telephone as a "loop" exchange - no effect from suit.
10.	P	NA	Partner indicated the move to another town was due to loss of optometry business because of suit.
11.	M	NA	Death of owners - a relative, left in charge of estate, could not carry extra responsibility and taxes.

* SC ; Sr. Cit. = Senior Citizen

INDIVIDUALS

Case	SC	RES	Sr. Cit.*	Reasons for hardship - other comments
1.	M		SC	Cannot sell house - want to move near relatives - nervous about paying taxes.
2.- 5.	P	Anonymous		
6.	P		SC	Thinking of moving closer to family - house too large - uncomfortable situation.
7.	P		SC	Wants to sell - Real Estate agents said value had dropped 20% throughout New Seabury.
8.	P			Has lot with foundation - cannot build.
9.	P	NA		
10.	P		SC	Physical problems - house too hard to manage - no car - little money - wants to move to apartment.
11.	P			Is inconvenienced - wants to move into larger house.
12.	P		SC	House too big and expensive - one realtor advised lowering the price some, another not to - decided not to.
13.	M		SC	Wants to sell house at an advantage and build a smaller house on another lot already owns - was told house and land had depreciated 20%.
14.	P			Needs to sell for imminent medical expenses.
15.	M	R		(Would not talk unless MAC officer approved.)

INDIVIDUALS

Case	*SC*	*RES*	*Sr. Cit.*	*Reasons for hardship - other comments*
16.	P		SC	Not even mild hardship - paying taxes-can always go back to work - thought of living in Florida.
17.	P			Started business in another state just before suit - house sale stopped - rentors want appliances and furniture so can't do - high transportation bills.
18.	M	NA		
19.	P	NA		
20.	M		SC	Did not initiate Senior Citizen petition to President Carter (despite reading it at a town meeting) - illness in family.
21.	P	NA		
22.	M		SC	Agent said property reduced 30% - buyers could not get mortgage - cannot move to Florida.
23.	P		SC	Not in distress but have to postpone plans to move.
24.	P			Inexpensive living in Mashpee - loves it here - considers theirs not even mild hardship.
25.	M			Wanted to build, sell, build again - now renting.
26.	P		SC	Wants to move to a smaller house near relative.
27.	M			No longer wants to sell.
28.	M		SC	Wanted to sell but has changed mind - realtors keep calling to show house.

INDIVIDUALS

Case	*SC*	*RES*	*Sr. Cit.*	*Reasons for hardship - other comments*
29.	P		SC	Wants to sell - some people want to buy.
30.	P	NA		
31.	P		SC	Knows now he won't lose house because of suit - likes it here - plans to stay.
32.	M			Confirmed by many people that had job transfer - couldn't sell house - now getting low rental - has mortgage payments - FE 2/28/78.
33.	P		SC	Needs mortgage to start a business and help a relative - trust fund completely gone.
34.	P			House too small - cannot obtain bank approval for addition.

REPORT FROM MASHPEE

KEY

NA = no answer; not available
CLOAN = consumer loans
HOMEL = home improvement loans
MORT = mortgages
TITLE = title insurance
SPEC = special arrangements
PAY = payments being made
FOREC = foreclosures

Y = yes
N = no, won't accept, give or extend
TI = title insurance required for mortgage
R = refused to discuss on telephone
REQ = required
DH = don't handle
OD = at own discretion
2nd = give mortgages only if already have 1st mortgage at bank - a policy of all Cooperative banks

ON CAPE BANKS

Case	*NA*	*CLOAN*	*HOMEL*	*MORT*	*TITLE*	*SPEC*	*PAY*	FOREC	COMMENTS
1.		Y		N 2nd	REQ	Y	Y	0	Many Cape towns have title insurance problems - bank won't give mortgages in any town with such complications.
2.		Y	N	N	REQ		Most	0	Using forbearance on 1 foreclosure possibility related to suit 1/24/78 FE: Only 2-4% mort. default out of 200.
3.		Y		Y	OD	Y		0	
4.		Y			OD N			1	All OK - defaults are not related to suit - new mort. applications would be difficult to accept.
5.		Y					Y	0	Will extend loans to old customers - payments coming slowly but without a hitch.

Case	NA	CLOAN	HOMEL	MORT	TITLE	SPEC	PAY	FOREC	COMMENTS
6.		Y	Y	N	OD N		Most	0	Will loan to old customers-wouldn't accept title insurance company's arrangement for any town - most residents not affected by suit.
7.		Y	Y	2nd	OD		Y	0	No problems - but bank has run out of mort. money so cannot give for another 5-6 weeks.
8.		Y	Y	N	REQ		Most	1	No homeowners in difficulty because of suit.
9.		Y	Y	Y	REQ	Y	Y	0	Delinquency is normal - has $ 1 million in mort. and all OK - giving mort. to those with mort. before suit.
10.		Y		Y	D		Y	0	Very little business on Cape anymore - unlikely to accept new applications.
11.			DH	N	N			1	
12.		Y	DH		REQ		Y	2	No distress areas - no problems - title insurance company offers were haphazard, not good.
13.	R								
14.	NA								
15.	NA								

Case	*NA*	*CLOAN*	*HOMEL*	*MORT*	*TITLE*	*SPEC*	*PAY*	*FOREC*	*COMMENTS*
16.		N	Y	Y	REQ			O	Title insurance company offers are not safe - too many loopholes and attachments - will not accept new applications.
17.		DH	?	OD	DH	Y	Y	1	Most business on Cape was stopped before the suit - would hesitate taking on anything new.
18.	NA								
19.				2nd					Not accepting new applications.
20.	NA								12/7/76 FE: 1-2 customers in arrears - not enough for concern.
21.	NA								
22.	R								
23.				OD	OD		Y	1-2	Some distress loans but not related to suit - not happy with title insurance company's offers.

SUMMARY OF INTERVIEWS

KEY

Type of contact:
NA = no answer
R = refused to talk
C = confidential
DC = disconnected phone
T = talked
DS = did not say
NI = not enough information

Type of source
M = media
P = person
T = tax valuation or telephone book

DEVELOPERS (18 Total)

Contact		Source		Paying taxes	
NA	4	M	8	Yes	0
C	1	P	3	No	7
R	5	T	7	DS	1
T	8			NA,R,C	10

REAL ESTATE AGENTS (22 Total)

NA	6	M	3	Yes	9
T	16	P	7	No	2
		T	12	DS	4
				NA,C	7

BUILDERS (17 Total)

NA	4	M	3	Yes	6
DC	3	P	5	No	3
T	10	T	9	DS	1
				NA,DC	7

SUBCONTRACTORS/TRADESMEN (18 Total)

NA	1	M	1	Yes	12
DC	2	P	4	No	1
R	1	T	13	DS	1
T	14			NA.DC	4

RELATED BUSINESSES (21 Total)

Contact		Source		Paying taxes	
NA	2	M	5	Yes	12
DC	2	P	3	No	1
T	17	T	13	DS	4
				NA,DC	4

OUT OF TOWN BUSINESSES (3 Total)

T	3	P	3

OTHER BUSINESSES - operating (87 Total)

NA	25	M	9	Yes	38	7 are summer businesses only.
DC	2	P	9	No	2	
T	60	T	69	DS	20	
				NA,DC	27	

OTHER BUSINESSES - closed since suit (11 Total)

NA	8	M	3
T	3	P	4
		T	4

INDIVIDUALS (34 Total - 15 Senior Citizens)

NA	5	M	10	Did not ask
R	1	P	20	
Anon.	4		4 P-Anon.	
T	24			

REPORT FROM MASHPEE

STATISTICS OF MASHPEE AREA

POPULATION - MASHPEE AND SURROUNDING TOWNS

	Mashpee	Barnstable	Falmouth	Sandwich	Cape
1940	↑434	8333	6878	1360	37,295
1950	↑ 438/.09%	10,480/26%	8662/26%	2418/78%	46,805/25%
1960	↑ 867/98%	13,465/28%	13,037/51%	2082/-14%	70,286/50%
1970	↑1288/48%	19,842/47%	15,942/22%	5239/151%	96,656/38%
1975	↑2573/100%	27,056/36%	20,666/30%	6401/22%	127,932/32%
1978 (estimate)	↑4000/55%				
↑ 1960 - 1975	197%	101%	59%	207%	82%
↑ 1960- 1978	361%				

Source: U.S. Census and Cape Cod Planning & Economic Development Commission

↑ = increase

POPULATION DENSITY

	Land Area	1940	1950	1960	1970	1975
Mashpee	23.86 sq. mi.	18.2	18.4	36.3	54.0	107.8
Cape Cod	399.00 sq. mi.	93.47	117.3	176.2	242.2	320.6

REPORT FROM MASHPEE

POPULATION OF MASHPEE BY CATEGORY

KEY

TP = total population. I = Indians. SC = senior citizens. S = schools.

RV = registered voters. SP = summer population. NH = number of homes.

	TP	I	SC	S	RV	SP	NH
			60+ 65+				
1960	867[1]		47[17] 5.4%	156[21]	426[22]		
1965	665[2]	500[11]	79[17] 11.9%	237[21]	586[22] (1966)		
1970	1288[3]	186[12]	250[18] 19.4% 157[18] 12.2%	342[21]			1991[27]
1971		400[13]		348[21]			
1973	1844[4]			446[21]			
1974				518[21]	1731[22]		
1975	2496[5] 2573[6]		400[18] 15.6% 288[18] 11.2%	585[21]	1900[22]	15,193[24]	
1976	2941[7] 3932[8]	450 to 500[14]		665[21]	2368[22]		3000[28]
1977	4000[9]	250[15] 500[15]	513 to 600 [19] 15%	674[21]	2412[22]	10 to 25 12,000	
1978	4000[10]	400[16] 350[20]			2460[23] 2387[22]	10,000[26]	2600[29]

Earlier population figures (same sources):

1910	270	1945	343
1920	242	1950	438
1930	361	1955	524

FOOTNOTES FOR POPULATION CHART

1) Massachusetts Profile of Mashpee, Massachusetts Department of Commerce and Development; also in U.S. Decennial Censuses.

2) Massachusetts Profile of Mashpee, see above; NYT 1/8/78.

3) U.S. 1970 Census.

4) U.S. Census. Current Population Report, Series P-25 #669, May 1977, Table 1.

5) Cape Cod Planning & Economic Development Commission; BG 12/25/77.

6) See #4 above.

7) Town Census 1/1/76.

8) Includes people who are officially residents but do not reside year-round in Mashpee. Prospectus issued by Town of Mashpee for sale of bonds for middle school, 1976.

9) BG 2/19/77; Some questions can be raised about the jump from 2941 to 4000. It seems a large jump when compared with the increase in school population, registered voters, and building permits.

10) 2000 Summer. National News Program Jan. 1978.

11) CSM 9/27/77.

12) U.S. Census 1970. The much lower number is almost certainly due to Census undercount. The U.S. Census has correctly and repeatedly been criticized for severe undercounting of lower income people and especially of Indian people.

13) Russell Peters.

14) Statement by Tribe. The Tribal Council has 405 members (1976). FE 11/23/76.

15) Phoenix 10/18/77. (Town claims 250, Tribe says 500.)

16) Selectman O'Connell FE 9/30/77; NYT 1/8/78.

17) U.S. Census.

18) Cape Cod Planning and Economic Development Commission.

19) Mrs. Esther Smith at Mashpee Senior Citizens Center.

20) BG 1/8/78.

21) Mashpee School Department. Some figures for other years are:

1936 - 119	1964 - 243
1958 - 114	1966 - 256
1961 - 175	1968 - 347
1962 - 191	1972 - 393
1963 - 210	

22) Cape Cod Planning & Economic Development Commission from Secretary of State.

23) Town secretary 2/28/78.

24) Cape Cod Planning & Economic Development Commission quoted in BG 12/25/77.

25) Half are found in New Seabury, one-half elsewhere in town. FE 7/77.

26) Selectmen NYT 1/8/78.

27) U.S. Census 1970.

28) One-third in New Seabury, one-third in Popponesset. FE 9/3/76.

29) Mashpee Police Statistics from Russell Peters.

REPORT FROM MASHPEE

SENIOR CITIZENS: PERCENTAGE OF POPULATION

	Age 60+ Mashpee	Cape Cod	Age 65+ Mashpee	Cape Cod
1960			47 5.4%	
1965			79 11.9%	
1970	250 19.4%	22,103 23%	157 12.2%	16,348 17%
1975	400 15.6%	32,466 25.4%	288 11.2%	24,265 19%
1977	513 to 600 15%*			

* assuming 600

Source 1960, 1965 U.S. Census.
1970 Cape Cod Planning & Economic Development Commission.
1975 " " " " " " "
1977 Mrs. Esther Smith, Mashpee Senior Citizens Center.

PER CAPITA INCOME

	Mashpee	Barnstable	Falmouth	Sandwich	Cape Cod
1969	$ 3398	3464	3292	3123	3353
1974	5104	4834	4533	4445	4779

State of Massachusetts 1969 - $ 3407; 1974 - $ 4755

Mashpee ranked ninth on Cape Cod in 1969 and sixth in 1974.

Source: U.S. Census Current Population Report, Series P-25 # 669 May 1977; Table I.

1970 OWNER-OCCUPIED HOUSE VALUE

	$ 10,000 & under	$ 50,000 +
Mashpee	10.1%	17.4%
Orleans	1.8%	15.8%
Provincetown	7.9%	3.4%

Orleans was the town with the second largest number of $ 50,000 homes. Provincetown had the second largest number of under $ 10,000 homes. Only Mashpee had the highest of both extremes.

Census cited in Developing a Land Use Management Process - Case Study, Mashpee, Mass. Massachusetts Department of Community Affairs; Office of Local Assistance; Local Assistance Series #4, Dec. 1975.

BUILDING PERMITS

RESIDENTIAL BUILDING : Number of units authorized by building permits in Mashpee.

1946	1	1950	4	1960	9	1970	117
1947	1	1951	2	1961	15	1971	156
1948	2	1952	4	1962	12	1972	252
1949	4	1953	2	1963	97	1973	266
		1954	5	1964	87	1974	174
		1955	10	1965	110	1975	232
		1956	9	1966	97	1976	102
		1957 }		1967	108	1977	14
		1958 }	27	1968	124		
		1959 }		1969	99		

RESIDENTIAL PERMITS IN NEIGHBORING TOWNS

	Mashpee	Sandwich	Falmouth	Barnstable	Cape Cod
1970	117	146	372	424	2970
1971	156	188	422	1001	4657
1972	252	255	519	805	4677
1973	266	268	765	832	4818
1974	174	133	320	390	2305
1975	232	126	285	230	1647
1976	102	177	363	420	2295
1977	14	266	519	630	2963
	1313	1559	3565	4732	26,332
%↑	63%	71%	37%	46%	41%

↑ = Percent increase in housing units since 1970.

RANK ON CAPE 1970-77

Percent increase			Actual numbers of units built		
#1	Brewster	99%	#1	Barnstable	4732
#2	Sandwich	71%	#2	Falmouth	3565
#3	Mashpee	63%	#3	Yarmouth	3427

NEW COMMERCIAL CONSTRUCTION

	Permits	Value of permits				
	1975		1976		1977	
Mashpee	23	104,000	14	3,329,000*	14	113,000
Barnstable	29	2,000,009	35	2,358,000	50	3,082,000
Sandwich	29	132,000	27	754,000	38	1,882,000
Falmouth	47	377,000	77	1,077,000	62	1,182,000

* includes new middle school

Source : Cape Cod Planning and Economic Development Commission and Massachusetts Department of Commerce.

UNEMPLOYMENT

	Mashpee	Barnstable County (Cape Cod)
1970	7.9%	5%
1971	12.0%	6.6%
1972	14.0%	7.2%
1973	14.2%	7.3%
1974	19.9%	10.2%
1975	22.8%	12.4%
1976		
January	33.4%	19.2%
February	32.1%	18.3%
March	30.5%	17.2%
April	24.7%	13.4%
May	22.4%	12.0%
June	17.2%	9.0%
July	15.9%	8.2%
August	17.3%	9.0%
September	17.5%	9.2%
October	19.2%	10.1%
November	24.8%	13.5%
December	22.4%	12.0%
1977		
January	32.7%	18.7%
February	31.4%	17.9%
March	27.9%	15.5%
April	24.5%	13.4%
May	16.7%	8.7%
June	15.6%	8.1%
July	14.1%	7.2%
August	16.4%	8.5%
September	18.0%	9.4%
October	18.0%	9.4%
November	21.8%	11.7%
December	21.4%	11.4%
1978		
January	27.2%	15.3%

Source - Cape Cod Planning & Economic Development Commission. The Commission and the Massachusetts Department of Employment Security stress that the individual town figures are based on 1970 patterns and are not updated. County figures are updated.

TOWN FINANCES

Outstanding Long Term Debt	
1964	$ 108,000
1965	96,000
1966	109,000
1967	102,000
1968	102,000
1969	95,000
1970	88,000
1971	81,000
1972	67,000
1973	
1974	59,000
1975	52,000
1976	45,000
1977	
1978	549,100

Source - Town Annual Reports, Middle School Bond Prospectus 1976

REPORT FROM MASHPEE

TAX RATES

Full Value Rates (per $ 1000 valuation)

	1978	1971
State Average	$ 47.02	$ 59.70
Mashpee	18.24	15.00
Barnstable	17.13	29.50
Falmouth	23.52	36.00
Sandwich	14.00	14.70
Bourne	22.00	29.00
Dennis	13.20	17.00
Brewster	15.44	16.00
Chatham	12.70	22.10
Harwich	15.20	26.00
Orleans	11.80	23.90
Provincetown	28.50	25.90
Truro	12.22	11.70
Wellfleet	9.25	16.10
Yarmouth	20.60	28.20
Eastham	13.70	20.60
Mashpee ranks	# 11	# 3
Number of Cape towns with lower tax rate	10	2

Source - Massachusetts Taxpayers Foundation, Boston.

TAX LEVY - REAL AND PERSONAL PROPERTY

	Amount	Per Capita	Full Value Tax Rate[1]
1954	$ 39,066	$ 89.19	
1955	91,930	175.44	
1960	148,552	171.34	
1961	162,170	196.09	
1962	175,199	222.90	
1963	225,473	302.24	
1964	260,852	370.00	
1965	291,381	438.17	
1966	331,514	419.64	
1967	330,371	361.46	
1968	398,118	383.17	
1969	523,263	449.93	
1970	679,484	527.55	
1971	775,346	506.76	15.00
1972	970,185	547.82	18.00
1973	1,125,262	559.00	18.00
1974 [2]	562,630		
FY1975	1,580,078	701.01	
FY1976	1,802,388	722.11	10.00

(continued on following page)

[1] Time did not permit gathering of a complete set of equalized valuation figures.

[2] Half-year figure only, due to switching fiscal year.

FY 1977	$ 2,680,030	911.26*	13.73
FY 1978	2,885,930	721.48*	18.24

* Population figure used here is for 1976. There is a sharp jump from 2941 to 4000 in 1977. The rise in registered voters is a much lower percentage increase. The same is true of school population. This leads one to believe that 4000 for 1977 is too high. The same can be said of 1978.

Source - Town Annual Reports, Massachusetts Taxpayers Foundation

REPORT FROM MASHPEE

TAXES UNCOLLECTED

As of December 31 each year, except 1977 figure which is as of April 1, 1978. Source: Town Annual Reports, Town Treasurer.

Taxes include Real Estate and Personal Property.

Taxes Uncollected December 31, 1973

1973	38,270.93	

Taxes Uncollected December 31, 1974

1974*	54,208.18	* 6 month transitional year Jan.-June 1974.
FY 1975	810,639.88	

Taxes Uncollected December 31, 1975

1974*	3604.90	* 6 month transitional year Jan.-June 1974.
1975	24,296.56	
1976**	1,418,992.47	** Due to revaluation tax bills were late. Due date for first payment Jan. 5,1976.

Taxes Uncollected December 31, 1976

FY 1975	2070.84
FY 1976	56,213.64
FY 1977	1,706,959.98

Taxes Uncollected April 1, 1978

FY 1977	15%
FY 1978	60%

Percent Uncollected as of :

	December 31 each year*	December 31 the following year
1973	3.4%	
1974 (Jan.-June)	9.6%	.6%
FY 1975	51%	1.5%
FY 1976	78%	3.1%
FY 1977	64%	15% as of 4/1/78
FY 1978	60%*	

* except 1978 which is as of April 1, 1978.

Note: The percentages in the first column for 1975,1976,1977,1978 are after the first half of the bill is due.
In 1975 the percentage is one month after due date.
In 1976 the percentage is the same time - bills were sent one month earlier thus some bills paid.
In 1977 same as 1976.
In 1978 the percentage is two months after due date.

FOOTNOTE REFERENCES: NEWSPAPER, MAGAZINE, ORGANIZATION

Abbreviation	*Name*	*City/State*
AM	Atlantic Monthly	Boston, MA.
AN	Arrowhead Newsletter	Boston, MA.
B & T	Banker & Tradesman	Boston, MA.
BE	Berkshire Eagle	Pittsfield, MA.
BG	Boston Globe	Boston, MA.
BP	Barnstable Patriot	Hyannis, MA.
C	The Circle	Boston, MA.
CCN	Cape Cod News	Hyannis, MA.
CCO	Cape Cod Oracle	Orleans, MA.
CCT	Cape Cod Times	Hyannis, MA.
CSM	Christian Science Monitor	Boston, MA.
CV	Cape Verdean	New Bedford, MA.
FE	Falmouth Enterprise	Falmouth, MA.
HA	Herald American	Boston, MA.
MAC	Mashpee Action Committee	Mashpee, MA.
MB	Mashpee Bulletin	Mashpee, MA.
MCN	Mashpee Coalition for Negotiation	Mashpee, MA.
NEM	New Englander Magazine	Henniker, N.H.
NT	News Tribune	
NYT	New York Times	New York City, NY
PH	Phoenix	Boston, MA.

R	Register	Yarmouthport,MA.
SDM	Seven Days Magazine	New York City, N.Y.
SST	Sunday Standard Times	New Bedford, MA.
ST	Standard Times	New Bedford, MA.
TM	Time Magazine	Chicago, IL.
VG	Vineyard Gazette	Vineyard Haven, MA.
WM	Win Magazine	Rifton, New York
WP	Washington Post	Washington,D.C.
WT	Worcester Telegram	Worcester, MA.
WQRC	WQRC Radio Release	Hyannis, MA.
WST	Wall Street Journal	New York City, N.Y.

REPORT FROM MASHPEE

ARTICLES CONSULTED

Date	Publication	Title
4/14/78	CCT	Selectmen Meet Insurance Director
4/14/78	FE	Candidates Night
4/14/78	FE	Emergency Assistance
4/14/78	CCT	Town, Tribe Discuss
4/14/78	CCT	Selectmen OK Plan
4/14/78	BG	Misleading Unemployment
4/12/78	CSM	Indians Plan Council
4/11/78	FE	Talks Possible
4/10/78	CCT	Attorney Predicts
4/8/78	CCT	Key To Land Claim
4/7/78	CCT	Candidates Place Views
4/7/78	FE	March Building Busy
4/7/78	BG	Movement in Mashpee
4/7/78	FE	Forum Sponsors Encouraged
4/7/78	FE	To All Residents
4/7/78	FE	Report From NIC
4/6/78	HA	Land and $4 M Sought
4/6/78	CCT	Settlement May Cut Corners
4/6/78	BG	Mashpee Offers Solution
4/6/78	CCT	Plan Not Acceptable
4/6/78	CSM	Mashpee Asks Congress
4/4/78	CCT	Bingham Hits Proposal
4/4/78	FE	Single Police, Fire Challenged
4/78	Form Announcement	Mashpee - The Alternatives
4/4/78	FE	New Trial Denied
4/4/78	FE	Panel for Forum
4/4/78	CCT	Judge Rejects
3/31/78	FE	Judge's Ruling
3/31/78	FE	Report From Mashpee
3/31/78	FE	He'll Meet In Mashpee
3/31/78	FE	Exploring Alternatives
3/31/78	FE	Masters Suggest Settlement
3/30/78	CCT	Cape - New Suburbia
3/30/78	CCT	Construction Booms
3/28/78	FE	Mashpee Matters
3/28/78	FE	Building on Cape
3/28/78	FE	New Construction
3/28/78	FE	Suit Dismissed - Appeal Likely
3/27/78	CSM	Controversy Still Boils
3/27/78	CCT	Won't Pay Ransom
3/27/78	NYT	Construction Boom
3/27/78	CCT	Innocent Suffer
3/26/78	CCT	Decision Settles Nothing
3/26/78	CCT	Unemployment

Date	Publication	Title
3/25/78	NYT	Suit Dismissed
3/25/78	CCT	Judge Dismisses Case
3/25/78	BG	Want New Trial
3/24/78	FE	Coalition Not Sponsoring Meeting
3/24/78	FE	Real Estate Assessed
3/24/78	FE	Election Talk
3/24/78	FE	State Hears Both Sides
3/24/78	CCT	Backs Selectmen
3/24/78	FE	Benway Won't Join Seminar
3/24/78	FE	Mashpee Town Hall
3/22/78	MAC Newsletter	
3/22/78	CCT	Coalition Not Sponsoring
3/21/78	FE	Conference on Indian Concerns
3/20/78		Letter to Dukakis
3/17/78	FE	What's It All About?
3/17/78	CSM	Indian Land Disputes
3/17/78	FE	Three Pay Levels
3/17/78	FE	Reason And Compromise
3/17/78	CCT	Group Plans Seminar
3/17/78	FE	Coalition Plans Seminar
3/17/78	FE	Glass Is Third
3/16/78	CCT	County Abates Taxes
3/14/78	FE	Quakers Study Impact
3/14/78	FE	Quakers Meeting On Indians
3/14/78	FE	Augat To Expand
3/12/78	CCT	Blaze
3/11/78	CCT	Coalition Spokesman Objects
3/10/78	CCT	Mashpee To Maine
3/10/78	FE	Bingham Runs
3/10/78	CCT	Bingham Runs
3/10/78	CCT	Mashpee May Get Money
3/5/78	CCT	Ask Vote On Suit
3/3/78	FE	SBA - 9 Applied
3/3/78	FE	Elected by Rights Congress
2/28/78	WQRC	Points For Contemplation
2/28/78	FE	Owner Relates Hardship
2/26/78	CCT	Expose Officials
2/24/78	BG	Indians VS. Archaeology
2/24/78	FE	Mashpee Station
2/24/78	FE	Board Goes To Court
2/24/78	FE	Mashpee Town Hall

Date	Publication	Title
2/24/78	FE	Mashpee Meeting
2/24/78	FE	Selectmen At Colorado
2/24/78	FE	Mashpee Meeting
2/23/78	CCT	Seek Firehouse
2/22/78	CCT	Special Town Meeting - Finances
2/21/78	CCT	Petitions Withdrawn
2/21/78	Warrant	Special Town Meeting
2/21/78	CCT	Petitioner Withdraws
2/17/78	CCT	Settle
2/17/78	CCT	Close Firehouse
2/17/78	FE	Aging Firehouse
2/17/78	FE	Appeals Board on Keliinui
2/17/78	FE	Augat - Record Income
2/17/78	FE	Town Hall
2/16/78	CCT	Cash Jingle
2/12/78	CCT	Capes Employment
2/9/78	CCO	Wamps in Wellfleet
2/7/78		Fact vs. Fiction (letter)
2/7/78	FE	Fire Problem at Legion Post
2/7/78	FE	Development Causing Cape's Water Pollution?
2/7/78	FE	Growing Pains In Cape Cod
2/7/78	FE	Dump In Mashpee
2/7/78	FE	Destructive Fires
2/7/78	FE	Year of Frustration (letter)
2/7/78	FE	Charges Irresponsibility (letter)
2/5/78	CCT	Capes Employment
Jan./Feb.	The Circle	Disappearing Tribe
1/78	CV	Indians Get Robbed
1/27/78	FE	Effect of Land
1/27/78	FE	Mashpee Ruling
1/27/78	FE	3 Businesses
1/27/78	FE	License Decision
1/27/78	CCT	Mashpee Selectmen Suspend Officers
1/27/78	CCT	Mashpee Asks
1/26/78	NYT	First Settlement Near
1/25/78	FE	Two Voices
1/24/78	BG	Gadflies
1/24/78	FE	U.S Tax Liens
1/24/78	FE	Mashpee Mortgages
1/24/78	FE	Mashpee Tax Bills
1/24/78	FE	Mashpee Verdict

Date	Publication	Title
12/31/77	FE	Trial Drawings
12/31/77	CCT	Due for Jury Decision
12/31/77	HA	Last of 52 Witnesses
12/30/77	CCT	Tribe Existed 1600
12/29/77	CCT	Indians No Tribe
12/28/77	CCT	Items to Ponder
12/27/77	CCT	MCN Member Rips
12/26/77	CCT	Christmas In Mashpee
12/25/77	BG	Cape Cod in Winter Peace
12/25/77	NYT	Defense Ends Case
12/22/77	CCT	Ind. Gave Land
12/22/77	BG	Mashpee History
12/21/77	CCT	Few Indians
12/21/77	CCT	Lawyer Hits Definition
12/20/77	FE	Other Editors: The Mashpee Case
12/20/77	FE	Another $125,000
12/20/77	FE	Witness Doubts
12/20/77	CCT	Sociologist Testifies
12/20/77	CCT	$ 125,000 OK
12/19/77	CCT	8th Week of Trial
12/19/77	leaflet	MCN leaflet
12/17/77	CCT	No Tribe
12/17/77	CCT	Witness Claims No Tribe
12/16/77	CSM	Attention Turns
12/16/77	CCT	Kennedy and Dukakis Ask Aid
12/16/77	FE	Mashpee Appeal For State Aid
12/16/77	FE	Mashpee Town Hall
12/16/77	FE	Trial Calendar
12/16/77	FE	Defense Downgrades Tribal Role
12/15/77	FE	Time for Equality
12/15/77	CCT	Mashpee Needs Help
12/15/77	CCT	Judge OK's Defense Testimony
12/15/77	BG	Tribe Is Challenged
12/15/77	NT	Mashpee Needs Help
12/14/77	CCT	State Weighs Loans Aid
12/14/77	CCT	Judge Hears Debate
12/13/77	CCT	Can't Speed Up Trial
12/13/77	FE	Selectmen Want More State Aid
12/13/77	FE	Must Be Unanimous Decision
12/13/77	CCT	Indians Widen Net
12/13/77	BG	Role of Indian Chiefs
12/12/77	BG	Trial Resumes
12/9/77	FE	Trial Resumes
12/7/77	CCT	Recess for Jurors
12/6/77	FE	Fringe Benefits

Date	Publication	Title
12/5/77	CCT	Selectmen Defend Expenses
12/2/77	FE	Trial Expenses
12/2/77	FE	Trial Resumes
12/1/77	BG	3 Letters
11/29/77	FE	Just Solomon
11/29/77	FE	Car Pool Needed
11/29/77	CCT	Town Accounts
11/28/77	BE	Rights and Wrongs
11/26/77	CCT	Indian Giver
11/25/77	FE	New Date For Mashpee Meeting
11/25/77	FE	Preacher Testifies
11/25/77	FE	Selectmen Had $ 57 lunch
11/24/77	NYT	Little to be Thankful
11/24/77	BG	2 Weeks Recess
11/24/77	CCT	Tribe Documents
11/23/77	CSM	Thanksgiving - Claims
11/23/77	CCT	Legal Fee
11/23/77	CCT	4 Witnesses
11/22/77	CCT	Back Selectmen
11/22/77	CSM	Shifts to Defense
11/22/77	CCT	No Tribe Now
11/22/77	FE	No Negotiations
11/22/77	FE	Defense Opens
11/21/77	CCT	Who's Kennedy Kidding
11/21/77	NYT	Indians Rest Case
11/19/77	CCT	Judge Rejects Dismissal
11/19/77	BG	Mashpee's Turn
11/18/77	CCT	Expert - Ancestry
11/18/77	FE	Studds Authority
11/18/77	FE	Studds Visits
11/17/77	CCT	Smithsonian Expert
11/17/77	BG	Tribe Exists
11/17/77	BG	Mashpee Plan Illusory
11/16/77	CCT	Judge Rules Out Test
11/16/77	CSM	Judge Strikes Testimony
11/16/77	CSM	Arbiter
11/16/77	BG	Mashpee Plan Unprincipled
11/16/77	CCT	Attorneys Speculate
11/16/77	CCT	Kennedy Defends Record
11/15/77	CCT	US Official Testifies
11/15/77	FE	MAC View
11/15/77	FE	Indian Bureau Official
11/15/77	BG	Tribe does not restore land values
11/14/77	NYT	Tribe Credentials

Date	Publication	Title
11/11/77	CSM	History Lesson
11/10/77	BG	Teacher Testifies
11/10/77	FE	Indians' Key
11/10/77	FE	Selectmen - Time Out
11/10/77	FE	Mills Questioned
11/10/77	FE	Sioux Author
11/10/77	FE	How Long
11/10/77	CCT	Chief Defends
11/9/77	MCN	Selectmen Block Aid
11/9/77	CSM	Tribal Entity
11/9/77	CCT	Chief's Testimony
11/9/77	BG	Mashpee Indian
11/9/77	HA	Chief Tells Story
11/8/77	CCT	St. Clair Seeks Data
11/8/77	FE	Coalition Urges Negotiation
11/8/77	FE	Genealogist Tells About Kinships
11/7/77	CCT	$80,000 for Legal Defense
11/7/77	BG	Selectmen - Indian Ties
11/6/77	CCT	Indian Leader Sees Growing Hostility
11/5/77	BP	Ancestry is Key
11/5/77	CCT	Mashpee Trial Tempo
11/4/77	FE	Medicine Man Answers
11/4/77	FE	Anthropologist Campisi
11/4/77	CCT	Denial Irks Coalition
11/4/77	CCT	Notetakers Pack Courtroom
11/4/77	FE	Cape Cod Feelings
11/4/77	CCT	Tribal Chief's Deposition
11/4/77	CCT	Medicine Man Testifies
11/4/77	FE	Defining Tribe
11/4/77	NYT	Credentials Contested
11/3/77	HA	Scientist's Tribe
11/3/77	BG	Wampanoags Need Proof
11/3/77	BG	Mashpees Less Ceremonial
11/2/77	HA	Mashpees Are A Tribe
11/2/77	BG	Mashpees Get Backing As Tribe
11/1/77	CCT	Irresponsibility Charged
11/1/77	CCT	Genealogist Is Witness
11/1/77	FE	Mashpee Board
11/1/77	CCT	Two Experts
11/1/77	FE	Selectman Says Trial Is Costing
11/1/77	MCN	Letter to Kennedy

Date	Publication	Title
10/31/77	CCT	$4 Million Won't Lessen Plight
10/30/77	NYT	Indians Demonstrate
10/30/77	CCT	Lighter Side of Courtroom
10/30/77	MCN	News Release
10/30/77	MCN	Proposed Newsletter
10/29/77	BG	Senate Fails
10/29/77	HA	Indian Payment Bill
10/29/77	CCT	Mashpee Talks
10/29/77	BG	To Be Indian
10/29/77	CCT	Mashpee Trial
10/28/77	FE	Bill Dead
10/28/77	BG	Mashpee Not Recognized
10/28/77	HA	Mashpee Tribe
10/28/77	FE	Pre Trial Expenses
10/28/77	FE	Defense Seeks to Shake Claim
10/28/77	FE	Term "Ransom"
10/27/77	CCT	Recipes
10/27/77	CCT	Indian Nation - 2 Years Old
10/27/77	HA	Cookery Lessons
10/27/77	BG	Indian Customs
10/27/77	CSM	Case Takes Turn
10/26/77	MCN	Proposed Newsletter
10/26/77	CCT	Search for Roots
10/26/77	HA	Indians Sold Land 1870
10/26/77	CCT	Common Land Sales Questioned
10/25/77	FE	Someone Needs A Lesson
10/25/77	FE	$ 4 Million Ransom
10/25/77	FE	An Alternative
10/25/77	FE	Expert on Indian Side
10/25/77	CCT	Witness Testifies
10/25/77	CSM	Wampanoags Seek Settlement
10/24/77	CCT	Historian Says Indian Took Woes to King
10/23/77	NYT	Indian Suit In Mashpee
10/23/77	BP	Negotiating Over Mashpee
10/22/77	CCT	Land Takings
10/22/77	HA	US Offers Indians $ 4 M
10/21/77	CCT	Senators Propose
10/21/77	FE	What Makes An Indian
10/21/77	FE	Mashpee Witnesses
10/21/77	CCT	Mashpee Jurors
10/21/77	FE	Each Side
10/21/77	FE	Yesterday Federal

Date	Publication	Title
10/21/77	HA	Unemployment Adds Woes
10/21/77	HA	Trial Hears Lore
10/21/77	BG	Tribe Kept Its Identity
10/20/77	CCT	Mashpee Defense
10/20/77	BG	Mashpee Indians
10/19/77	BG	Wampanoags Status
10/19/77	HA	1859 Census
10/19/77	CSM	Lawyers for Indians
10/19/77	NYT	Status Argued
10/19/77	CCT	Contradictory Claims
10/18/77	WP	Indians Open Battle
10/18/77	CCT	Attorneys Battle
10/18/77	NYT	Tribe Status
10/18/77	BG	Jury Picked
10/18/77	FE	Survivors
10/18/77	CCT	In Court
10/18/77	CCT	Diversified Jurors
10/18/77	PH	Battle of Two Mashpees
10/18/77	NYT	Jury Sworn
10/18/77	FE	Trial Opens In Boston
10/18/77	FE	Falmouth Among Jurors
10/18/77	FE	Lawyers Open Trial
10/18/77	CSM	Many Eyes
10/18/77	CCT	Mashpee Suit Jurors
10/18/77	CCT	Land Claim Attorney
10/18/77	NYT	Status Of Tribe
10/18/77	BG	Mashpee Land Jury Panel
10/18/77	BG	The Battle of the Mashpees
10/17/77	NYT	Trial Opening
10/17/77	CCT	Suit Begins
10/14/77	CCT	Indians May Cut Claim
10/14/77	CCT	Bankers Unwilling
10/14/77	BG	Land Plan Opposed
10/14/77	FE	Defense Retains
10/14/77	FE	Potential Witness List
10/14/77	FE	Trial Is Monday
10/14/77	FE	Claim Foes To Court
10/14/77	FE	$ 1,000 Contribution
10/14/77	FE	Studds Bill Opposed by Administration
10/13/77	CCT	Indian Rights Issue
10/12/77	MCN	Letter to US Representative Roncalio
10/12/77	CCT	Sets Record Straight
10/11/77	FE	Washington Bound
10/11/77	CCT	Congress Must Wait

REPORT FROM MASHPEE

Date	Publication	Title
10/8/77	CCT	Selectmen Rejoice
10/7/77	CCT	Mashpee Seniors
10/7/77	FE	Text Of The Resolution
10/6/77	MCN	An Appeal To Reason (Draft)
10/5/77	CCT	Mashpee Selectmen Buoyed
10/5/77	FE	Mashpee Needs Help
10/5/77	CCT	Action Hailed
10/5/77	CCT	New Legislation Aids
10/5/77	BG	Limit Proposed
10/5/77		Development In Mashpee
10/4/77	FE	Selectmen's Hearing
10/4/77	FE	Fostering Hate
10/1/77	MCN	MCN Letter
9/30/77	FE	Property Owners Plead Help
9/30/77	CCT	Mashpee Seeks Aid
9/30/77	FE	Studds On Mashpee
9/30/77	FE	Action Contacts Banks
9/30/77	FE	Selectmen Press Bank
9/30/77	FE	Let Laws Decide
9/28/77	CCT	Mashpee Action Came Here
9/27/77	CSM	A Different Concept
9/27/77	FE	Skinner Rejects Counter Suit
9/26/77	CCT	St. Clair Tells Town
9/26/77	CCT	Gunter Let Them Down
9/25/77	CCT	Letters Vent Feelings
9/25/77	MAC	Newsletter
9/23/77	FE	Economic Conference
9/23/77	FE	Judge Won't Defer
9/23/77	CCT	Town Has No Friends
9/23/77	CSM	Mashpee Residents
9/22/77	BP	Bank Decision Due
9/22/77	BP	MAC Resents Congressional Pressures
9/22/77	BP	Seniors Join In
9/22/77	CCT	Judge Refuses Delay
9/22/77	BP	Legislators Ask Kendall to Participate
9/22/77	CCT	Bank To Meet Selectmen
9/21/77	CCT	Mashpee Indians
9/20/77	CCT	New Turn
9/20/77	CCT	Mashpee Group Blasts
9/20/77	FE	No Negotiations
9/18/77	CCT	Bank Claims
9/17/77	BG	Hope For Mashpee
9/17/77	CCT	Kendall Trapped
9/15/77	FE	MAC Supports Hearing
9/15/77	CCT	Indian Cause OK'D

Date	Publication	Title
9/14/77	CSM	Mashpee Sees Gunter
9/9/77	CCT	Committee Contacts Gunter
9/9/77	FE	Coalition & MAC
9/9/77	FE	Clarification
9/9/77	CCT	Selectmen Insincere
9/8/77	CCT	Mashpee Seeks Mediator
9/8/77	BP	Coalition Urges Mediator
9/8/77	CCT	Petition In Mashpee
9/8/77	HA	Mashpee Asks U.S. To Mediate
9/7/77	CCT	Gunter: Let Trial Begin
9/6/77	FE	Coalition Now Permanent
9/6/77	MCN	Telegram To Brooke, Kennedy, Studds
9/6/77	MCN	Negotiate Now
9/4/77	BG	Gunter Favors Trial
9/3/77	CCT	Mashpee Presses For Gunter
9/3/77	CCT	Indians Seek Reins
9/77	CSM	Mashpee Indian Land
9/77	The Circle	Claim Hits Court
9/77	The Circle	History Of Case
9/77	The Circle	Selectman Rips
9/77	The Circle	Peters Responds
8/30/77	MCN	MCN Information Leaflet
8/30/77	CCT	Land Bought In Good Faith
8/28/77	WP	Suit By Indians
8/28/77	WP	Suit By Indians Stops Town's Growth
8/27/77	CCT	MAC Report - Ad
8/26/77	FE	Confidence Vote
8/26/77	FE	Property Values
8/26/77	FE	MCN Statement
8/26/77	FE	Correction On Philip Herr Quote
8/26/77	FE	MAC Statement
8/26/77		Letter To Selectmen Proposing Questionnaire
8/26/77	FE	MCN-MAC Meet With Selectmen
8/24/77	FE	MCN Statement To Selectmen
8/23/77	FE	Report On Forum
8/23/77	FE	Support Of Tribal Council Offer
8/21/77	R	Whites Took Over
8/21/77	CCT	New Seabury Hardship
8/19/77	FE	New Offer By Tribal Council
8/18/77	BG	Indians Offer Compromises
8/12/77	FE	Justice Department Comm. Relations On Forum
8/4/77	CCT	MAC Letter To President
7/28/77	MCN	Press Relase
7/28/77	MCN	Public Announcement of Forum

Date	Publication	Title
7/28/77	CCT	Legislature For Small Business Aid
7/22/77	CCT	Bond Aids Mashpee
7/18/77		Letter From Studds
7/17/77	BG	Doubts
7/15/77	FE	Sympathetic
7/15/77	CCT	Call For Action
7/15/77	CCT	Gunter Looks
7/14/77	BP	Discrimination Cases
7/14/77	CCT	Rights For All
7/14/77	CCT	Bank Denies Funds
7/13/77	BG	Land Claim Deadline Extended
7/13/77	CCT	Extension Voted
7/12/77	BG	Suit Costs
7/12/77	BG	Name Limit
7/11/77	CCT	Cash To Solve Claims
7/11/77	BG	Bill Due
7/9/77	CCT	Suit's Historian
7/8/77	FE	New Seabury Conveyencing Co.
7/8/77	CCT	One More Step
7/8/77	FE	Praying Indians
7/8/77	CCT	End Claims
7/8/77	FE	Mashpee Eyed Suit
7/3/77	BG	Powwow
7/2/77	R	Mashpee: How The Whites Took Over
7/77	VG	"They Only Want Land"
July Report		Kennedy On Mashpee
6/29/77	BG	Cartoon
6/29/77	CCT	Survey
6/28/77	BG	Carter Gets Claims
6/28/77	FE	Selectmen Hold Weight
6/24/77	FE	Lawyers Favor Settlement
6/24/77	FE	Bingham Letter
6/24/77	FE	"As She Sees It"
6/24/77	FE	Angry Protest
6/14/77	FE	Defendants Challenge "Tribe" Existence
6/14/77	FE	Suit To Open Oct.
6/14/77	CCT	Congress Can Erase Claims
6/12/77	CCT	Looking Back
6/9/77	CCT	Studds Letter - Reactions
6/9/77	CCT	Oct. Trial Date
6/7/77	CCT	House Delays Date For Suit
6/5/77	BG	Case Studied
6/4/77	BG	Trial In Oct.
6/3/77	FE	Praying Indians
6/3/77	FE	Dispute On Tribal Definition
6/2/77	BG	Deadline Extended
6/2/77	BP	MAC To D.C.
6/2/77	CCT	Tribe Status
6/2/77	BG	R.E. Sales No Go

Date	Publication	Title
6/2/77	BG	Briefs Filed
6/1/77		Studds Open Letter
5/31/77	FE	Options
5/29/77	BG	Land Alternatives
5/27/77	FE	No Economy in Mashpee
5/26/77	CCT	Public Unclear
5/24/77	CCT	Officials Talk In D.C.
5/20/77	FE	MAC To Washington,D.C.
5/20/77	FE	Indian Speaks
5/19/77	BP	Ins. Gets Harder Look
5/18/77	CCT	Title Ins. Is Topic
5/18/77	FE	Mashpee Has Historian
5/16/77	CCT	Title Insurance On Way
5/12/77	CCT	House OK's Bill
5/10/77	BG	Briefs Filed
5/10/77	CCT	For The Record
5/9/77	CCT	Progress Report
5/9/77	BG	Plan To Aid Mashpee
5/8/77	BG	Financial Help
5/7/77	CCT	FHA Loans OK
5/6/77	FE	Group Asks Representation
5/6/77	FE	2 Formal Statements
5/6/77	FE	Mashpee Relief
5/6/77	FE	Historian Joins Defense
5/6/77	FE	Mashpee's Traveling Selectmen
5/5/77	CCT	Land Suit Keeps O'Connell In Race
5/5/77	BP	Board Deplores Tribal Statement
5/4/77		MCN Letter To Maxim
5/4/77	CCT	Selectmen Answer Indians
5/4/77	CCT	US Seeks Land Suit Extension
5/3/77	FE	Suit Sparks Debate
5/3/77	FE	Fed. Approach
5/3/77	CCT	Greelish Proposal
5/3/77	FE	Mashpee Solons Answer
5/3/77	CCT	Panel Backs Funds
5/1/77	CCT	Senate Hearing
5/1/77	CCT	Land Use Factor
4/29/77	FE	House Oks Aid
4/29/77	FE	Mortgage Aid
4/29/77	FE	Selectmen On Road
4/29/77	FE	Mashpee Dispute

Date	Publication	Title
4/29/77	FE	About Compromise
4/29/77	FE	Mashpee Selectmen Often On Road
4/29/77	FE	About The Compromise
4/29/77	FE	The Mashpee Dispute
4/29/77	FE	Study On Land Suit
4/29/77	FE	Mortgage Aid Bill
4/29/77	CCT	House Panel
4/28/77	BP	Mashpee Tide Watcher
4/28/77	BP	Simpson's History
4/28/77		Greelish Proposal
4/27/77	CCT	"Another Choice"
4/26/77	FE	Mashpee Group Presses Settlement
4/26/77	HA	Mashpee Versus Mashpee
4/25/77		Letter To Gunter
4/24/77	WT	Development vs. Open Space
4/22/77	FE	Tribal Council Urges Wider Involvement
4/22/77	CCT	Selectmen Insurance
4/21/77	CCT	Loss Of Rights
4/21/77	BP	Open Letter From Tribe
4/21/77		Open Letter From Tribe
4/20/77	CSM	Indian Flexibility
4/19/77	CCT	Rap Maxim's Washington Trip
4/19/77	CCT	Out Of Court Settlement
4/16/77	CCT	Settle Land Claim
4/15/77	FE	Negotiate Or Concede
4/15/77	FE	Bill On Mashpee Mortgage
4/15/77	CCT	Candidate Proposes Mortgage Bill
4/15/77	CCT	Indian & Pols Debate Suit
4/15/77	FE	Gunter To Act
4/15/77	FE	Is Negotiate A Dirty Word
4/14/77	CSM	Mashpee Accepts Carter's Envoy
4/13/77	BG	Mashpee Accepts Gunter
4/13/77	CCT	Gunter Named
4/12/77	CCT	Protest At White House
4/12/77	FE	Mashpee Talks
4/11/77	CCT	White House Talks
4/11/77	TM	Should We Give?
4/10/77	BG	Indians Get Federal Dollars
4/9/77	FE	Title Insurance Ok'd
4/9/77	FE	Indian Land Values
4/8/77	BG	Indian Claim Panel
4/8/77	FE	Mashpee Property
4/8/77	FE	Mashpee Foes
4/7/77	BG	Emergency Federal Loans
4/7/77	CCT	Ted & Brooke File Aid Bill
4/7/77	BP	Bill Amended

Date	Publication	Title
4/7/77	BP	MAC Meeting
4/6/77	WSJ	Meet Indians Claims
4/6/77	BG	Bills Aiding Bay State
4/6/77	BG	Mashpee Gets Some Insurance
4/6/77	CCT	Mashpee Offered Title Insurance
4/5/77	FE	Meeting In Mashpee
4/5/77	CCT	Visitors Tell Mashpee
4/5/77	BG	Mashpee Told: You're Not Alone
4/5/77	BG	Senate Ok's Aid
4/5/77	BG	Whites Organize
4/5/77	FE	Raising The Rhetorical Ante
4/5/77	FE	Some Favor Negotiation
4/4/77	CCT	Indian Suit
4/4/77	CCT	Mashpee Breathing Spell
4/3/77	CCT	Senate Aid Raises Hope
4/2/77	BG	US Senate Moves To Aid Mashpee
4/1/77	CCT	White House Hosts Talks
4/1/77	FE	Indians Multi-million Dollar Claim
4/1/77	BG	Expert To Check Claim
4/1/77	BG	Mashpee Dispute
4/1/77	CCT	Suit Defendants Meet
4/77	AN	Native Americans In S. New England
3/31/77	BG	Mashpee Tribe Seeks $500M
3/29/77	FE	The Tribe Calls A Halt
3/27/77	NYT	Sovereignty Reborn
3/25/77	FE	Defendants In Suit
3/25/77	CCT	Claims Court
3/25/77	FE	Would Negotiate (Letter)
3/24/77	CCT	Beware Sales Pitch
3/23/77	BG	Counter Suit Filed
3/23/77	CCT	Owners File Suit
3/23/77	CCT	Mashpee May Get Title Insurance
3/23/77	CCT	Land Suit
3/23/77	CCT	Mashpee Owners File $300M Countersuit
3/22/77	FE	Warning To Mashpee (Letter)
3/22/77	FE	Indian Television Series
3/22/77	CCT	Mashpee Bridging Communications Gap
3/22/77	FE	Land Claim Parley
3/21/77	CCT	Mashpee Indians
3/18/77	CCT	Mediator Expected
3/18/77	FE	Carter Was Ready
3/18/77	FE	Selectmen Renew Carter Request
3/18/77	FE	MAC & Council

Date	Publication	Title
3/17/77	BP	Island Trust Bill
3/17/77	BP	"So Sorry" Says White House
3/17/77	CCT	No Discussion
3/17/77	BP	Town Files Counterclaim
3/16/77	CCT	Tepid Carter
3/15/77	FE	Claim "Conquest"
3/15/77	FE	Mashpee Land Suit
3/15/77	FE	Relief Needed
3/14/77	CCT	Forum Due
3/13/77	CCT	Hails Selectmen
3/12/77	CCT	Mashpee Mediator
3/12/77	BG	Carter Assigns Representative
3/12/77	FE	State Role
3/11/77	BG	Landowners; Mashpee File
3/11/77	CCT	Be Compassionate
3/11/77	FE	Owners Want Money
3/11/77	FE	Dedicated Selectmen (Letter)
3/11/77	CCT	Mashpee Files $200M Counter Claim
3/11/77	HA	Giving It Back
3/11/77	FE	Hope For Mashpee
3/10/77	WQRC	Broadhurst Report
3/10/77	BP	Mashpee Tide Watcher
3/10/77	CCT	Mashpee Board
3/8/77	FE	Brooke Sees Federal Role
3/8/77	FE	Selectmen Urge
3/8/77	BG	Newman To Handle
3/8/77	FE	Action Committee
3/6/77	CCT	Mashpee Needs
3/5/77	CCT	Mashpee Selectmen
3/4/77	FE	Mashpee Mediator
3/4/77	FE	Mashpee Role In Solving Suit
3/4/77	CCT	Brooke Urges Negotiation
3/3/77	BP	Brooke Urges Negotiation
3/3/77	BP	Skinner Rules Against Town
3/2/77	CCT	Settle Land Claim
3/1/77	FE	Selectmen Urge President
3/1/77	CCT	Land Developer To Brooke
3/1/77	BG	US To Help
3/1/77	CCT	Brooke To Seek Aid
3/1/77	FE	Judge Won't Dismiss Suit
3/77	MAC	MAC Newsletter
2/28/77	CCT	Indians Need Justice
2/28/77	CCT	Negotiator Choice Is Near
2/28/77	BG	Negotiation Claims
2/28/77	CCT	Banker Aid Sought

Date	Publication	Title
2/27/77	BG	US Press Talks
2/27/77	CCT	Federal Mediator Named
2/26/77	CCT	Brooke Speaks
2/25/77	FE	Mashpee Appeals To Banks
2/24/77	BP	Struggling To Keep Afloat
2/23/77	CCT	Banker Aid Sought In Mashpee Suit
2/23/77	CCT	No Easy Answers In Mashpee
2/22/77	FE	Mashpee Litigants
2/22/77	FE	Other Editors Are Saying
2/22/77	FE	Citizens Agree To Try Negotiation
2/19/77	BG	Agree To Negotiate
2/18/77	FE	Wamps In Mashpee
2/18/77	FE	President Considers Mashpee
2/17/77	BP	Kennedy Meeting
2/15/77	BG	MAC Wants Response
2/15/77	BP	Suit Reps Meet
2/14/77	CCT	Brooke Visits Mashpee
2/11/77	FE	Letter To President
2/11/77	FE	Mediation
2/11/77	FE	Bid To White House
2/11/77	CCT	It's Hogwash (Letter)
2/11/77	FE	MAC Meets Kennedy
2/11/77	BG	Indian Land Claim
2/11/77	FE	Brooke To Visit
2/10/77	BP	Mashpee Tide Watcher
2/10/77	BG	Seek Mediator
2/10/77	BP	Kennedy Listens
2/10/77	BP	O'Neill Asks For Federal Aid
2/9/77	BG	Maine-Massachusetts Split
2/8/77	CCT	Kennedy Aid To Mashpee
2/8/77	CCT	State Seeks U.S. Help
2/8/77	BG	Kennedy Aids
2/?/77	FE	Selectmen Ask For Bank Aid
2/6/77	BG	State Aids In Bond Sale
2/5/77	CCT	Dukakis Asks For Mediator
2/4/77	CCT	Brooke Visit
2/4/77	CCT	Drawing Real Estate Feeble
2/3/77	CCT	Foreclosure Looms
2/2/77	BG	Responsibility
2/1/77	CCT	Congress Must Act
2/1/77	FE	Lawyer Reports
2/1/77	CCT	Ted Hears Complaints
2/1/77	CCT	St. Clair-Settlement

Date	Publication	Title
1/31/77		Open Letter To Peters
1/30/77	BG	Foundation Support - Private Funds
1/27/77	CCT	Tribe Attorney Cools
1/27/77	BP	Residents in Boston "Arena"
1/27/77	BP	Mashpee Tide Watcher
1/27/77	BP	Residents Trip To Boston
1/26/77	BG	Massachusetts Indians
1/26/77	CCN	Hope For Settlement
1/25/77	HA	Ted Flayed
1/25/77	FE	Secure Values
1/25/77	BG	St. Clair Bars Suit
1/24/77		History By Birdsey
1/24/77	FE	Motion Heard
1/23/77	FE	Studds Position
1/21/77	FE	Town Response
1/21/77	FE	Hearing On Dismissal
1/20/77	CCT	Mashpee Rejects Part Of Offer
1/19/77	CCT	St. Clair Meets
1/18/77	CCT	Federal Solutions
1/18/77	FE	On Proposal
1/18/77	FE	Lawyer Sees Benefits
1/18/77	FE	Owner Of Two Houses
1/18/77	FE	Double-edged Knife
1/18/77	CCT	Council Proposal
1/18/77	BG	Indians Offer New Deal
1/18/77	FE	Indians Present Compromise
1/16/77	NEM	This Land Is Your Land
1/16/77	ST	Button On Hold
1/15/77	FE	Resolution Adopted
1/15/77	BG	Congress Urged
1/14/77	FE	Mashpee To Negotiate
1/14/77	FE	Indian Housing
1/14/77	FE	Peters To Appear
1/14/77	FE	Seeks Solution
1/11/77	FE	Land Sales
1/8/77	NYT	Indians Lose
1/8/77	FE	Postponed Trip
1/7/77	FE	Mashpee Meeting
1/4/77	FE	An Expert
1/3/77	CCT	Beginning
1/3/77	BG	Mashpee Organizes
1/77	SST	Strange Feeling In Mashpee (1/16/77)
1/77		Fund Raiser Letter
1/77	BP	MAC Director Interviewed (1/27/77)

Date	Publication	Title
12/31/76	FE	Talks Scheduled
12/31/76	FE	Title Insurance Concern
12/31/76	FE	Hassles
12/31/76	FE	Court Sets Dates
12/29/76	CCT	Indian Caretakers
12/28/76	FE	Aid Businesses
12/28/76	FE	Wampanoag - Not Spoken Language
12/28/76	FE	Defendants Response
12/28/76	FE	Abatement Requests
12/28/76	FE	Fantasy World
12/28/76	FE	Law Firm Works
12/28/76	FE	Bank Foreclosure
12/24/76	FE	Negotiations
12/24/76	FE	Support Indians
12/21/76	FE	Dialogue
12/21/76	FE	Suit In Court
12/19/76	BG	Panel Of Lawyers
12/19/76	FE	Mashpee Solons Travel
12/18/76	BG	Developers Paying
12/17/76	BG	Rights Taken
12/17/76	BG	300 Years
12/17/76	FE	Kendall Pursuing
12/17/76	BG	Double Standard
12/14/76	FE	Studds Meeting
12/14/76	FE	God Protect
12/14/76	FE	Cut Expenses
12/14/76	FE	New Seabury Won't Pay
12/14/76	FE	Kendall Mediator
12/14/76	FE	Studds Warns
12/12/76	BG	Residents V. Studds
12/11/76	NYT	Gay Head Backs Return Of Land
12/10/76	FE	Mashpee & Maine Meet
12/10/76	FE	Studds Coming
12/10/76	FE	Follow Her Example
12/10/76	FE	Kendall Files Bills
12/10/76	BG	Indian Aggressors
12/10/76	BG	Ownership Concept
12/10/76	FE	Commissioner Writes
12/10/76	FE	Fisheries Asks Guarantee
12/10/76	FE	Maxim Defended
12/10/76	FE	Sympathy Is Vital
12/10/76	FE	MAC Aim
12/9/76	FE	Reply To Peters
12/9/76	BP	Bills Filed
12/7/76	FE	Banks Go Easy
12/5/76	BG	Court Suit
12/3/76	FE	St. Clair Accounts For Money
12/3/76	CCT	Kendall Bill

Date	Publication	Title
12/3/76	FE	Mashpee Story
12/3/76	FE	Brooke's Role
12/3/76	FE	Bills Filed
12/3/76	FE	Studds Visit
12/2/76	CCT	Seek Relief
12/2/76	CCT	Lower Voices
12/1/76	FE	No Plans To Extend Suit To Falmouth
11/30/76	FE	Missed The Point
11/30/76	FE	Selectmen Reply
11/30/76	FE	Cheap Shot
11/30/76	FE	Who Is Guilty
11/30/76	CCT	Peters Raps
11/30/76	FE	Dan & Bill's Business Closing
11/30/76	FE	Council Considers Comment
11/30/76	FE	Assessors Deny Charge
11/27/76	CCT	Tribal Council Raps Mashpee Board
11/26/76	FE	Guilt Not Involved
11/26/76	FE	Tribal Council Hits Opponents
11/26/76	FE	Legal Settlement Or Tribe Status
11/26/76	FE	Dismissal Motion Frivolous
11/23/76	FE	Non-Indians Are Target
11/23/76	FE	Montana Neutral
11/23/76	FE	Hearing On Trial
11/23/76	BG	Aid Pledged To Mashpee
11/23/76	FE	1910 Census Questioned
11/23/76	FE	850 Signatures
11/23/76	FE	Posturing In Mashpee
11/23/76	FE	Selectmen Busy
11/19/76	FE	Montana Meeting Against Indians
11/19/76	FE	Indian Lawyers Answer
11/16/76	FE	Do Something
11/15/76	TM	Non-Intercourse Act
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11/12/76	FE	State Wants Role
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11/5/76	FE	Mashpee Town Hall
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Date	Publication	Title
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11/2/76	FE	No Thrill For Selectmen
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IN THE

Supreme Court of the United States

October Term, 1978

No. 77-983

STATE OF WASHINGTON, *et al.*,
Petitioners,
v.
WASHINGTON STATE COMMERCIAL PASSENGER FISHING VESSEL ASSOCIATION AND WASHINGTON KELPERS ASSOCIATION,
Respondents.

No. 78-119

STATE OF WASHINGTON, *et al.*,
Petitioners,
v.
UNITED STATES OF AMERICA,
Respondent.

No. 78-139

PUGET SOUND GILLNETTERS ASSOCIATION, *et al.*,
Petitioners,
v.
UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON,
Respondent.

MOTION FOR LEAVE TO FILE AND BRIEF OF *AMICI CURIAE*

American Friends Service Committee; Church Council of Greater Seattle; Washington Association of Churches; Office of Catholic Charities, Archdiocese of Seattle, Native American Task Force; Synod of Alaska Northwest, United Presbyterian Church; Board of Church and Society of the United Methodist Church; American Baptist Churches in the United States of America; Lutheran Council in the United States on behalf of the Lutheran Church in America; Office for Church and Society, United Church of Christ.

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MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE*

This motion for leave to file the annexed brief *amici curiae* is respectfully made pursuant to Rule 42 of the Supreme Court Rules. Consent to the filing of this brief has been granted by counsel for the United States and liaison counsel for the Intervenor Indian Tribes. Counsel for the State of Washington also consented to the filing of this brief, conditioned upon counsel for these *amici* noting that he was formerly counsel of record for the Hoh Indian Tribe, but did not actively participate in the proceedings

below. Consent has been withheld by the Washington State Commercial Passenger Fishing Vessel Association, the Washington Kelpers Association, and the Puget Sound Gillnetters Association.

The *amici* have no political or economic interest in the issue before the Court. Our interest is in the moral implications of these proceedings. The case involves solemn promises made by the United States and various quasi-sovereign Indian nations. The obligations undertaken by the United States were assumed in exchange for the benefits the treaties gave to the United States and its people. The *amici* believe the arguments posed by the state and commercial fishing groups would in effect negate the benefits which the treaties conferred to and the rights reserved by the Indian tribes. *Amici* support the tribes' position before the Court, and respectfully request the Court's consideration of this analysis of the history and law affecting this issue.

The *amici* are familiar with the issues involved in this case. The American Friends Service Committee represents a social justice arm of the Religious Society of Friends. Its concern for the rights of Indian tribes derives from early Quaker principles of contract with tribes developed when establishing the colony of Pennsylvania. The American Friends Service Committee has maintained an active Indian Affairs Program in the Pacific Northwest for many years. Early in 1960 this program initiated an in-depth study of the history behind the fishing rights issue and the contemporary attitudes and forces affecting the on-going conflict. The results of that study became the book *Uncommon Controversy—Fishing Rights of the Muckleshoot, Puyallup, and Nisqually Indians,* published by the Uni-

versity of Washington Press in 1970. The book, which went into its fourth printing in 1975, has served as a useful background resource and has been widely disseminated. The current AFSC program has produced a study of local law enforcement jurisdiction on reservations in Washington and serves as a resource for public education on contemporary Indian issues.

The Church Council of Greater Seattle is an ecumenical organization established in 1969 to provide a structure within which a number of denominations, local congregations, and church-related entities can make the determinations and decisions necessary to effective Christian witness and ministry in the Greater Seattle area. The Church Council identifies needs in the community which require church action and develops strategies to address these needs through existing church and community structures. The Council has had a Native American Concerns Task Force since 1973 which has reviewed the issues of conflict between Indian tribes and the state. Through the work of the task force, the Church Council has issued statements favoring Indian sovereignty and supporting the 1974 district court decision.

The Washington Association of Churches is an organization committed to dialogue and communication among its denominational membership. The Association has participated on the Church Council Native American Task Force and supports its positions.

These two ecumenical organizations represent the regional level of eighteen major Christian denominations. Two regional denominations have acted individually to join in the brief. They include the Native American Task Force, Office of Catholic Charities, Archdiocese of Seattle,

and the Synod of Alaska Northwest, United Presbyterian Church. In addition to this Pacific Northwest regional constituency, some denominations believe the matter before the Court is of such import that it warrants the voice of the national church organizations. For that reason the following national denominational voices have joined this brief: Lutheran Council in the United States of America on behalf of the Lutheran Church in America; the Board of Church and Society of the United Methodist Church; the American Baptist Churches in the United States of America; and the Office for Church and Society, United Church of Christ.

Too often the nation's relationship with Indian Tribes has been marred by self-seeking expediency, broken promises and unfulfilled obligations. The dominant society's efforts to "re-socialize" our Indian citizens has often failed to recognize the richness of their culture and the rightness of their lifestyle to their own value structure. The result has led to a denial of self-determination and to the disenfranchisement of our native people. All segments of our society have contributed to this unfortunate condition, including some of the past policies of the churches joining this brief. However, hopefully we are embarking on a new era in our relationship with the tribes—an era in which we underscore our obligation to our solemn contracts with them and value the contribution of their culture to our total society. It is in this spirit we approach the Court, and request that this motion to file the annexed brief *amici curiae* be granted.

Respectfully submitted,

Frederick L. Noland of
MacDonald, Hoague & Bayless
Attorney for *Amici Curiae*

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BRIEF OF *AMICI CURIAE*

INTEREST OF *AMICI*

The interest of *amici* is set forth in the preceding motion for leave to file this brief.

INTRODUCTION

Reinhold Niebuhr, the eminent American theologian, observed that:

> The most obvious rational check which can be placed upon the use of coercion is to submit it to the control

> of an impartial tribunal which will not be tempted to use it for selfish ends . . . the supposition is that the government is impartial with reference to any disputes arising between citizens, and will therefore be able to use its power for moral ends . . .[1]

The *amici* believe that the principle of an "impartial tribunal" is fundamental to the issue before this Court.

The State of Washington has a political and economic self-interest in the fishery resource and has allowed that self-interest to cloud the legitimate rights of Indian tribes to a fishery. The tribes are a small minority and have been vulnerable to the coercion of the state. They have been subjected to arrest, gear confiscation, harassment, and humiliation as they have struggled since shortly after the Treaties were ratified to have their fishery recognized and respected.

Illustrative of the disparate *political* power of these two contending groups is the fact that state court judges, who are elected for four- or six-year terms and fear the will of the majority, consistently hold against Indian treaty fishing rights whereas federal judges, who are appointed for life, consistently hold in favor of Indian treaty fishing rights—a situation reminiscent of the 1950's and 1960's when southern state court judges tended to deny civil rights of blacks, whereas federal court judges, although selected from the same pool of lawyers, insisted those rights be upheld.

The full implementation of the Indians' fishing rights, as recognized by the lower federal courts, will require adjustments within the current non-Indian fishery. However,

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1. R. Niebuhr, *Moral Man & Immoral Society* 238 (1932).

when addressing these adjustments, one cannot ignore the years of struggle Indians have faced because of past failure of the state to honor their rights.

SUMMARY OF ARGUMENT

The arguments of the *amici* can be summarized in the following six points:

1. The lower courts' interpretation of the 1855 Stevens Treaties is morally compelled and legally sound.
2. The Washington State Government has a long history of refusing to recognize Indian treaty fishing rights.
3. Hostile state reaction to the lower court decision has caused difficulties in implementation which would have been avoidable if the state had assumed a cooperative posture.
4. The responsibility for difficulties imposed on the non-Indian fishing industry should be shouldered by the state and federal governments which caused the problem, not by the Indians.
5. Implementation of *United States v. Washington* will benefit both the Indian and non-Indian citizens of the state.
6. The decision is consistent with current congressional policy of Indian self-determination.

ARGUMENT

I.

The Lower Courts' Interpretation of the 1855 Stevens Treaties is Morally Compelled and Legally Sound

The trial court, after a comprehensive review of the historical and legal evidence, rendered a decision which is legally sound and morally consistent with our nation's 1787 pledge in the Northwest Ordinance that:

> The utmost good faith shall always be observed toward the Indians; their land and property shall

> never be taken from them without their consent; and in their property, rights, and liberty, they never shall be invaded or disturbed unless in just and lawful wars, authorized by Congress; but laws founded in justice and humanity shall from time to time be made, for preventing wrongs being done to them, and for preserving peace and friendship with them. *Journal of the Continental Congress* 32:340-41.

The district court correctly recognized that "The treaty was not a grant of rights to the treating Indians, but a grant of rights from them, and a reservation of those not granted." *United States v. Washington*, 384 F. Supp. 312, 407 (W.D. Wash. 1974). *See United States v. Winans*, 198 U.S. 371, 381 (1905). In interpreting the language, "The right of taking fish, at all usual and accustomed grounds and stations, is further secured to said Indians, in common with all citizens of the territory . . .," the district court recognized the paramount importance to the tribes of the fishing rights reserved by them. In so doing, the court correctly interpreted the treaty language as it would have been reasonably understood by the tribe.[2]

Through the treaties, Indian tribes relinquished their claims to vast areas of land, timber, fishery and water resources. The district court noted that:

> To the great advantage of the people of the United States, not only in property but also in saving lives of citizens, and to expedite providing for what at the time

2. These principles of interpretation applied by the lower courts are well established in case law and were applied to the Stevens Treaties in *United States v. Winans, supra* at 380:

> We have said we will construe a treaty with the Indians as "that unlettered people" understood it, and "as justice and reason demand, in all cases where power is exerted by the strong over those they owe care and protection," and counterpoise the inequality "by the superior justice which looks only to the substance of the right, without regard to technical rules." [*Choctaw Nation v. United States*] 119 U.S. 1 . . . [*Jones v. Meehan*] 175 U.S. 1 [1899] . . .

> were immediate and imperative national needs, Congress chose treaties rather than conquest as the means to acquire vast Indian lands.

United States v. Washington, 384 F. Supp. at 330. If these treaties have any value to the Indians, it is in the protection they offer for the few rights reserved by them. *To argue that the Indians reserved no special rights to the fishery, but only kept rights to fish exactly the same as other citizens of the territory, is untenable and unconscionable.* No specific language would have been necessary to secure such a wholly illusory right. Surely the Indians understood they were reserving something "special" in return for relinquishing virtually the entire Washington Territory.

The State of Washington has argued in the past that the Stevens Treaties recognize no special tribal rights to an off-reservation fishery. This argument was soundly rejected in *United States v. Winans,* wherein the Court noted:

> This is certainly an impotent outcome to negotiations and a convention which seemed to promise more, and give the word of the nation for more.

198 U.S. at 380.

Despite this ruling, the state continues to present the same argument. As in the past, the Court should reject it and reaffirm the moral and legal obligation assumed by the United States when the benefits of the treaties were accepted by this nation.

II.

The Washington State Government Has a Long History of Refusing to Recognize Indian Treaty Fishing Rights

In 1886 the Court observed in *United States v. Kagama,* 118 U.S. 375, 384, that:

> Because of the local ill feeling, the people of the States

> where they are found are often their deadliest enemies. From their very weakness and helplessness, so largely due to the course of dealing of the federal government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power.

This prophetic statement describes the situation which has evolved in the State of Washington.

A. *State Court Actions Denying Indian Rights*

The Supreme Court of Washington has a long history of disregard for the basic validity of the treaties. The prevailing attitude was most blatantly stated in the 1916 case *State v. Towessnute*, 89 Wash. 478, 481-82, 154 P. 805, 807 (1916):

> The premise of Indian sovereignty we reject. The treaty is not to be interpreted in that light. At no time did our ancestors in getting title to this continent ever regard the aborigines as other than mere occupants, and incompetent occupants, of the soil. Any title that could be had from them was always disdained . . . Only that title was esteemed which came from white men. . . .
>
> The Indian was a child, and a dangerous child, of nature, to be both protected and restrained. In his nomadic life he was to be left, so long as civilization did not demand his region. When it did demand that region, he was to be allotted a more confined area with permanent subsistence. . . .
>
> These arrangements were but the announcement of our benevolence which, notwithstanding our frequent frailties, has been continuously displayed. Neither Rome nor sagacious Britain ever dealt more liberally with their subject races than we with these savage tribes, whom it was generally tempting and always easy to destroy and whom we have so often permitted to squander vast areas of fertile land before our eyes.

That such a decision could be rendered in 1916 by the

highest court of the state in light of the 1905 ruling in *United States v. Winans* is an example of the hostility ingrained in the attitudes of state officials.[3]

In 1977, the State Supreme Court ignored the fact that the basic ruling of the federal district court had been unanimously upheld by the Ninth Circuit Court of Appeals and that this Court had denied *certiorari.* At a time when the district court was continuing to exercise jurisdiction over the subject matter of this dispute, the majority of the Washington Supreme Court in *Puget Sound Gillnetters v. Moos,* 88 Wash. 2d 677, 691 565 P.2d 1151, 1158 (1977), agreed on the remarkable statement:

> Being cited no authority for the proposition that federal district courts have exclusive jurisdiction to construe Indian treaties—treaties which affect important interests of the state— we adhere to our own interpretation of the treaty.[4]

The State Supreme Court then went on to deny the Indian rights so carefully considered and upheld in *United States v. Washington.*[5]

One ground relied upon by the State Supreme Court was

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3. The ruling in *State v. Towessnute* effectively prohibited Indians from fishing without state licenses until the ruling was overturned by *Tulee v. Washington,* 315 U.S. 681 (1942). The lone dissenting judge in Towessnute noted that he could not concur with the majority's reasoning that the Enabling Act of the state implicitly abrogated the treaty. Judge Holcomb observed that: "Whatever may be the views of the majority as to what an Indian treaty with our national government is, whether it is a treaty between two sovereigns or not, it is certainly a solemn compact binding in law and in honor upon both parties to it . . . Good faith requires the observance of the spirit as well as the letter of the compact with the Indians, more especially because the Indian tribe is the weaker of the two parties to the compact." 89 Wash. at 489, 154 P. at 809-10.

4. *See McConaughy, The Interaction of Federal Equitable Remedies with State Sovereignty,* 53 Wash. L. Rev. 787 (1978).

5. Two dissenting state judges correctly stated that the federal district court decision was final in the federal court system and binding on the state.

that the federal interpretation of the treaty denied equal protection to non-Indians under the Fourteenth Amendment to the Constitution. The argument is without validity. This Court has often upheld treaties that reserve or grant to an Indian *tribe* rights that are different than those accorded non-Indians or non-members of the tribe. The benefits of the treaties belong to those individuals who are members of the tribes signing the treaties. All Indians do not as a "race" share in those rights. The classification is not "racial", but is determined by membership in an organization that signed a contract with the United States.

The lower federal courts simply determined the meaning of the rights reserved by the Indians when they entered into the treaties with the United States. To strike down treaties negotiated in 1855 under the Fourteenth Amendment which was adopted in 1868 would require a ruling that treaties, though valid when signed, were made unconstitutional retroactively when the Fourteenth Amendment was adopted thirteen years later. Such a ruling would violate the long-accepted rule of construction that subsequent laws do not vitiate Indian treaties unless a clear intent to do so can be shown. Such a ruling would not only be without precedent but would violate any standards of decency and good faith towards the implementation of these treaties so solemnly entered.

B. *Actions of State Agencies and State Attorney General's Office*

State executive department officers have long used their official positions and powers to deny Indians their off-reservation treaty fishing rights. As the Ninth Circuit Court of Appeals noted:

> The record in this case . . . make[s] it crystal clear that it has been recalcitrance of Washington State officials and their vocal non-Indian commercial and sports fishing allies which produced the denial of Indian rights requiring intervention by the district court. This responsibility should neither escape notice nor be forgotten.

United States v. Washington, 520 F.2d 676, 693 (9th Cir. 1975) [concurring opinion of Judge Burns].

During the 1960's the state fish and game departments pursued a vigorous policy of interference with Indian off-reservation fishing. Numerous arrests were made resulting in gear confiscation, fines, and jail sentences. State court rulings either temporarily or permanently enjoined Indians from fishing on the Green, White, Nisqually, and Puyallup rivers. State court decisions denied the existence of one tribe that was federally recognized by the Bureau of Indian Affairs. The state justified its action on the grounds that Indians had no special treaty fishery rights and that in any event state regulation was necessary for conservation. However, during this time Indians were catching well under 10% of the resource, and the state was encouraging the growth of non-Indian commercial fisheries in marine waters—where the fish were intercepted by non-Indian fishermen before they arrived at the Indians' traditional fishing sites.[6]

In the trial court the state had three years to produce evidence to support its claim that regulation of Indian fishing was necessary to promote conservation. Judge Boldt observed that:

With a single possible exception testified to by a high-

6. For reference, see: American Friends Service Committee, *Uncommon Controversy Fishing Rights of the Nisqually, Puyallup and Muckleshoot Indians* (1970).

> ly interested witness . . . and not otherwise substantiated, notwithstanding three years of exhaustive trial preparation, neither Game nor Fisheries has discovered and produced any credible evidence showing any instance, remote or recent, when a definitely identified member of any plaintiff tribe exercised his off reservation treaty rights by any conduct or means detrimental to the perpetuation of any species of anadromous fish.
>
> Unfortunately, insinuations, hearsay, and rumors to the contrary, usually but not always instigated anonymously, have been and still are rampant in Western Washington. Indeed, the near total absence of substantial evidence to support these apparent falsehoods was a considerable surprise to this court.

United States v. Washington, 384 F. Supp. at 338 n.26.

III.

Hostile State Reaction to the Lower Court Decision Has Caused Difficulties in Implementation Which Would Have Been Avoidable if the State Had Assumed a Cooperative Posture

The refusal of the state to abide by the decision in *United States v. Washington* has obstructed implementation of this decision and encouraged the lawlessness that dominates the salmon fishery.

The Washington Supreme Court effectively prevented implementation of federal court orders by ruling in 1977 that the state fisheries department had no statutory authority to allocate harvestable fish for any purpose other than conservation, and specifically could not do so to implement the Indians' treaty rights. The state Department of Fisheries then claimed to be powerless to implement the federal court orders without new state legislation.

The legislature contributed to the state's obstructionism by failing to enact bills to vest the requisite allocation

authority in the Department of Fisheries. *The Seattle Times,* Washington state's largest newspaper, editorialized on March 7, 1977:

> For far too long, the Legislature has tended to shy away from measures to give the Department of Fisheries better tools and greater flexibility for fisheries management . . . an overhaul of present laws is essential not only to improving the climate for possible negotiated settlements of Indian fishing matters, but as a way to head off violence involving non-Indian fishermen in the fishing seasons that lie ahead.

That same editorial noted a voluntary agreement between Oregon, Washington, and Indian tribes fixing a formula for the allocation of Columbia River salmon. The editors applauded that agreement as "the most important development affecting Columbia River fishing since the Indian treaties of 1855," and noted further that:

> The pact could also be regarded as setting an encouraging precedent for negotiated settlements of the prolonged and complex disputes over the Puget Sound fishery. But prospects for negotiating pacts on Indian fishing here, as well as other fishing issues, will remain fairly remote without action by the Legislature . . .

The executive department of the state has also done little to encourage cooperation and communication with treaty tribes since Judge Boldt's decision. An example is the unfortunate advocacy by the present governor of renegotiation of Indian treaties made during this nation's renegotiation of the Panama Treaty. The State Attorney General has openly opposed the lower court ruling, and has testified before the U.S. Civil Rights Commission that Indians have been made "supercitizens" (hearing before the United States Commission on Civil Rights in Seattle, Washington on October 19-20, 1977, Vol. I. p. 14).

An Assistant Attorney General has appeared before many commercial fishing groups and has been publicly quoted in the press assuring non-Indian fishermen that the lower court decision will be "overruled" because it violates their "equal rights" under the constitution.

The *amici* are distressed that the state has clouded the issue of compliance with federal court orders by the "equal protection" argument. This argument is especially inappropriate here and tends to foster racial bigotry in a society which has suffered far loo long from the damaging effects of racism. These actions by state officials, who have sworn to uphold the Constitution of the United States, are highly unprincipled, have contributed to the current level of agitation in the industry, and have encouraged flagrant illegal fishing by non-Indians. The following observations of the United States Court of Appeals for the Ninth Circuit are particularly appropriate:

> The State's extraordinary machinations in resisting the decree have forced the District Court to take over a large share of the management of the state's fishery in order to enforce its decrees. Except for some desegregation cases [citations omitted], the District Court has faced the most concerted official and private efforts to frustrate a decree of a federal court witnessed in this century.

United States v. Washington, 573 F.2d 1123, 1126 (9th Cir. 1978).

State officials and non-Indian commercial fishing groups have decried the "uncertainty" of the law in this area, in spite of definitive rulings of the federal district and Ninth Circuit courts. The clear implication of these assertions is that with "certainty" will come compliance with the law, correction of the current lawlessness in the non-Indian

fishery, and acceptance of a rational management regime including the treaty Indian fishery. The *amici* cannot accept the state's claim that the rulings of the lower court leave any uncertainties. Rather it has been the obstructionism of the state which has led to the current level of agitation and disrespect for the law. This mistaken perception of "uncertaintly" can and should be rectified by a clear ruling of this Court upholding the lower court decisions.

IV.

The Responsibility for Difficulties Imposed on the Non-Indian Fishing Industry Should be Shouldered by the State and Federal Governments Which Caused the Problem, Not by the Indians

The apportionment in the fishery should have been made 75 or 100 years ago when the state first began encroaching on the treaty right. That it has come at this stage of non-Indian fisheries development is certainly inconvenient, and requires adjustments among non-Indian fishery groups, but does not justify a denial to Indians of what is justly theirs. The burden of this adjustment rests with the state and federal governments, which created the problem by failing to recognize and accommodate the legal rights of the Indians from the beginning.[7] Responsibility for current problems should not be foisted onto the politically less

7. The historical disregard for Indian treaty rights in Washington is especially appalling in light of the federal government's fiduciary responsibility to protect those rights. Extensive case law has recognized a trust responsibility to Indian tribes. *See, e.g. Cherokee Nation v. Georgia,* 30 U.S. (5 Pet.) 1 (1831); *United States v. Kagama, supra, United States v. Sandoval,* 231 U.S. 28, 45-46 (1913); *United States v. Payne,* 264 U.S. 446, 448 (1924); *Choctaw Nation v. United States,* 119 U.S. 1, 27-28 (1886); and *Seminole v. United States,* 316 U.S. 286, 296-97 (1942).

This trust responsibility has most recently been articulated by Congress in section two of the Indian Child Welfare Act of 1978, P.L. 95-608: "Recognizing the special relationship between the United States and Indian

powerful Indian tribes. Adjustments by the non-Indian fishermen may cause hardships for some commercial and sports fishermen. Such hardships can be and are being addressed through federally sponsored buy-back programs and fishery enhancement programs, and such programs should be continued.

V.

Implementation of *United States v. Washington* Will Benefit Both the Indian and Non-Indian Citizens of the State

A. *Implementation of the Decision Forces More Thoughtful Planning in the Overall Management of the Resource*

For many years the salmon fishing industry in the state has been in serious trouble. The growth of the industry has been guided by the frontier principle that salmon are an inexhaustible resource. This policy placed undue faith in hatchery programs which were expected to replace all fish lost to poor habitat control and over-fishing. As early as 1906 the state fish commissioner noted that excessive and unregulated fishing was being permitted. State policy has continued to encourage the growth of the commercial fishing fleet despite clear evidence that the fish stocks were disappearing. Between 1911 and 1914 the average annual catch of salmon was 24,901,000 fish. The average annual

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tribes . . . the Federal responsibility to Indian people . . ." and, ". . . that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources."

The federal government has been justly criticized for its apathetic approach towards its legal and moral responsibility to protect Indian resources. In view of the long history of state interference with Indian treaty fishing rights in Washington, the 1970 decision of the United States Department of Justice to file the action below, while appropriate, was long overdue.

catch between 1971 and 1974 was 6,508,000.[8] This drastic decrease occurred despite an increase in the number of fishermen and significantly improved fishing technology.

If Indians had not courageously challenged the practices of the state, the salmon stocks may have continued to decline to a point where very few non-Indians would have enjoyed any success in the industry. As a result of the Indians' court challenges, the public consciousness has been raised, and more citizens are aware of the multidimensional aspects of sound resource management. Certainly continued restriction of Indian fishing will not cure the problems currently facing the industry.

Since the trial court decision, the tribes have taken great strides to enhance their fishery management capabilities. Mere speculation that tribal management might fall short of conservation goals does not justify denial of tribal self-regulation.

Procedures to promote cooperation were established immediately after the district court ruling in 1974. The court obtained the services of a fisheries biologist and eventually created a Fisheries Advisory Board consisting of both state and tribal representatives. This Board has resolved many technical disputes which have arisen during subsequent salmon fishing seasons. This communication is overdue and, given the tribes' interest in and dependence on a healthy resource, should lead to increased respect and concern for one of the state's unique and valuable resources. The process should be noted and encouraged.

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8. 38th to 39th *Annual Report—State Department of Fisheries*, 42nd to 45th *Annual Report—State Department of Fisheries*, 1974 State Department of Fisheries *Statistical Report*.

B. *The Decision Enables the Tribes to Develop a Stable Economy to Which They Are Culturally Suited and in Which They Reserve a Property Right*

When the Treaties were signed the tribes had a highly developed fishery on which they were economically dependent. Tribal leaders knew that reserving the right to fish was necessary to their culture and survival. Assaults on this right, along with other forms of political and cultural oppression, have caused widespread poverty and unfortunate social conditions among the Indians in the Pacific Northwest, resulting in high unemployment, shorter life spans, poor health, and low educational achievement. Despite the state's attempts to frustrate it, the trial court decision has resulted in a significant improvement of fishing opportunities to various tribes. The tribes are preparing for a future in all aspects of fishery management—marine biology, fish management technology, law enforcement, and fish processing. This future provides educational goals for tribal members and renews their pride in a livelihood and culture compatible with their history.

The state's economy is enhanced by the growing economic health of tribal communities. Money spent for groceries, goods, and services remains in the state and contributes to the local economy. Increased Indian employment in the fishery reduces poverty and the need for government assistance.

VI.

The Decision Is Consistent With Current Congressional Policy of Indian Self-Determination

Congressional policy of self-determination supports the federal district court decision.[9] The district judge noted

9. *See, e.g.*, Indian Self-Determination Act, 25 U.S.C. § 450 *et seq.* (1975); Indian Civil Rights Act of 1968, 25 U.S.C. § 1301 *et seq.*; Indian Financing Act of 1974, 25 U.S.C. § 1451 *et seq.*

that current congressional "measures . . . make plain the intent and philosophy of Congress to increase rather than diminish or limit the exercise of tribal self-government." *United States v. Washington,* 384 F. Supp. at 340. Tribal management of the Indians' own fishery is an important element of self-determination. More fundamentally, judicial recognition of the right to harvest a specific percentage of fish provides the tribes with a continuing opportunity for economic and cultural survival and is a profound endorsement of the congressional policy of self-determination.

CONCLUSION

In conclusion we urge that this Court resolve, finally and completely, any conceivable uncertainty that might exist about the meaning of the off-reservation fishing rights reserved to Pacific Northwest Tribes in the Stevens Treaties by rendering an opinion affirming the federal district court and the Ninth Circuit Court of Appeals decisions in *United States v. Washington.*

DATED this 24th day of January, 1979.

Respectfully submitted,

FREDERICK L. NOLAND of
MACDONALD, HOAGUE & BAYLESS
Attorneys for Amici Curiae

Exhibit No. 16

National Conference of State Legislatures

Headquarters Office
(303) 623-6600

1405 Curtis Street 23rd Floor Denver, Colorado 80202

President
Jason Boe
President of
The Oregon Senate

Executive Director
Earl S. Mackey

March 28, 1979

Arthur Flemming
Commissioner
U.S. Civil Rights Commission
Room 600
1121 Vermont Avenue
Washington, D.C. 20425

Dear Commissioner Flemming:

It was a pleasure for me to appear before the Civil Rights Commission last week in Washington, D.C. I certainly appreciated the opportunity to talk about the efforts of the Task Force on Indian Affairs of the National Conference of State Legislatures, and the interest you showed in our efforts.

As you requested, I am submitting copies of NCSL's policy positions on Jurisdiction, Indian Water Rights and Indian Education and also the first monthly reports of the Commission on State-Tribal Relations. These monthly reports include short summaries of the state-tribal agreements we have identified. I would like to point out, however, that we have not yet analyzed these agreements or developed any guidelines or recommendations for contents or procedures.

When you begin to draft your final report and recommendations, I urge you to bear in mind that in a large number of disagreements, state and tribal leaders can develop their own solutions that are tailored to each specific situation. During the hearing, Ken Black, Director of the National Tribal Chairmen's Association summarized my concerns quite clearly by stating, "Local people should solve local problems." All too often, I am afraid that federal studies and investigations result in reports that strive to create answers that are too comprehensive. I hope any proposals the Commission recommends will be flexible enough to allow for resolution of differences by state and tribal members and not attempt to impose universal federal solutions or procedures in all cases.

Thank you again for allowing me to share my thoughts with the Commission. I certainly hope you will call on me in the future if I may be helpful in any way.

Sincerely,

Sue Gould

Senator Sue Gould
Washington State Senate
Vice Chairman, Task Force on
Indian Affairs

SG:gp
cc: Marvin Schwartz

closely to a national coordinating entity such as a reconstituted and strengthened WRC.

- At the state and regional level, require that the research agendas of both the federal agencies and the federally-supported water resources research centers be developed in conjunction with the expressed research needs of the states.

INDIAN WATER RIGHTS

In a growing number of Western states, Indian tribes have begun to claim their rights to water, often after waters have been appropriated for other uses under state law or federal reclamation projects. Because access to water is vitally important in these states, a procedure for determining how to allocate water among the competing claims to limited water supplies is crucial.

NCSL feels the following principles should guide any policy or actions regarding Indian water rights:

1. Resolution of disputes between Indian and non-Indian users should be as fair and equitable as possible. The terms of settlement should consider the legitimate claims and the economic hardships that will be imposed on those who have legally obtained their rights, and also on those who have been denied full possession of their rights.

2. Procedures should be flexible, to account for the variety of local needs, resources, claims, and relationships among water users and claimants.

3. Clarification of the extent of Indian rights to water is necessary for sound water management, for allocation of water among competing uses and for planning future growth and development.

4. Procedures for resolving Indian water rights disputes should encourage communication and cooperation among various users of water, and seek to avoid further destructive confrontations.

Therefore, NCSL recommends:

1. The extent and nature of Indian's rights to water should be quantified. Only when the amount of water that Indians are entitled to has been fully identified can resolution of the controversy proceed.

2. Where conflicting claims to water occur because Indians claim prior rights to water already appropriated, tribes, states and non-Indian users should seek to resolve the dispute through mediation, with federal participation as necessary to ensure that states and tribes arrive at an enforceable agreement.

3. Where mediation is unsuccessful in resolving disputed claims, adjudication should be sought, with the ability to initiate adjudication in state courts.

4. Federal legislation is needed to provide full compensation to all owners of legally determined water rights, if those rights are later altered or taken by the United States or Indian tribes, or if the exercise of those rights is precluded by actions of the United States.

5. In view of the extent of Indian rights to water resources, tribal governments should be directly represented on national, regional, and interstate water regulation and water policy planning bodies and commissions, including Interstate Compact Commissions, Interbasin Commissions, River Basin Commissions and others.

ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT

The Alaska National Interest Lands Conservation Act (H.R.39) currently being considered by the U.S. Senate would establish dangerous precedents of federal encroachment upon historical lands of the state of Alaska. Prior to any federal legislation which would determine the future uses of vast areas of the state of Alaska, the National Conference of State Legislatures urges that the following steps take place:

1. A careful inventory of the mineral potential of the land that may be included in a management category, which would foreclose mineral exploration and development, should be undertaken and completed before its designation into a management category;

2. Access for transportation, recreation, and utilities should be guaranteed in and to all preservation system designations in Alaska;

3. A careful environmental and economic impact study should be made on each wilderness proposal;

4. Commercial forest land in the interior of Alaska should be considered for designation as a national forest, thereby providing federal multiple-use areas in the interior of Alaska;

5. Large blocks of land with identifiable agricultural potential should be included in management systems which would allow for future agricultural development;

6. State management of resident game on federally-owned land in Alaska should be guaranteed, as the state is in a better position to manage this game and such management was provided for under the Statehood Act;

7. The state should be guaranteed the right to rehabilitate, maintain and enhance its fishery resource through fish hatchery and rehabilitation programs on all land and water in the state considered appropriate for such purposes by the state; and

8. Cooperative federal-state procedures or institutions should be established to make recommendations or designations on policy, planning and management of Alaska's federal and state land.

RESOLUTIONS ADOPTED AND REVISED FOR 1978-1979

FEDERAL, STATE AND TRIBAL JURISDICTION

Congress retains ultimate power to determine whether it, the states or tribal governments will maintain jurisdiction over Indian lands. But, because Congress has failed to develop a consistent policy with regard to jurisdiction, uncertainty about jurisdiction in many matters exists.

Congress has vacillated between policies supporting reservation, assimilation, termination and self-determination for Indians. In addition, in some states, Congress has delegated its jurisdiction over Indian affairs to the state government; other states have voluntarily assumed partial jurisdiction.

At the same time, tribes are increasingly asserting their own right to govern their members and their territories--including control over non-Indians living and owning land within many reservations.

The problem of jurisdiction has been compounded by numerous and conflicting court decisions on the issue. The Task Force rejects the court approach as a solution to the jurisdiction problem.

Instead, the Task Force recommends that:

1. Congress undertake a concerted and expeditious effort to legislate those areas that cannot be resolved by dialogue between the states and tribes;

2. States and tribes seek, wherever possible, to reach cooperative agreements on intra-state jurisdictional problems;

3. To that end, we suggest NCSL create a special commission composed of legislators, Indian leaders, and federal representatives, and funded by outside sources. This commission will be charged with developing a formal mechanism for the discussion and resolution of jurisdictional problems. We recommend that this process be implemented on a pilot basis in a few states to test its effectiveness.

INDIAN EDUCATION - REFORM OF BASIC SUPPORT

The educational services available to Indian children in many areas of the country have been inadequate for too long. Large numbers of Indian children have not mastered basic educational skills. Many Indian children who are handicapped are not receiving any educational preparation that is necessary to compete successfully for meaningful employment.

HR 9810 is one of numerous federal, state and local proposals in the last year or two to overcome the historical deficiencies of Indian education. The basic objective of the bill is of unquestioned merit. Local

educational agencies receiving Impact Aid for serving Indian children who reside on federal reservations would be required to develop a plan for providing all such children a "basic education." Nevertheless, the National Conference of State Legislatures cannot support this bill in its present form.

The bill has a number of important deficiencies. First, it fails to provide Indian parents any mechanism for redressing their grievance against local educational agency services except the questionable option of placing their children in an alternative education setting which may be no more accountable than the local educational agency itself. Second, the bill makes the Indian tribal council central to the process of negotiating what is to be construed as a "basic education" without any assurance that the tribal council is any better equipped to know the educational needs of particular Indian children than the officials of the local educational agency. Indeed, the great shortcoming of the bill is that it gives only a minor decision-making role to Indian parents and absolutely none to local education agency attendance centers which in many instances serve no one but Indian children. Third, the bill makes the definition of a basic education in each local education agency dependent on a negotiating process that provides almost no incentive for the parties involved to come to a swift resolution of their differences. Indeed, it is entirely possible that the bill would foster protracted delays in defining a basic education. Fourth the bill assumes that states have done nothing to deal with the problem of defining basic education at the very time when many are beginning to enact major measures which address the issue. And fifth, there is no clearcut evidence at this time that the problem of assuring Indian children a basic education will require a near-doubling of the Impact Aid authorization. Indeed, it seems somewhat ironic that the bill proposes markedly increased outlays for a problem with uncertain financial dimensions completely ignoring the all too obvious financial needs of existing federal programs for Indian children requiring special education, vocational training and assistance in job placement.

TASK FORCE ON INDIAN AFFAIRS

The Task Force on Indian Affairs was authorized to meet throughout the 98th Congress (1978). While the Task Force feels it has made substantial progress in the areas of jurisdiction, Indian water rights and Indian education, many issues remain to be reviewed. The Task Force therefore recommends that the Task Force on Indian Affairs be extended for two years.

INDIAN WATER RIGHTS (see Natural Resources Committee)

COMMISSION ON STATE-TRIBAL RELATIONS

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Monthly Report

January, 1979

During the month of January, the survey of states and tribes to identify existing agreements was begun. Initial results of the survey are summarized briefly below. In addition, steps were taken to publicize the Commission through printing a brochure and drafting press releases.

In February, we will continue the survey and contact the majority of the remaining states and tribes. Additional efforts for fund raising and publicity have been planned as outlined below.

I. SURVEY RESULTS

The survey has uncovered agreements and forms of intergovernmental cooperation as follows:

A. Minnesota

--Tax Collection

- The state has signed agreements with each of its eleven tribes providing for the collection and refund of excise taxes on liquor and cigarettes. The state refunds collected taxes to the tribal government according to a formula based on a state-wide consumption figure, reservation population and tax rate.

- Agreements have also been signed with six Chippewa tribes in which the state collects a tax equivalent to its own sales, use and motor vehicle excise tax on all transactions on the reservation and refunds $60 per member to the tribes.

--Hunting and Fishing: In 1972, the Leech Lake Chippewa and the state negotiated an out-of-court settlement of a lawsuit involving hunting, fishing, trapping and ricing rights. The tribe agreed to adopt and enforce a conservation code, while the state agreed to collect a special fee from sportsmen for tribal licenses and permits. Revenue collected is remitted to the tribe. The agreement called for cross-deputization of state and tribal conservation officers and state training of reservation officials. Jurisdiction was clearly divided, with tribal members exempted from state laws while on the reservation and non members subject only to state law.

-Sue Gold #2 of 2

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National Tribal Chairmen's Association

--Environmental Control: The Minnesota Chippewa tribe has been formally involved in the state's Water Quality Management Planning process. The tribe will receive $20,000 from the state to hire a liaison who will share information between the tribe and state on water pollution problems and concerns and develop a model water quality plan for the Leech Lake reservation.

--Alcoholism and Drug Treatment: The state has created a special program for Native Americans. Through the state's mental health boards, funding is available for residential and after-care treatment, and prevention, education and community awareness programs.

--Health Care: Last year the state enacted a Comprehensive Health Services Act with special funding and programs for Indian health care services.

--Job Training: In cooperation with industry and tribes, the state provides job training for reservation residents where industries cannot locate enough trained workers to open plants.

--Education: The state authorized an experimental school to be operated jointly by a local school district and a committee of elected reservation citizens. The committee manages the school and hires personnel. Although it is subject to regular state standards, the tribe is authorized to hire instructors of Indian culture who are not certified by the state. The school district funnels state funds to the committee and is also responsible for transportation.

--Disposal of Abandoned Cars: The state amended an existing local aid program for removing abandoned cars so that tribes would be eligible. The Chippewa tribe hired a supervisor who was trained by the state.

State officials suggested that agreements might be helpful in enforcing regulations of the federal Safe Drinking Water Act and in issuing NPDES permits under the federal Water Pollution Control Act.

B. Wisconsin

--Hunting Rights: Following litigation, the state legislature enacted procedures to authorize members of the Winnebago tribe to hunt deer for religious ceremonies without a state license.

--Public Recreation Facilities: The state amended an existing local aid program to also provide financial assistance to tribes for developing water-related facilities such as docks and piers. Many of the reservations depend heavily on sportsmen and tourists for income and needed to improve public access to their lakes and streams.

--Cross Deputization: Two counties have entered into cross deputization agreements with reservations. Deputies were funded by federal LEAA grants and will eventually be funded by the counties.

--Forest Management: The Menominee tribe has had an informal agreement with the state Department of Natural Resources for several years concerning forest fire prevention and control and forest management. A formal agreement has been drafted and approval is pending.

--Training of Tribal Wardens: Through funding from the BIA, tribal conservation wardens attend training courses in state law enforcement procedures and special conservation matters from the Department of Natural Resources.

--Tax Refund: Under threat of litigation from the Menominees, the state has agreed to refund taxes which were collected during the time when the tribe's recognition was restored and jurisdiction was retroceded. Taxes were imposed even though the tribe was not liable.

--Tribal License Plates: The state has authorized tribal governments to obtain state license plates for law enforcement vehicles at the regular reduced rate.

--Protection of Indian Burial Mounds: Tribes in the state are seeking protection for ancient Indian burial mounds against disturbance or development of the sites into museums or parks.

C. Michigan

--Fishing Rights: An informal agreement had been reached this summer between two tribes and state officials to calm the volatile dispute over fishing rights. The arrangement included acceptance of geographical limits on fishing areas and a halt on the use of gillnetts. The parties also committed themselves to continue discussions on resolving other issues such as resource depletion, allocation of licenses and assistance for commercial Indian fishermen who suffered financial losses. One tribe has recently withdrawn its consent and has notified the state that Indian fishermen will resume fishing in the spring.

--Tuition Waivers: The state waived tuition to state universities for all Michigan Indian residents of at least one-quarter blood.

--Health: The state has built an outpatient primary care clinic on the Bay Mills reservation. The tribe and the county applied jointly to the state for funding.

D. Iowa

--Elections: Because the state's one reservation is located within four different state voting precincts, members had to vote in four different towns off the reservation. At the tribe's request, one special district was established within the reservation.

--Funding of a Deputy Sheriff: State and county appropriations support one deputy sheriff who is assigned to the reservation.

--Alcohol and Drug Treatment: The state funds a special program for alcohol and drug abuse treatment on the reservation.

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Monthly Report

February, 1979

I. SURVEY RESULTS

During February, we surveyed the states of Colorado, Montana, South Dakota, North Dakota and Nebraska, and found the following state-tribal agreements:

A. Colorado

--Hunting and Fishing

- As a result of litigation in 1972, the Southern Utes and the state negotiated a settlement that clarifies jurisdiction for enforcing hunting and fishing regulations within reservation boundaries. Tribal members are immune from state law within the reservation, but will refrain from exercising treaty rights beyond the boundaries. The agreement is enforced through cooperative efforts; if, for example, a tribal officer discovers a nonIndian breaking state law, he arrests and turns over that person to state officials. Colorado agreed to cooperate with the Southern Utes in setting seasons and bag limits and in developing wildlife management practices. To facilitate this, the state consolidated the existing four wildlife districts in the reservation area into one.

- The state and the Ute Mountain Utes have just signed a consent decree settling a lawsuit. The tribe was authorized to regulate hunting and fishing by its members within a specified area extending beyond the reservation boundaries, and adopted comprehensive regulations. For public protection, the state must be notified if members of the tribe intend to hunt off-reservation outside state seasons. Both agreed to cooperate in training tribal game wardens and in developing a game management plan for the area. The tribe is seeking federal funds to implement the agreement, and state officials are helping lobby Colorado's Congressional delegation.

--General Wildlife Management: As a result of the two hunting and fishing agreements, the tribes and the state's District Wildlife Manager for the reservations have developed close relationships. The District Manager has conducted fire arms training for tribal officers, offered technical assistance on the effects of strip mining reclamation on wildlife, helped with training tribal game wardens and participated in official functions.

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National Congress of American Indians
National Tribal Chairmen's Association

--Training of Game Wardens: Tribal members attend training on the reservation with the District Manager, followed by a six month program at the state headquarters in Denver. Training includes six to eight weeks of classroom instruction on basic law enforcement techniques and hunting and fishing regulation. Trainees are then placed in the field for several months all over the state.

--Water Quality Planning: Both tribes were granted EPA funds to prepare a water quality management program and contracted with the state pollution control agency. The Southern Utes have completed their plan for erosion and sediment control and submitted it for inclusion in the state plan. The Ute Mountain Utes have not been able to begin their study yet.

--Law Enforcement: Formerly, the tribes and state highway patrol met regularly and worked together. Within reservation boundaries, a state policeman who apprehended an Indian offender would release that person to the tribe. Likewise, Indian officers who stopped nonIndians would turn that person over to state officials. The tribes are interested in formalizing the practice and have met with the staffs of the Governor, Attorney General, Secretary of Natural Resources and the head of the state highway patrol. Discussions are continuing although there has recently been a change in leadership of the state highway patrol.

--Regulation of Foster Care and Adoption: The Southern Ute Tribe has discussed implementation of the Indian Child Welfare Act with Colorado and requested state assistance in drafting regulations for foster care and adoption. The tribe intends to coordinate its regulations with those of the state to avoid confusion.

--Water Treatment Facilities: The water treatment plant serving the town of Ignacio and the Southern Ute reservation was antiquated. The tribe received a grant from the Economic Development Administration, raised the required match through a contribution from HEW and a tribal appropriation and replaced the plant. The town of Ignacio contracted with the tribe, as the new owner, to buy water.

--Liquor Control: To avoid a confrontation over regulation of liquor sales in a tribally owned motel and restaurant, the Southern Utes licensed the facility under their own ordinance and coordinated their regulations with Colorado's.

--Unemployment Compensation Taxes: The IRS has ruled that the two tribes are liable for unemployment taxes (FUTA). Ninety percent of the collected taxes, however, are paid to the state for benefits that are administered solely by the state and Colorado in the past has not recognized the tribes as employers for tax purposes. Because the tribes' employees therefore are ineligible for benefits, the tribes are not paying the tax. The state Attorney General was consulted for an opinion on whether Colorado could change its policy. Preliminary opinions have found that the state is unable to without federal legislation expressly authorizing states to levy such a tax.

B. Montana

--Juvenile Delinquents: A few years ago, a court decision prevented state courts from committing Indian juveniles to state institutions for offenses occurring on the reservation. A law was passed enabling the state to contract with tribes to accept juveniles that tribal courts want placed in state institutions. The contracts set a per diem rate for each Indian juvenile. Problems encountered by administrators of the institutions are solved by consultation between court and institution officials.

--Water Quality Management: As in other states, three tribes have granted funds from EPA to create water quality plans and have contracted with the state pollution control agency.

--Vital Staticstics Records: Since 1976, the state Department of Health has officially accepted information on domestic relations if the data is filed in tribal court orders and submitted to the state. These statistics include items like divorces, adoption records and annulment. Death certificates and birth certificates are generally accepted by the state, although the practice is not uniform. The legislature appears likely to adopt a bill this year that would recognize tribal judge's actions in solemnizing marriages.

--Aging Programs: Montana funds three referral technicians to contact elderly members of tribes and refer them to proper state agencies for necessary help. The technicians also are responsible for following up their referrals. While the state previously funded referral technicians for each reservation, vacancies have occurred on four reservations. Next year, the state hopes to resume services to all reservations.

--Law Enforcement: Individual state highway patrol officers are commissioned as Deputy Special Officers by the Bureau of Indian Affairs to enforce federal laws on the reservation. In each reservation, the local BIA superintendant receives applications from officers who expect to patrol on or near the reservation. Each applicant is screened, including a background investigation, and certified. Commission cards are issued in each of Montana's six divisions.

--Hunting and Fishing: Although every tribe has had agreements with the state at some point in the past, only two still are in effect. Fort Belknap and Fort Peck have agreements that clarify jurisdiction and provide for cooperation in planning resource management. The Fort Belknap agreement requires the state to hire a tribal member as a state game warden. The Blackfeet are discussing a similar compact. Although Rocky Boy has no agreement, state and tribal game wardens cooperate informally with enforcement. The Crow tribe is engaged in litigation over control of hunting and fishing, and the Northern Cheyenne voided an earlier agreement. The Flathead tribe won off-reservation hunting rights in the state courts in 1971. Discussions have been held occassionally, but no agreements have been drafted.

--Mental Health Services: The state signs contracts with individual tribes to provide services through regional mental health centers.

--Alcoholism and Drug Abuse: Montana state law provides for local alcoholism and drug abuse programs such as detoxification centers. outpatient clinics,

half-way houses, residential centers, prevention, education and follow up. After a program is approved, it is eligible for state and county funding. The state is working with programs in each of the seven reservations to help them meet eligibility standards. Technical assistance is provided with at least one on-site staff person. The Blackfeet and Flathead tribes currently operate approved programs.

--Child Support Enforcement: Title IV D of the Social Security Act requires states to create statewide plans to implement the federal child support enforcement program. Because states have no jurisdiction on reservations, they cannot fully enforce the law and are therefore liable for noncompliance penalties. HEW is encouraging states and tribes to enter agreements to collect child support payments from absent fathers. The state is in the process of contacting tribes to begin discussions.

C. Nebraska

--Dental Clinic: The Winnebago tried to win approval for a reservation-based dental clinic that would serve both Indians and nonIndians. After receiving support from the county, however, the local planning agency rejected the plan. The state Health Service Agency then reversed that action after the tribe appealed the decision, but the state Director finally vetoed the clinic. At present, no further steps have been planned.

--Rights of Way: The state utility commission is planning to construct a power line which would cross the Winnebago reservation. The tribe agreed to meet with the commission concerning the rights-of-way.

--Aging Nutrition Programs: The state Department of Aging is administering nutrition programs on the three reservations. Under the program, the state contracts with the Intertribal Development Corporation to provide hot lunches, support services and education. Local governments match federal funds to support the programs. Other available programs for elderly members of the tribe are counseling services and recreational activities. State site managers on the reservations administer the programs.

D. North Dakota

--Juvenile Delinquency: In 1975, the BIA contracted with the Director of the North Dakota Department of Institutions to reserve space for at least three Indian juveniles per reservation. Tribal judges may commit a reservation delinquent to the Industrial School, although the school's director retains the right to approve each commitment. The program is very successful with close cooperation from all parties involved.

--Law Enforcement: As in Montana, the BIA commissions Deputy Special Officers if police of another jurisdiction apply for appointments. In North Dakota, state highway patrol, county and city officers and game wardens have been commissioned. Monthly meetings increase communication among all the parties.

--Forestry Inventory and Management Plan: Lower Brule, Crow Creek and Cheyenne River contracted with the state Division of Forestry to conduct an inventory of trees along the banks of the Missouri River and prepare a five year management and budget plan for planting trees. The BIA funded the contracts and shared information on the trust lands.

--Cross-Deputization: Although talks between tribes and the state on cross-deputization agreements were unsuccessful in the past, initial contacts have been made to resume discussion following the 1978 elections. The BIA commissions Deputy Special Officers who are members of the highway patrol to enforce federal laws, and informal collaboration occurs on Crow Creek.

--Water Rights: A special legislative commission met with some of the tribes and proposed a continuing discussion on water-related issues to improve understanding and coordination. The future is uncertain, however, as the legislature just approved the sale of substantial water rights and some tribes appear to have lost interest.

--Recognition of Court Actions: In 1978, the legislature authorized the state Department of Social Services to honor tribal court orders on delinquency, neglect and dependency of Indian children. Because state and tribal recognition of judicial actions are haphazard in general, several people have mentioned the need for a clear statement of tribal and state court relations.

--Direct Funding: In 1977, the Standing Rock Tribal Council and Governors of North and South Dakota applied to HEW for a research and demonstration project to directly fund AFDC, Child Welfare, Medicaid, Title XX and Food Stamp programs to the tribe. HEW countered with a proposal for direct administration by the tribes and continued funding through the states because federal law prohibits direct funding. The tribe and states have not accepted HEW's proposal.

Exhibit No. 17

National Association of Counties

Offices • 1735 New York Avenue N.W., Washington, D.C. 20006 • Telephone 202/785-9577

To: Charlotte Williams, President

From: Linda Bennett, Public Lands Specialist

Subj: Q/A on NACo's involvement in Indian issues in preparation for hearings before the Civil Rights Commission, March 19, 1979.

1. HOW LONG HAS NACo BEEN INVOLVED IN INDIAN ISSUES?

NACo's involvement in Indian issues began approximately two years ago when a resolution was brought through the Public Lands Steering Committee to the Western Region District, an affiliate of the National Association of Counties, for approval. The Western Region District, which has since become the Western Interstate Region, approved the resolution, recommending that Congress enact laws to clarify that Indian Tribal Councils only would have legal or political jurisdiction over members of their own tribe and no jurisdiction over non-Indians living or visiting the reservation (see attachment A).

In March, 1977, a draft of the two year study by the American Indian Policy Review Commission (AIPRC) recommended to Congress that tribal governments should have authority to exercise jurisdiction over non-Indian people and property within the reservation boundaries.

As a result of these two events, an Indian Affairs Task Force was created as part of the Public Lands Steering Committee to review and comment on the draft Commission Report. Fred Johnson, Glacier Co., Montana, was named chairman. State Associations of Counties in thirty (30) states containing Indian reservations were asked to designate Task Force members. Comments to the AIPRC report were developed in an April meeting and submitted to the Commission.

In February 1978, former NACo President William Beach created an Indian Affairs Committee. This Committee was created in a manner similiar to the Rural Affairs Committee and the Urban Affairs Committee to recommend NACo policy and strategy to our standing steering committees. These committees do not have independent policy setting powers.

Proposed policy on Tribal/County jurisdictional issues must be reviewed by the Home Rule and Regional Affairs Committee, policy on law enforcement by the Criminal Justice Committee, policy on trust lands by the Public Lands Committee, policy on water rights and natural resources by the Energy and Environment Committee and so on. It is the recommendations of these steering committees after their deliberations which are presented to the NACo Resolutions Committee.

2. COULD YOU GIVE MORE DETAILS ON THE TASK FORCE?

The purpose of the NACo Task Force on Indian Affairs was to comment on the American Indian Policy Review Commission report issued in early 1977. Under the leadership of Fred Johnson of Glacier Co., Montana, it met in April 1977 in Helena, Montana. In addition to Task Force members from 16 states who were in attendance, there were about 70 other county officials plus 25 Indian representatives. The Task Force heard one full day of hearings, and then on the second day hammered out its comments to the AIPRC (attachment B).

The NACo President extended the Task Force to develop policy for the NACo American County Platform. A policy statement was developed in a June 1977 meeting which, because of its intergovernmental nature, was referred to the NACo Home Rule and Regional Affairs Steering Committee (attachment C).

The Home Rule Committee took no action on the proposed policy statement; rather, it referred it back to the Task Force for clarifying information and recommended actions which NACo might take to resolve some of the issues.

The Task Force met once again, in September 1977, in Spokane, Washington, with 8 members present plus 12 other county officials, the President of the National Tribal Chairman's Association (NTCA), and a representative of the Bureau of Indian Affairs (BIA). It modified and approved a joint grant application between NACo and NTCA to IPA (Civil Service, which is now the Office of Personnel Management) which would provide problem solving meetings between Indian and county representatives, as well as providing staff for ongoing NACo efforts concerning Indian issues. The Task Force did not change the recommended policy statement.

The Indian Affairs Committee, formed in February 1977 by former NACo President William Beach, supersedes the Task Force on Indian Affairs.

3. HOW LARGE IS THE INDIAN AFFAIRS COMMITTEE?

Potentially the Committee could have one member representing each state, as well as one member representing each of the NACo Steering Committees. (The Steering Committee representatives are to insure proper coordination between the various committees since any policy adopted by the Indian Affairs Committee must be reviewed by the other committees.) At present there are 20 members from 18 states. John Horsley, Kitsap County, Washington, is the chairman. Charles Patterson of Navajo Co., Arizona, is the vice chairman.

4. WHEN HAS THE COMMITTEE MET, AND WHAT HAS BEEN RECOMMENDED?

To date the NACo Indian Affairs Committee has held five meetings:
May 1978 -- Seattle, Washington
July 1978 -- Atlanta, Ga. (in conjunction with the Annual Conference)
Dec. 1978 -- Washington, D.C.
Feb. 1978 -- Kauai, Hawaii (in conjunction with the WIR Conference)
March 1979 -- Washington, D.C. (in conj. with the Legislative Conference)

The first two meetings were primarily concerned with the development and adoption of a position on Indian issues for the National Association. Successive meetings have dealt with the BIA's proposed land acquisition policy, payment-in-lieu of taxes for Indian lands (attachment D), and possible sources of funding for NACo to become more involved with the Indian issues.

5. WHAT WAS THE POLICY RECOMMENDED BY THE INDIAN AFFAIRS COMMITTEE, AND WAS THIS POLICY ADOPTED BY THE NATIONAL ASSOCIATION?

Nine members of the Indian Affairs Committee met in Seattle, Washington, in May 1978 and adopted a position regarding Indian issues. One member, Commissioner Jim Cain of Greene Co., Ohio, objected to the position and submitted a minority position paper which was co-signed by Supervisor Louise Descheeny of Apache Co., Arizona (Attachment E). It was this position paper which was adopted at the NACo annual conference held in Atlanta, Georgia, in July 1978.

6. WHAT IS THE DIFFERENCE BETWEEN THE TWO POLICIES?

The majority position called for the federal government to withdraw tribal immunity, for tribes to have no greater power than local municipalities, that tribes not have jurisdiction over nonmembers, etc. This position was viewed by many as being "anti-Indian". (Attachment F, which appeared in the June 1978 issue of the newspaper Wassaja, illustrates this view.)

The minority position, which was adopted by NACo when amended to exclude support of Indian self-determination, rather than demanding that all Indian rights be abrogated, simply noted that there are problems, that these problems should be looked at, and that some mutual cooperation should occur.

7. DOES TOM TOBIN, ATTORNEY FROM SOUTH DAKOTA, WORK FOR NACo?

No. Mr. Tobin has attended several of the meetings that the Indian Affairs Committee has held but that does not mean that he works for NACo. Upon occasion he has mentioned that he disagrees with NACo's adopted policy. I believe that he works for several counties and a state association of counties.

At present NACo has one staff member, Ms. Linda Bennett, working approximately one-fifth of her time on Indian issues. NACo is pursuing a joint grant with NTCA to IPA and BIA which would provide additional staff to work on these important issues.

8. COULD YOU EXPLAIN THIS GRANT CONCEPT IN MORE DETAIL?

The grant proposes a program which would allow NACo, in cooperation with the National Tribal Chairmen's Association (NTCA), to address serious intergovernmental problems now confronting Indian tribes and county governments throughout the United States.

Few intergovernmental problems have been as perplexing and difficult to resolve as the unanswered questions related to the interaction of county and tribal governments. American Indian tribes and county governments are confronting each other with increasing frequency over disagreements about jurisdiction over personal and property rights on Indian reservations.

NACo and NTCA propose a series of three-day workshops to convene Indian leaders and county officials , to identify and to propose solutions to some of these jurisdictional problems, including law enforcement, taxation, economic development, land use planning and health and housing. The regional workshops will be held with twelve county and twelve Indian leaders participating in a problem-solving format.

NACo views the grant as a mechanism to govern local circumstances and resolve disputes between the affected governmental bodies at the local level.

9. ARE YOU FAMILIAR WITH THE JOINT PROJECT OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES (NCSL) AND THE NATIONAL CONGRESS OF AMERICAN INDIANS(NCAI)?

[CHARLOTTE: I HAVE ATTACHED AN ARTICLE ON THIS COMMISSION FOR YOUR INFORMATION. IN ADDITION, I BELIEVE THAT REPRESENTATIVES FROM THIS COMMISSION WILL BE TESITFYING BEFORE THE CIVIL RIGHTS COMMISSION PRIOR TO YOU.]

The Commission is an innovation in more than its spirit of cooperation. It is based on a perception that both the Indian and non-Indian residents of Indian reservations are paying the price of the current stalemate in Indian jurisdiction and policy. Without sacrificing matters of principle and without trying to resolve the profound political differences between tribal and state governments, the Commission will at least identify and direct attention to the many areas where cooperation is possible and necessary for the good of the community. It is hoped that the result will be a lessening of tensions and a realization that the residents of Indian reservations share a wealth of common interests and needs.

There are similiarities between what the Commission is trying to achieve and what NACo hopes to achieve through its grant. Both projects seek to remedy complex jurisdictional problems, though NCSL is working at the state level and NACo is working at the local (county) level.

10. WHAT ELSE HAS THE COMMITTEE RECOMMENDED?

As mentioned, the committee meetings have dealt with BIA's proposed land acquisition policy, payments-in-lieu of taxes for Indian lands, and potential funding sources for NACo. In addition, the meetings have provided a forum for discussions with Congressional staff (Pete Taylor and Alan Parker of the Senate Select Committee and Frank Ducheneaux of the House Interior Committee), Dale Wing of LEAA, and Myles Flint of the Indian Resources Division of the Dept. of Justice.

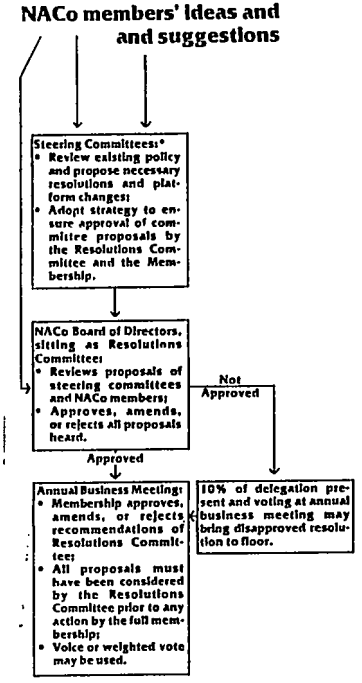
Dale Wing of LEAA discussed a project involving NTCA which provides a forum for discussion by the affected groups in an area in the field of law enforcement. NACo has been invited to participate in these meetings. The first meeting was in Albuquerque, New Mexico, earlier this year and the next meeting will be held in Spokane, Washington, in the near future. These meetings should be beneficial in the resolution of disputes between the affected groups at the local level.

Last week at the NACo Legislative Conference, members of the Indian Affairs Committee voted to forward a statement on the subject of land acquisition to the Tax and Finance Committee, to the various State Associations, and to the other members of the Committee, since NACo does not have a position on this subject. (There were only 5 members present, and one person, Louise Descheeny Dennison, abstained from the vote.) The position is as follows:

> Be it resolved that a moratorium be placed on the conversion of land into Indian trust status until Congress develops satisfactory methods to compensate local governments for the loss of already lean local tax monies necessary to the provision of mandated and requested services.

It should be stressed that this is NOT NACo policy at present, and may in fact never be NACo policy. It is a proposed policy, and subject to refinement as it moves through the NACo policy process.

NACo Policy Process



*All proposed platform amendments and resolutions approved prior to the Annual Conference are mailed, along with a Voting handbook, to the chief elected official of each NACo member county approximately six weeks before the Annual Conference.

The American County Platform

The American County Platform is NACo's permanent policy document and, when necessary, is amended at the Annual Conference. Divided into substantive policy areas covered by 12 policy steering committees, the platform reflects the philosophy and broad objectives of NACo's membership.

Policy may also be articulated in resolutions which are generally single-purpose documents addressing a specific issue or piece of legislation. Resolutions draw attention to a topic or current concern, clarify parts of the broadly worded platform, or set policy in areas not covered by the platform.

Initial policy recommendations are developed by the policy steering committees which meet several times a year.

From the policy steering committees, proposed platform changes and resolutions are presented to the Board of Directors sitting as a Resolutions Committee, which reports the proposals to the membership at the annual business meeting.

The membership is the ultimate arbiter of what will or will not be NACo policy.

The American County Platform and policy resolutions contained in this volume have been studied, debated and finally adopted by the NACo members. The platform and resolutions are carefully considered statements of the needs and interests of county governments throughout the nation, and they will serve as a guide for NACo members and staff in the year ahead as they appear before legislative and administrative agencies to present the views of county governments.

Steering Committees

NACo has 12 steering committees:

- Community Development
- Criminal Justice and Public Safety
- Employment
- Environment and Energy
- Health and Education
- Home Rule and Regional Affairs
- Labor-Management Relations
- Land Use
- Public Lands
- Taxation and Finance
- Transportation
- Welfare and Social Services

Each steering committee has 36 members nominated by state associations of counties and appointed by the NACo president. The committee chairman and subcommittee chairmen are elected officials who are appointed by the NACo president for one year. At least two-thirds of the members of each steering committee must be elected officials, but many committees have a much greater elected representation.

Steering committees are responsible for studying issues, recommending new policy positions and interpreting the American County Platform. Platform amendments and resolutions from member counties are submitted to the appropriate steering committee for review and recommendation. At least one NACo staff member is assigned to each steering committee to work with the committee chairman in arranging meetings and determining agendas.

NACo staff represents counties only on those issues which have been approved through the policy process.

It is the responsibility of NACo steering committees to interpret the American County Platform as it relates to specific legislation, and the NACo Board of Directors has the authority to adopt interim policy during the year. However, such interim policy is voted on by the member counties at the next annual conference.

Each steering committee reviews legislation and issues within its jurisdiction. The officers of the Association along with the 12 Steering Committee chairmen act as a Committee on Committees to resolve any jurisdictional disputes between steering committees. In many cases, informal arrangements are made for joint consideration of certain issues.

National Association of Counties
Offices • 1735 New York Avenue N.W., Washington, D.C. 20006 • Telephone 202/785-9577

AMERICAN COUNTY PLATFORM STATEMENT
ON INDIAN AFFAIRS

Problem Statement

Historically inconsistent Federal policies toward Indian reservations and recently expressed moves by Indian Tribes on the reservations toward complete self-government have created a local government crisis in many parts of the nation. By failing to spell out Tribal jurisdictions, Congress has allowed a situation of conflict to develop in which Tribal aspirations and treaty interpretations are pitted against other constitutional principles and rights.

The result of this is a further deterioration of relations between Indians and non-Indians. Without judging the validity of Indian claims, it is clear that Congress must decide matters of jurisdictions - civil, criminal, control of resources, etc. - on a broad spectrum.

The National Association of Counties, therefore, calls upon Congress to resolve this situation by clearly defining the nature and scope of Tribal jurisdictions, rights and sovereignty; their relation to the various States and, through the States, to the local governments.

Policy Statement

The National Association of Counties:

- Recognizes the unique citizenship status of Native Americans;
- Recognizes the important contirbutions Native American peoples and cultures have made to our national heritage;
- Supports the principles of Tribal self-government;

- over -

- Supports measures to preserve the cultural and social identity of Native American peoples; and
- Pledges cooperation with Indian Tribes for the provision of constituent services within our individual jurisdictions.

Tribal Jurisdictions

NACo calls upon Congress to enact comprehensive legislation which makes clear the governmental powers granted Tribes by Congress and/or Treaty, balancing the unique status of the Tribes with other Constitutional concerns.

In developing such enactments, Congress should be mindful of the following questions and considerations:

1. To what extent do Tribal governments have sovereign immunity from legal action? Is it that accorded to State or Local governments? Is it something more? Is it something less? A clear definition of both the government and its immunity is required.

2. Within "Indian Country", what jurisdiction would Tribal governments have over Tribal members? Over non-members? Over members outside of "Indian Country"?

3. Regarding hunting and fishing: Within the reservations, who would regulate members; who non-members? Who would have proprietory power over resources? Could the Tribes exclude non-members? Who would have the power, for conservation purposes only, to regulate both members and non-members? Outside of Indian reservations, what are the limits of Treaty provisions regarding hunting and fishing?

4. Who has jurisdiction on the reservation over natural resource development, including but not limited to the following: Water, timber, coal, oil shale, grazing lands?

5. Regarding criminal jurisdiction in "Indian Country": What levels of responsibility for enforcement, prosecution and trial rest with the Tribes? With the States? With the Federal Government?

6. What is the extent of Tribal water rights?

7. If Congress supports the continued conversion of land to Indian Trust status under the Indian Reorganization Act of 1934, then Congress should develop satisfactory methods to compensate local governments for the loss of already lean local tax monies necessary to the provision of mandated and requested services.

8. Where, in redressing long-standing Indian rights violations, Congress finds it appropriate to limit equally long-standing practices or assumed rights of non-Tribal members, especially where such change works a fiscal hardship, Congress should make provision for appropriate redress to those so limited.

Adopted by the NACo Board -- July, 1978

National Association of Counties
Offices • 1735 New York Avenue N.W., Washington, D.C. 20006 • Telephone 202/785-9577

RESOLUTION ON INDIAN AFFAIRS

Whereas, NACo is concerned that proposals to Congress for Indian self-government made by the American Indian Policy Review Commission state that:

"The growth and development of tribal government into fully functioning governments necessarily encompasses the exercise of some tribal jurisdiction over non-Indian people and property within reservation boundaries."

Whereas, Conflict and changes in Federal Indian affairs and policies have resulted in a substantial number of non-tribal members living or owning land on Indian reservations and since there exists in most of the same areas, county governments, the proposed Commission policy raises issues concerning voting by and representation of non-members, reservation boundaries, due process of law, land use planning and zoning, distribution of water rights, environmental quality standards, and questions of equal taxation.

Therefore, Let it be resolved, That before Congressional or Federal Agency implementation of the recommendation of the American Indian Policy Review Commission, Congress must:

1. Adequately study the socio-economic impact on non-members of Indian tribes living and owning property on or near Indian Reservations, now represented by county government,

2. Consider development of an intergovernmental model representing Federal, state, county, and Indian Tribal governments that address the above issues, and

3. After hearings and debate, adopt a Congressional policy statement determinative of the issue of whether Congress perceives the various tribes of American Indians as:

    a. Bodies politic in the nature of a sovereign as that word is used to describe the United States and the states; or as

    b. Bodies politic which the United States, through its sovereign power, permits to govern itself and order its internal affairs, but not the affairs of others.

ADOPTED, JULY 1978.

Western Region District
of NACo

1735 New York Ave. N.W.
Washington, D.C. 20006
(202)-785-9577

An Affiliate of the National Association of Counties

RESOLUTION ON NON-INDIAN LANDS LOCATED WITHIN INDIAN RESERVATIONS

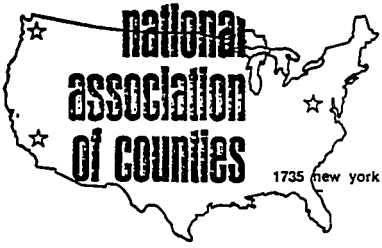
WHEREAS, the WRD is concerned that tribal governments of Indian Reservation in the Western States are attempting to declare themselves as sovereign nations, and assert executive, legislative and judicial control over non-Indians and over their lands, water and resources, without representation or participation of the non-Indians in said tribal governments;

WHEREAS, state and county governments have a legal and moral obligation to protect all of their citizens, Indian and non-Indian alike;

WHEREAS, said tribal actions are creating serious adverse problems on land ownership, management of property, financing, taxation, law enforcement, public facilities management of fish and wildlife and other natural resources and environmental protection and pollution control, water management and rights and aspects of commercial intercourse and professional licensing of the non-Indians and their fee patented lands of the Western States and their political subdivisions.

NOW THEREFORE, BE IT RESOLVED that the WRD urges the Congress of the United States to support and pass legislation which establishes that the States have the exclusive jurisdiction and authority in all executive, legislative and judicial matters over all non-Indians and non-Indian lands, and interest in lands, existing wholly or in part within the geographic boundaries of any Indian Reservation.

ADOPTED 2/77



1735 new york avenue, n.w., washington, d.c. 20006 (202) 785-9577

Helena, Montana
April 27, 1977

The Honorable James Abourezk
Chairman, American Indian Policy Review Commission
Congress of the United States
House Office Building, Annex #2
Washington, D. C. 20515

Subject: NACo Comments on the American Indian Policy Review Commission Report.

Dear Mr. Chairman:

County governments have the capacity and willingness to represent and provide services to all citizens within their boundaries.

Without consultation with county governments the American Indian Policy Commission has made findings and recommendations that raise serious questions about the relationship of counties and tribal councils. NACo is especially concerned about the principle proposed by the Commission for Federal policy that states:

> "The ultimate objective of Federal-Indian policy must be directed toward aiding the tribes in achievement of fully functioning governments exercising primary governmental authority within the boundaries of the respective reservations. This authority would include the power to adjudicate civil and criminal matters, to regulate land use, to regulate natural resources such as fish and game and water rights, to issue business licenses, to impose taxes, and to do any and all of those things which all local governments within the United States are presently doing."

The Commission report further states that: "The growth and development of tribal government into fully-functioning governments necessarily encompasses the exercise of some tribal jurisdiction over non-Indian people and property within reservation boundaries."

Conflict and changes in Federal Indian affairs and policies have resulted in a substantial number of non-Indians living or owning land on Indian reservations

and since there exists in most of the same areas, county governments, the proposed Commission policy raises the following questions:

1. How would a tribal government constitutionally represent all of the citizens within its boundaries as now represented by county government if only tribal members are allowed a voice or vote in tribal government?

2. How would the extent of tribal jurisdiction be determined where no Federally recognized reservation boundaries now exist?

3. How would due process of law be effectively and realistically guaranteed to all citizens within a tribal court system similar to a county-state court system?

4. How would land use planning and zoning powers be administered on an equitable basis to all citizens, Indian and non-Indian alike?

5. How would regulation of water rights and the distribution thereof be fairly administered?

6. How would national, state and local air, water and other environmental quality standards be administered and enforced?

7. How would all categories of taxes be imposed fairly and equitably upon all citizens? Would non-tribal members be taxed without representation? Would tribal members be taxed who are now exempt from state and local taxation?

Although this task force has not had an adequate opportunity to review both majority and dissenting reports, many of the questions and concerns of counties have been expressed in the dissenting views of the Commission. Congress must provide an equal vehicle for the expression of county views including on-site Congressional hearings.

The potential impact of the Commission recommendations on county government cannot be overstated. Before Federal Agency or Congressional action is contemplated for implementation of any of the Commission's recommendations, county government must be given an adequate opportunity to be heard. It is imperative that county governments be included as a full partner in any Federal-State-Indian efforts to resolve these questions. These efforts would require cooperation, communication and education at the local level.

This Task Force stands ready to assist in these efforts.

Sincerely,

Fred Johnson

Fred Johnson, Chairman
NACo Task Force on Indian Affairs

Recommendations for Policy Statement by the NACo Indian Affairs Task Force

NACo is concerned that proposals to Congress for Indian self-government made by the American Indian Policy Review Commission state that:

"The growth and development of tribal government into fully functioning governments necessarily encompasses the exercise of some tribal jurisdiction over non-Indian people and property within reservation boundaries."

Conflict and changes in Federal Indian affairs and policies have resulted in a substantial number of non tribal members living or owning land on Indian reservations and since there exists in most of the same areas, county governments, the proposed Commission policy raises issues concerning voting by and representation of non-members, reservation boundaries, due process of law, land use planning and zoning, distribution of water rights, environmental quality standards, and questions of equal taxation.

NACo proposes that before Congressional or Federal Agency implementation of the recommendation of the American Indian Policy Review Commission, Congress must

1. Adequately study the socio-economic impact on non-members of Indian tribes living and owning property on or near Indian Reservations, now represented by county government,

2. Consider development of an intergovernmental model representing Federal, state, county, and Indian Tribal governments that address the above issues, and

3. After hearings and debate, adopt a Congressional policy statement determinative of the issue of whether Congress perceives the various tribes of American Indians as:

a. Bodies politic in the nature of a sovereign as that word is used to describe the United States and the States; or as

b. Bodies politic which the United States, through its sovereign power, permits to govern itself and order its internal affairs, but not the affairs of othe

Adopted by the NACo Indian Affairs Task Force, June 3, 1977

National Association of Counties
Offices • 1735 New York Avenue N.W., Washington, D.C. 20006 • Telephone 202/785-9577

TO: Indian Affairs Committee

FROM: Linda Bennett Linda

SUBJ: PILT for Indian Lands

Attached is material on payments-in-lieu of taxes for Indian lands in Wasco County, Oregon. This material, collected by Judge Hugh Elder, covers the details of costs involved to the county in handling law enforcement problems due to the existence of the Warm Springs Reservation. Some information also is given on the costs to the two other counties in Oregon which are likewise involved. As one can see from this information, it is costing Wasco County around $52,000 annually.

As you know, the original payments-in-lieu of taxes bill, PL 94-565, does not include payment to counties for Indian lands. Subsequent legislation adds inactive military lands and fish and wildlife refuges, but again not Indian reservations, to the PILT entitlement lands.

NACo supports the concept of payments-in-lieu for Indian lands, and will be testifying in favor of such a program when legislation is introduced in the new Congress.

It would be of great assistance to NACo staff in drafting PILT legislation and testimony if committee members from counties facing a similiar situation to Wasco County would submit similiar material on costs involved.

April 28, 1978

The Honorable Mark O. Hatfield
United States Senator
463 Russell Senate Office Building
Washington, D. C. 20510

Dear Senator Hatfield:

In my letter to you dated March 30, 1978, I stated I was in the process of preparing material you requested in support of payment-in-lieu of taxes for Indian Reservation lands in Wasco and other involved counties in Oregon.

It has taken considerably longer than I thought it would to get this material assembled and I hope it is not too late to get it in to where the action is in this matter.

According to our measurement, 377,900 acres of Warm Springs Indian Reservation land is in Wasco County, which is nearly one-fourth of the County's total land area. The table below has been prepared to show the amount of annual tax revenue that would be derived by Wasco County if this land was in private ownership, which you will note totals the sizable sum of $233,202.00 per annum.

37,790 tillable acres @ $100/acre assessed valuation =	$3,779,000.00	
113,370 forest acres @ $30/acre assessed valuation =	3,401,000.00	
226,740 range acres @ $5/acre assessed valuation =	1,133,700.00	
	$8,313,700.00	
1977-78 tax rate, $19.74/1,000		
8,313.7 x 19.74 =		$164,112.00
Kah-Nee-Ta Resort estimated assessed value $3,500,000.00		
$3,500,000.00 @ 19.74/1,000 =		69,090.00
		$233,202.00

In addition to this, there are costs generated in prosecuting the Warm Springs Reservation residents for offenses occurring outside the Reservation and in Wasco County, and for prosecuting non-Indians for offenses occurring within Wasco County's portion of the Reservation. These costs for the operation of the Wasco County District Attorney's office and the District Court are conservatively estimated at $27,000.00 per year based on an average of the past several years' costs. The Circuit Court costs are averaged at $9,000.00 per year, making an estimated total of these legal costs of $36,000.00 annually. The law enforcement annual cost to the County based on Fiscal Year 1976-77, which is considered a good average year was as follows:

Civil Department for serving papers, etc.	$ 310.00
Corrections Department for confinement of prisoners	11,330.00
Criminal Department for making patrols of the area	4,500.00
Total	$16,140.00

A summation of these annual costs to the County in round figures is $52,000.00.

Beginning last year, Wasco County was awarded $20,657.00, as payment-in-lieu of taxes on Federal Entitlement Lands in Wasco County (BLM, Forest Service, Bureau of Reclamation, Corps of Engineers). This was based on 10¢ per acre. Under the formula established by the Department of the Interior, some payment could be made as high as 75¢ per acre. At 10¢ per acre for Indian Reservation land we would not recover our estimated annual costs, but we strongly feel that we should be awarded at least 10¢ per acre annually as payment-in-lieu of taxes.

There is enclosed some correspondence from Jefferson County setting forth its costs and loss of revenue from the Warm Springs Indian Reservation, and also enclosed is a letter from Umatilla County pertaining to its costs and loss of revenue from the Umatilla Indian Reservation in that County.

I contacted Klamath County also, but as stated in their letter they no longer have any Indian lands, however, as you will note, they are sympathetic with our problem.

It is my understanding that SB 1168 is now in Senate Committee and it is our hope that some provision can be made in the bill to at least provide some reimbursement to counties for their actual costs incurred in providing the services required which are attributable to the existence of Indian reservations.

Your support of our endeavor in this regard will be greatly appreciated.

For the County Court,

Sincerely yours,

H. B. ELDER, County Judge

Enclosures

HBElpp

cc - Congressman Al Ullman
Kess Cannon, aoc

RECEIVED
APR 5 - 1978
WASCO COUNTY COURT

Jefferson County
Madras, Oregon 97741

April 3, 1978

Honorable H. B. "Hugh" Elder
Wasco County Judge
Wasco County Courthouse
The Dalles, OR 97058

RE: PAYMENT IN LIEU OF TAXES

Dear Judge Elder:

The purpose of this letter is to state some facts in regard to untaxed land in Jefferson County.

1. There are 1,795 square miles in Jefferson County of which 390 square miles are within the Warm Springs Indian Reservation.
2. The population of the Warm Springs Indian Reservation is approximately 2,200 this includes both Jefferson and Wasco Counties.
3. After checking with Justice Court we find that approximately 50% of the Court cases are related to the reservation. This is exclusive of traffic cases.
4. The Sheriff's Department gets on the average of 2 call per week in regard to problems at the Frontier a tavern located just across the river from the reservation. Each trip is approximately a 28 mile round trip.
5. Another problem which came up last year was the purchase of property on the industrial site off the reservation by the U. S. Government held in trust for the Confederate Tribes. This takes this property off the tax roll.

Trusting that these facts will supply some information to help you with your project for payment in lieu. If you have any questions feel free to call.

Thank you for all your time and effort to compile the information in regard to the payment in lieu.

Very truly yours,

Herschel Read

Herschel Read
Jefferson County Judge

HR:dc

Jefferson County
Madras, Oregon 97741

April 24, 1978

Honorable H. B. "Hugh" Elder
Wasco County Judge
Wasco County Courthouse
The Dalles, OR 97058

RE: Payment in Lieu of Taxes

Dear Judge Elder:

The following additional estimate on the reservation land has been prepared by the assessor's office of Jefferson County in reference to land on the Warm Springs Reservation within Jefferson County:

Timber land	155,000 acres @ $30.00 per acre	=	$ 4,650,000.
Agriculture land etc.	80,533 acres @ $100.00 per acre	=	8,053,300.
Homes, mobile & apartments	325 units	=	5,735,000.
Loading dock industrial site		=	85,000.
Administration Office & Government Buildings		=	2,000,000.
	TOTAL ESTIMATED ASSESSED VALUATION		$ 20,523,000.
	X tax rate $22.	=	$ 451,506,000.

The amount estimated for the cost of police protection and Courts by the Sheriff's Department and the Court is $50,000.00.

Very truly yours
Herschel Read
Herschel Read
County Judge

HR:dc

216 Southeast 4th

UMATILLA COUNTY

BOARD OF COMMISSIONERS

F.K. "Woody" Starrett
Barbara Lynch
Ford Robertson

P.O. Box 1427
Pendleton, Oregon 97801
Ph: 503/276-7111

J. Dean Fouquette
Administrative Assistant

April 13, 1978

Judge Hugh Elder
Wasco County Courthouse
The Dalles, Oregon 97058

Dear Hugh:

My apologies for not getting this to you last week as promised; we didn't get some of the information from the Reservation until Monday of this week.

At this time the Umatilla Indian Reservation consists of 157,982 acres of land of which 86,688.1 acres are owned by non-Indians, 2,028.7 acres are tribal trust lands, 68,434.3 acres are allotted land held in trust for individual Indians, and 830 acres are owned by Indian individuals in fee simple. There are also 14,000 acres owned by the tribe that are off the reservation. This amounts to 85,293 acres of land not taxed by the County.

It is impossible to determine exactly what we lose in revenue by not having them on the tax role. However, using figures from an Oregon State Department of Revenue Summary of Tax Exempt Real Properties as of January 1, 1977, the TVC per acre for these properties is estimated (roughly) as $725.00/acre. Multiplying this figure times the 86,293 acres = TVC of $61,837,425 for the acreage not being taxed. Multiplying this times the amount property is assessed per $1,000, we arrive at an estimated figure of $10,000 the County General Fund is losing. Please keep in mind that this figure is a very rough guestimate and not based on actual appraised value of the acreage involved. It is probably much more.

It would be difficult to determine a cost figure for services the County is providing the 1,783 citizens who live on the Reservation, but we are providing the following:

1. Maintenance of approximately 150 miles of county roads on the Reservation

2. Mental health services, which include alcohol and drug programs

3. Public health services

4. Deputy sheriff patrol

5. Court system

6. Services of the clerk's office

7. Public library

8. All other services available to the general public

I suppose we could take the percentage these people represent of the County population and use that percentage of the total county budget to "roughly" determine what it costs the county to provide services to them. By doing this, we come up with a figure of $267,450.

We strongly feel that these 85,293 acres should be included in Federal Land from which the County receives payment in lieu of taxes.

Sincerely,

Barbara

Barbara Lynch
County Commissioner

BL:mw

P.S. The County would receive $63,969 in lieu of taxes if we received 75¢ for each of the 85,293 acres which are not being taxed

BOARD OF COUNTY COMMISSIONERS

KLAMATH COUNTY OREGON

COUNTY COURTHOUSE -:- KLAMATH FALLS, OREGON 97601

April 4, 1978

H. B. Elder, County Judge
Wasco County Courthouse
The Dalles, Oregon 97058

Dear Judge Elder:

We have discussed the recent telephone conversation you had with Chairman Kuonen on the matter of an inequity relating to in-lieu-of-tax payments.

Klamath County no longer has Indian lands reserved, therefore, we would not be affected. However, we understand your problem in Wasco County where vast areas are so classified, and exclusion of such lands from in-lieu-of-tax payments would have a drastic influence on your resources.

We are sympathetic with your problem, and urge our Congressmen's consideration of placing Indian lands into a category that will provide a fair computation of in-lieu-of-tax payments.

Sincerely,

BOARD OF COUNTY COMMISSIONERS

Nell Kuonen
Chairman of the Board

Floyd L. Wynne
County Commissioner

Lloyd Gift
County Commissioner

June 22, 1978

The Honorable Mark Hatfield
United States Senate
Washington, D.C. 20510

Dear Senator Hatfield:

It is good to know through your letter of May 15th that you are co-sponsoring bill S 1168 and are doing your utmost to get it passed in the present session of Congress.

In your letter you stated that there are two principal arguements against inclusion of Indian trust lands in the payment-in-lieu scheme. One is the cost which is estimated at $40,000,000 annually. Senator Packwood also mentioned this in one of his recent letters. Since hearing of this I have been in contact with the National Association of Counties regarding this potential cost of the payment proposal as cited by the Senate Energy and Natural Resources Committee and through NACO's study I find that the 40 million is greatly out of line. Apparently someone used the factor of 75¢ per acre against the 55,000,000 acres of Indian Reservation which was wrong. In Oregon the three counties having reservations could only qualify for 10¢ per acre when applying population factor etc. NACO estimates that nationwide the average would be somewhere between 10¢ and 17¢ per acre. Applying the largest of 17¢, the estimated cost would only be around $9,000,000 and it could run less according to them.

I am in hopes that you will straighten the staff of the Energy and Natural Resources Committee out on this feature of their concern. Senator Bumpers and his staff on the Public Lands Sub-Committee probably has the same misconception of the potential cost of this proposal and needs to be given the facts.

You stated that another arguement against the inclusion of Indian trust lands was the Indian Education Act which relieves the counties of some service costs. Since Jefferson County is heavily involved in the schooling of both Indian and non-Indian children who live on the reservation I contacted Judge Herschel Read on this matter. He stated

that they receive federal money (PL874) for this purpose however emphasized the fact that the funds received are far short of the amount they spend to operate the school and transport the childr from the reservation. He summarized by saying, "We lose plenty money on every Indian we have in our schools".

Maupin, Wamic, and Tygh Valley schools also receive this type of funds for the few students they have from the reservation and th also claim that it does not cover their proportionate share of t cost to operate the schools. Obviously these funds could not be considered to be of any benefit to counties and therefore it app that they should not be considered in context with the payment-i program. Please be informed that no federal funds are made avai to Wasco County's general fund due to the existance of Indian la

We, the Wasco County Court, appreciate your interest in this matt and the attention you obviously are giving to it and we hope you will continue to "beat the bushes" for us and all other counties involved with Indian lands.

Sincerely,

H.B. Elder
County Judge

HBE/ei

copy to: Congressman Al Ullman
U.S. House of Representatives
Washington, D.C. 20515

OFFICE OF THE
COUNTY COMMISSIONERS
James J. Cain, President
69 GREENE STREET XENIA, OHIO 45385
513-372-4461

May 18, 1978

Mr. John Horsley, Chairman
NACo Indian Affairs Committee
1735 New York Avenue, N.W.
Washington, D.C. 20006

Dear John:

Per your agreement in Seattle, here is the minority position I promised. I consulted with Supervisor Deschenny on the phone and, at her request, have added her name to the position.

I hope you will give this your objective consideration as I feel it is a much more even-handed position for NACo to be in. It does not present directions for Congress to take, but rather poses the myriad questions Congress must address in formulating an answer.

Obviously, John, I'm pro-Indian. But it would be sheer irresponsibility for any elected official to take a stance of favoring one group of citizens to the Constitutional detriment of another. If, for instance, a non-Indian has reservation land in violation of a Treaty and the violation occurred 100 years ago, you have a double problem. The Tribe has and can legally demand, or should be able to, all jurisdiction granted them on other lands that are theirs. But, on the other hand, the current land owner is not the violator the original owner was. You have two valid claims.

The answer to this sort of delimma seems to be, as proposed by Congressman Meeds and our committee in Seattle, to go, in all such cases, with the claim of the non-Tribal member.

I do not advocate the flip-side of that. Recognizing both validities, I am not convinced the answer has to be either/or. While I don't intend to go into detail here, I am certain

there are techniques and practices (reverter clauses, purchase and relocation, intergovernmental contracts, life estates, non-conforming usages, etc.) that could be adopted to answer the many different situational problems. The solution might not give either party the answer they'd like, but our system is built on the compromise. Indian land could be Indian land without abrogating the Constitutional rights of others.

That, I feel, is the kind of direction NACo should take, if NACo does in fact intend to take a position other than one of concern that states the problems and the need for Congressional action.

If we, as elected officials, are serious about suggesting directions and answers, then we need to develop them. We cannot do that in a vacuum. We will need to meet with Indians to do that development. Both groups need to reflect a broad spectrum of viewpoints. And if we go into such a discussion with an established position of being anti-Indian, and whatever the intent - that is our position, the results will be negligible. We must go in open, committed to neither side and both, if we are going to overcome several hundred years of suspicion.

As Commissioner Johnson said, Indians have a unique citizenship - we must recognize that. We have been called a "nation of nations." If any one group has a right to that special identity, it is the Indians. Red Cloud, I believe, once said "The white man made us many promises, but he only kept one. He promised to take our land and he did."

It's time we started keeping those other promises and stop keeping the latter. It's going to take some accommodation to do so - by both sides - but that is where NACo ought to be. I'd rather be part of the solution than the problem.

One final comment - any position taken by the Indian Affairs Committee must be reviewed by several other committees because of the potential effects of our position on Indian people. Before we present a position to the Board, let alone the convention, it should be reviewed and studied by, at least, the following:

Criminal Justice and Public Safety
Employment

Environment and Energy
Health and Education
Home Rule and Regional Affairs
Land Use
Taxation and Finance
Welfare and Social Services

If you have any questions or comments, please call me or write. See you in Atlanta.

Best regards,

James J. Cain
President
Greene County Commissioners

JJC/jc

cc: William O. Beach, President
National Association of Counties

Members of the Indian Affairs Committee

Minority Proposed Platform Statement on Indian Affairs

Problem Statement

Historically inconsistent Federal policies toward Indian reservations and recently expressed moves by Indian Tribes on the reservations toward complete self-government have created a local government crisis in many parts of the nation. By failing to spell out Tribal jurisdictions, Congress has allowed a situation of conflict to develop in which Tribal aspirations and treaty interpretations are pitted against other constitutional principles and rights.

The result of this is a further deterioration of relations between Indians and non-Indians. Without judging the validity of Indian claims, it is clear that Congress must decide matters of jurisdictions - civil, criminal, control of resources etc. - on a broad spectrum.

The National Association of Counties, therefore, calls upon Congress to resolve this situation by clearly defining the nature and scope of Tribal jurisdictions, rights and sovereignty; their relation to the various States and, through the States, to the local governments.

Policy Statement

The National Association of Counties:

- Recognizes the unique citizenship status of Native Americans;
- Recognizes the important contributions Native American peoples and cultures have made to our national heritage;
- Supports the principles of Tribal self-determination and self-government;

- Supports measures to preserve the cultural and social identity of Native American peoples; and
- Pledges cooperation with Indian Tribes for the provision of constituent services within our individual jurisdictions.

Tribal Jurisdictions

NACo calls upon Congress to enact comprehensive legislation which makes clear the governmental powers granted Tribes by Congress and/or Treaty, balancing the unique status of the Tribes with other Constitutional concerns.

In developing such enactments, Congress should be mindful of the following questions and considerations:

1. To what extent do Tribal governments have sovereign immunity from legal action? Is it that accorded to State or Local governments? Is it something more? Is it something less? A clear definition of both the government and its immunity is required.

2. Within " Indian Country," what jurisdiction would Tribal governments have over Tribal members? Over non-members? Over members outside of "Indian Country"?

3. Regarding hunting and fishing: Within the reservations, who would regulate members; who non-members? Who would have proprietory power over resources? Could the Tribes exclude non-members? Who would have the power, for conservation purposes only, to regulate both members and non-members? Outside of Indian reservations, what are the limits of Treaty provisions regarding hunting and fishing?

4. Who has jurisdiction on the reservation over natural resource development, including but not limited to the following: Water, timber, coal, oil shale, grazing lands?

5. Regarding criminal jurisdiction in "Indian country": What levels of responsibility for enforcement, prosecution and trial rest with the Tribes? with the States? with the Federal Government?

6. What is the extent of Tribal water rights?

7. If Congress supports the continued conversion of land to Indian Trust states under the Indian Reorganization Act of 1934, then Congress should develop satisfactory methods to compensate local governments for the loss of already lean local tax monies necessary to the provision of mandated and requested services.

8. Where, in redressing long-standing Indian rights violations, Congress finds it appropriate to limit equally long-standing practices or assumed rights of non-Tribal members, especially where such change works a fiscal hardship, Congress should make provision for appropriate redress to those so limited.

Submitted by:

James J. Cain
Commissioner
Greene County, Ohio

Louise A. Deschenny
Supervisor
Apache County, Arizona

jc

PROPOSED - "MAJORITY"

American County Platform Statement on Indian Affairs

Adopted in Seattle, Washington May 12, 1978

Problem Statement

The inconsistency of federal policy regarding Indian reservations and the system resulting has charted tribal government on a collision course with county government throughout the nation. What Congress has permitted to develop by failing to spell out the jurisdictional rights of American Indians is a direct conflict between Indian tribal aspirations and the constitutional rights of American citizes.

Relations between Indians and non-Indians within our member counties have become strained as tribes have begun claiming rights to natural resources and jurisdiction over non-Indians. The federal government's advocacy of Indian claims has seriously contributed to the tension.

The National Association of Counties calls upon Congress to resolve this situation through the enactment of a national policy toward American Indians which clearly defines the nature and scope of tribal jurisdiction.

NACo Policy Statement

THE NATIONAL ASSOCIATION OF COUNTIES:

* Respects the principle of tribal self-government over the members of Indian tribes and the property of their members;

* Recognizes the important contribution American Indian cultures and peoples have made to the heritage of all Americans:

* Supports measures to preserve the cultural identity of Indian peoples; and

* Pledges cooperation with Indian tribes in the provision of service to constituents within our respective jursidictions.

Tribal Jurisdiction

NACo calls upon Congress to enact comprehensive legislation which makes it clear that the governmental powers granted tribes by Congress are limited to the government of members and their internal affairs. With regard to the relations of tribes with non-members, the constitutional principles of "government by consent of the governed", "equal protection under law", "no taxation without representation", and "trial by one's peers", should be reflected in the policy adopted. Furthermore, it should incorporate the following:

Tribal government should have no greater "sovereign immunity" from legal action than is accorded state, county and city government. Such tribal immunity as currently exists should be withdrawn.

Within "reservations" tribal government would have jurisdiction over tribal members. The state would have jurisdiction over others. Outside "reservations" tribal government would have no jurisdiction.

- over -

Regarding hunting and fishing: Within reservations, Indian owned lands, or trust lands, the tribe would regulate members and the state non-members. However, the tribe would have proprietory power over the resource and could exclude non-members States would have the power, for conservation pruposes only, to regulate both members and non-members.

Outside of Indian reservations, the state would regulate both members and non-members.

Regarding criminal jurisdiction in reservations: All major crimes by members - federal. All crimes by non-members and all crimes by members against non-members not covered by the Major Crimes Act - State.

All crimes committed by members against members by members where there is no victim and which are not covered by the Major Crimes Act - tribal.

Tribal water rights should be recognized in the amount currently in use.

No further conversion of land to Indian trust status should be approved until satisfactory methods can be devised to compensate counties for the loss to their tax base.

NACo Indian Committee Resolutions
Adopted in Seattle, Washington May 12, 1978

RE: H.R. 11489; S. 2502

Be it Resolved that:

Until the Congress defines the nature and extent of its trust responsibility to Indian tribes, and until Congress resolves questions regarding tribal and county jurisdiction presently in conflict, the National Association of Counties cannot support enactment of the "Tribal-State Compact Act of 1978".

RE: H.R. 6869; S. 1437

Be it Resolved that:

Congress be petitioned to delete section 144-i of this bill, which repeals PL 280, until adequate public hearings are held to expose this highly controversial issue to full public scrutiny.

RE: Moratorium on conversion of land into Indian trust status

Be it Resolved that:

Members of Congress be petitioned to request the Secretary of Interior to place an immediate moratorium on further conversions of land into Indian trust status. The moratorium would remain in place until Congressional hearings could be held to establish what the policy of the U.S. is regarding these conversions -- in light of the threat to the provision of basic services by counties affected by the removal of these lands from their tax roles.

RE: OMB A -95 Process

Be it Resolved that:

Indian tribes should be specifically included in the OMB A-95 federal project review process.

RE: H.R. 9950 - the Meeds Bill

Be it Resolved that:

The Meeds bill be updated to reflect two recently delivered, landmark opinions from the U.S. Supreme Court: "Oliphant-Belgarde" ruling that Indian Tribal Courts do not have inherent criminal jurisdiction over non-Indians; and "Wheeler" defining the limited sovereignty of tribal governments over the affairs of their members.

And be it further Resolved that NACo applaud and endorse the constitutional principles enunciated in the "Oliphant-Belgarde" decision and that NACo resist any effort to reverse by legislation what has just been established by the Supreme Court's action.

The National Association of Counties

Another Drum Beating for Destruction of Indian

Anti Indian Groups in Massive Attempt to Influence Congressional Legislation to Destroy Treaties

BY JIM LEWIS

The membership of the National Association of Counties will have a choice at their annual meeting in Atlanta the second week of July.

They can join hands with fanatically antiIndian groups like the Interstate Congress for Equal Rights and Responsibilities.

Or they can ask for a reasoned legislative solution to the conflicts between citizens and treaties.

Two policy statements will be available for the membership to choose between.

One was drafted by a small clique within the newly formed NACO steering committee on Indian affairs at a meeting in Seattle last month.

Minority Report Filed

The other, to be presented as a minority report from the same committee, was drafted by James Cain, county commissioner from Kenai, Alaska and signed by Cain and Lorraine A. Deschenny, Navaja, county supervisor from Apache County, Arizona.

It is an interesting exercise in propaganda analysis to compare the two policy statements and to become aware of the subtle way ICERR phraseology can be used to create a moderate sounding but strongly antiIndian statement.

The NACo steering committee includes 25 representatives from throughout the 50 states. Only about eight attended the Seattle meeting, most from northwest, mountain, and plains states. The northwest region committee on Indian affairs met along with the national committee.

Meeting Dominated by ICERR

About 50 non-members also attended the meeting. This "audience" was dominated by citizens and sympathizers of the ICERR.

Tom Tobin, South Dakota attorney and corporate agent for the ICERR, contributed considerable advice to the county commissioners who drafted the minority report.

The only scheduled speaker was Slade Gordon, attorney general of Washington, who many northwest Indians claim has been an obstructionist influence in negotiations for a peaceful solution to the sometimes violent dispute over treaty fishing rights in that state.

The small clique of commissioners from the Northwest and other areas heavily represented in Seattle, hope to make their views NACo policy.

One of the strategies discussed was

Tobin: Keep Easterners "Ignorant"

to convince commissioners from eastern and midwestern states that they are ignorant of the "real problems" in Indian country. These "uninformed" commissioners are therefore, expected to sit back and let the "experts" from Indian country set the policy for the future organization.

It was also apparent, since no Indians or Indian attorneys were present, that the Seattle clique hopes to formulate this policy with as little participation as possible from the Indian position.

Tobin and others also cautioned the commissioners against any appearance of being antiIndian in their relations with the press or the public.

The frame of reference of the statement drafted by the Seattle majority is established in the first sentence, which proclaims that inconsistent federal policy "has shamed tribal governments throughout the nation."

Compare this with the minority report which points to "historically inconsistent policies which have caused a local government crisis in many parts of the nation."

The majority implies that tribes and counties are in direct conflict, have opposing interests, are enemies.

All the Blame on the Tribes

It is, in their view, the tribal governments who have embarked on the collision course; it is the tribal governments who must do all the course changing.

Furthermore all counties are in danger from the Indians, even those supposedly uninformed eastern ones who have no Indians within their boundaries, according to this statement.

That there is a crisis in local governments in many counties, as the minority report states, is hardly the subject of argument. However this report leaves out the black-hat-white-hat attributions of blame and implies that counties have no need to compromise or to negotiate solutions.

In the first sentence of the majority report the inconsistent federal policy is defined as pertaining to "Indian reservations and the issues pertaining."

Majority Report Advocates Termination

Slade is a popular and conversationally different term to define Fort Tobin as defines it in Palm Springs. In his speech to a NACo workshop there early this year he said all of the problems to the "reservation system" and claims that the problems would go away if the "system" including the Bureau of Indian Affairs were dismantled, or ended forthwith.

The reporter believes that the county group is in effect advocating termination, one of those inconsistent federal policies that spelled disaster.

The majority statement further defines the conflict as one "between Indian tribal separations and the constitutional rights of American citizens."

In the minority statement "tribal separations are pitted against other constitutional principals and rights."

By using the word other, the minority has recognized what the Constitution itself says, that treaty rights are constitutional rights. The majority statement denies this, again borrowing from ICERR and other antiIndian propaganda.

The minority asks Congress to clearly define "the nature and scope of tribal jurisdictions, rights, and sovereignty."

The majority asks for "the enactment of a national policy towards Indians which clearly defines the nature and scope of tribal jurisdiction."

No Mention of Sovereignty

Far be it for the latter group to mention sovereignty anywhere in their statement is the word itself, even though the sovereign status of tribes was defined by the courts in the early 1800s and upheld consistently since then. The ICERR has just as consistently denied that Indian sovereignty exists.

Both statements speak of the tribes' "relation to the various states and, through the states, to the local governments, their trustee.

Both statements also ask for a solution by Congress (Tobin warned in Palm Springs it would be wise to avoid the courts because, he said, they too often ruled in favor of the Indians.)

Would Tell Congress What to Do

However, while the minority report simply poses the questions Congress is asked to consider, the majority report tells Congress what to do.

In general the majority's answers are the same as those in the bills by the antiIndians' heroes, Congressmen Lloyd Meeds and John Cunningham, including the latter's bill to unilaterally abrogate all treaties with the tribes.

Although these bills are apparently dead so far as this Congress is concerned there undoubtedly will be efforts to revive them in later sessions if NACo adopts the majority report. It will be throwing its political weight behind the revival of the bills.

Support to these bills is also contained in a patronizing statement in the majority report, that says NACo "respects the principle of tribal self government over the members of the Indian tribes and the property of their members."

Jurisdiction only over "Members"

These call for a denial of tribal jurisdiction over nonIndians in any circumstances only "members" and their "property". The states would have jurisdiction over nonIndians on the reservation and everybody off the reservation.

The same principle is applied to fishing and hunting rights. While the tribes would have a "proprietary power over the resources," the states would have the power to regulate both Indians and nonIndians for purposes of conservation. Otherwise the tribe could exercise control over members.

As to criminal jurisdiction, the tribes would only have jurisdiction over "major crimes" committed by members (now under federal jurisdiction, and other crimes when committed by members against other members. The state would have jurisdiction over all crimes on the reservation involving nonIndians and presumably Indians from another reservation whether Indians were perpetrators or victims. (This almost turns back to frontier law, except that in the old days Indians could not even testify in white courts.)

Water Rights

Water rights would be limited to water "currently in use" by the tribes.

The sum of these directions to the U.S. Congress is to tell them to overturn not only the treaties, but all existing federal law regarding Indians, and at least half a century of decisions by the courts, including the Supreme Court.

It will be interesting to see if the "eastern commissioners are as misinformed as the Seattle clique believes, and are willing to ask Congress to destroy the tribes. Or will they, as the minority report would have them do, "support the principles of tribal self-determination and self government."

The NACo annual meeting affords a good opportunity for Indians to see the county commissioners in action and perhaps provide some information and advice for their consideration.

It is being held at the Georgia World Conference Center in Atlanta. The steering committee on Indian affairs will meet Saturday, July 8 from 9 a.m. to 11:30.

July Meetings Open to Public

A workshop on Indian county relationships will be held Wednesday, July 12, starting at 1:30 p.m. Tom Tobin and Tom Fredericks associate counselor for Indian affairs in the Department of Interior are two of the presenters. Two others will be announced later.

By NACo policy all meetings are open to the public and the press.

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1:30

NACo Indian Affairs Committee
Minutes
Meeting in Washington, D. C., on December 15, 1978

The following committee members were present:

John Horsley, Kitsap Co., Wash.
Elmo Foster, Laramie Co., Wyom.
Robert Horton, Davidson Co., Tenn.
James Cain, Greene Co., Ohio
Fred Johnson, Glacier Co., Mont.
Ed Bader, Corson Co., S. Dak.
Charles "Pat" Petterson, Navajo Co., Ariz.
Seth Neibaur, Power Co., Idaho

OTHERS IN ATTENDANCE:
Cal Black, San Juan Co., Utah
Dale Skaalure, Chouteau Co., Mont.
Jim Rannells, Big Horn Co., Wyom.
Norm Cable, Exec. Director, Wyom. County Commissioners Assn.
Marvin Schwartz, attorney, U.S. Commission on Civil Rights
Pete Taylor, Special Counsel, Senate Select Committee on Indian Affairs
Alan Parker, Chief Counsel, Senate Select Committee on Indian Affairs
Frank Ducheneaux, Special Counsel, House Interior & Insular Affairs Committee
George Waters,National Congress of American Indians

John Horsley, chairman, presided. With formalities (introductions, etc.) aside, there ensued a discussion on leadership in the Senate Select Committee on Indian Affairs since former Senator Abouresk vacated the position. It was decided that individual commissioners should contact their Senators concerning the committee position, but that NACo should not be advocating one Senator over another.

Next, Cal Black described a situation in San Juan County involving the authority to tax an oil company -- whether it should be the county or the Navajo tribe -- and the distribution of services. Unitl recently the county has received the tax revenues from the company and in turn has provided the services to the area which includes a portion of the Navajo Reservation. If the tribe is going to obtain the tax revenues, will it also become the provider of services? Should the county boundaries be split? Should there be some sort of intergovernmental agreement? Legislative clarification of the governmental authority of the tribe and county may be needed.

Bob Horton - The East has a different, but interrelated set of problems dealing with the Indian tribes. The myriad of court cases involving tribes are confusing things. For example, the state is trying to project ten-year goals for the areas of health and education. What powers/responsibilities to counties have in regard to the Indian population? Where in the system of federalism do the tribes fit? Staff should contact Center for Study of Federalism at Temple University which is pursuing this subject.

Discussion ensued concerning the powers of the tribes, especially in reference to the acquisition of land. The BIA issued draft regulations (attachment A)

on the land acquisition this summer, which generated correspondence between several committee members and BIA (some included in attachments B - D). The final regulations should be released in late January or February, so this subject shall be a major topic of discussion at the next committee meeting on February 8, 1979; at the annual Western Interstate Region (WIR) meeting. No action taken at this meeting.

Frank Ducheneaux, Pete Taylor and Alan Parker provided a legislative wrap-up of the 95th Congress and a forcast for the 96th. The Select Committee will continue, though a chairman will not be chosen until early next Congress. The 96th Congress will probably address different aspects of the American Indian Policy Review Commission.

The "State-Tribal Compact Act", which passed the Senate during the 95th Congress, will be reintroduced. This bill, once amended, could be a good vehicle for resolving issues. There is a need for states to allow local units to enter into agreements at the local level. Reciprocal extradition agreements are an example of Indian tribes and states exchanging agreements.

The House Indian Affairs Committee does not foresee legislation specifically addressing the issue of sovereignty during the next Congressional session. There may, however, be legislation of this nature emerging from one of the state delegations. Other areas which legislation might address:

- hunting and fishing rights
- water rights, especially in view of the present administrative review of water projects
- payments-in-lieu of taxes for Indian lands (AIPRC did recognize the burden of these property tax exempt lands)
- amendments to the "Self-determination Act" to address Indian health service problems, etc.
  (Patterson: the South Dakota Act doesn't allow for profit and overhead.
  Horton: Debt collection problems for hospitals from Indian users.)
- Economic development
- social security/Title XX

Seth Neibaur - There are many things which can be done at the local level - search for solutions to these problems, but avoid the controversial. (Idaho's governor also has requested an Indian Task Force.) Concept of state-tribal compact act should be supported.

A motion was made by Jim Cain, seconded by Fred Johnson, to explore funding for additional staffing as in the NACo work program. All were in favor.

Next item on the agenda was a presentation on the recently-initiated joint Indian project of the National Conference of State Legislators (NCSL) and the National Congress of American Indians (NCAI). The work of this Commission, composed of six state legislators and six tribal representatives (attachment E) will be conducted in three phases over a two year period. During the first six months, (phase I), research will be conducted in four areas:

1. State and federal legislation will be collected and analyzed to determine existing authority for and barriers to cooperative agreements.

2. Existing and past agreements between tribes and states will be examined to determine the range of issues dealt with, and what factors contributed to their success or failure.

3. Specific issues or government functions which could be the subject of state-tribal cooperative agreements.

4. Identify potential participants for several pilot projects for phase III

Phase II objective: develop recommendations for a procedure that states and tribes could use to negotiate agreements. Hearings will be held in several areas.

During the second year (phase III), the Commission will coordinate several pilot rojects to evaluate the recommended negotiating process and the agreements.

The Commission offered to allow a NACo observer to attend their meetings. This would allow for NACo input into the project without binding NACo in any way to its outcome. The following three people wish to be observers:

Charles Patterson
Fred Johnson
Bob Horton

Meeting adjourned. Next meeting will be on Friday, February 9.

MINUTES OF INDIAN AFFAIRS COMMITTEE MEETING

Seattle, Wash., May 11-12

Committee Attendees:

John Horsley, Chairman
Clay Bader, Colo.
Ed Bader, S. Dak.
Jim Cain, Ohio
Hugh Elder, Ore.
Elmo Foster, Wyo.
Fred Johnson, Mont.
Seth Neibaur, Idaho
Loryn Ross, Utah

Washington State Committee Attendees:

Russell Will
Mel Lakin
Terry Unger
Tom Taylor
Graham Tollefson
Omar Yaumans
Jack Rogers
George Barner, Jr.

Interstate Congress for Equal Rights :

F. W. Rockwell

A.A. Thurston Co., Neb.:

Blair Richendifer

Attorneys:

Tom Tobin, S. Dak.
Slade Gorton, Wash. St. Atty. Gen.
John Merkel, U.S. Atty., Western Wash

NACo Staff:

Linda Bennett

John Horsley, Chairman, gave opening remarks. The discussion then turned to the attendees, who started to give a narrative of their Indian problems. This was interrupted by the arrival of Slade Gorton. For clarity, I have grouped all the "narratives" together.

Slade Gorton, Attorney General, Washington State

1. Alert on S. 1437 and H.R. 6869, sec. 1441 , Revised Federal Criminal Code Section 1441 is a practical repeal of P.L. 280.

Must educate Congress and courts. In a great number of cases, more non-Indians are affected than Indians (Many Congressman/staff are not aware of actual problems, and that there are "checkerboard" reservations).

2. Cooperation with National Association of Attorneys General

The Western Division of the Association of Attorneys General is most sympathetic to non-Indian problems. Communicate with either:

a. Secretariat
National Association of Attorneys General
Lexington, Kentucky

b. Ray Marshall, National Association of Attorneys General
Hall of States
444 N. Capitol, N.W.
Washington, D. C.

3. S. 2502 - the Tribal State Compact Act

Various problems exist with bill in present state. Solution to Indian-county jurisdictional problems lies with Congressional action. Lloyd Ingraham, Interstate Congress, testified against the bill at Senate hearings in early March. Slade Gorton does not endorse S. 2502.

4. Water Rights

Charlie Roe, staff for Gorton, is drafting language for water rights bill.

5. Meeds' Bills

At present, the bills are being essentially killed by the House and Senate Indian committees. They shall be reintroduced next Congress after Senator Abourezk is out of office. Unfortunately, Meeds shall also be out of office, so another sponsor is needed. Possible sponsors are: Foley (D-Wash); Magnason (D-Wash); and McCormack (D-Wash). Magneson and McCormack are expressing mild interest.

6. Eastern Land Claims and American Indian Policy Review Commission

Both have been an unexpected "godsend" as the demands are so great. Much of what the Indians requested is automatically discounted. We must use this to our immediate advantage.

7. Attacks of racism

Unfortunately, the group shall be branded as racist until people are educated to the problems of the non-Indians. (This, however, shall be a slow process.)

8. Sovereignty

Supreme Court uses the term "quasi-sovereign" with respect to Indian tribes. Oliphant case - 1978 - do not have jurisdiction against non-Indians.

9. Conversion of fee-patent land to trust land

Tobin: Decision at BIA has been delegated down to the local BIA agent. Farmer's Home Administration and HUD have given money to Indians and tribes to repurchase land. Suggestion: place moratorium on reverting land back to trust land. Also, get compensation for effect of Indian tribal land -- similar to payments-in-lieu bill.

At this point, Slade Gorton had to leave. Discussion then focused on a narrative from each person with respect to problems in their area.

Jim Cain, Ohio:* No problems.

Tom Taylor, Mason Co., Washington: * No major problems

Graham Tollefson, Yakima Co., Wash: * Ratio of non-Indians to Indians is 3 to 1. Problems with insuring the constitutional rights of non-Indians, water rights, and investment decisions. Cross-deputization has worked (cooperation is an intermediate solution until problem is solved.)

Hugh Elder, Wasco Co., Oregon: Few problems in comparison.

1. have enforcement problems -- services are provided for the tribes (Warm Springs Reservation) but counties are not reimbursed. For example, the Indians arrest non-Indians on the reservation and turn them over to the county police at the reservation borders for prosecution. Some sort of reimbursement -- either from the tribes or from the Feds.-- should exist.

2. Salmon fishing on the Columbia River. Indians have no respect for the seasons. Also, there is a lot of illegal poaching.

Ed Bader, Corson Co., S. Dak: (Biggest problem is Abourezk.) Major problems result from shifting reservation boundaries (due to recent court battles.) Also, the homesteading acts resulted in checkerboarded reservations. Trust land conversion is continually eroding the tax base of the county.

Elmo Foster, Laramie Co., Wyo.:

1. Environmental laws of tribes are often stricter than state laws. This creates problems in the mining industry.

2. Indians are exempt from state taxes.

3. Indians don't carry auto insurance.

4. Study is needed to determine how much water belongs to the Indians

Clay Bader, Colo.: Disagreements over water and hunting rights -- Mountain Ute Indians claim water. Law enforcement on highways is also a problem.

Omar Yaumans, Wash.:

1. Zoning -- Indians zoned land, and private homeowners can't build.

2. Joe DelaCruz, NTCA -- extremely crafty.

Loryn Ross, Duchesne Co., Utah: problems include: checkerboard area, law and order code, water rights, and tazes and sales. At present. Duchesne Co. is in lawsuit wit- the Uintah Utes over criminal jurisdiction in the original Ute Reservation.

Terry Unger, Whatcom Co., Wash: Indians receive too much federal money. They are immune from the OMB - A 95 procedures, and in many cases there is no prewarning of Indian action. Goal of Indians is to reduce non-Indian population. They are proceeding by several methods. 1. buying land, s. sewer project (which is operated

* For sake of Clarity and continuity, have placed these with the rest.

by Indians.) Area has 5 to 1 ratio non-Indian.

Seth Neibaur, Idaho:

1. Many Indians aren't tribal council members and therefore need to be represented.

2. Indians want control of H2O flowing through the entire reservation.

Mel Lakin, Ferry Co., Wash.: 1. County has limited tax base (only 13% of county) 2. County pays for all services. For example, tribes are willing to negotiate on solid waste problems, but not willing to pay. 3. Indians are trying to control all the water rights of the Columbia R.

Russell Will, Okanogan, Wash.:

1. No audit on tribal money. Tribes are buying land with our tax money (FHA).

2. Long range plan of Pirdle law firm (Seattle) is same design as Maine.

3. Yel Tonasket (Indian) talks exclusion

4. However, there are some road areements which work.

Fred Johnson, Glacier Co., Mont.: 1. Reservation (Blackfeet) encompasses 7/8 county. 2. About 27,000 acres to be returned to trust 3. The Indians have no financial responsibilities and have lost incentive to work.

Blair Rickendifer, A.A. for Thurston Co., Neb.:

1. Two reservations encompass the county

2. There are no cross-deputization agreements, because if there were C.D. agreements, the insurance would be void.

3. In a case before a tribal court, an outside atty. is permitted only with the permission of the tribal government.

F.W. Rockwell, Interstate Congress: Appeal for help. ICERR 's greatest "claim to fame" was stopping the Indian Water Bill last year. If the bill would have passed, the Indians would now have claim to Colorado River, Talmor River, etc.

George Barner, Thurston Co., Wash: Fisheries issue

John Horsley -- This is a contest -- Indian militants against the constitutional rights of the non-Indians.

Tom Tobin then took the chair to address the following issues:

1. Meed's bill with regard to Wheeler and Oliphant
2. Tribal-state compact act
3. Trust land conversion
4. H.R. 6869 - S. 1437 (Repealer of P.L. 280)

Main criticism is of the system (action and inaction), not of Indians. We are not racist, but we get branded in this manner no matter how we proceed.

Answer to problem lies in Congress. The key to success is with the county commissioner. At any level above this, one loses the local control.

The Washington, D.C. scene has been engineered by Sen. Abourezk. The Tribal State Compact Act is merely a smoke screen to hide the Meed's bills. The Meed's bills should be revamped in light of the Wheeler and Oliphant cases (which limit Indian jurisdiction).

A moratorium should be placed on trust land conversion until Congress can adequately study the effects on non-Indians

Votes were taken to draft the resolutions and the new county platform. It was decided not to outright oppose the State Tribal Compact Act because such a move would result in too much unfavorable press. However, any "support" would be qualified. Graham felt that tribal governments are not equal to counties. Only half the group felt that Indians should have the power to police their own people.

Friday, May 12

Began with a short discussion of the problems of the off-reservation Indians. Blair suggested that health services be extended to off-reservation Indians so that they would not want to go back to the reservations. Jim Cain responded, indicating that this would cost more money. This would not be popular with taxpayers.

John Merkel, U.S. Atty for Western Wash: Problem in the past has been that courts have been Indian-biased. This is slowly changing. Merkel is trying to reverse the Boldt decision (which gave Indians 50% of the fish (catch) in the State. Merkel emphasized that the INdians have only those rights given to them by treaty. Congress should realign the responsibilities in favor of the majority. People must give input to courts -- Peter Taft -- in Justice Dept. Mr. Mormon

Ed Bader questioned how an Indian could be a citizen, a ward, and sovereign at the same time. Merkel responded, discussing the history of the U.S. government fiduciary responsibility to the Indians.

With respect to water rights, is it only the water which was in use at the time of the treaty, or is it all the water on the reservation?

-- Return to discussion on platform.

Horsley - We want to indicate that we wish to be cooperative, but yet wish to decide how the policy effects non-Indians.

Jim Cain - Why not regionalism? Why not cooperation? Why are there no Indians at the meeting today?

Johnson and Horsley -- responded that the presence of any Indians frustrated any development of a solid position at past meetings. We want to negotiate only when in the county interest.

Resolutions and Policy statement -- voted on and passed unanimously.

Exhibit No. 18

Not received at time of publication

Exhibit No. 19

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

APR 0 8 1980

Paul Alexander, Assistant General Counsel
United States Commission on Civil Rights
Washington, D. C. 20425

Dear Mr. Alexander:

Thank you for your recent letter requesting information for the record of your March 1979 Hearing on National Indian Civil Rights Issues. The Bureau of Indian Affairs has prepared a brief report for each of the two items you have requested.

Payment of Tribal Attorney Fees

The payment of attorney fees of Indian tribes from appropriated funds was addressed in a decision of the Comptroller General, dated May 30, 1975 (B-114868). The Bureau has issued guidelines based upon this decision. A copy of each is enclosed for your convenience.

Following the issuance of the Comptroller General's decision, the Bureau has provided funds to eight tribes for the payment of attorney fees, because representation by the Department of Justice, without independent counsel, would have resulted in conflict of interest situations. Three of these tribes -- Navajo, Ute Mountain Ute, and Jicarilla Apache -- are involved in litigation over water rights in the San Juan River Basin, a situation in which the Justice Department could not represent the conflicting interest of all three tribes. Four of the tribes - the Pueblos of Pojoaque, Tesuque, Nambe, and San Ildefonso - are engaged in similar litigation regarding the Rio Grande Basin. The other tribe is the San Pasqual Band of Mission Indians, which, along with several other bands, is involved in proceedings before the Federal Energy Regulatory Commission. Although the United States Attorney is representing the Indian parties before the FERC, litigation will follow the FERC proceedings and the interests of the San Pasqual Band will, at that time, become adverse to the interests of the other Indian parties.

The other cases in which the Bureau has approved contracts for the payment of attorney fees subsequent to the Comptroller General's decision have been cases in which the Justice Department declined to

represent the Indian interests. These include a case by the Hualapai Tribe to recover title to land and a case by the Omaha Tribe in which the Justice Department would only agree to prosecute a portion of the claim.

Indian Law Enforcement Professionalization

Efforts to professionalize both Bureau and tribal law enforcement personnel had its initial implementation in 1969 with the establishment of the Indian Police Academy. Initially, the academy offered only a basic police training program for an average of eight weeks, with successful completion of the program being required for uniform police patrolmen employed by the Bureau and voluntary participation of uniformed police patrolmen employed by tribes. In addition, on a space available basis, potential Indian police patrolmen and other law enforcement officers working on or near Indian reservations were accepted for training.

Over the years, the academy-type basic training program was modified and updated until the basic Indian law enforcement program now consists of more than 500 hours of intensive training conducted in a ten-week period. In addition, new courses of instruction have been added and are conducted on a regular recurring basis, either as an on-site and/or off-site at the area, agency, reservation level of operations. The courses range from one-day to two-week programs. Some, but by no means all, courses available include a two-week First Line Police Supervisory Course; a one-week Police Instructors' Course; a two-week Jail Management and Operations Course; a two-week Fish and Game Enforcement/Conservation Course; a five-day Basic and Advanced Firearm Instructors' Course; a three-day Indian Law Enforcement Automated Data Reporting Program; a two-week Law Enforcement Executive Management Course. Upon request, specialized short-term programs, usually three to five days, are developed and presented relating to unique problems at a local area, agency and/or reservation level of operations.

Prior to 1969, there were no training requirements prescribed for Indian law enforcement personnel, except for 40 hours of annual local in-service training for Bureau officers. This situation changed with implementation of regulations through 68 BIAM and 25 CFR which require mandatory basic training for all new Bureau officers and tribal officers employed through contracts with the various tribes under the provisions of P.L. 93-638, within one year of appointment either at the Indian Police Academy or at the approved state training facilities where the reservation is situated. In addition, the BIAM and CFR now prescribe

mandatory training for supervisory and management personnel as well as criminal investigative and jail management/operations personnel.

Regulations now require that, in all Bureau and tribal P.L. 93-638 enforcement programs, each law enforcement officer must requalify in issued weapons semi-annually through successful completion of an approved firearms qualification course.

Since 1971, selected Bureau and tribal criminal investigators have participated in the FBI Academy training program. In addition, Bureau and tribal criminal investigators are required to complete the criminal investigators' training program at the Federal Law Enforcement Training Center. To date, 24 Bureau and tribal criminal investigators have graduated from the FBI Academy and 92 from the Federal Law Enforcement Training Center.

The Bureau adheres to the qualification standards prescribed by the Office of Personnel Management (formerly Civil Service Commission) for the employment of Bureau of Indian Affairs police officers and criminal investigators, to include a full field background investigation conducted by the Office of Personnel Management. Tribes contracting to provide for law enforcement services under provisions of P.L. 93-638 are also required to comply with qualifications standards prescribed by the Office of Personnel Management.

To further enhance field Bureau and/or tribal law enforcement programs, an Inspection and Evaluation Unit was established at the Bureau level of operations in 1976. Since its establishment, the staff of this Unit has made more than 100 inspections and evaluations, follow-up inspections and special investigations of reservation, agency, and area law enforcement programs to insure that such programs adhere to prescribed law enforcement standards.

Twelve years ago there was no coordinated effort to upgrade the caliber and skills of Bureau and/or tribal law enforcement personnel. Any such effort was a total responsibility of the local employing field organization. Today there is a coordinated effort being made to upgrade the caliber and skills of all Indian law enforcement personnel, both Bureau and tribal, with tentative plans to further this advance in professionalizing Indian law enforcement services, provided adequate funding is forthcoming in the future.

We hope this has been responsive to your request. If we can be of further assistance, please let us know.

Sincerely,

Deputy Assistant Secretary - Indian Affairs

Enclosures

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20242

IN REPLY REFER TO:

JUN 10 1977

Attorney Fees

GUIDELINES FOR ENTERING INTO CONTRACTS
FOR THE PAYMENT OF ATTORNEY FEES

In order to secure proper legal representation of tribal rights and interests where required and within the Bureau's budget capability, the following guidelines are provided for contracting officers to use when negotiating with tribes in this regard.

1. Eligibility in accordance with requirements as set forth by the Comptroller General (B-114868)

The Commissioner will advise the Solicitor of a potential conflict of interest between the affected tribe and the United States and request that the Solicitor so advise the Attorney General, seeking a determination pursuant to 25 U.S.C. 175 of whether the Department of Justice can or will represent the tribe in the identified fact situation. Upon receipt of the Attorney General's decision that the Department cannot represent the tribe or will not, the Area Director will proceed to the next step.

2. Determination of Priority Classification

(a) In the event that a tribe is sued directly and must defend its immunity from suit as well as on the merits and the Attorney General declines to defend the tribe, these facts will constitute the Bureau's first-funding priority of a tribe's attorney's fees.

(b) In the event that the United States is sued and a tribe's (or tribes' rights and interests (e.g., Winters right) are challenged by the action and, in addition, other identified interests of the United States (Bu Rec, BLM, etc.) or the rights and interests of another tribe conflict with those of the affected tribe, such facts will constitute the Bureau's second-priority funding of a tribe's attorney's fees.

(c) In the event that the actions (or inactions) of another party detrimentally affect the rights and interests of a tribe, and the Attorney General declines to bring suit to enjoin such action thus forcing the affected tribe to bring suit to protect its rights and interests, such facts will constitute the Bureau's third-priority funding of a tribe's attorney's fees.

3. Provisions of the contract

(a) The contract shall state with specificity based upon a proposal submitted by the attorney to the Area Director (to be stamped CONFIDENTIAL) what tribal rights and interests the attorney will defend in the event of items 2(a) and (b) above and what tribal rights and interests the attorney will seek to protect in the event of item 2(c) above and the legal theory or theories to be used to serve such ends. Final approval of the contract remains with the Commissioner.

(b) Recognizing that it is most difficult to arrive at an annual rate of compensation for the services of the tribe's attorney, it has been determined that the Bureau will allow 1600 billable hours annually at $50 per hour ($80,000) or portions thereof with a limit of $300 per per day. It is felt that such compensation closely parallels what it would cost the Government, based on the local United States Attorney's annual salary, to defend or to prosecute the case of an affected tribe but for the conflict of interest that requires independent counsel for tribal representation.

In addition to the compensation stated above, the attorney will be allowed consideration for extraordinary costs, including necessary travel (coach class) and per diem which will be computed in accordance with pertinent Government regulations. (Additional costs of first-class air fare will be borne by the attorney for whatever reason.) Each projected trip must be fully justified in writing. It is recognized that unanticipated events may occur which will require the attorney to travel more times than projected. However, variances shall be allowed only upon written justification to be submitted to the Area Director. In the event that the Area Director does not grant the variance, such decision shall be stated in writing with reasons given and may be appealed to the Commissioner. In the event that the Area Director allows the variance, such decision shall be in writing and forwarded to the Commissioner for review. Final approval or disapproval of travel variances will be decided in writing by the Commissioner. Equipment purchases shall not be allowed.

(c) In addition to 3(b) above, the attorney will state in his/her submission to the Area Director those technical studies deemed necessary to prove his/her claim or defense and which will later be submitted to qualified architectural-engineering firms (at least three) for "quotes":

(i) type of study and necessity,
(ii) quantifiable units (acres, miles, wells drilled, etc.)
(iii) cost per unit.

Supporting documentation is required for unit costs. Final approval of technical study contracts remains with the Commissioner.

It must be recognized that the Bureau, in fulfilling the trust responsibilities of the United States in protecting the rights and interests of Federally recognized tribes, also has a duty to expend Congressionally authorized appropriations in a responsible, circumspect manner.

This provides NOTICE to all Bureau employees that CONFIDENTIAL material made available to unauthorized persons shall constitute a gross breach of duties and shall provide grounds, if the facts so indicate, for immediate suspension from duties pending a hearing and decision for explusion from the Civil Service for violation of the attorney-client relationship.

All requests for data and information acquired as a result of the above mentioned technical studies in support of litigation shall be denied since such data and information will become subject to discovery and therefore should be disclosed at that time when the trier of fact so determines in conducting the pre-trial procedures.

All contracts shall expire at the end of the fiscal year in which they are executed. All contracts shall state that renewal or extension is contingent upon the availability of funds authorized by Congress for this program activity.

Approved:

(Sgd.) Raymond V. Butler

Commissioner of Indian Affairs

Acting Deputy

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-114868

DATE: DEC 6 1976

MATTER OF:

Expenditures for legal expenses of Indian Tribes

DIGEST:

1. Snyder Act, 25 U.S.C. § 13, provides discretionary authority for Secretary of the Interior to use appropriated funds to pay for attorneys fees and related expenses incurred by Indian tribes in administrative proceedings or judicial litigation, for purpose of improving and protecting resources under jurisdiction of Bureau of Indian Affairs. Attorneys fees and expenses incurred in judicial litigation may only be paid where representation by Department of Justice is refused or otherwise unavailable, including situation where separate representation is mandated by Court.

2. Attorneys fees and related litigation expenses incurred by Northern Pueblo Tributary Water Rights Association, prior to decision by Court of Appeals that private attorneys may intervene in suit in which U.S. District Court denied intervention may be paid from appropriations of Department of the Interior because Department of Justice conceded before Court of Appeals that its representation would constitute conflict of interest, and allowed private attorneys to cooperate in preparation and presentation of Northern Pueblo position despite failure of Court to permit intervention.

3. Secretary of Interior is not obligated to pay for attorneys fees and related expenses incurred by Indian tribes, but may within his broad discretion to make expenditures he deems necessary for protection of Indian resources, make such payments on basis of factors he concludes should be considered, including relative impecuniousness of tribe. Determinations, however, should be made on uniform basis. B-114868, May 30, 1975, modified.

B-114868

This decision to the Secretary of the Interior responds to two separate submissions from the Solicitor, Department of the Interior, with enclosures, concerning the payment of attorneys fees and related expenses incurred or potentially to be incurred by the Northern Pueblo Tributary Water Rights Association, the Northern Cheyenne Tribe, and the San Pasqual Band, in separate litigation and administrative proceedings.

The Solicitor requests, in effect, that we reconsider the position taken in Expenditures for the legal expenses of Indian tribes, B-114868, May 30, 1975, in which we stated:

> "* * * the Secretary of the Interior has the discretion to expend available appropriations to pay tribal legal expenses including attorney's fees where he determines it necessary to do so, subject to the limitations set forth below. In cases where the opposing party is not the United States, 25 U.S.C. § 175 (providing for representation by United States attorneys) would bar the use of appropriated funds, except in cases in which the Attorney General refused assistance or in which his assistance was not otherwise available."*

The Solicitor has apparently taken the position that the Secretary has discretion to pay Indian tribes' attorneys fees and related expenses, and to institute litigation prior to consultation with the Attorney General and irrespective of the Attorney General's determination as to whether or not to represent the Indians involved, if he determines that such representation is necessary for the protection of Indian resources, and essential to the "* * * fulfillment of the trust obligations of the United States to protect its Indian wards and their property."

---

*25 U.S.C. § 175 (1970) provides as follows:

> "In all States and Territories where there are reservations or allotted Indians the United States attorney shall represent them in all suits at law and in equity."

This duty has been construed as a discretionary one, and the Attorney General has been held to have properly refused to represent tribes in cases presenting a conflict of interest, both where the United States was a party and where it was not. See B-114868, May 30, 1975, and court cases cited therein.

We have also been requested to clarify or reconsider our position in B-114868, supra, in which we stated that the Secretary of the Interior should make a finding, before expending funds for attorneys fees for Indian tribes, that they do not have sufficient funds to otherwise obtain such services.

NORTHERN PUEBLO TRIBUTARY WATER RIGHTS ASSOCIATION

In B-114868, supra, we indicated, with regard to the payment of attorneys fees and related expenses incurred by the Northern Pueblo Tributary Water Rights Association (Northern Pueblo) as follows:

> "* * * we question the availability of appropriated funds to retain private attorneys to, in effect, review the Justice Department's preparation of the case involving the Northern Pueblo Tributary Water Rights Association."

Since the Justice Department had agreed to represent the Northern Pueblo, we reasoned that the Department of the Interior could not also expend funds to review that case.

It now appears, from the material provided in the Solicitor's current submission, that the contract providing for the payment of attorneys fees and related litigation expenses in the subject case was to pay for attorneys to participate as intervenors in litigation entitled State of New Mexico v. Aamodt (Nos. 75-1069 and 75-1106), filed in the United States District Court for the District of New Mexico, adjudicating the rights of certain Pueblos to the use of water of the Nambe-Pojoaque River system.

The subject litigation was actually initiated in 1966. However, it was not until 1973 that the four Pueblos involved in the Aamodt case--Pojoaque, Nambe, Tesuque, and San Ildefonso--formed the Northern Pueblo Tributary Water Rights Association, because they believed that the court was planning to decide the case against them, even before commencement of the trial (then scheduled several months in the future). Up to this point, the Department of Justice had been representing the Pueblos, and the question of conflict of interest had apparently not been raised. It was at this time that the attorney contract was entered into, and the attorneys, unfamiliar with the work done on the case up to that time, began reviewing the theory, evidence, and trial preparation of the Department of Justice.

The District Court, on its own motion, struck a tendered complaint in intervention, proffered by attorneys for the Northern Pueblo, holding that private counsel "* * * may not separately and independently represent the Pueblos which are already represented by government counsel." Although the Department of Justice was required to remain as nominal counsel for all four Pueblos involved because of the District Court's decision to deny intervention, it conceded before the Court of Appeals that a conflict of interest existed, and that the Pueblos should have been afforded separate representation. Moreover, the Department permitted private counsel to assume a predominate role in the preparation and espousal of the position of the Pueblos.

The Department of Justice had also intervened in the adjudication as the necessary representative of the United States, as owner of the Sante Fe National Forest, the water rights of which were also to be adjudicated in the subject litigation. The Commissioner of Indian Affairs apparently continued to pay for private counsel for the Pueblos, having determined that, under the circumstances, this was the only practical means of fully protecting their rights in the case.

Attorneys for the Northern Pueblo subsequently appealed the denial of intervention. In State of New Mexico v. Aamodt, 437 F.2d 1102 (1976), the Court of Appeals for the Tenth Circuit, held that the denial of the request for intervention was erroneous. The court reasoned, supra at 1106, as follows:

> "* * * The claim that the Pueblos are adequately represented by government counsel is not impressive. Government counsel are competent and able but they concede that a conflict of interest exists between the proprietary interests of the United States and of the Pueblos. In such a situation, adequate representation of both interests by the same counsel is impossible."

The Court went on to indicate, supra at 1107, as follows:

> "* * * The United States in the case at bar recognizes and supports the right of the Pueblos to private representation."

In light of the above and the broad authority granted in 25 U.S.C. § 2 to the Commissioner of Indian Affairs to provide for and manage all matters arising out of Indian relations, the Court held that the Commissioner could properly decide that separate representation for the

Pueblos should be provided, and that such a determination would be wholly compatible with the fiduciary obligations of the United States to the Indians. State v. Aamodt, supra at 1107.

As noted above, appropriated funds may be used to pay for attorneys fees and related expenses where representation by the Attorney General is refused or is otherwise unavailable. Accordingly, once the Court of Appeals determined that the failure of the District Court to permit intervention was erroneous, and that the Pueblos' private attorneys should henceforth control the litigation, rather than the Department of Justice, funds appropriated to the Department of the Interior would be available to pay attorneys fees thereafter incurred.

Moreover, in light of the decision by the Court of Appeals that the denial of intervention was erroneous, as well as the determinations by the Attorney General that a conflict of interest existed and that separate representation should have been accorded to the Northern Pueblo, we conclude that appropriated funds may be used by the Department of the Interior to pay for attorneys fees and related expenses incurred by the Northern Pueblo prior to that decision.

NORTHERN CHEYENNE TRIBE

The Solicitor also requests our concurrence with the view that under guidelines set forth in B-114868, supra, appropriated funds may be used to pay attorneys fees and related expenses incurred by the Northern Cheyenne Tribe in connection with a continuing administrative proceeding and possible litigation against various energy companies concerning the validity of certain coal exploration permits and leases on the Northern Cheyenne Reservation.

As noted in our previous decision, the Northern Cheyenne Tribe had petitioned the Department of the Interior to withdraw departmental approval of leases and permits previously granted for the purpose of allowing the stripmining of coal on the Northern Cheyenne Reservation. The Secretary of the Interior, on June 4, 1974, granted the petition in part, denied it in part, referred some questions to an administrative hearing, and held others in abeyance. Moreover, the Secretary stated in that decision that he would support the tribe in a lawsuit against the coal companies or a request that the Justice Department bring a suit in the name of the Tribe to test the validity of the permits and leases under 25 U.S.C. § 175 (1970). In response to the Solicitor's inquiry concerning the Secretary's authority to pay such expenses, we issued our decision of May 30, 1975, B-114868, supra.

B-114868

In a supplemental decision of September 8, 1975, the then Acting Secretary of the Interior indicated that the GAO decision did not provide clear authority to fund or reimburse the Northern Cheyenne Tribe for the cost of an administrative proceeding or judicial litigation in the instant situation. Accordingly, he directed that specific authorizing legislation and appropriations be sought for the funding of Indian tribal legal expenses in this and similar circumstances.

A subsequent decision was issued November 10, 1975, by Secretary Kleppe, in which he determined that despite the lack of clarity which existed concerning the Department's broad authority to pay tribal attorneys fees, he would pay such fees for the Northern Cheyenne Tribe on condition that he receive an opinion from us that such payment is lawful.

With regard to the payment of attorneys fees in possible litigation, we have noted above that 25 U.S.C. § 175 provides for representation of Indians by the United States attorney in all suits at law and in equity. Because the courts have construed this statute as permitting the U.S. attorney to refuse assistance when he determines that a conflict of interest exists, we have determined that private representation could be paid for from appropriated funds where the Attorney General refused assistance or assistance was otherwise unavailable.

As we understand the instant situation, should the Northern Cheyenne ever institute a suit, the Department of the Interior (and hence the United States) would be a necessary party, since the validity of coal leases and permits approved by the Department of the Interior would be the basic issue being litigated. The Department of Interior apparently takes the position that the Department of Justice could not properly represent both the United States and the Northern Cheyenne. Even if this is so, however, the right to make the ultimate determination of whether assistance should be provided is accorded by statute and court cases to the Department of Justice. Neither the statute nor the court cases suggest that any other governmental official has the discretion to decide whether the Attorney General should represent the Indians. To so decide would render the mandate of 25 U.S.C. § 175 a nullity.

State of New Mexico v. Aamodt, supra, decided by the Court of Appeals for the Tenth Circuit, does not as the Solicitor suggests, indicate otherwise. In that case the court noted that the Government not only conceded that there existed a conflict of interest but also

supported the right of the Indians involved to private representation. The court distinguished Pueblo of Picuris in State of New Mexico v. Abeyta, 50 F.2d 12 (10th Cir. 1931), where the private counsel for the Pueblo and counsel for the United States took contrary positions on appeal. The court held in that case that when he is representing the party involved, the Attorney General of the United States, and not private counsel, must control the course of litigation.

We are of the view that if the Department of the Interior wishes to pay attorneys fees from appropriated funds for any litigation which may be brought by the Northern Cheyenne, 25 U.S.C. § 175 would require that the Department of Justice be contacted first, for exploration of the question of whether it would, in the particular circumstances involved, decline to provide representation.

As noted above, the Northern Cheyenne are also involved in a continuing administrative proceeding concerning the validity of certain coal exploration permits and leases. As noted in B-114868, supra, the basic authority for the expenditure of funds appropriated for the benefit of Indians is found in the Snyder Act, ch. 115, 42 Stat. 208 (1921), 25 U.S.C. § 13 (1970), which provides as follows:

> "The Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States for the following purposes:
>
> "General support and civilization, including education.
>
> "For relief of distress and conservation of health.
>
> * * * * *
>
> "And for general and incidental expenses in connection with the administration of Indian affairs."

The Supreme Court, in commenting on the provision has stated "[t]his is broadly phrased material and obviously is intended to include all BIA activities." Morton v. Ruiz, 415 U.S. 199, 208 (1974). Moreover, as noted in B-114868, supra:

> "Appropriations for the operation of Indian programs are normally available for among other things 'expenses necessary to provide * * * management, development, improvement, and protection of resources and

B-114868

> appurtenant facilities under the jurisdiction of the Bureau of Indian Affairs.' This appropriation is enacted in the form of a lump-sum with no specific limitations as to use. Thus, the determination of what expenses are necessary for the stated purpose is left to the reasonable discretion of the Secretary."

Accordingly, we continue to be of the view expressed in our prior decision, that:

> "In light of the foregoing, and particularly the broad language and legislative history of the Snyder Act, as well as our obligation to liberally construe statutes passed for the benefit of Indians and Indian Communities (Ruiz v. Morton, 462 F.2d 818, 821 (9th Cir. 1972), aff'd mem., Morton v. Ruiz, supra.), it is our view that the Secretary of the Interior has the discretion to expend available appropriations to pay tribal legal expenses including attorney's fees where he determines it necessary to do so, subject to [certain limitations]."

The provisions of 25 U.S.C. § 175, discussed above, which require that a request first be made to the Attorney General for his representation in suits at law or in equity would not apply to the subject administrative proceeding, which is being conducted within the Department of the Interior itself.

SAN PASQUAL BAND

The Solicitor also questions whether attorneys fees may be paid by the Department of the Interior in connection with proceedings before an Administrative Law Judge of the Federal Power Commission (FPC) (Project No. 176, Dockets No. E-7562 and 7655). In these proceedings the firm of Garjarsa, Liss & Sterenbuch are representing the San Pasqual Band pursuant to Contract No. 14-20-0550-2406. The Department of Justice does not participate in FPC proceedings. The Secretary of the Interior is a party to them, and is being represented by the Office of the Solicitor. In this regard, the August 2, 1976, submission from the Solicitor indicates as follows:

> "* * * The contract to pay attorneys fees * * * deals only with the proceedings before the Federal Power Commission, which does not involve the Department of Justice in any way.

"There are several reasons why such a contract is necessary. First, the Justice Department does not participate in FPC proceedings. The Secretary of the Interior is a party to these proceedings, but he cannot without at least the appearance of a conflict of interest represent the San Pasqual Band (or indeed any of the bands). Initially, part of the FPC proceedings entail the assessment of past annual charges against the present licensee. One of the underlying allegations being made in this assessment is the breach of the fiduciary duty by the failure of the Secretary of the Interior to request these annual charges on behalf of the Bands at an earlier date. The annual license fee issue is an awkward one for the Department, because it involves allegations of possible past derelictions of duty by Department officials and a potential monetary liability for the United States in [an Indian Claims Commission proceeding]. Similarly, if the district court [in a related case] or the Federal Power Commission holds that the Bands are entitled to water diverted from the San Luis Rey in the past by non-Indians, the United States could be liable to the Bands for the value of the water diverted in [the Indian Claims Commission proceeding] on the theory that as a trustee the United States should have prevented the diversions. Hence, attorneys for the Justice Department and this Department obviously could be inhibited by this duality of interests from effective representation of the Bands.

"In addition, the five Mission Indian Bands, all of which are located within San Luis Rey River Watershed, have conflicting interests because of the limited amount of water within the watershed and the Escondido watershed. Physically, the San Pasqual Reservation is located along the canal carrying the water away from the San Luis Rey River toward Escondido. In certain respects, it could receive potential benefits from the diversions which would harm the Bands located on the San Luis Rey River. Because of these specific conflicts, it was determined that the Secretary of the Interior would be in a direct conflict of interest where his duties as a trustee would be compromised if it advanced one Band's interest over another. The other Bands in the watershed are represented by counsel associated with the Native American Rights Fund which

> cannot represent all of the Bands. Consequently, it was necessary to enter into the contract with Mr. Gajarsa to provide representation to the San Pasqual Band."

It is not our prerogative to determine whether an actual or potential conflict of interest exists in the subject situation. As long as the Secretary of the Interior acts within his broad discretion according to the criteria set forth above with regard to the Northern Cheyenne Tribe, payment for attorneys fees in this situation would be proper.

INDIGENCY OF THE INDIAN TRIBE

The Solicitor of the Interior also questions the determination made in B-114868, supra, that "* * * it would seem appropriate that before * * * expenditures [for attorneys fees] are made by the Secretary there be a finding that the Indians have insufficient funds to otherwise obtain those services." In this regard, the Solicitor argues as follows:

> "* * * The United States owes a trust responsibility to Indian tribes irrespective of the assets of the tribe. Nothing in the two operative statutes considered in your May, 1975 opinion--25 U.S.C. § 13 and § 175--limits the availability of federal services to indigent tribes. Nor, so far as we are aware, does any other statute authorizing the United States to provide services to or expend appropriated funds on behalf of Indians require that the tribe be indigent. Regardless of whether the tribe is able to hire its own counsel, the United States (and specifically this Department) has an independent trust responsibility to the tribe. And--where the Department of Justice is unwilling or unable to discharge fully that responsibility by legal representation--this Department as trustee must have the latitude to fund special counsel to represent the tribe. While the ability of the tribe to hire its own counsel may be a factor influencing the Secretary's decision whether to pay such fees in a particular case, in our view he is not absolutely constrained by the operative statutes to limit such payments to impecunious tribes."

We agree that the operative statutes do not limit payments by the Secretary for attorneys fees and related expenses to impecunious tribes. This does not mean, however, that the relative impecuniousness of an Indian tribe may not be a factor for consideration by the Secretary when a determination is being made as to whether expenditures should be made to pay for such expenses incurred by a particular Indian tribe in connection with a particular administrative or judicial proceeding.

B-114868

The operative statutes accord to the Secretary broad discretion to pay expenses deemed necessary by him for the protection of Indian resources. While he could determine that payment for attorneys fees incurred by an Indian tribe should be paid in a particular instance, he is under no obligation to make such payment. Under these circumstances, the Secretary, within his broad discretion, could determine that the relative impecuniousness of tribes should be considered in deciding whether to make payments for attorneys fees and related expenses. If this factor is to be considered, however, it should be applied uniformly in similar situations.

B-114868, May 30, 1975, is modified to the extent inconsistent herewith.

R.F. KELLER

Deputy Comptroller General
of the United States

Exhibit No. 20

On file at the U.S. Commission on Civil Rights

Exhibit No. 21

On file at the U.S. Commission on Civil Rights

Exhibit No. 22

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245

IN REPLY REFER TO:
Law Enforcement Services

MAR 2 ? 1980

Paul Alexander
Assistant General Counsel
U.S. Commission on Civil Rights
Washington, D.C. 20425

Dear Mr. Alexander:

Please pardon the delay in forwarding you the information requested during the Civil Rights Commission hearings on Indian issues.

A review of my statements and that of the Commissioner indicated that two types of information were requested. They were the number of Federal violations investigated and presented to the Office of the U.S. Attorney and, subsequently, declined on behalf of Tribal Court prosecution and the number of Deputy Special Officer Commissions issued to Tribal and other law enforcement agencies by the Bureau of Indian Affairs. The information on both subject matters are enclosed.

If there is additional information that I can furnish, please do not hesitate to contact me at your convenience.

Sincerely,

E. F. Sweet Sr.

Chief, Division of Law Enforcement Services

Enclosure

SURVEY OF DEPUTY SPECIAL OFFICER COMMISSIONS

DSO Commissions shown under "Other" are those commissions issued to full-time type law enforcement related officers who work on or near Indian reservations where Federal/Tribal law enforcement programs are maintained. These commissions are issued to various categories of law enforcement personnel. For example, in the Phoenix Area, the 284 commissions are issued as follows:

188 - State Police (186 in AZ; 2 in NV)
48 - County Sheriff Officers (12 in AZ; 26 in NV; 2 in NM)
40 - City Police Officers (5 in AZ; 26 in NV; 9 in NM)
1 - Fire Marshal (NV)
1 - Constable (NV)
6 - State Fish & Game Officers (UT)

Bureau of Indian Affairs Jurisdiction	STATE	DSO Commissions TRIBAL	OTHER	TOTAL
Aberdeen Area	NE	0	0	0
	ND	3	68	71
	SD	41	120	161
	Total	44	188	232
Albuquerque	UT	0	7	7
	NM	21	29	50
	Total	21	36	57
Anadarko	KS	0	0	0
	OK	0	0	0
	Total	0	0	0
Billings	MT	2	87	89
	WY	27	25	52
		29	112	141
Eastern	FL	0	0	0
	ME	3	0	3
	MS	0	0	0
	NC	8	0	8
	Total	11	0	11
Flagstaff Adm Ofc	AZ	0	3	3
	Total	0	3	3
Minneapolis	MI	2	2	4
	MN	4	19	23
	WI	13	67	80
	Total	19	88	107

Navajo Area	AZ	22	12	34
	NM	20	0	20
	UT	0	0	0
	Total	42	12	54
Phoenix	AZ	31	204	235
	CA	0	11	11
	NM	4	63	67
	UT	3	6	9
	Total	38	284	322
Portland	ID	18	56	74
	OR	0	24	24
	WA	56	105	161
	Total	74	185	259
	Grand Total	278	908	1,186

A recap of DSO Commissions issued by State is as follows:

STATE	TRIBAL	OTHER	TOTAL
AZ	53	219	272
CA	0	11	11
CO	0	0	0
ID	18	56	74
KS	0	0	0
*ME	3	0	3
MI	2	2	4
MN	4	19	23
MT	2	87	89
NE	0	0	0
NV	4	63	67
NM	41	29	70
*NC	8	0	8
ND	3	68	71
OK	0	0	0
OR	0	24	24
SD	41	120	161
UT	3	13	16
WA	56	105	161
WI	13	67	80
WY	27	25	52
TOTALS	278	908	1,186

FEDERAL VIOLATIONS INVESTIGATED/PRESENTED/DECLINED

The Federal government has exclusive jurisdiction to investigate and prosecute violations of Federal law (Title 18, 1153) under the Major Crimes Act. In general, the offenses in the Major Crimes Act are "felony" type offense which are also the Crime Index Offenses.

The offenses of Murder, Forcible Rape, Robbery, Aggravated Assault, Burglary, Larceny-Theft and Auto Theft are used to establish an Index in the Uniform Crime Reporting Program to measure the trend and distribution of crime in Indian country. These crimes are counted by Indian law enforcement agencies as they become known and are reported on an annual basis. The Crime Index offenses were selected as a measuring device, because as a group, they are all serious crimes, either by their very nature or due to the volume in which they occur. The offenses of Murder, Forcible Rape, Aggravated Assault and Robbery make up the Violent Crime category. The offenses of Burglary, Larceny-Theft and Auto Theft make up the Property Crime category.

Indian law enforcement does not purport to know the total volume of crime because of the many criminal actions which are not reported to official sources. Estimates as to the level of unreported crime can be developed through costly victim surveys but time does not eliminate the reluctance of the victim to report all criminal actions to law enforcement agencies. In light of this situation, the best source for usable crime counts is the best logical universe which is the offense known to the police. The crimes used in the Crime Index are those considered to be most constantly reported and provide the capability to compute meaningful crime trends and crime rates.

In addition to the seven Crime Index offenses, the Bureau of Indian Affairs, in concert with the Federal Bureau of Investigation, conduct investigations of Arson, Assault with Intent to Commit Rape, Assault with Intent to Commit Murder, Assault with a Dangerous Weapon, Carnal Knowledge of a Female Under the Age of Sixteen, Incest, Kidnapping and Manslaughter.

The Bureau of Indian Affairs has divided the United States into eleven service areas, however, only reservations in ten service areas have Federal/Tribal jurisdiction.

The data presented is for Calendar Year 1978 by State as opposed to individual reservations, so if necessary, a comparison of Crime Index rates can be made to show the magnitude of crime in Indian country.

AREAS/STATES	ACTUAL	PRESENTED	DECLINED
Abderdeen (14 reservations) Nebraska North Dakota South Dakota	814	449 (55.2%)	283 (63.0%)
Albuquerque (24 reservations) Colorado New Mexico (excludes Navajo Reservation)	311	133 (42.8%)	55 (41.4%)
Anadarko (12 reservations) Oklahoma Kansas	1	1 (100.0%)	0 (00.0%)
Billings (8 reservations) Montana Wyoming	348	185 (53.2%)	99 (53.5%)
Eastern (6 reservations) Maine Mississippi North Carolina	64	34 (53.1%)	28 (82.4%)
Juneau (1 reservation) Alaska	17	4 (23.5%)	3 (75.0%)
Minneapolis (8 reservations) Minnesota Michigan Wisconsin	228	158 (69.3%)	98 (62.0%)
Navajo (1 reservation) Arizona Utah New Mexico	1,373	608 (44.3%)	538 (88.5%)
Phoenix (46 reservations) Arizona Nevada Utah	678	323 (47.6%)	199 (61.6%)
Portland (31 reservations) Washington Idaho Oregon	693	278 (40.1%)	177 (63.7%)
TOTALS	4,527	2,173 (48.0%)	1,480 (68.1%)

Exhibit No. 23

N.U.I.C.

NATIONAL URBAN INDIAN COUNCIL

To promote the social and economic self-sufficiency of Native Americans.

April 10, 1979

Paul Alexander
U.S. Commission of Civil Rights
1121 Vermont Avenue, N.W.
Room 600
Washington, D.C. 20425

Dear Mr. Alexander:

Attached you will find our general statements relating to the discrimination hearings the U.S. Commission of Civil Rights has been conducting.

We hope that they may be of assistance.

Sincerely,

Gregory W. Frazier
President

GWF/sj

Enclosure

1805 South BeLaire, Suite 525 Denver, Colorado 80222 (303) 756-1569

N.U.I.C.

NATIONAL URBAN INDIAN COUNCIL

To promote the social and economic self-sufficiency of Native Americans.

DISCRIMINATION

AND

URBAN INDIANS

Presented to:

U.S. Civil Rights Commission
1121 Vermont Avenue, N.W.
Room 600
Washington, D.C. 20425

By

THE NATIONAL URBAN INDIAN COUNCIL

April, 1979

1805 South BeLaire, Suite 525 Denver, Colorado 80222 (303) 756-1569

It is a well established fact that through necessity most Indian people travel and live where job opportunities prevail. Today, 50 percent of the total Indian population reside in urban settings throughout the country. This migration off the reservations is encouraged by government programs designed to provide better opportunity in the areas of employment, education, and housing. In addition to this influence there exists a desire to be away from the problems which prevail on reservations. Indian people maintain close family and cultural ties to their reservations, as they are a source of tribal identity and spiritual rejuvenation. Through their mobility, Native Americans transport special medical, educational and social needs to urban settings. Urban Indians have a right to services where ever they reside.

The urban Indian is the brunt of covert discrimination which stems from the undefined relationship between the Federal Government and the States, counties and cities. The failure of the Courts to define this relationship coupled with the lack of responsibility on the part of the Federal Government to provide services to off-reservation Indians, has created a national split between urban and reservation people over funding allocations. It is a policy of the Federal Government to deny services to off-reservation Indian people. Ironically, the BIA established a relocation policy, which presently supplements the Federal Government's earlier assimilation program, to entice reservation Indians into the cities, away from any Federal support provided on the reservations. With the transfer of nearly fifty percent of the population to urban settings, the Federal Government is able to extend its policy of neglect by refusing to take responsibility for the relocated Indian population. Job opportunities are made to look attractive in distant urban areas without any provisions for adjustments and much needed services.

Indian Health facilities are centralized on or near reservations. The

Indian patient is often discriminated against in local non-Indian health facilities as they are refered to the more distant Indian hospitals because of the fear on non-payment. Discrimination exists where city, State and county health agencies do not work with Federal Indian health agencies and as a result fail to identify urban Indian health needs. Therefore, needs statements are non-existant where necessary assessment is a basic requirement. The fact that federal Indian health agencies do not address the needs deprive the urban Indian of his rights to services.

Over the past twenty years there has been a 15 percent population increase among the urban Indian work force. This is due to the lack of employment on the reservations and Federal policies encouraging Indians to seek better opportunities. This approach has proven to be discriminatory against the Indian migrating from the reservation. Lack of development of appropriate working skills eliminates the unskilled Indian from the job market. Prospective employers have little desire to hire the untrained Indian population and discrimination prevails. Unemployment rates for urban Indian men and women are much greater than is the national average, and believed to be nearly 40 percent.

Indian parents in an urban setting are a small, almost invisible minority with no political influence on school boards. Where there are special targeted programs to provide Indian children with needs, they lack funding, policy and technical assistance. Urbans are forced to compete with reservations for funding or must appeal to rigid educational systems for program implementation. The urban Indian student population enrolled in public schools represent less than 2 percent of the total enrollment. Indian's have a low priority compared with other minorities and disadvantaged children. Indian children go into public school systems as individuals and State legislators do not take into consideration their needs where equalization of funding for education comes into play.

Additionally, Indian children receive racial harassment from their peers and teachers lack Indian cultural sensitivity and information.

Housing is another area where Indians are discriminated against as they are a small minority with no political force to obtain adequate housing. Indian agencies do not collaborate within the urban communities which are familiar with the problem.

Urban Indian people become the object of discrimination where they are encouraged to leave provided Federal services and relocate to areas where they are deemed ineligible under local programs. Before the urban Indian can receive entitled services, the Federal and State, county, and city governments must collaborate on policy and grant legal recognition.

Exhibit No. 24

TESTIMONY OF

MICHAEL D. HAWKINS

UNITED STATES ATTORNEY, DISTRICT OF ARIZONA

BEFORE

U. S. COMMISSION ON CIVIL RIGHTS

WASHINGTON, D.C.

March 20, 1979

Chairman Flemming and Members of the Commission:

I am happy to be here this morning, in response to the Commission's invitation, to discuss the experiences of the United States Attorney's Office in Arizona in discharging our responsibility to fairly and faithfully enforce the nation's criminal laws as they pertain to offenses occurring in Indian country.

As the United States Supreme Court recognized in the early days of the Republic, Cherokee Nation v. Georgia, 30 U.S. 1 (1831), and has repeated, Seminole Nation v. United States, 316 U.S. 286, 296-97 (1942), the United States, in its dealing with the various Indian nations, is charged with "moral obligations of the highest responsibility and trust."

More practically, as a United States Attorney, I recognize that I occupy a special relationship with regard to major criminal offenses occurring in Indian country. Because most major criminal offenses arising there cannot be deferred to local or state prosecutors, in a very real sense I am like a county or district attorney to the seventeen separate Indian nations in Arizona.

Arizona feels the special impact of native Americans. From the Havasupai, whose 400 members live on the floor of the Grand Canyon, to the Navajo, whose 150,000 members occupy almost nine million acres of land, native Americans play a special role in the life of Arizona (See attachment).

Although law enforcement problems within Indian nations run the full gamut of the general concerns of criminal law, I would like to focus my remarks here today on three particular problems I find I have to deal with on an almost daily basis: (1) investigative agency overlap; (2) jurisdiction over non-Indians; and (3) law enforcement cooperation among tribal, federal, and state or local law enforcement officials.

Investigative Agency Overlap.

One of the most curious problems I found upon assuming office was the presence of three separate investigative agencies, within many Indian nations, with the responsibility for enforcing criminal laws: Tribal Police, Bureau of Indian Affairs (BIA) Law Enforcement, and the Federal Bureau of Investigation (FBI). While there existed some informal understandings among these agencies, there was considerable overlap in the investigative and reporting responsibilities of each.

Beyond the cost to taxpayers of such duplication of responsibility, this overlap posed significant practical problems for federal law enforcement. Witnesses to crimes were often interviewed by two or three separate agencies, sometimes producing such inherently conflicting statements that subsequent criminal prosecutions were rendered enormously difficult, if not impossible. Especially outside Tribal

Police Agencies, language and common experience were often substantial barriers between federal investigators and witnesses to (and sometimes even suspects of) criminal events.

In an effort to deal with this problem, I met with officials responsible for law enforcement within the Navajo Nation, America's largest tribe. After a series of such meetings, which included frank and candid exchanges between concerned parties, I issued a set of trial guidelines concerning the investigation of federal offenses occurring within the Navajo Nation. (Although in a strict sense I do not have the authority to control the investigative actions of any of the concerned agencies, I do have the "yea or nay" final authority on the decision to prosecute in Federal Court.) After a 120-day trial period, I met again with the concerned parties, and after minor adjustments, issued final guidelines. An interesting sidelight: since the Navajo Nation "spills over" into two other states, it was necessary to secure the agreement of the United States Attorneys in New Mexico and Utah. They agreed, and the guidelines are now uniform throughout the Navajo Nation.

After one year's experience with the Navajo, I then contacted leaders of most of the remaining Indian nations in Arizona. Some minor adjustments were necessary to fit the particular needs of each, but in the end uniform

guidelines were adopted and are now in effect with regard to virtually all Indian nations in Arizona. (Attached are a copy of the guidelines.)

The presence of the guidelines has, by almost unanimous consent, benefited law enforcement within Indian nations in Arizona. Since the separate law enforcement agencies now report directly to our office, we have developed closer working relationships with these agencies, especially tribal police officers. The guidelines have also, we believe, improved communication among the various investigative agencies. Since initial field decisions about investigative responsibility must be made, it has followed that agencies must communicate at early stages in criminal investigations. As to those Indian nations with larger tribal police forces, we have found a significant improvement in the communication between officers of those agencies and our own office. Since those officers now have direct contact with our prosecutors, they have a greater understanding of federal procedural and evidentiary requirements, and we have seen a resultant improvement in the efficiency of investigations conducted by them. Additionally, tribal police officers have proven to be invaluable aids in overcoming language and cultural barriers in trial preparation.

Jurisdiction Over Non-Indians.

The United States Supreme Court's decision in Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978), has presented unique and difficult enforcement problems. Oliphant holds that Indian Tribal Courts do not have criminal jurisdiction over non-Indians who commit offenses in Indian country.

Decided March 6, 1978, Oliphant is already having a significant impact on law enforcement within Indian nations. Since Tribal Courts do not (and did not even prior to Oliphant) possess felony jurisdiction, the primary impact of the decision will be upon the routine, day-to-day offenses which are normally suitable for summary disposition (e.g., driving while intoxicated, drunk and disorderly, traffic offenses, and the like). Because of the general mobility of society and the fact that some very beautiful recreational areas lie within Indian nations, substantial numbers of non-Indians travel in and out of reservations. Recreational enterprises provide substantial income to some tribal organizations. With the good, comes the bad. Many non-Indians bring with them their poor driving, drinking, and other habits.

The question left unanswered by Oliphant, and of equal signficance, is the impact of that decision on the enforcement of tribal fish and game regulations. In Arizona, some of the most attractive hunting and fishing locations

are within Indian nations. Several tribes have extensive fish and game management, regulation, and enforcement programs. Oliphant does not directly deal with this question, but seems to suggest that such laws could not be applied criminally against non-Indians. The questions is particularly vexing since 18 U.S.C. §1165 creates a separate federal offense for hunting or fishing in Indian country without tribal permission. We are of the view that this statute clearly implies the authority of the tribes to regulate such matters and to penalize all persons, including non-Indians, for such violations. For the moment, however, this is a matter of some controversy and question.

Neither our office nor the Department of Justice has the kind of staff or attorney resources necessary to cope with all misdemeanor violations involving non-Indians that may occur in Indian country. By rough count, our research shows this would have meant an additional 4,000 cases in 1978 for an already over-crowded federal criminal justice system. Accordingly, we have had to rely on some alternatives to federal prosecution in District Court. They include: (1) cross-deputization of tribal police and fish and game officers with state and local police agencies; (2) designation of tribal judges or magistrates as state or local justice officials (Justices of the Peace); and (3) cross-deputization of tribal police officers, tribal fish and game officers, and BIA law enforcement officers.

We have found the first two alternatives work well in those Indian nations who have long-standing good working relationships with local and state governmental officials outside their borders. In those instances where such relationships are strained or non-existant, we have suggested the third alternative, which involves the issuance of citations into U. S. Magistrate's Court for certain misdemeanor violations by non-Indians committed in Indian country.

In this area, as many others, we found no set solution that applies with uniformity to all Indian nations. Rather, we have found that a case-by-case approach is necessary for a solution of the problems.

Law Enforcement Cooperation

I view as one of the most significant responsibilities of my position the creation and maintenance of cooperation, in spirit and fact, between all law enforcement agencies. In the non-tribal context, this normally means cooperation between federal and local law enforcement officials.

In Indian country, this means the creation and maintenance of lines of communication between the tribal, federal (BIA and FBI), and local or state law enforcement officials.

It is not an easy task. Long-standing disputes over "turf," smoldering resentments, and language barriers sometimes prevent communication at all. We have found,

however, that by simply bringing such officials together periodically and discussing problems of mutual concern and interest, that the situation can be dramatically improved. Once the various agencies are assured that we all are indeed spending taxpayer dollars for the same general purpose, cooperation and communication generally result.

In some instances, dramatic events can add an immediate and long-term effect on such cooperation and communication. Recently, two convicted murders escaped from the Arizona State Prison with the assistance of two other individuals. They proceded to go on a nine-day crime spree, which included the killing of six persons. The individuals were seen at various locations in Arizona, on and off Indian reservations, on and off federal property, in and out of various communities and counties. It became essential that a cooperative, team effort be undertaken to deal with the problem. With the cooperation and leadership of the Governor of Arizona, federal law enforcement officials helped put together a task force of investigators and helped supervise the collection and retention of physical evidence. Eventually the escapees were captured after driving through a police roadblock at high speed. The team that eventually captured the escapees, (save one who was killed in the gun fight and one other who escaped into the desert and dies of exposure) consisted of local police officers, county sheriffs,

state highway patrolmen, FBI agents, state narcotics officials, and representatives of at least three tribal police organizations.

The spirit of cooperation that arose out of this incident has carried over and these agencies now know that the machinery is present and available for continued use as well as emergency situations.

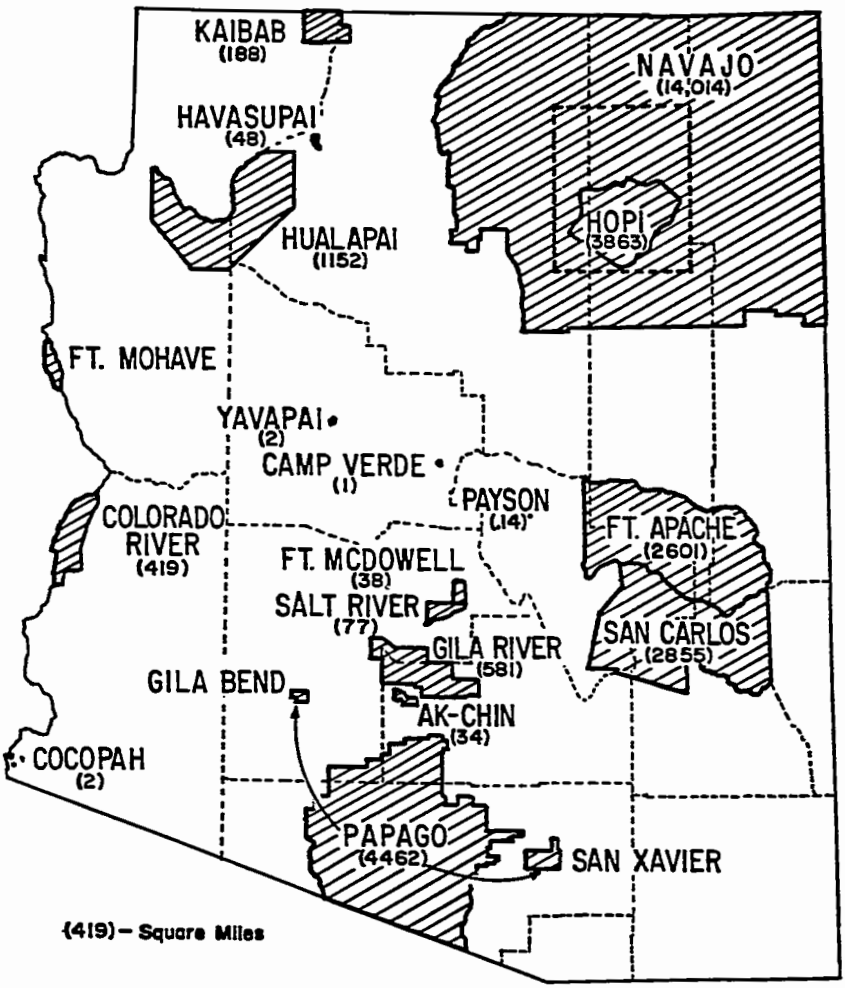
Conclusion

As United States Attorney, I view my responsibilities with seriousness and purpose. Clearly one of the most important responsibilities I have is to insure adequate and fair law enforcement within the various Indian nations in Arizona.

After dealing with these problems for more than two years, I have come to the conclusion that native Americans are no different than the rest of us: they want their communities to be safe and secure, they expect reasonably efficient service from the governmental entities charged with the responsibility of serving them, and they expect to be dealt with in a compassionate, humane way.

Thank you for having me here today. I will be happy to answer your questions.

INDIANS OF ARIZONA



POPULATION AND ACREAGE OF ARIZONA RESERVATIONS

Reservation	Classification	Population	Acreage
Ak-Chin	Papago	280	21,840
Camp Verde	Yavapai Apache	425	640
Cocopah	Cocopah	370	1,411
Colorado River	Mohave Chemehuevi	1,767	268,691
Fort Apache	Apache	7,500	1,664,972
Fort McDowell	Yavapai	346	24,680
Gila River	Pima Maricopa	8,355	371,933
Havasupai	Havasupai	396	188,077
Hopi	Hopi	6,865	2,472,254
Hualapai	Hualapai	797	993,173
Kaibab-Paiute	Paiute	161	120,413
Navajo	Navajo	145,403	8,969,248
Papago	Papago	14,536*	2,855,874
Payson	Tonto Apache	64	85
Salt River	Pima Maricopa	2,800	49,294
San Carlos	Apache	5,815	1,827,421
Yavapai-Prescott	Yavapai	78	1,409
		195,958	19,831,415

Note: the figures were supplied through the courtesy of the Bureau of Indian Affairs and do not include the thousands of off-reservation members of tribes.

The Navajo population is for Arizona only.

*The Papago figure includes the Papagos living around Tucson.

SOURCE: ARIZONA COMMISSION OF INDIAN AFFAIRS

United States Department of Justice

UNITED STATES ATTORNEY
DISTRICT OF ARIZONA
FEDERAL BUILDING
PHOENIX 85025

August 18, 1978

MEMORANDUM FOR: All law enforcement agencies having responsibility and jurisdiction over federal criminal violations occurring within Indian Country and the federal District of Arizona

FROM: Michael D. Hawkins
United States Attorney
District of Arizona

SUBJECT: Guidelines for presentation of criminal investigations and rendering of prosecutive opinions.

1. General.

These guidelines apply to all investigations of federal criminal matters occurring within that portion of Indian country within the federal District of Arizona. No report of a criminal investigation will be accepted for the rendering of a prosecutive determination, except in accordance with these guidelines.

A. Scope.

These guidelines apply to all federal criminal violations over which the United States District Court for the District of Arizona (under present statutory and case law) would have jurisdiction, i.e., offenses occurring within the confines of the Indian Reservation, constituting a violation of a specific provision of the United States Code, and where the proposed defendant is an Indian.

B. Return to Initiating Agency.

In all matters where the United States Attorney declines prosecution, the report of the

investigation concerning the offense shall be returned to the originating agency, with a view towards reference to tribal officials for processing. In any case where an Assistant United States Attorney has declined prosecution, the initiating agency is free to consult the United States Attorney regarding the matter.

C. Matters Not Covered.

All specific federal criminal violations (e.g., drug offenses) not specifically covered by this memorandum shall be investigated and forwarded for prosecutive determination in accordance with existing standards.

D. Aggravating Circumstances.

"Aggravating circumstances" as used in this memorandum includes, but it is not limited to, the following:

1. Repeat offenders;
2. Use of firearms;
3. Pattern of, or connection to, repeated offenses;
4. Proposed defendant a public figure.

2. Indian Police Department.

Absent aggravating circumstances, the following matters will be routinely and standardly declined by the United States Attorney, and, accordingly, may be investigated by the Indian Police Department for reference to tribal authorities:

A. Alcohol (Liquor) Violations.

Absent indications of an ongoing commercial enterprise (e.g., manufacturer of alcohol on Reservation) or criminal conspiracy, all federal liquor violations.

B. Larceny, Unarmed Robbery, Housebreaking, Burglary, and Theft (Including Auto Theft).

All cases involving less than $2,000 in property loss. [1]

C. Assault.

Any assault, except that upon a federal officer, and not resulting in serious bodily harm.

3. Bureau of Indian Affairs Law Enforcement Services (BIA).

The following matters may be investigated and reports forwarded directly to the United States Attorney for prosecutive opinion:

A. Rape (Including Carnal Knowledge) or Incest..

B. Larceny, Burglary, Housebreaking, Unarmed Robbery, and Theft (Including Auto Theft).

All cases in excess of the above Indian Police Department guidelines, except those cases requiring scientific investigation.

C. Public Assistance Violations.

All cases involving welfare fraud or the like, except those requiring accounting expertise in preparation or presentation. (Note: all such cases involving loss to the government of less than $1,000 may be routinely declined and a memorandum report confirming such declination forwarded to the United States Attorney via the FBI.)

D. Arson.

All cases except those where death or serious bodily harm results.

4. Federal Bureau of Investigation (FBI).

The FBI shall be primarily responsible for the investigation and presentation to the United States Attorney of the following matters:

A. Murder.

B. Manslaughter.

C. Assault.

All cases involving assault on a federal officer, or assault resulting in serious bodily injury.

D. Arson.

In such cases where death or serious bodily harm results.

E. Bank or Other Armed Robbery.

F. Embezzlement.

G. Kidnapping.

H. Public Assistance Violations.

All cases involving over $1,000 in loss to the government and where accounting expertise is involved in the preparation or presentation of the matter.

MDH:bjr

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[1] Nothing in these guidelines shall be construed to remove or otherwise affect the responsibility of BIA to conduct appropriate civil or administrative investigations into matters over which they have such responsibility (i.e., property loss from government quarters). The Indian Police Department is encouraged to provide BIA with copies of all reports on such matters and to otherwise cooperate with BIA in such matters.

Exhibit No. 25

Not received at time of publication

Exhibit No. 26

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

APR 9 1979

Arthur S. Flemming, Chairman
United States Commission on
Civil Rights
1100 L Street, N.W.
Washington, D.C.

Dear Mr. Flemming:

At the March 19, 1979, hearing concerning rights of American Indians, I was requested to submit a list of those Indian reservations which possess oil and gas resources. Attached is a list of Indian reservations on which there are either proven fields or on which present information indicates a presence of those resources.

Sincerely,

SOLICITOR

Attachment

Oil and Gas Resource-Owning Tribes

Acoma Pueblo
Blackfeet
Cheyenne River Sioux
Chitimacha
Choctaw (Oklahoma)
Crow Creek Sioux
Crow
Duckwater Shoshone
Flandreau Santee Sioux
Fort Apache
Fort Belknap
Fort Berthold
Fort Hall
Fort Peck
Hoh
Hopi
Iowa (Kansas/Nebraska)
Jicarilla Apache
Kaibab
Kickapoo (Kansas)
Lower Brule Sioux
Navajo
Nett Lake (Bois Forte)
Northern Cheyenne
Osage
Pine Ridge (Oglala Sioux)
Quinault
Rocky Boy's (Chippewa-Cree)
Rosebud Sioux (also, oil shale)
Sac and Fox (Iowa)
San Carlos Apache
Seminole (Florida)
Sisseton-Wahpeton Sioux
Standing Rock Sioux
Turtle Mountain
Uintah and Ouray (also, oil shale)
Ute Mountain
Wind River
Yankton Sioux
Zuni Pueblo

Exhibit No. 27

On file at the U.S. Commission on Civil Rights

Exhibit No. 28

NATIONAL ADVISORY COUNCIL ON INDIAN EDUCATION

March 20, 1979

The Honorable Arthur S. Fleming
Chairman, United States Commission
on Civil Rights
Federal Maritime Commission Auditorium
1100 L Street, N.W.
Washington, D.C. 20573

Dear Chairman Fleming:

I would like to take this opportunity to formally introduce the organization which I respresent, and myself, to your historic United States Commission of Civil Rights, currently conducting Indian hearings today, March 20, 1979, at the auditorium of the Federal Maritime Commission. The organization which I represent is the National Advisory Council on Indian Education (NACIE), and I, Dr. Michael P. Doss, am the new Executive Director.

Although the NACIE was not included in your schedule of witnesses during the Indian hearings conducted yesterday and today, March 19-20, 1979, the NACIE would like to respectfully offer our services to the United States Commission on Civil Rights now and in the future. In order to acquaint the Commission with our organization, we would like to respectfully submit copies of our publication entitled, The Fifth Annual Report To The United States Congress, presented on behalf of the NACIE, for your personal information.

In addition, the NACIE would like to respectfully request permission from the Commission to submit "written testimony," pertaining to important issues in Indian education, in lieu of oral testimony presented at these Indian hearings, since our organization was not on the list of regularly scheduled witnesses.

Please accept my invitation to your fine Commission and staff to visit our Washington, D.C. office, located at the Pennsylvania Building, 425 13th Street, N.W., Suite 326, at any time. Furthermore, if the National Advisory Council on Indian Education may be of future assistance to the United States Commission on Civil Rights, please feel free to call us at (202) 376-8882.

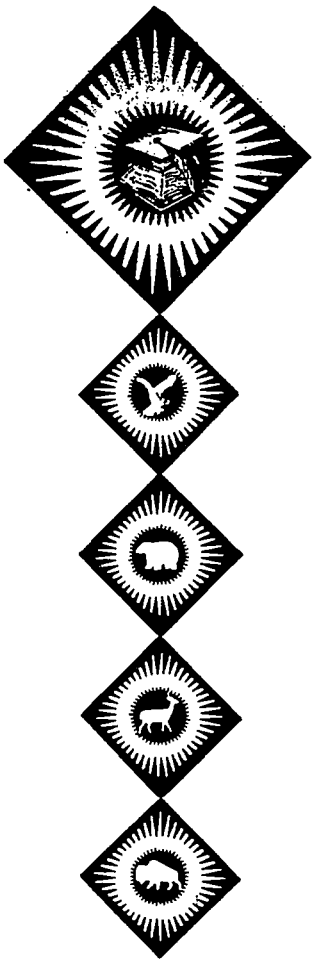
Respectfully yours,

Mike Doss

Dr. Michael P. Doss
Executive Director

MPD:mah

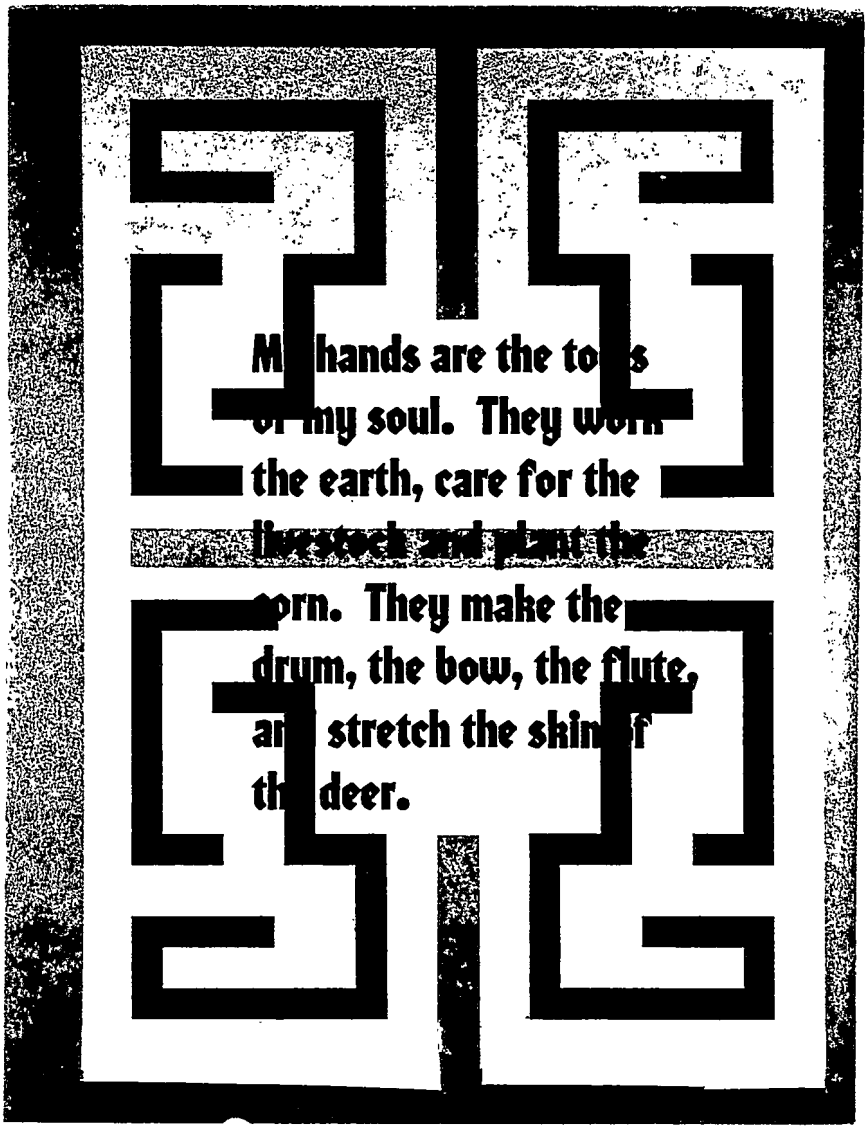
PENN. BUILDING, SUITE 326 425 13th STREET, N.W. WASHINGTON, D.C. 20004



THE FIFTH ANNUAL REPORT TO THE UNITED STATES CONGRESS

National Advisory Council
On Indian Education

June 1978


M hands are the to s
of my soul. They work
the earth, care for the
livestock and plant the
orn. They make the
drum, the bow, the flute,
an stretch the skin f
th deer.

NATIONAL ADVISORY COUNCIL ON INDIAN EDUCATION

M E M O R A N D U M
March 19, 1979

TO: All Interested Tribes, Indian Organizations, National, State, and Local Agencies, and Interested Individuals.

FROM: Michael P. Doss, Executive Director (Mpd)
National Advisory Council on Indian Education

SUBJECT: New Executive Director of NACIE

The National Advisory Council on Indian Education (NACIE) recently announced the selection of Dr. Michael P. Doss as the new Executive Director of NACIE. Dr. Doss has experience as a teacher, as a superintendent of schools and as an organizational consultant as President of ARROW Creek Associates. Also, Dr. Doss served as the Associate Director of the Harvard American Indian Program and as an organizational and planning consultant to the Director of the American Indian Policy Review Commission, while completing the requirements for the doctoral degree in organizational development and administrative education at the Harvard Graduate School of Education. The title of his doctoral dissertation was, The American Indian Policy Review Commission: A Case Study and Analysis of an Attempted Large System Change by a Temporary Organization, 1977. Dr. Doss received his D.Ed from Harvard University and an M.Ed. and B.S. degrees from Eastern Montana College. Dr. Doss is a member of the Crow Tribe of Montana and began his duties on January 29, 1979.

Mr. Stuart A. Tonemah, on January 28, 1979, left his position as the Executive Director of NACIE to complete his work on a doctorate degree in higher education. Mr. Tonemah began working with NACIE as the Associate Executive Director in March, 1977. The NACIE and other organizations and individuals here in Washington, D.C. would like to extend to Stu and his family the very best of luck in their return to Oklahoma.

NATIONAL ADVISORY COUNCIL
ON INDIAN EDUCATION
Pennsylvania Building, Suite 326
425 13th Street, N.W. Washington, D.C. 20004

DR. MICHAEL P. DOSS
EXECUTIVE DIRECTOR (202) 376-8862

NATIONAL ADVISORY COUNCIL ON INDIAN EDUCATION

MEMBERS

Ellen A. Allen
Kickapoo

Frederick S. Bigjim
Eskimo

Lionel R. Bordeaux
Rosebud Sioux

Wesley Bonito
Apache
(White Mountain)

Maxine R. Edmo
Shoshone-Bannock

Theodore George
Clallum

Calvin J. Isaac
Choctaw

Patricia A. McGee
Yavapai

Earl H. Oxendine
Lumbee

Viola G. Peterson
Miami

Paul R. Platero
Navajo

Donna Rhodes
Creek

David Rising
Hoopa

Thomas A. Thompson
Blackfeet

Minerva C. White
Mohawk

STAFF

~~*Stuart A. Tonemah*~~
~~*Kiowa/Comanche*~~

Margo Kickingbird
Kiowa

Marietta Hill
Seneca

Michael P. Doss
Crow

Structure

The Council shall consist of 15 members, including a chairperson, who are Indians and Alaska Natives appointed by the President. Such appointments shall be made by the President from lists of nominees furnished, from time to time, by Indian tribes and organizations, and shall represent diverse geographic areas of the country.

Meetings

The Council shall meet at the call of the Chairperson, but not less than two times per year.

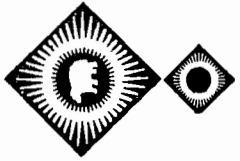
Meetings shall be open to the public except as may be determined otherwise by the Commissioner of Education; notice of all meetings shall be given in advance to the public. Meetings shall be conducted and records of proceedings kept in accordance with applicable laws and Departmental regulations.

The National Advisory Council on Indian Education invites comments from the Indian community through correspondence, by telephone, through testimony at the open Council meetings. It is essential that the National Advisory Council on Indian Education hear from the Indian community concerning educational issues. The notices of the Full Council meetings are published in the Federal Register and sent to individuals on our mailing list. If you would like to have your name added to NACIE's mailing list, please contact the NACIE office.

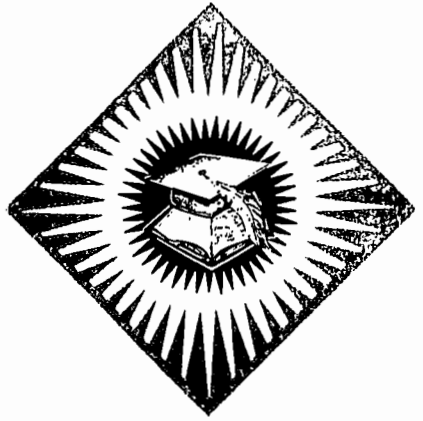
GPO 814-495

POSTAGE AND FEES PAID
U.S. DEPARTMENT OF H.E.W.
HEW 395

NATIONAL ADVISORY COUNCIL ON INDIAN EDUCATION
425 13th Street, N.W.
Pennsylvania Building, Suite 326
Washington, D.C. 20004



NATIONAL ADVISORY COUNCIL ON INDIAN EDUCATION



425 13th Street, N.W.
Pennsylvania Building, Suite 326
Washington, D.C. 20004
(202) 376-8882

NACIE's Primary Responsibilities

" . . the Council's primary responsibility is with the education of American Indians as established in Title IV of the Indian Education Act of 1972. The Council chooses to interpret its role in the broadest sense in order to encourage the improvement of those essentials necessary to receiving a meaningful education, and as being fundamental to achieving self-determination ." (Second Annual Report)

". . . the desire for self-determination should not be misinterpreted as advocating termination. Self-determination will have been achieved when Indians find themselves being allowed to be responsible for the results of their own actions . ." (Second Annual Report)

"The Council in serving as an advocate for Indian education have attempted to . (aid in developing) administration mechanisms designed by Indians themselves consistent with their tribal goals and objectives ." (First Annual Report)

" . (aid in developing) processes to insure that there is adequate Indian review and input into the legislative budgetary and appropriation mechanisms and . . " (First Annual Report)

". . . maximizing the involvement of national Indian leadership in an organized and systematic fashion." (First Annual Report)

"The National Advisory Council on Indian Education serves to stand vigilant to preserve the sovereign rights of indigenous people and to insure that the Federal laws, rules, regulations, and policies do not further erode the sovereign rights of Indian people." (Third Annual Report)

Authority

Title IV, Section 442 of the Education Amendments of 1972 (Public Law 92-318) (20 U.S.C. 1221g). The Council is governed by the provisions of Part D of the General Education Provisions Act (Public Law 90-247 as amended; 20 U.S.C. 1223 et seq.) and of the Federal Advisory Committee Act (Public Law 92-463; 5 U.S.C. Appendix I) which set forth standards for the formation and use of advisory committees.

Functions

The Council shall advise the Congress, the Secretary of Health, Education, and Welfare, the Assistant Secretary of Education, and the Commissioner of Education with regard to programs benefiting Indian children and adults. More specifically, the Council shall:

1. submit to the Commissioner of Education a list of nominees for the position of Deputy Commissioner of the Office of Indian Education/OE;

2. advise the Commissioner of Education with respect to the administration (including the development of regulations and of administrative practices and policies) of any program in which Indian children or adults participate from which they can benefit, including Title III of the Act of September 30, 1950 (Public Law 81-874) and Section 810, Title VIII of the Elementary and Secondary Education Act of 1965 (as added by Title IV of Public Law 92-318 and amended by Public Law 93-380), and with respect to adequate funding thereof;

3. review applications for assistance under Title III of the Act of September 30, 1950 (Public Law 81-874), Section 810 of Title VIII of the Elementary and Secondary Education Act of 1965 as amended and Section 314 of the Adult Education Act (as added by Title IV of Public Law 92-318), and make recommendations to the Commissioner with respect to their approval;

4. evaluate programs and projects carried out under any program of the Department of Health, Education, and Welfare in which Indian children and adults can participate or from which they can benefit, and disseminate the results of such evaluations;

5. provide technical assistance to local educational agencies and to Indian educational agencies, institutions, and organizations to assist them in improving the education of Indian children;

6. assist the Commissioner of Education in developing criteria and regulations for the administration and evaluation of grants made under Section 303(b) of the Act of September 30, 1950 (Public Law 81-874) as added by Title IV, Part A, of Public Law 92-318;

7. submit to the Congress not later than March 31 of each year a report on its activities, which shall include any recommendations it may deem necessary for the improvement of Federal education programs in which Indian children and adults participate or from which they can benefit, which report shall include a statement of the Council's recommendations to the Commissioner with respect to the funding of any such programs; and

8. be consulted by the Commissioner of Education regarding the definition of the term "Indian," as follows:

   Sec. 453 [Title IV, Public Law 92-318]. For the purposes of this title, the term "Indian" means any individual who (1) is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member, or (2) is considered by the Secretary of the Interior to be an Indian for any purpose, or (3) is an Eskimo or Aleut or other Alaska Native, or (4) is determined to be an Indian under regulations promulgated by the Commissioner, after consultation with the National Advisory Council on Indian Education, which regulations shall further define the term "Indian."

The Fifth Annual Report to the Congress of the United States

COORDINATION AND COOPERATION IN INDIAN EDUCATION: An Emerging Phenomenon

June 1978
Washington, D.C.

National Advisory Council on Indian Education

TABLE OF CONTENTS

NATIONAL ADVISORY COUNCIL ON INDIAN EDUCATION

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Superintendent
All Indian Pueblo Council
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Term Expires 9'29/78

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Administration for Native Americans
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Mississippi Band of Choctaw
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Education Department
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Raeford, NC 29376

Term Expires 9/29/79

LEGISLATIVE, RULES AND REGULATIONS COMMITTEE
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Wesley Bonito
Donna Rhodes
Theodore George
Minerva White
James Sappier

PROPOSALS REVIEW TASK FORCE
Ellen Allen
Linda Belarde
Paul Platero
Calvin Isaac
Wesley Bonito
Earl Oxendine

ANNUAL REPORT TASK FORCE
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Dr. Will Antell
James Sappier

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(Chairperson for NACIE)
Federal Programs Coordinator
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Term Expires 9/29/79

EXECUTIVE COMMITTEE
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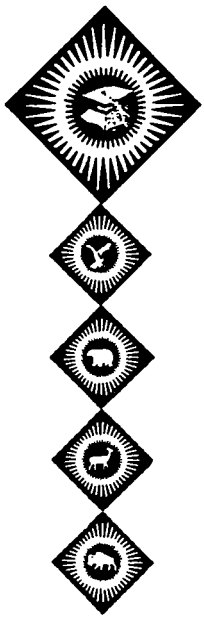
Dr. Will Antell
Theodore George
Ellen Allen
Donna Rhodes

GOVERNMENT INTER-AGENCY COMMITTEE
Thomas Thompson
Paul Platero
Dr. Will Antell
Patricia McGee
Linda Belarde
Ellen Allen
Joe Abeyta
Calvin Isaac
Earl Oxendine

TECHNICAL ASSISTANCE, RESEARCH AND EVALUATION TASK FORCE
Theodore George
Linda Belarde
Thomas Thompson
Donna Rhodes
Minerva White
David Risling



NATIONAL ADVISORY COUNCIL ON INDIAN EDUCATION

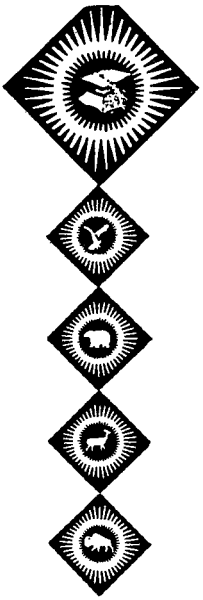
June 1978

TO THE CONGRESS OF THE UNITED STATES

It is a privilege for the National Advisory Council on Indian Education to submit to you its Fifth Annual Report. This material reflects the many complex educational issues with which the Council has been involved over calendar year 1977.

The recommendations made in this document were derived from meeting with Indian people across the nation and listening to their concerns about education. We hope that the Congress will review the recommendations and consider favorable action on them. It is the wish of the NACIE that NACIE and the Congress, the Administration, the Department of Health, Education, and Welfare, the Office of Education and the Office of Indian Education can continue to work in harmony to expand and improve Indian education.

THE NATIONAL ADVISORY COUNCIL ON INDIAN EDUCATION



NATIONAL ADVISORY COUNCIL ON INDIAN EDUCATION

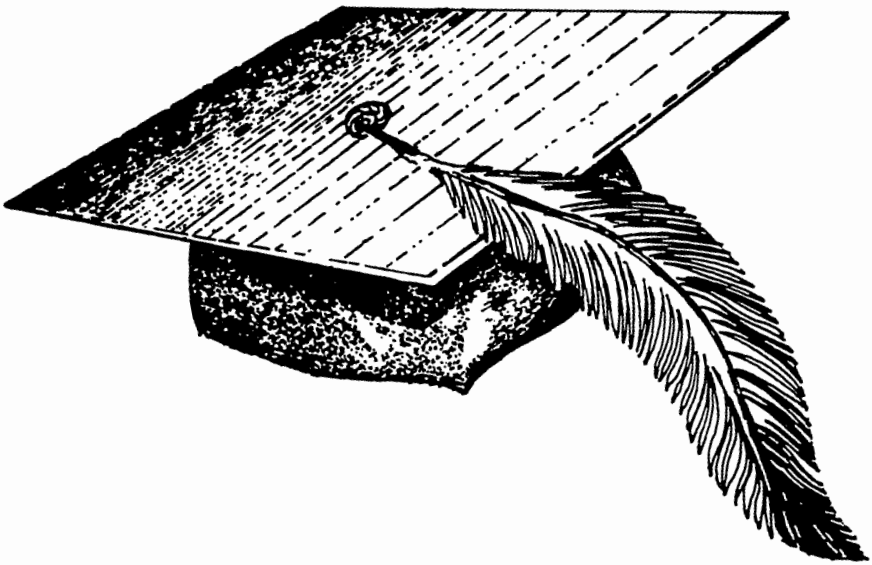
June 1978

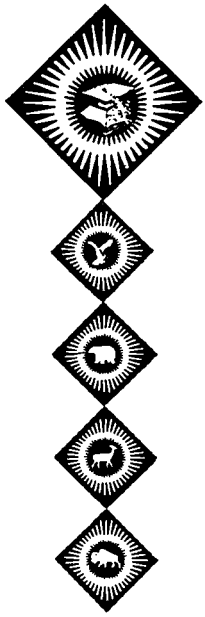
Historically, Indian tribes were played against each other in expedient governmental efforts to appropriate Indian land and conquer the original inhabitants of this continent. Unfortunately, similar tactics for other ends still plague many Indian people. Increased communication and coordination with the myriad of agencies and institutions is seen as important by the National Advisory Council on Indian Education if Indians and non-Indians alike are to understand the others' perspectives and accept each others' values as important and real.

This year the National Advisory Council on Indian Education chose as one of its primary goals increased coordination and communication with other national Indian organizations and the U.S. Congress. Council meetings were held in conjunction with annual meetings of both the National Congress of American Indians and the National Indian Education Association. Members of the Congress and Congressional staff received invitations to all NACIE meetings and many have been in attendance. The Council worked especially closely with the House Advisory Study Group on Indian Education, co-chaired by Congressman Michael T. Blouin, D-Iowa, and Congressman Al Quie, R-Minnesota, who introduced several significant pieces of legislation to improve Indian Education. Our increased efforts at coordination/communication have paid tremendous dividends as the Council is now recognized as a credible voice for all aspects of Indian Education.

The National Advisory Council on Indian Education shall continue to strive for increased levels of understanding and for the provision of an equal educational opportunity for American Indians/Alaska Natives and for all their fellow Americans.

Thomas A. Thompson
NACIE Chairperson





NATIONAL ADVISORY COUNCIL ON INDIAN EDUCATION

June 1978

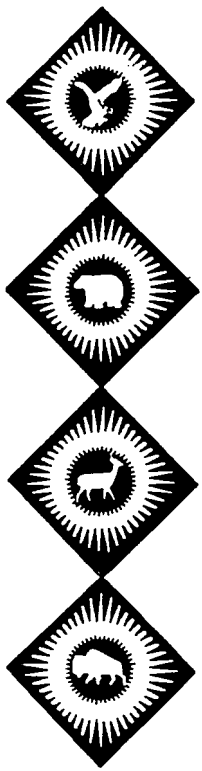
The National Advisory Council on Indian Education in 1977 strived to maximize the opportunity to coordinate and cooperate our actions with other Indian organizations. For too long Indian education has been separate from tribal affairs. Each has functioned independently of the other and often have come into conflict. The ideals of cooperation and coordination are not new or innovative ideals, but at times Indian people lose sight of the need to practically apply these concepts.

It was the intent of the NACIE to make a concerted effort to bring education and tribal affairs closer together to improve the educational delivery services to tribal people. The recommendations included herein are a direct result of input by tribal people and educators' at NACIE meetings during the public testimony sessions. Many of the recommendations address the re-authorization of P.L. 92-318. The legislative changes recommended utilize the ideals of coordinating and cooperating among Indian tribes, Indian organizations, Indian institutions with the various federal agencies to improve educational services and to eliminate duplication of programs. Collective thought and collective action far outweigh individual efforts for the betterment of Indian education.

This spirit of cooperation and efforts to coordinate activities comes at a crucial time in Indian affairs. There have been several Congressional Bills introduced which would abrogate the treaty relationship between Indian tribes and the Federal Government. These bills are not to the best interest of Indian people. Indian people must be kept informed and made aware of these efforts. It is incumbent that Indian people cooperate with each other and coordinate their efforts to maintain their "special relationship" with the Federal Government, regardless of efforts to eliminate this status.

The NACIE, being a quasi-governmental organization can serve as a liaison for tribal groups with the Federal Government on educational issues. This liaison activity can and will be served by NACIE to further the ideals of coordination and cooperation among tribal groups, Indian organizations, and agencies involved with American Indian/Alaska Native education.

Stuart A. Tonemah
Executive Director
NACIE



Part I

1977 Recommendations

National Advisory Council
on Indian Education

RECOMMENDATIONS
TO THE CONGRESS AND THE ADMINISTRATION

LEGISLATIVE

NACIE staff and members testified at the House of Representatives oversight hearings on P.L. 92-318, the Indian Education Act, on October 7, 1977, and the following recommendations for legislative amendments were made:

1. THAT THE INDIAN EDUCATION ACT BE REAUTHORIZED FOR A FIVE YEAR PERIOD.

   The Indian Education Act, P.L. 92-318, was created in 1972 and in the short period of five years, the Act has made many significant contributions to the whole of Indian Education. The Act provides for Indian children to receive direct services from the money provided through the IEA, and equally important, provides for parental participation in the entire operation of the programs funded under IEA. The latter has been a missing link in hte past in the education of Indian people. The positive effects of the IEA are being realized and more time is needed to develop, expand, and improve upon the Act.

* * * * * *

2. THAT THE WORDING OF P.L. 92-318 BE AMENDED TO READ: "TO MEET THE SPECIAL EDUCATIONAL AND (CULTURAL) NEEDS OF INDIAN STUDENTS."

   One of the original intents of the Indian Education Act is to meet the "special educational needs of Indian children." These special educational needs range from tutoring and counseling to curriculum development. The NACIE recommends that the Indian Education Act be amended to allow for and to encourage the development of special Indian culture programs, the development of special Indian cultural program components, and the development of culturally related academic programs. NACIE believes that through the teaching of American Indian and Alaska Native cultures, the self-concept of Indian children will improve. The American Indian children have had the "American culture" taught to them in the schools with no alternative to have their own cultures inculcated into the curriculum. It would appear reasonable then to consider teaching American Indian and Alaska Native cultures in the schools in addition to those cultural traits of American society. America portends to be a culturally plural society and to allow the teaching of various American Indian and Alaska Native cultures in the schools will further this idea.

* * * * * *

LEGISLATIVE (CON'T)

3. THAT THE PART A ENTITLEMENT FORMULA BE CHANGED TO ESTABLISH A PROGRAM ELIGIBILITY OF A MINIMUM OF 15 STUDENTS.

The National Advisory Council on Indian Education recommends that the entitlement formula for a school district to receive funds be changed to establish an eligibility minimum of 15 students (current eligibility is 50% of enrollment except in Oklahoma, California and Alaska where the eligibility is 10 students). Many Indian people will not agree with this recommendation. Indian people will find that the funds entitled, regardless of the amount, give them "special" status and recognition within the schools their children attend. Without these funds they are anonymous. This argument is difficult to counter. However, it is also difficult to conceive how a school district can adequately serve Indian students on the current formula, if the number of Indian students is less than 15. For many school districts the application procedure alone is not worth the effort to apply.

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4. THAT SET-ASIDE FUNDS BE ESTABLISHED WHICH WOULD AUTHORIZE RESEARCH, EVALUATION AND DATA COLLECTION TO BE CARRIED OUT UNDER THE AUSPICES OF THE OFFICE OF INDIAN EDUCATION.

The National Advisory Council on Indian Education recommends that a set-aside in the Indian Education Act be established for research, evaluation, and data collection activity. There currently is no research authority in the Indian Eduction Act, and this void must be filled to ensure that effective planning and future policy decisions can be made utilizing the most accurate and most current information available. The importance of this activity cannot be overly emphasized. A set-aside would assure that funds would be available for these activities and the Office of Indian Education would retain control over these funds and ultimately retain control over the research conducted.

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5. THAT PROVISIONS BE MADE IN THE INDIAN EDUCATION ACT FOR SEPARATE AND DISTINCT FUNDING TO AUTHORIZE GRANTS AND CONTRACTS TO PROVIDE TECHNICAL ASSISTANCE TO OTHERS.

The National Advisory Council on Indian Education feels that the area of technical assistance to the Office of Indian Education programs is extremely necessary and vitally important to the continued success of the individual projects and the overall growth and success of the Indian Education Act. One of the National Advisory Council on Indian Education's

LEGISLATIVE (5) (CON'T)

goals this year is to monitor and evaluate the technical assistance contractors and make suggestions on the improvement of these services. Here are recommendations to improve the current status of the Office of Indian Education's technical assistance efforts.

a. technical assistance contracts should be awarded on sectional, regional, or state basis to cover areas of greatest concentration of eligible applicants; and

b. provisions should be allowed in the project applications for purchasing in specific technical assistance areas as the need occurs in the grant management or operation of the Title IV projects.

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6. THAT THE OFFICE OF INDIAN EDUCATION AND THE OFFICE OF EDUCATION INSTITUTE A POLICY OF COORDINATION WHICH WOULD ENSURE ACCESS AND PROMOTE MAXIMUM PARTICIPATION OF AMERICAN INDIANS AND ALASKA NATIVES IN ANY OR ALL PROGRAMS IN THE OFFICE OF EDUCATION AND HEALTH, EDUCATION, AND WELFARE.

The National Advisory Council on Indian Education recommends that the Office of Indian Education, Office of Education institute a coordinated effort to ensure American Indian and Alaska Native access to all the U.S. Office of Education grant programs and recommend the implementation of administrative and/or legislative action to resolve problems of access. It is simply not adequate to make information on these programs available to American Indians and Alaska Natives; what is needed is to have each Office of Education grants program make a concerted effort to involve these American Indians and Alaska Natives in their programs. Another of the National Advisory Council on Indian Education's goals is to work with Indian leadership to see that this happens.

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7. THAT INDIAN PREFERENCE BECOME A POLICY IN THE OFFICE OF INDIAN EDUCATION.

The National Advisory Council on Indian Education advocates strongly that Indian people be given preference in employment in the Office of Indian Education. The presence of more Indian staffers in the Office of Education would create

LEGISLATIVE (7) (CON'T)

a needed visibility within that organization, but more importantly, Indian people across the country would know that other Indian people are administering Indian programs in Washington, D.C. Obviously, Indian preference does not mean that any Indian person be hired. What is intended, is that qualified Indian people be employed. Indian preference in the Office of Indian Education would provide career models for other Indian educators, the Indian community, and most importantly for Indian youth. Another rationale for Indian preference in the Office of Indian Education is the fact that the Office of Indian Education annually receives its appropriation from the Interior Appropriation Committees of both the House and Senate as does the Bureau of Indian Affairs and the Indian Health Service. Both of these organizations have an Indian preference policy. It is conceivable that the Office of Indian Education, too, could have this policy although it is housed in the U.S. Office of Education.

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8. THAT THE CURRENT 10% SET-ASIDE FOR NON-LEAs NOT BE CHANGED.

NACIE recommends that the amount of money provided by the 10% set-aside from Part A, the entitlement portion of the Indian Education Act, is sufficient to cover the needs of non-LEAs and there appears to be little chance of proliferation of these schools.

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9. THAT NACIE BE FUNDED AT A LEVEL WHICH WOULD ALLOW IT TO SATISFACTORILY MEET ITS STATUTORY RESPONSIBILITIES.

The NACIE in the past and present is diligently striving to meet its statutory responsibilities but must do so on a limited budget. The demands and complexities of Indian education are such that even if NACIE had an unlimited budget, it would be hard pressed to achieve its goals. NACIE has prioritized its activities and is concentraing on these major areas:

a. gathering information from Indian people to make recommendations for the reauthorization of the Indian Education Act;

b. analyzing and making recommendations on technical assistance provided to the projects by OIE and NACIE under the Indian Education Act; and,

LEGISLATIVE (9) (CON'T)

c. promoting coordination and cooperation of the Office of Education programs that involve Indians (in addition to the Indian Education Act) to maximize American Indian and Alaska Native participation in these programs.

It is our belief that additional funds made available to NACIE can expand their priorities to more adequately cover the critical areas of Indian education.

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10. THAT THE INDIAN EDUCATION ACT BE AUTHORIZED TO BE FUNDED AT A MINIMUM LEVEL OF $275,800,000 WITH A MINIMUM STAFF LEVEL OF 66 POSITIONS.

This figure is based on 50% of the authorization level. NACIE feels that a more realistic appropriation figure for Title IV (the Indian Education Act) is $90.42 million. This suggested authorization level is recommended to bring the authorization level closer to the appropriation level. At the latter level, one in five applications in the discretionary part of IEA can be funded; in the entitlement area the per pupil expenditure would be raised to $162.00 per student (FY 78 level is $125.00 per student).

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The following legislative amendments were proposed and endorsed by the members at various Council meetings:

11. THAT THE FORESTRY CATEGORY OF THE FELLOWSHIP PROGRAM, TITLE IV, PART B, BE CHANGED TO READ "NATURAL RESOURCES" (TUCSON, ARIZONA-JANUARY 28, 1977).

This change is necessary because the field of "forestry" by itself is not comprehensive enough to attract sufficient numbers of Indian students to major in this area. The Fellowships awarded in this field of study could include related specialities (such as Game Management, Aquaculture, and Soils). This more inclusive category would help to encourage Indian students into Natural Resources and related scientific fields.

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12. THAT NACIE DEFER ACTION ON THE HAWAIIAN REQUEST THAT NACIE SUPPORT PROPOSED AMENDMENTS (S.857) TO THE INDIAN EDUCATION ACT, TO INCLUDE NATIVE HAWAIIANS. THE NACIE WILL DEFER ACTION ON THIS REQUEST PENDING FURTHER DISCUSSION BETWEEN COUNCIL MEMBERS AND ELECTED TRIBAL AND NATIVE ALASKAN PEOPLE (DALLAS, TEXAS-SEPTEMBER 17, 1977).

LEGISLATIVE (12) (CON'T)

The Hawaiian delegation to NACIE stated that the trust relationship with the Federal government is similar for both Native Hawaiians and American Indians; they stated that they are seeking joint legislation as a way of adding to the collective strength of Native groups. The Council is generally supportive of Native Hawaiian efforts to improve their educational level, but feels that as a National Advisory Council, they must seek the advice of tribal groups before making a commitment regarding such a basic change in long-range Native education policy as has been proposed.

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13. THAT NACIE SUPPORTS THE ENTRY OF NATIVE HAWAIIANS INTO EDUCATION AND OTHER FEDERAL DOMESTIC ASSISTANCE PROGRAMS FOR THEIR PARTICULAR BENEFIT THAT ARE EXCLUSIVE OF AMERICAN INDIANS AND ALASKA NATIVE PROGRAMS. FURTHERMORE, THAT WE OFFER TO SEEK AND MUTUALLY DEVELOP AS NEEDED STRATEGIES WITH THESE PEOPLE AND OTHERS AS, ASIANS, CHICANOS, BLACKS, HANDICAPPED, WOMEN, ETC., THAT CAN ENHANCE EACH OTHER"S WELL BEING; FOR EXAMPLE:

    1. LEGISLATION
    2. AFFIRMATIVE ACTION
    3. ECONOMIC DEVELOPMENT
    4. HUMAN RIGHTS
    5. CULTURAL EDUCATION, ETC.

FURTHERMORE, THAT THIS POSITION BE TRANSMITTED TO APPROPRIATE HAWAIIAN NATIVE AND LEGISLATIVE LEADERSHIP AND TO NATIONAL INDIAN ORGANIZATIONS. (ST. PAUL, MINNESOTA-NOVEMBER 5, 1977).

The Council felt that the entire past history of the Indian trust relationship with the Federal Government--the numerous treaties, laws enacted, precedents set, the functions of the Bureau of Indian Affairs, etc.--evolved in the context of Indian treaty rights in the continental United States; they felt that any change in future legislation to allow the inclusion of some other Native group with a different history, in a distant geographic location, might conceivably call into question all the rights that have been established in law for American Indian people and Alaska Natives in the continental United States.

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14. THAT NACIE GO ON RECORD AS STATING THEIR SUPPORT FOR THE CONCEPT THAT INDIAN-CONTROLLED INSTITUTIONS FOR HIGHER EDUCATION BE GIVEN PRIORITY (TUCSON, ARIZONA-JANUARY 28, 1977).

LEGISLATIVE (14) (CON'T)

There is an emerging network of tribally-controlled community colleges, many of which are affiliated with four year non-Indian institutions. These community colleges are located on reservations close to Indian populated areas and are available to adults as well as college age students. Most of the community colleges are chartered by the tribes and are tribally-controlled and administered. They are able to reach many Indian students who otherwise would be excluded from higher education; the educational level of the tribes is being raised in this way, all at the local level. These Indian-controlled community colleges provide a link to American higher education and exemplify the ideals of community colleges, in general, by being community based, by serving a particular community's educational needs, and by being controlled by that community. The Indian-controlled community colleges are an expression of the unique status that American Indian people have with the Federal Government: they serve Indian people and receive much of their operating funds from the Federal Government. NACIE urges the Congress to support and act favorably on H.R. 9158, which would provide a more secure funding base to these tribally-controlled institutions.

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15. THAT NACIE SUPPORT INDIAN-CONTROLLED COMMUNITY COLLEGES AND INDIAN HIGHER EDUCATION, ESPECIALLY A PROPOSED NEW BILL IN CONGRESS TO PROVIDE GRANTS TO TRIBALLY-CONTROLLED COMMUNITY COLLEGES AND OTHER PROGRAMS (H.R. 9158)(DALLAS, TEXAS-SEPTEMBER 18, 1977).

The tribally-controlled community colleges are an extremely valuable concept to Indian tribal people. It has been demonstrated that in those schools already in operation the usual high dropout rate for Indian college students is greatly reduced; also a noticeable number of mature people are able to attend classes at least part time and still continue to be employed to support their families. Physical location close to reservation population centers is an important factor, as is maintenance of close cultural and family ties. The young students are not exposed to culture shock on a strange campus in a non-Indian world far from home, a situation that often compounds already existing educational handicaps. Some of the community college students then go on to make a successful transition to four year colleges and universities. A growing and largely unmet need exists on the reservations for more tribally-controlled higher education facilities and teachers.

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ADMINISTRATIVE—OFFICE OF EDUCATION

1. THAT NACIE WILL DO AN INDEPENDENT REVIEW OF INDIAN EDUCATION ACT (TITLE IV) PROPOSALS, PARTS B AND C, SUBMITTED TO THE OFFICE OF INDIAN EDUCATION: THEY WILL ALSO PARTICIPATE AS INDIVIDUAL READERS IN THE TOTAL REVIEW PROCESS. THE OFFICE OF INDIAN EDUCATION WILL GIVE FINANCIAL SUPPORT TO NACIE FOR THIS PURPOSE, BECAUSE OF DEPLETING COUNCIL FUNDS. ALSO, NACIE SUPPORT THE NEW OIE REGULATIONS FOR PARTS B AND C, TITLE IV (TUCSON, ARIZONA-JANUARY 28, 1977).

   The NACIE has, as a part of its statutory responsibilities, the task of reviewing and recommending for funding, applications submitted to the Office of Indian Education. This task is one of the Councils most important functions. NACIE's proposal review provides an important element in the total proposal review process, that of a third party review by Indian people. This important function is a primary aspect of Indian self-determination.

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NATIONAL ADVISORY COUNCIL ON INDIAN EDUCATION

2. THAT THE OFFICE OF INDIAN EDUCATION (HEW) AND NACIE SHARE INFORMATION DEVELOPED FROM ON-SITE VISITS TO INDIAN EDUCATION PROGRAMS OPERATING IN THE FIELD (TUCSON, ARIZONA-JANUARY 28, 1977).

   This administration procedure is essential to ensure maximum coverage by the two organizations that are responsible for overseeing the Indian Education Act programs. Pooling of information from on-site visits, evaluation, and technical assistance visits made by individual Council members or by OIE staff to selected sites can help to eliminate duplication of efforts and increase knowledge available regarding progress, problems and education activities of the various projects in the field programs.

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3. THAT NACIE RECOMMEND ONE OF ITS MEMBERS TO BE APPOINTED TO THE NATIONAL ADVISORY COUNCIL ON VOCATIONAL EDUCATION, AND TO SEEK TO SEAT OTHER AMERICAN INDIANS OR ALASKA NATIVES WHENEVER THERE IS A VACANCY ON NACVE (WASHINGTON, D.C.-MARCH 5, 1977).

   It would seem to be mutually advantageous to NACIE and NACVE to have a NACIE Council member to serve on the NACVE, which presently does not have an Indian representative on its Council but has indicated its interest in appointing an Indian member. A considerable number of funded vocational education programs all over the country include Indian people as participants. Vocational education is a vital component of Indian education

ADMINISTRATIVE 3 (CON'T)

in general, and more coordination between the two areas is essential. There have been cooperative efforts in the past between NACVE and NACIE; seating a NACIE member on the NACVE Council would help to formalize this cooperative effort.

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4. THAT THE EXECUTIVE COMMITTEE DEVELOP A BUDGET, WITH FULL INVOLVEMENT OF NACIE STAFF; AND THAT THE ENTIRE COUNCIL WILL ACT ON THE BUDGET (WASHINGTON, D.C.-MARCH 5, 1977).

This internal function of the Council deserves mention only because of the limited funds available on which NACIE has to function. The Council determined priority areas for NACIE activity need to be identified and funds set aside to meet those needs. Additionally, if there are more priority areas than funds available, the Executive Committee is charged with developing recommendations to the full Council on possible alternatives. Consequently, the full Council would be involved in making the final decision on the budget.

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5. THAT NACIE MEET WITH THE COMMISSIONER OF EDUCATION, OFFICE OF EDUCATION (HEW) IN THE IMMEDIATE FUTURE TO ADVISE HIM OF NACIE's OFFICIAL RESPONSIBILITY TO CONSULT WITH HIM ON THE ADMINISTRATION OF ANY OE PROGRAM IN WHICH INDIAN PEOPLE PARTICIPATE: SPECIFICALLY, THAT THE COUNCIL BEGIN AN EXAMINATION OF THE ADMINISTRATIVE STRUCTURE AND RESPONSIBILITY OF THE OFFICE OF EDUCATION AS IT PERTAINS TO INDIAN EDUCATION, AND THAT THIS STUDY SHALL FOCUS ON, BUT NOT BE LIMITED TO, THE FOLLOWING AREAS: SCOPE OF ACTIVITIES, ORGANIZATIONAL STRUCTURE, AND ASSIGNMENT AND RESPONSIBILITY OF PERSONNEL WITHIN THE OFFICE OF EDUCATION (DALLAS, TEXAS-SEPTEMBER 18, 1977).

This recommendation was prompted in part by a legal action pending by a tribal group against the Office of Indian Education. The legal action charge unfair practices and favoritism in the proposal review and grant process of OIE. The Council felt that the Office of Education officials present at the NACIE meeting in Dallas, Texas in September were unable to provide satisfactory information regarding the Office of Education proposal review and granting procedures and requested the meeting with the Commissioner of Education to obtain the information.

NACIE as an advisory and a participant in the proposal review process of the Office of Indian Education felt that the Council should be advised; of any changes being contemplated in the proposal review process, of possible

ADMINISTRATIVE 5 (CON'T)

program inadequacies, and of plans for the future that might help prevent any new legal actions by tribal or other groups. When made aware of these things the Council would be better able to fulfill its statutory responsibility of advising the Office of Indian Education and the Office of Education officials regarding granting procedures, which involve many tribes and Indian organizations nationally, and millions of dollars in Federal funds. Also, the Council should have input to the overall review and report that will go forward after the complete investigation of OIE by an outside review team.

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6. THAT THE COUNCIL'S CURRENT STRUCTURE BE CHANGED, SO THAT THERE WILL BE THREE STANDING COMMITTEES: EXECUTIVE; LEGISLATIVE, RULES AND REGULATIONS; AND GOVERNMENT INTERAGENCY COMMITTEE. THAT THE COUNCIL SHALL CREATE TEMPORARY TASK FORCES AS NEEDED; THE TASK FORCES WILL BE: PROPOSAL REVIEW; TECHNICAL ASSISTANCE; RESEARCH AND EVALUATION; AND THE ANNUAL REPORT TASK FORCE (ST. PAUL, MINNESOTA-NOVEMBER 4, 1977).

The Council decided to eliminate all but three standing committees and to create temporary task forces as needed, as a way of gaining greater flexibility in operation. The committees will handle work that is of an ongoing nature and the task forces will handle assignments that are more periodic in nature, or that can be completed over a short period of time. The members expect that the resulting redistribution of work load among the Council and staff will lead to increased efficiency and greater production at a reduced level.

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7. THAT ANNUAL COST ESTIMATES FOR SUPPORT OF NACIE BE RAISED FROM $230,000 TO $460,000 (TUCSON, ARIZONA-JANUARY 28, 1977).

The Council feels that the former funding level of $230,000 (cut to $100,000 in FY'76 and $150,000 in FY'78) is not sufficient to fully carry out the responsibilities outlined in the NACIE Charter. Considering the multiplicity of Indian education organizations, the 250 or more tribes in the United States, and the unusually complex Federal, State and local funding programs for Indian education, the NACIE is inadequately staffed to serve as a true focal point for all these activities. At present, the Council can respond only to the most critical requests for assistance

ADMINISTRATIVE 7 (CON'T)

from Indian people. The Council continues to fulfill its statutory responsibilities to the Office of Education (HEW) and to the Congress, although it must do so at a reduced level. Technical assistance to the field programs is vitally needed by tribes and Indian organizations, and NACIE sets a high priority to concentrate in this area. The Council feels that more funds are needed to respond to the larger number of the stated needs and requests presented each year by Indian people.

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8. THAT NACIE ESTABLISH CONTACT WITH THE WHITE HOUSE AND REQUEST A MEETING WITH THE PERSONS RESPONSIBLE FOR INDIAN AFFAIRS. THE INTENT OF THE MEETING WOULD BE TO DISCUSS MAJOR ITEMS OF IMPORTANCE TO INDIAN PEOPLE, SUCH AS: FUNDING OF THE INDIAN EDUCATION; INDIAN PARTICIPATION IN WHITE HOUSE ACTIVITIES (TUCSON, ARIZONA-JANUARY 28, 1977).

There had been no meeting of any Indian group with either the White House or the Administration. NACIE by the nature of its statutory responsibilities is the logical vehicle to serve as liaison in making contact with the Carter Administration; this would be a very appropriate function for the Council since it is presidentially appointed.

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TRIBAL

1. THAT NACIE SUPPORT THE STATE OF MAINE TRIBES AND THE SELF-DETERMINATION STAND THEY AHVE TAKEN, ESPECIALLY REGARDING THE CONTINUATION OF THE THREE INDIAN-CONTROLLED SCHOOLS IN MAINE; THAT NACIE PROVIDE AS MUCH TECHNICAL ASSISTANCE AS POSSIBLE; AND THE NACIE CONTACT THE AGENCIES RESPONSIBLE FOR FUNDING THESE SCHOOLS AND ATTEMPT TO RESOLVE THE PROBLEM OF NON-ACCEPTANCE OF RESPONSIBILITY (DALLAS, TEXAS-SEPTEMBER 19, 1977).

The Penobscot and Passamaquoddy Tribes, two of the four tribes in Maine, were declared "Recognized Tribes" by the Federal Courts in December of 1975; as such they are entitled to Federal services, including financial support for education. But supplemental funds have not been requested by the Federal government in spite of documentation of promises to the tribes from the responsible agencies, which are the Bureau of Indian Affairs (Department of Interior) and the Office of Management and Budget (OMB). The State of Maine had

TRIBAL 1 (CON'T)

eliminated scholarships and had reduced support for Indian education in its budget, declaring that the Federal Government has this responsibility. The Governor had stated that the three schools should be closed. NACIE will assist the Penobscot and Passamaquoddy tribes in any suitable way that is within its charter to keep these schools open, for example, by contacting any agency that could assist the tribes in securing funds. The NACIE Executive Director and Council members have met repeatedly with BIA and OIE officials on behalf of the Maine Indians. They eventually succeeded in authorization of BIA scholarship funds for higher education for Penobscot and Passamaquoddy students, which had not heretofore been available from Federal sources.

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2. THAT NACIE SUPPORTS THE REQUEST OF THE NATIONAL AMERICAN INDIAN TASK FORCE ON VOCATIONAL EDUCATION FOR RECOGNITION AND NACIE REQUESTS THE TASK FORCE TO WORK WITH THE NATIONAL INDIAN EDUCATION ASSOCIATION AND THE NACIE IN PLANNING AND DEVELOPMENT OF VOCATIONAL EDUCATION PROGRAMS FOR INDIAN TRIBES (ST. PAUL, MINNESOTA-NOVEMBER 6, 1977).

Vocational education is a very important area of Indian education that needs strengthening and better coordination, especially between the various Federally funded programs and the tribes. The Council feels that the new American Indian Task Force on Vocational Education can do much to focus national attention on the need for a coherent National policy for Indian Vocational Education.

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3. THAT NACIE SUPPORTS THE MINNESOTA CHIPPEWA TRIBE IN URGING THE APPROPRIATION COMMITTEES OF CONGRESS TO DEVELOP AND ADOPT A FORMULA FOR THE DISTRIBUTION OF JOHNSON-O'MALLEY (JOM) SUPPLEMENTAL EDUCATION FUNDS THAT IS EQUITABLE AND BENEFICIAL TO THE MAJORITY OF STATES AND INDIAN TRIBES SUCH AS OPTION C IN THE BIA MEMORANDUM OF JANUARY 18, 1977 (ST. PAUL, MINNESOTA-NOVEMBER 6, 1977).

The Bureau of Indian Affairs' formula for distribution of Johnson-O'Malley (JOM) funds (to public schools where Indian children are enrolled) for FY'77 and FY'78 greatly reduces the amount of money available to the Minnesota Chippewa Tribe and to 17 states that give a high priority to education. NACIE urges the Appropriation Committee of Congress to adopt an equitable formula that will benefit

TRIBAL 3 (CON'T)

the majority of Indian tribes and State educational systems that enroll Indian students; Option C in BIA Education Memorandum of January 18, 1977 would provide such a formula, if approved by Congress. (See Appendix for options JOM provide by BIA).

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4. THAT NACIE SUPPORTS THE MINNESOTA CHIPPEWA TRIBE IN REQUESTING THAT THE BUREAU OF INDIAN AFFAIRS CONDUCT HEARINGS AND THEN TO REVISE AND OR AMEND TWO PARTS OF THE RULES AND REGULATIONS TO IMPLEMENT THE INDIAN SELF-DETERMINATION ACT (P.L. 93-638), SPECIFICALLY THOSE PARTS THAT WOULD RESULT IN CLOSURE OF THREE MINNESOTA INDIAN COMMUNITY SCHOOLS AND REDUCTION OF SERVICES TO INDIANS IN THREE OTHER MINNESOTA SCHOOL DISTRICTS, PLUS APPROXIMATELY 20 OTHER SCHOOLS ACROSS INDIAN COUNTRY (CFR, PART 273.13: IV AND PART 273.31) (ST. PAUL, MINNESOTA-NOVEMBER 6, 1977).

NACIE agrees with the Chippewa Tribe that the Rules and Regulations of the Indian Self-Determination Act as now written are contrary to the intent of the self-determination for the Chippewa Tribe and must be changed. Tribal students enrolled in public schools in five states are subject to loss of educational services that have proved to be very effective in raising the academic level and reinforcing the Indian culture. Chippewa students are caught between the 70% eligible Indian student requirement for public schools, and there is 70% actual enrollment in the Indian community schools. The same situation applies to a number of other Indian tribes. CFR 25, Part 273.3 of the Act provides a mechanism for necessary changes in the law, so that tribal youth could continue to receive essential educational services.

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5. THAT NACIE OFFICIALLY RECOGNIZE AND COMMEND THE NATIVE AMERICAN SCHOLARSHIP FUND, INC. (NASF) FOR ITS EFFORTS ON BEHALF OF INDIAN STUDENTS, AND SUPPORT THE NASF ENDEAVORS (DALLAS, TEXAS-SEPTEMBER 18, 1977).

The fund is a non-profit, charitable organization now providing service to the West Coast region, especially California which has plans to expand to the national level. The NASF provides supplementary grants to students who already have partial funding. The NASF receives funds from a number of Federal sources plus private foundations. Priority is given to Indian students in the critical shortage professions among Indian: medicine and health, business, and science and or engineering.

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NATIONAL ADVISORY COUNCIL ON INDIAN EDUCATION

FUNCTIONS

The Council shall advise the Congress, the Secretary of Health, Education, and Welfare, the Assistant Secretary for Education, and the Commissioner of Education with regard to programs benefiting Indian children and adults. More specifically, the Council shall:

1. submit to the Commissioner a list of nominees for the position of Deputy Commissioner of Indian Education;

2. advise the Commissioner of Education with respect to the administration (including the development of regulations and of administrative practices and policies) of any program in which Indian children or adults participate from which they can benefit, including Title III of the Act of September 30, 1950 (P.L. 81-874) and Section 810, Title VIII of the Elementary and Secondary Education Act of 1965 (as added by Title IV of P.L. 92-318 and amended by P.L. 93-380), and with respect to adequate funding thereof;

3. review applications for assistance under Title III of the Act of September 30, 1950 (P.L. 81-874), Section 810 of Title VIII of the Elementary and Secondary Act of 1965 as amended and Section 314 of the Adult Education Act (as added by Title IV of P.L. 92-318), and make recommendations to the Commissioner with respect to their approval;

4. evaluate programs and projects carried out under any program of the Department of Health, Education, and Welfare in which Indian children or adults can participate or from which they can benefit, and disseminate the results of such evaluations;

5. provide technical assistance to local educational agencies and to Indian education agencies, institutions, and organizations to assist them in improving the education of Indian children;

6. assist the Commissioner in developing criteria and regulations for the administration and evaluation of grants made under Section 303(b) of the Act of September 30, 1950 (P.L. 81-874) as added by Title IV, Part A, of P.L. 92-318;

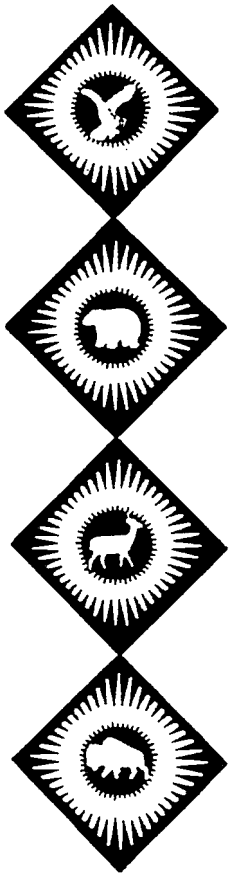
7. submit to the Congress not later than March 31 of each year a report on its activities, which shall

FUNCTIONS (CON'T)

include any recommendations it may deem necessary for the improvement of Federal education programs in which Indian children and adults participate or from which they can benefit, which report shall include a statement of the Council's recommendations to the Commissioner with respect to the funding of any such programs; and

8. be consulted by the Commissioner of Education regarding the definition of the term "Indian" as follows:

> Sec. 453 [Title IV, P.L. 92-318]. For the purpose of this title, the term "Indian" means any individual who (1) is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member, or (2) is considered by the Secretary of the Interior to be an Indian for any purpose, or (3) is an Eskimo or Aleut or other Alaska Native, or (4) is determined to be an Indian under regulations promulgated by the Commissioner, after consultation with the National Advisory Council on Indian Education, which regulations shall further define the term "Indian."



Part II

1977 Activities

National Advisory Council
on Indian Education

REVIEW OF PROPOSAL AND GRANT AWARDS

As a major part of its activities, the NACIE has participated in the review of proposals submitted to the Office of Indian Education (HEW) under the Indian Education Act, P.L. 92-318, and has made recommendations to the Commissioner as to their funding. The following is a brief description of how the funds for the Indian Education Act are utilized. The amount of money for the Indian Education for FY'78 ($59.732 million) were made under Parts A, B, and C of the Indian Education Act, P.L. 92-318.

Part A of the Act provides Federal funding to public school districts which serve Indian children as well as to Indian-controlled alternative schools. Part B controls discretionary funds to State and local education agencies (LEAs), Indian tribes and organizations, and institutions of higher education to improve educational opportunities for Indian children and adults. Under Part C, State and local education agencies and Indian tribes and organizations receive funds for adult education.

The largest awarded under Part A (non-Leas)--$270,000--went to the All Indian Pueblo Council in Albuquerque, New Mexico. The Council has begun to provide, in a school in Albuquerque taken over from the Bureau of Indian Affairs, quality education services for about 300 Pueblo students from 19 villages in New Mexico. Indian-controlled schools on or near reservations also received more than $3,3 million as formula grants under Part A.

The largest grant under Part A went to the Gallup McKinly County School District--a total of $853,518.17. The smallest grant went to Kildare School District ($661.08) for their program, "Aid to students."

The largest grant under Part B--$390,000--was awarded to the Tulsa Comprehensive Cultural, Educational, Social and Dropout Prevention Center. The smallest award for education planning--$34,150--was made to the Shoshone-Bannock Tribes, Inc., at Fort Hall, Idaho.

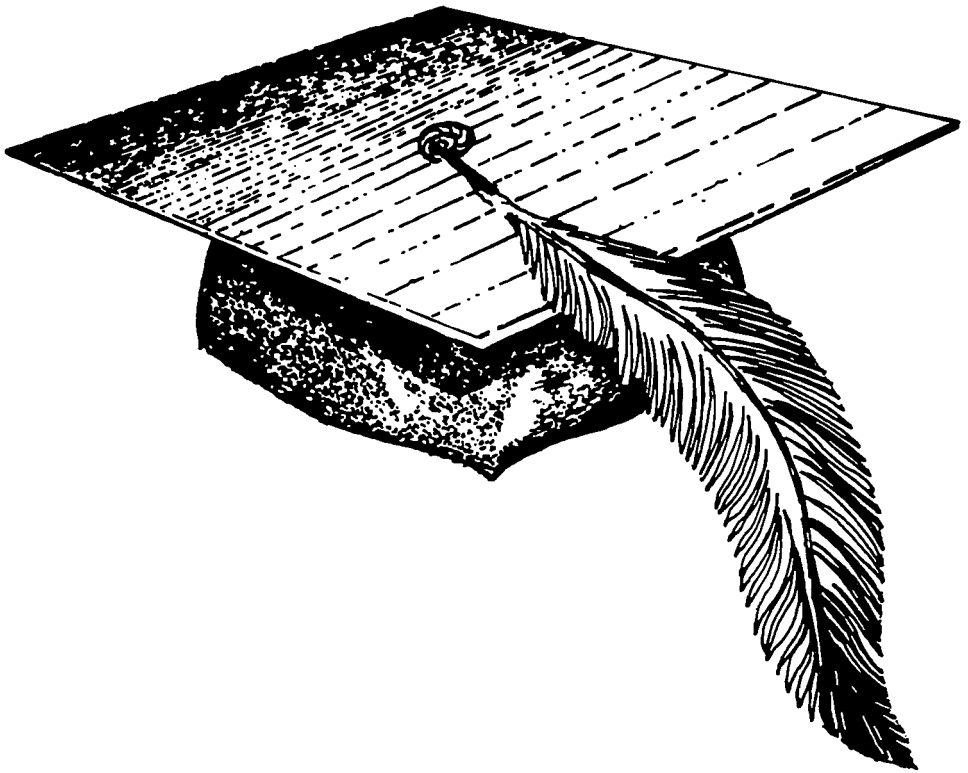
About $1 million in fellowships also is provided under Part B of the Act for Indians seeking a professional degree for careers in medicine, law, engineering, forestry, or business. The average award is $5,000. This program is not duplicated in the BIA. It is the principal source of funds for graduate (and some undergradiate) students in these specialized, high-priority fields.

Adult education programs received $4.2 million for programs under Part C of the Act. The United Indians of All Tribes in Seattle was given a $235,539 grant to prepare adults for a competency-based high school diploma awarded after training in life-coping skills. The smallest grant in Part C went to the Yerington Piaute Tribe, Nevada, for their "Adult Education and Training Program."

	Appropriation 1978
Part A - Payments to LEAs and Non-LEAs	
Funding	$38,850,000
No. of Grant Awards	1,000
No. of Indian Students Served	301,000
Average Grant Expenditure Per Child	$117

Appropriation 1978 (con'd)

Part B - Special Projects for Indian Children	
Total Appropriation	$14,400,000
Grant Awards	
Funding (84 Projects)	$13,080,000
No. Fellowships Awarded (225	1,000,000
Part C - Special Projects for Indian Adults	
Funding	$ 4,410,000
No. Projects Funded	56
Estimated No. Adults Impacted	13,200
Part D - Program Administration	
Funding	$ 2,072,000
Total Appropriation	$59,732,000



SUMMARY OF 1977 COUNCIL MEETINGS

Tucson, Arizona	January 27, 1977
Washington, D.C.	March 4-6, 1977
Washington, D.C.	July 8-10, 1977
Denver, Colorado	August 26-27, 1977
Dallas, Texas	September 17-19, 1977
St. Paul, Minnesota	November 4-6, 1977

It is the policy of the National Advisory Council on Indian Education (NACIE) to hold its open meetings in different regions of the United States, changing locations each year so that in each three or four year cycle, most of the areas of large Indian population will have had the opportunity to attend this national organization's meetings, and the people concerned will have had an opportunity to take part in discussions affecting the future of Indian education.

NACIE encourages participation of Indian people in its regional meetings. Keeping in contact with local people is important to NACIE's function as the national advocate and to provide a forum for the tribes. These regional meetings help to keep the Council aware of new developments, problems, and directions in Indian education across the country. Dissemination of information gathered at these meetings by the Council also is an important function. For example, a new program or approach that works in Oregon might be equally appropriate in South Dakota, if the information can be made known and adapted to local conditions and then applied. Therefore, NACIE considers these regional meetings to be a major component and perhaps the most publicly visible part of the Council's role.

TUCSON, ARIZONA - JANUARY 1977

The first full meeting of NACIE in 1977 was held in Tucson, Arizona, January 27-29, 1977. Fourteen members of the Council were present in addition to NACIE staff. Approximately fifty guests participated in the meeting. They represented Southwestern tribes, Indian organizations, and state and local educational agencies. Mr. Thomas A. Thompson, Chairperson, presided.

The priority item of business for the council was to produce a final list of candidates for the position of Deputy Commissioner, Office of Indian Education (OIE). This list was to be presented to the Commissioner of Education (OE/HEW) for his consideration in the appointment of the Deputy Commissioner of Indian Education. (The Search Committee of NACIE had solicited applications nationwide in calendar year 1976, and had recommended a list of six semi-finalists at their Executive Committee meeting in Denver, Colorado, December 17-18, 1976 for the full Council consideration.)

In closed session the Council formed three teams, with a member of the Search Committee in each team. They received 29 applications for the position of Deputy Commissioner. After discussion, the full Council accepted the Search Committee recommendations, accepted the proposed list of six semi-finalists, and recommended that the full Council interview these people. The names of the semi-finalists were to be made public when the meeting adjourned that day.

Also during the first day, Dr. Gabe Paxton, Acting Deputy Commissioner of OIE gave his report to the Council:

> Dr. Ernest L. Boyer is the person proposed by the Carter Administration to be Commissioner of Education (HEW). He will serve with the new Secretary of Health, Education, and Welfare, Joseph Califano; Under Secretary, Hale Champion (proposed); and Assistant Secretary, Mary Berry (proposed).
>
> The Indian Education Act Legislation, P.L. 92-318, is slated to expire in Fy'78 unless renewed by Congress. The Office of Education (OE) is supporting renewal. Reauthorization is essential.
>
> Regarding the proposal funding and grant allocation functions of OIE, the new proposal forms (application dates, rules and regulation changes, etc.) must be cleared by General Counsel's office, HEW. If clearance is not received soon, OIE will be faced with a September grant allocation period again, which can cause serious problems. Most schools and students and some Indian organizations, need to know by August, at the latest, whether or not their proposals and/or fellowship applications will be funded. Part C, rules and regulations revisions, fortunately, cleared this week; OIE has made an urgent request to OIE/OE for speedy action on revisions of all subparts of Part B (discretionary programs).
>
> The OIE proposal reading and review process has been streamlined this year, and NACIE will continue to have the responsibility for proposal review and program evaluation.

Mr. Stuart Tonemah, Acting Executive Director of NACIE, read the Bureau of Indian Affairs Memorandum of Agreement to the Council. The Agreement is between NACIE and the BIA in which NACIE is to evaluate five recommendations on BIA education programs, especially in regard to increasing the involvement of Federal Indian tribes

in the education process. The Council did not have objections to it and asked that the Executive Director proceed with securing the agreement from the BIA.

On the Second day, the Council heard reports from its Sub-committees:

Publications Committee - Decided to limit the amount of money spent on preparation of the 1977 Annual Report to $8,000. This will be done by greatly reducing the length of the report, and by cutting back on consultant time and expense compared to the previous year.

Legislation Committee - Discussed four areas of consideration that needed action and support from the full Council:

1. Supplemental appropriation for NACIE and OIE; seek these funds from the Congressional appropriation committees;

2. Reauthorization of Title IV--Indian Education Act;

3. Review of NACIE Charter. Specifically that the termination date be changed to September 30, 1981; and

4. Seek support from Indian organizations to do these things.

Proposals, Rules and Regulations Committee - Recommended that NACIE participate in the OIE training process for field readers, as well as participating in the total review of proposals under Title IV including the Fellowship applications. Also, there was renewed discussion of the continuing problem of legal "definition of an Indian" with regard to NACIE's Charter; no conclusion was reached on this issue.

The Acting Executive Director gave the budget report. Some money has been "saved" by not filling the position of Assistant

Executive Director this year, but unfortunately, the remaining staff has been forced to cut back on some needed activities. Possibly some of the money "saved" can be applied to the cost of the annual report. The drastic budget cut--56% of total budget, from $230,000 to $100,000 in 1976--has resulted in more of a concentration of efforts by NACIE in critical areas. Coordination and cooperation with other Indian education organizations has been emphasized. Dr. Paxton, Acting Deputy Commissioner, OIE, gave copies of OIE's operating plan for the year, including proposed contracts.

Several of the visiting representatives of tribes and educational organizations made presentations. Special reports were given by:

Phil Lane, United Indians of All Tribes Foundation. Showed a film; and gave a presentation on Puget Sound Education Consortium; plus a Technical Assistance Report to NACIE on Adult Education issues.

Edith Petrock, Education Commission of the States, "The State Role in Indian Education," presentation, and proposal for funding.

Dr. John Tippeconnic, Coordinator, Center for Indian Education, Arizona State University. Discussion of various programs of the Center, including bilingual.

Gay Lawrence, Arizona State Education Department. Bilingual and/or bicultural testimony from the Arizona Native American Education Association (with Mr. Al Sinquah, Hopi Department of Education).

Loretta Metoxin, National Indian Education Association. Gave a presentation; she read a resolution from NIEA in support of Dr. Gerald Gipp to be Deputy Commissioner, OIE.

Cipriano Manuel, Language Education, Papago Tribe. Presentation (in Papago language) of need for and progress in bilingual education of the Papago nation.

Harvey Paymella, Executive Director, Hopi Center for Human Services. Presentation on activities in Hopi education, especially for adults.

Darryl Gray, Executive Director, Montana United Scholarship Service. Described the Montana Scholarship program and the need for funding, specifically by passage of a supplemental appropriation to Title IV.

These special reports by guests generated a number of recommenations, resolutions, and statements of support by the NACIE Council. Such actions formalize the valuable input from Indian people in the field. This local level information thus reaches the national level of visibility in a very direct way.

On the third and last day of the meeting, the Council met in closed session to interview the six semi-finalists for the Deputy Commissioner position, and to develop a list of finalists. The six persons were interviewed in the following randomly selected order: Mr. Gerald Gray, Mr. Robert Chiago, Mr. Leroy Clifford, Ms. Helen Sheirbeck, Dr. Gerald Gipp, and Mr. John Wade.

Each candidate was given a 30-minute interview. The Council then cast secret ballots. They chose the following three people as finalists for the slate to be submitted to the Commissioner of Education, HEW (alphabetical order):

1. Leroy Clifford--(Pine Ridge Sioux)--B.S., Business Administration; M.S., Economics; Ph.D. Education Candidate, UCLA; Education Division, Bureau of Indian Affairs, Washington, D.C.

2. Gerald Gipp--(Standing Rock Sioux)--Ph.D. in Education Administration, Pennsylvania State University; Assistant Professor Cultural Foundations of Education, also Director, Native American Program, Pennsylvania State University.

3. Gerald Gray--(Blackfeet-Cree)--M.ED., Northern Montana College; Superintendent, Rocky Boy Elementary School, Montana.

This was the final item of business at the three day January meeting.

WASHINGTON, D.C. - MARCH 1977

The full Council convened at NACIE headquarters in Washington, D.C., in a closed session to select a new Executive Director of NACIE.

Mr. Thomas A. Thompson, Chairperson, presided. Twelve members of the Advisory Council were present. The Council considered the recommendations of its Executive Search Committee, and reviewed and rated 15 applications for the position of Executive Director (the same procedure was followed as that for the Deputy Commissioner, OIE). Dr. Will Antell withdrew from the selection process for personal reasons; he was replaced by Wesley Bonito. The Council approved the top two candidates recommended; then interviewed both (alphabetical order):

1. Lee Antell-(Chippewa)-Assistant Deputy Commissioner, OIE. Education: Bachelor's degree from Moorehead State University, 1964; MA University, Minnesota, 1971.

2. Stuart A. Tonemah-(Kiowa/Comanche)-Acting Executive Director of NACIE, and former Assistant Director. Education: Bachelor's degree from University of Oklahoma, Norman, Oklahoma, 1964; Education Doctoral Candidate, Pennsylvania State University.

By secret ballot of the Council, Mr. Stuart A. Tonemah was selected to be the New Executive Director, replacing Mr. Lincoln White.

Mr. Tonemah presented a report to the Council to bring them up-to-date on all major activities since January and informed them of the present political and Congressional status of Indian education in general and NACIE in particular. He informed the Council that Indian people had limited involvement in the recent Presidential election, and fewer Indian people had access to the Carter Administration. For example, when meetings were scheduled in January between the Office of Education, members of Congress, and the Carter transition team, all OE programs were represented except the Office of Indian Education. Through various efforts, NACIE and OIE did arrange to meet with the Carter transition team education division and were able to make recommendations for future development of Indian education with the new administration.

The morning of the second day was devoted to special reports and presentations from invited guests. In order of sequence, they were:

Ms. Robin Pascua, Assistant to the Director, Office of Bilingual Education, HEW. She reviewed and discussed Title VII (P.L. 93-380) programs. She emphasized the fact that NACIE can request changes and additions to the Bilingual Education Law, but this must be done by May 15, 1977. NACIE members asked how American Indian education organizations can compete more successfully for some of Title VII funds. Ms. Pascua replied that better proposals written by professional proposal writers and complete, documented information were needed. The Office of Bilingual Education staff can provide some technical assistance but may not actually help on writing proposals.

Edna Paisano and Karen Crook, from the Bureau of the Census (Department of Commerce) made a presentation. They stated that participation of the American Indian community in the planning of the 1980 Census was essential. The data collected will be widely used in new legislation, allocation of government funds, and public and private program planning, so it would seem that participation by the Indian people would be advantageous to them. The Bureau of Census plans to develop extensive local coordination with Indian groups in the 1980 Census.

Reginald Petty, Executive Director, National Advisory Council on Vocational Education (NACVE), HEW, and staff members Ruth Tangman and Warren Means made presentations. They reviewed NACVE's task force hearings on Indian vocational education. They advocated getting another Indian on the NACVE Council. Mr. Means stated that NACIE could possibly be funded as the State Advisory Council in amounts from $75,000 to $200,000, if BIA was designated as a State Education Agency. The National Advisory Council on Vocational Education will vote on whether NACIE should be recommended to serve as their Advisory Council. Ms. Pat McGee favored serious consideration by NACIE of this potential broadening into the vocational area. By request, Mr. Means summarized the forthcoming report and recommendations of the NACVE Task Force:

- Legislation for BIA to match Office of Education vocational funds, to be jointly administered; tribes to receive funds on same basis as States.

- Office of Education (NACVE), and BIA would provide technical assistance to tribes for planning programs, training vocational teachers, etc., tied to economic development and self-determination.

A motion was passed that NACIE develop a preliminary plan whereby they can be designated as State Advisory Council on Indian Vocational Education.

Stuart Tonemah presented the Executive Director's report: Senate testimony was presented on March 3, 1977, regarding budget hearings for FY'78. The House of Representatives appropriation hearings will be in April 1977. He stated that several Council members, Rose Hubbart and Margo Kickingbird, were commended for outstanding work.

The Research and Publications Committee report was given by Ms. Pat McGee. The Fourth Annual Report is well under way, with Leo Nolan serving as a consultant and the person principally responsible for its preparation. It will be much more concise than the Third Annual Report, due to budget restrictions.

Discussion of the OIE proposal review process followed. NACIE members will review all the scores given by OIE readers to proposals and Fellowships submitted to OIE for consideration for funding. The NACIE scores will be compared with OIE readers' scores on each proposal, and if there is any large discrepancies in the two ratings,

that proposal will be re-reviewed after a discussion with a three-member NACIE team. Standard statistical procedure will be used--raw scores, percentiles, collective ranking, etc. It was NACIE's recommendation that their rankings count equally in weight with OIE field readers' rating on a 50/50 basis. The review process is expected to take about two weeks in late February and early March.

The last day of the meeting was lent to discussion of budget and funding problems. The Executive Director and Administrative Assistant went over the proposed NACIE budget, explaining those parts that required action and responding to questions from the Council. Staff salaries are set by Law and are comparable to other National Advisory Councils' salaries. A suggestion was made that the present proposed (FY'78) budget be compared to the FY'76 budget of $230,000 to see how the council had operated previously in order to make decisions on what proportions should be spent on the various NACIE activities. More funding must be secured in order for the Council to operate at its maximum effectiveness.

Other Items of Business. After much discussion, the Council agreed not to pass resolutions selectively supporting organizations competing for Office of Education funds; the Council can support appropriate issues and policies, but should stay out of potential political problems or conflicts of interest. The meeting concluded with discussion of upcoming NACIE activities, planning dates, and Congressional hearings.

WASHINGTON, D.C. - JULY 1977

The NACIE met in closed session on July 8-10, 1977. The intent of this meeting was to review proposals submitted under the Indian Education Act, Parts B, C, and Non-LEA (Title IV, P.L. 92-318) and Sec. 422(a) and 423(a) (P.L. 93-380). The Council made recommendations to the Commissioner as to the funding of these proposals. The NACIE recommendations must comply with the pertinent laws, rules and regulations. The proposal review responsibility of NACIE is one of the most important aspects of the Council's activities. This review allows for a "third party" evaluation and more importantly, provides more Indian input into the funding process and furthers the ideal of Indian Self-Determination.

DENVER, COLORADO - August 1977

The Executive Committee of NACIE met for two days in August for a concentrated discussion of several critical items of business. Chairperson Thomas A. Thompson, presided. All Committee members were present.

In the morning of August 26, 1977, Dr. Gerald Gipp, Deputy Commissioner of OIE, met with the Committee to discuss mutual problems and future plans for improvement in the Office of Indian Education (OIE). Regarding the proposal review process, Dr. Gipp stated that OIE should keep NACIE better informed and work closely with the Council throughout the process. It was suggested that

NACIE should not review each proposal, but should review the entire process with regard to Parts B, C, and Fellowships. Specifically, the Executive Committee recommended that they review only those proposals that are new, continuing, or already recommended for funding by OIE, plus any "controversial," borderline, or otherwise unusual proposals. With regard to Part A, NACIE members will not only continue to participate as readers, but will also monitor the proposal review process. The Executive Committee recommended this plan unanimously to be referred for full Council action and the response relayed to Dr. Gipp.

The Office of Indian Education expects to have computer processing of proposal scoring data perfected by next year, which will be a benefit in time and money saved in the proposal review process. Dr. Gipp agreed that in the future NACIE should review the continuing (previously funded) proposals and Fellowships, which the Council did not do this year.

Dr. Gipp went on to discuss the final slate of proposals recommended for funding under Part B, subparts B, C, D, and E; he expressed some concern over the relatively low agreement rate (50 percent) between NACIE recommendations and OIE recommendations.

Next, Dr. Gipp presented to the Executive Committee a list of nine issues developed by OIE that need Council action as soon as possible which would amend the Indian Education Act. He has an

urgent need for input from Indian people, especially the Council members, who are asked to reply by early September after consulting their own constituencies, associates, and tribes, etc.

On Saturday, August 27, 1977, a change in the OIE proposal review process was recommended by the Executive Committee: (1) that the time schedule be moved forward in the year to allow projects to plan their programs in advance of their funding. Parts B and C should have a mid-January deadline for receipt of proposals and Fellowships, to allow the grants to be awarded by May 15; and (2) that early notification of recipients and non-recipients must follow this speeded up process so that tribes, organizations, Indian people, and students will have time to make plans or find alternative funding if necessary.

A proposed NACIE budget of $150,000 for FY'78 was presented to the Executive Committee by Mr. Tonemah, Executive Director. Discussion was confined to the issue of whether the budget should be realigned to allow for greater participation in various activities by the Council but with less staff, or whether the budget should stand as proposed by the Executive Director to include a Stenographer/Receptionist. Although recognizing the heavy workload of the present reduced staff, the Committee agreed that the Stenographer/Receptionist position should be vacated. The need for clerical help to be filled possibly by a CETA trainée; an Education Fellowship intern from

George Washington University; or a Federal person in IPA (Intergovernmental Personnel Action), any of which would provide NACIE with extra staff at no expense. In order to obtain more operating funds, NACIE will continue to: (1) seek a supplemental appropriation from Congress; (2) seek a rearrangement of the OIE budget to release more funds to NACIE: and (3) seek a continuation of the BIA contract. At present, none of these alternatives looks promising for the upcoming fiscal year.

A high priority item for NACIE is the reauthorization of the Indian Education Act (Title IV) by the Congress. NACIE will continue to work actively with national, regional, and tribal groups to support the continuation of this essential piece of legislation.

The meeting of the Executive Committee closed with a brief discussion of future meeting dates and sites.

DALLAS, TEXAS - SEPTEMBER 1977

The full Council met for three days in Dallas, Texas in September (17th-19th, 1977) in conjunction with the National Congress of American Indians (NCAI) annual conference to conduct Council business and to hear public testimony from representatives of various Indian tribes and Indian organizations. It is the policy of NACIE to hold its meetings at times and places where the maximum in coordination and cooperation can take place between itself and the National Indian organizations. The goals of these joint meetings are to maximize

efforts toward achieving mutual objectives and to minimize duplication. A large number of guests were in attendance, most of whom presented testimony before the Council. Many of the guests attending the Saturday and Sunday sessions expressed their deep interest in the NACIE proceedings. Mr. Thomas A. Thompson, Chairperson, presided.

The Chairperson, the Executive Director, and the Executive Committee gave reports. Discussion included recommendations of the Executive Committee to the Director on the use of the available funds; Mr. Tonemah requested more participation by the Council members in writing a proposal for continuation of the BIA Interagency Agreement. Ms. Ann Bailey, Committee Officer, OE/HEW, stated that all but one of the half dozen or more Advisory Councils in the Office of Education have more staff and larger budget than NACIE's.

The Executive Director's report dealt at some length with the Council's plans to possibly be designated as the State Advisory Council on Indian Vocational Education, which had been suggested by the National Advisory Council on Vocational Education (NACVE) in an earlier meeting. By statute the NACIE can serve as an Advisory Council to a Federal Agency (other than those in its own department-HEW) but not to another Federal Council such as NACVE. The BIA cannot fill this role because it has not been designated as a State educational agency. This information was a disappointment as Vocational Education is an important area into which NACIE would like to expand its influence.

The Executive Director's report also discussed the letter to be sent to the Commissioner of Education with a list of names of Indian people to be considered for nomination to the National Advisory Council on Vocational Education. With the concurrence of NACVE, an outside Indian Task Force has been formed to solicit names to submit for possible appointment a person with concurrent membership on both NACVE and NACIE.

A priority item mentioned by the Executive Director is the need to develop a policy statement clearly defining the role of NACIE on the national scene, which would outline NACIE's present and potential relationship to other Federal Agencies and Councils, with Indian organizations, and with tribes. Other urgent items that need to be addressed by the Council are:

- Recommendations on the Tribally-Controlled Post Secondary Education Act (Senate Bill 1215);

- Recommendations from each Council member for new amendments to be included in the request to Congress for reauthorization of the Indian Education Act (Title IV) in 1978, specifically the nine issues singled out for comments and requested by Dr. Gerald Gipp, Office of Indian Education. The continuation of Title IV, with some changes, is the single most important issue for the future of Indian education; and,

- Completion of the responsibilities assigned to NACIE by the Bureau of Indian Affairs in the memorandum of Interagency Agreement of February 1977, which was to evaluate BIA education recommendations in five specific areas. The Council must now complete the final report on the BIA project. NACIE must decide whether or not to

enter another contract with the BIA, this time possibly to conduct a sample survey of BIA boarding schools and their effectiveness.

The Executive Director urged NACIE to take the lead in addressing these important issues.

Several persons presented testimony in the afternoon of September 17, 1977. They were:

Mr. Charles Cervantes, for Dr. Doris Gunderson, Bureau of Occupational and Adult Education, OE/Hew:

"One Percent Set-aside for American Indians, Vocational Education Act." Presentation on the Act and Vocational Education Discretionary Programs. There is money available for which Federal Indian tribes and organizations can compete. Grants are given on multi-year basis up to three years, after completion of one satisfactory year. Indian organizations could develop proposals for local projects, or participation in State-wide plans. (See Appendix)

Ms. Winona Ruebin, representing the Native Hawaiians, discussed:

"Native Hawaiian Amendments in the Indian Education Act (Title IV)." She gave a brief description of the cultural/historical evolution of Hawaiians and explained their present status. She asked for NACIE support of Senate Bill 857, which would include the 154,000 Native Hawaiians with American Indians and thus make them eligible for more Federal education programs, but not at the expense of American Indian appropriations, she emphasized, additional money is being requested. Native Hawaiians already have received funding for their group under CETA. She added that the Native Hawaiians trust relationship with the government is similar for both Native groups. She feels that both would gain greater strength by joining forces. (See Appendix)

Ms. Rebecca Cryer, representing the Potowatomi Tribe's Child Day Care Center, Shawnee, Oklahoma:

"Opportunities and Problems, Title Iv in early Childhood Education" (funded by Part B, subpart C). She discussed their problems with the funding agency, the Office of Indian Education, especially: late availability of rules and regulations; lack of feedback on progress reports on the adequacy of their program; unofficial information that their program was not refunded; and no formal, on-site visit by OIE staff. She felt that successful performance was not being rewarded under Title IV.

Dr. Hakim Khan, Division Director, OIE, was introduced by the Chairperson. Dr. Khan explained that OIE is seriously understaffed, that each field specialist is responsible for monitoring about 110 programs in Part A; it is nearly impossible to visit or maintain close contact with all of them. They too are concerned about the application process and are working to improve it.

Mr. Sam Windy Boy, Treasurer, Crow Central Education Commission, gave a report on the acitivies of the National Indian Vocational Educàtion Task Force of which he is a member. The Task Force was formed in June 1977 at a meeting in Denver, Colorado. He requested NACIE's support for the new task force. Also, he requested that NACIE give consideration to a recommendation to OIE that Title IV funding be closely examined for equitable geographic distribution; specifically, the Crow Tribes' s Title IV, Part C proposal was not funded.

Mr. Ed DeCenso, Superintendent, Maine Indian Education. Requested NACIE support regarding the serious problems the Maine tribes are having in keeping their education system going. More than two years ago, the Courts ruled that two tribes (Penobscot and Passamaquoddy) were eligible for Federal assistance, but so far no money has been received for education; at the same time the Governor of the State of Maine has

> proposed closing the schools (three on three reservations) because they are not "Federal," and he would like to save money. The three school boards are all Indian, elected by the tribal members. They have full authority to operate in the same way as any public school board.

Following the public presentations, the various subcommittees met in evening sessions.

Sunday, September 18, 1977, the Council members spent the morning discussing Council business, and then heard more public testimony.

The NACIE budget discussions centered on plans to carry out the Executive Committee recommendations, which were to cancel one staff position at the end of the fiscal year to give more financial latitude to activities of the Council. Council member Joe Abeyta stated that decisions must be based on what tasks are to be accomplished, what the priorities are, and then make decisions on apportionment of the budget between staff and Council members' activities.

Council member, Ted George, felt that evaluation of technical assistance and on-site visits to OIE and other grantees should be a major activity of the members. This technical assistance effort has been greatly curtailed because of lack of funds. The Executive Director informed the Council that NACIE has received many requests from Indian tribes and organizations for technical assistance,

particularly, the request for help in interpreting OIE regulations and rules, and for advice and assistance to Parent Committees and school districts. Evidently, there is a real need for technical assistance, and Nacie is in a unique position to help fill this need if the money for staff and travel were sufficient to do this. The Council recommended that the Secretary/Stenographer position be vacated, and the money for this position be used for Council business.

A decision was made by the Council that election of the officers will be deferred until the new Council members are appointed. The next meeting of NACIE will be held in St. Paul, Minnesota, in conjunction with the Annual NIEA Convention.

Public testimony was offered in the afternoon by the following people:

Dr. Gerald Gipp, Deputy Commissioner, OIE. He gave a report on the grant review process at OIE, and also informed that Council that a reverification process was being followed to make sure that proposals and applications were reviewed completely and impartially. An outside review team had been mandated to conduct the review of the process, which should put to rest any questions about OIE grant review. The final slate of approved grantees must be out by September 30, 1977.

Dr. Delfin Lovato, Chairman, All Indian Pueblo Council, New Mexico, presented his view that there has been neglect and negligence on the part of OIE in the proposal review, granting, and administration process. Application of procedures and interpretation by the staff have been inconsistent, he alleged. He also questioned NACIE's role in regard to the whole

proposal and grant review process but did not have specific recommendations to make. Dr. Gipp responded that he has recommended that deadlines be moved up and that a full investigation of the past procedures is now taking place. The Council was assured by Dr. Gipp that NACIE will be asked to contribute to the resulting report of the investigation. He feels that more information should be made available to the public; possibly a monthly newsletter would help achieve better communication. Mr. Lovato stated that legal action by AIPC is the alternative if the OIE report is not satisfactory to them.

Mr. Leroy Clifford, Executive Director, American Indian Higher Education Consortium, Denver, Colorado, discussed the importance of tribally-controlled community colleges that emphasize cultural heritage as well as regular education curriculum. They can fill a very important gap between high school and the four year colleges and universities, which have a very high dropout rate for Indian students. He requested NACIE support for H.R. 9158 which would provide grants for these schools. This bill would help to advance the longer range objective of improving tribal government by raising the general education level. Mr. Clifford assured the group that H.R. 9158 does not exclude small tribes from participation in the community college concept.

Ms. Shayne Del Cohen, Program Analyst, and Reginald Begay, Executive Director of A School For Me, Inc., Tohatchi, New Mexico (Navajo Nation): "Report of the Programs of Title IV, Regarding Handicapped Children." They explained problems the school had had in dealing with Title IV regulations, deadlines, staff, etc., and requested guidance from NACIE.

Mr. Dean Chavers, Native American Scholarship Fund. The goal of NASF is to reduce the dropout rate of Indian students in higher education by using a system of supplementary grants to ease financial problems, and by using personal counseling to help in the adjustment to demands of the college

environment. The Fund's new charter would allow them to operate nationally, instead of regionally. They would like to emphasize grants in medicine, business, management, and engineering. Mr. Chavers requested a letter of support from NACIE.

Ms. Georgianna Tiger, National Congress of American Indians, Education Committee, requested more joint meetings and discussion of NCAI's education concerns with NACIE, for detailed coordination and planning. A majority of resolutions passed by NCAI deal with education.

On September 19, 1977, the Council heard further testimony on subjects previously presented, recessed for several hours to attend NCAI sessions of mutual concern, then reconvened to finish Council business. Nominations for new Council members will be accepted early in 1978. Subcommittees should be held accountable for projects assigned to them. The Rules and Regulations Committee recommended:

- on-site visits by OIE and NACIE people to continuing and multi-year projects should be #1 priority with reference to NACIE's work with OIE; and

- NACIE readers should read and rate proposals in their own area or field of expertise as much as possible.

ST. PAUL, MINNESOTA - NOVEMBER 1977

The Council was convened on November 4, 1977 by Chairperson, Thomas Thompson, who presided. All Council members were present by the second day of the meeting. About 35 guests attended in addition to NACIE staff. This meeting was held in conjunction with the annual National Indian Education Association (NIEA) Convention scheduled at the same time in St. Paul, Minnesota. This is consis-

tent with NACIE's announced policy of giving top priority to coordination with other Indian organizations; NACIE's meeting preceded NIEA sessions by two days and overlapped by one day.

The Chairperson's report emphasized the importance of several selected items on the agenda, especially bills that are pending in Congress. NACIE needs to take a position and document their stand on these critical issues.

The Executive Director's report was given to Council members and was discussed with them. The Executive Director presented a draft of new by-laws for the Council, which are somewhat parallel to the by-laws of manuals of the other National Advisory Councils. Mr. Tonemah gave a progress report of action taken on past resolutions of the Council and brought them up to date on new or expected events, including the possibility of establishment of a new Department of Education in the Federal Government. He also discussed the fact that the All Indian Pueblo Council (New Mexico), who have applied for funds under Part B, Title IV, has filed a lawsuit against OIE, alleging favoritism in grant awards. Mr. Tonemah also mentioned the need for NACIE to assist Dr. Gipp in securing HEW and Civil Service approval to add an Associate Deputy Commissioner to his staff. This position is urgently needed. The issue of reauthorization of Title IV may be put off by the Congress until FY'79 by being part of the Elementary, Secondary Educational Assistance Act, which would auto-

matically continue the Indian Education Act for another year.

In addition, the Executive Director reported on testimony that he and various Council members have given to members of Congress on several occasions on behalf of the Council. The testimony presented related to Bilingual Education, Title IV, the Indian Education Act, the Post Secondary Education Act (H.R. 9810). In recent months NACIE has been consulted considerably more often by members of Congress, Committees and subcommittees, than it had been in the past.

The pending BIA Interagency Agreement renewal for 1978 was considered. The Chairperson stated that it was the consensus of the Council that the members were not pleased with the final product. The work submitted could have been better had the Council had more time to conduct the report.

The Council engaged in a long discussion of their basic structure trying to decide if they should keep the present committees and assignments or should they replace the Committees with Task Forces. (The Executive Committee would remain in either case.) The final result was a compromise in which it was agreed that the same Committees would be retained, and Task Forces would be formed for short term activities. The new internal structure of NACIE was changed to the following:

Executive Committee - Planning, budget, major recommendations, emergency actions.

Government InterAgency Committee - Bilingual, bicultural, vocational, adult, childhood, special, and higher education, also CETA and BIA.

Legislative, Rules & Regulations Committee - changes, recommendations regarding new or existing legislation; plus NACIE rules and operational procedures.

Technical Assistance - Assistance to requests from tribes, other organizations; data collection, evaluation and dissemination.

Proposal Review Task Force - Preparation for Title IV proposal review of OIE proposals.

Annual Report Task Force - To prepare the Annual Report to Congress.

The following day, the Committees and Task Forces met separately and elected their Chairpersons and reported to the full Council.

In the afternoon, the Council was addressed by:

Mr. Alan Lovesee, Counsel, House Education and Labor Committee, Subcommittee on Elementary, Secondary, and Vocational Education. He explained that the new House Advisory Study Group on Indian Education was formed in February 1977 to assist in the formation of bills in the area of Indian education. He explained their activities and discussed a current draft of H.R. 9810, which would restructure Indian education including BIA and Title IV.

The Native Hawaiians requested support for several proposed Senate Bills--Native Hawaiian amendments to Indian Education Act that would help to fund Native education in Hawaii, especially for the Kamahameha Schools.

Mr. Joe Abeyta, NACIE Council Member, Principal, Albuquerque Indian School, Albuquerque, New Mexico, introduced a group of five student visitors and a staff member from his school to the Council meeting.

Mr. Bill Wilson, Association of American Indian Physicians, described the current status of the

Association to the Council and showed their career recruitment film "Billy." This film was financed through the Office of Indian Education.

On the last day of the meeting, Dr. Will Antell, Vice Chair-Person, presided.

Dr. Antell requested a decision from the Council on how they would handle the BIA report. He will discuss additions or changes with Dr. Bill Demmert, Director of Education Division, BIA. The various committees and task forces set dates for their future meetings. Budget discussion followed.

After the conclusion of regular Council business, several reports were given by invited guests.

Ms. Joan LaFrance and Joyce Reyes, United Indians of All Tribes Foundation, gave a presentation on the education activities of their organization.

Joyce Knows His Gun, Early Childhood Education (ECE) Follow Through, Northern Cheyenne Reservation, Montana, described the tribes' programs for grades Kindergarten through Three for all Cheyenne children in the three elementary schools, a total of about 420 children. This program is funded by Community Services Act, set up in conjunction with the University of Kansas and has been in successful operation for eight years. The program seeks to involve parents and community. A formal evaluation report was presented to NACIE for their use.

Mr. Dick LaFever, Principal, Elementary Education at Busby School, Northern Cheyenne Reservation, Montana. Gave a presentation on Busby School and how it has been affected by contract funding since 1974. The school was formerly operated by the BIA, is now operated by the tribe using BIA funds.

Dr. Gerald Gipp, Deputy Commissioner, Office of Indian Education, OE/HEW. Gave an informal update on activities of the OIE, including preparation for the next proposal review process.

Mr. Richard Tanner, Coordinator, Johnson-O'Malley Program, Minnesota Chippewa Tribe. Described the results of application of JOM funds in the State school districts where Chippewa children are enrolled.

Dr. William Demmert, Director of Indian Education, Bureau of Indian Affairs. Gave a report of progress of the BIA reorganization plan and how it is expected to affect their education programs.

Following these presentations, the Proposal Review Task Force of the Council met with Dr. Gerald Gipp, regarding NACIE's FY'78 participation in the proposal review process of the Office of Indian Education. Those present were Ellen Allen, Wesley Bonito, Paul Platero, David Risling, and Linda Belarde. The Task Force then recommended two possible options to the full Council:

- NACIE will take part in the total proposal review process as moderators and overseers, working with OIE staff and readers, but not reading all proposals; and

- NACIE will read all proposals and then develop their own slate of proposals recommended for funding, following the same review process as the OIE readers.

These two alternatives were presented to the NACIE Council members present, and they unanimously declared their preference for Option 1. The Executive Director can then proceed to make firm plans for the review process in February and March, 1978. The last meeting of the year adjourned.

Part III

Appendix

National Advisory Council on Indian Education

THE VOCATIONAL EDUCATION DISCRETIONARY PROGRAMS

Doris V. Gunderson
&
Howard F. Hjelm

NATIONAL ADVISORY COUNCIL ON INDIAN EDUCATION
Dallas, Texas
September 20, 1977

THE INDIAN CONTRACT PROGRAM

Section 103(a)(B)(iii) of the Vocational Education Act.

The Commissioner is directed, upon the request of any Indian tribe which is eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination Act or under the Act of April 16, 1934, to enter into a contract or contracts with any tribal organization of any such Indian tribe to plan, conduct, and administer programs, or portions thereof, which are authorized by and consistent with the purposes of this Act, except that such contracts shall be subject to the terms and conditions of section 102 of the Indian Self-Determination Act and shall be conducted in accordance with the provisions of sections 4, 5, and 6 of the Act of April 16, 1934, which are relevant to the program administered under this sentence. From any remaining funds reserved pursuant to division (i) of this subparagraph (B), the Commissioner is authorized to enter into an agreement with the Commissioner of the Bureau of Indian Affairs for the operation of vocational education programs authorized by this Act in institutions serving Indians described in division (i) of this subparagraph (B), and the Secretary of the Interior is authorized to receive these funds for that purpose. Beginning in the fiscal year 1979, the Bureau of Indian Affairs shall expend an amount equal to the amount made available under this subparagraph to pay a part of the costs of programs funded under this subparagraph. During each of the fiscal years covered by this subparagraph, the Bureau of Indian Affairs shall expend no less than the amount expended during the prior fiscal year on vocational education programs, services, and activities. The Commissioner and the Commissioner of Indian Affairs shall jointly prepare a plan for the expenditure of funds made available and for the evaluation of programs assisted under this subparagraph. Upon the completion of a joint plan for the expenditure of these funds and the evaluation of the programs, the Commissioner shall assume responsibility for the administration of the program, with the assistance and consultation of the Bureau of Indian Affairs.

Subpart 2—Indian Tribes

CONTRACT PROGRAM FOR INDIAN TRIBES AND INDIAN ORGANIZATIONS

§ 105.201 Purpose.

The purpose of the program for Indian tribes and Indian organizations is for the Commissioner, at the request of an Indian tribe, to make a contract or contracts directly with Indian tribal organizations, with funds available under section 103(a) (1) of the Act, to plan, conduct, and administer programs, or portions thereof, which are authorized by and consistent with the Act, particularly section 103(a) (1) (B) (iii) of the Act.

(Sec. 103(a) (1); 20 U.S.C. 2303.)

§ 105.202 Applicability of the Indian Self-Determination Act of 1975.

(a) Any contract entered into under this subpart is subject to the provisions of sections 4, 5, 6, 7(b) and 102 of the "Indian Self-Determination and Education Assistance Act of 1975," Pub. L. 93-638.

(b) Regulations implementing the above sections of the Indian Self-Determination and Education Assistance Act, Title 25 of the Code of Federal Regulations, §§ 271.44, 271.45, 271.47, and 271.50 are applicable to the extent that they are relevant and practicable.

(c) Whenever the term "Secretary of the Interior" is used in the Indian Self-Determination and Education Assistance Act, the term means, for the purposes of this subpart, "Commissioner of Education."

(Sec. 103(a) (1) (B) (iii); 20 U.S.C. 2303; 25 U.S.C. 450a, et seq.)

§ 105.203 Definitions.

(a) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaskan native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

(b) "Tribal organization" means the recognized governing body of any Indian tribe or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by the organization and which includes the maximum participation of Indians in all phases of its activities.

(25 U.S.C. 450b.)

§ 105.204 Assistance contracts.

Awards will be made competitively through assistance contracts governed by Subchapter A of Title 45, Code of Federal Regulations (entitled "General Provisions for Office of Education Programs"), except to the extent that appropriate sections of the Indian Self-Determination and Education Assistance Act of 1975 apply or to the extent that more specific regulations in this subpart apply. The criteria in 45 CFR 100a.26(b) do not apply to this program.

(Sec. 103(a) (1) (B) (iii); 20 U.S.C. 2303; 25 U.S.C. 450e(b).)

§ 105.205 Eligible applicants.

An Indian tribal organization of an Indian tribe which has contracted with the Secretary of the Interior for the administration of programs under the Indian Self-Determination and Education Assistance Act of 1975 or under the Act of April 16, 1934, is eligible for assistance contracts.

(Sec. 103(a) (1) (B) (iii); 20 U.S.C. 2303; 25 U.S.C. 450f.)

§ 105.206 Applications for assistance contracts.

An application from an eligible tribal organization must be submitted to the Commissioner by the Indian tribe and must contain the information that the Commissioner requires. An application which serves more than one Indian tribe shall be approved by each tribe to be served in the application.

(Sec. 103(a) (1) (B) (iii); Pub. L. 93-638; 20 U.S.C. 2303; 25 U.S.C. 450b(c).)

§ 105.207 Review for duplication of effort.

An applicant shall submit a copy of the application directly to the Commissioner of the Bureau of Indian Affairs and the State board at the same time it submits an application to the Office of Education in order to avoid duplication of funding.

(Implements Sec. 103(a) (1) (B) (iii); 20 U.S.C. 2303.)

§ 105.208 No cost sharing.

No cost sharing by the applicant is required.

(Implements Sec. 103(a) (1) (B) (iii); 20 U.S.C. 2302.)

§ 105.209 Duration of awards.

(a) The total project period of an award may not exceed three years. The Commissioner may make multi-year awards if the nature of the project warrants multi-year funding. Continuation funding is contingent upon satisfactory performance. Application for multi-year awards shall have a detailed budget for the current year and total budget figures for the subsequent years.

(b) A request for continuation of a project beyond the project period will be considered a new application and will be reviewed competitively with all other applications. In order for the Commissioner to make this determination, an applicant who has had a prior contract under this program shall include an evaluation of the previous project.

(Implements Sec. 103(a) (1) (B) (iii); 45 CFR 100a.432; 20 U.S.C. 2303.)

§ 105.210 Final reports.

The contractor shall submit final financial status and performance reports as the Commissioner shall request.

(45 CFR 100a.403; 45 CFR 100a.432; 20 U.S.C. 2303.)

§ 105.211 Technical review criteria.

The following criteria will be utilized in reviewing applications. These criteria are consistent with 45 CFR 100a.26(b), Review of Applications, in the General Provisions for Office of Education Programs. A segment or segments of an application should address each criterion. Each criterion is weighted and includes the maximum score that can be given to an application in relation to the criterion. The maximum aggregate score for the criteria is 100 points, and the maximum weight for each criterion is listed below in parentheses. Points will be awarded to the extent that evidence in the application satisfies each criterion. The review of these criteria shall constitute the basis for the Commissioner to enter or decline to enter into a contract with an eligible applicant. If the review of any application results in no recommendation to fund (where funds are available), this will mean that it is not satisfactory, as that term is used in the Indian Self-Determination Act (section 102). Applications must receive a minimum of 30 points to be considered for funding.

(25 U.S.C. 450f.)

(a) *Program improvement.* (Maximum 15 points.) The application focuses on the improvement of occupational training opportunities for Indians and delineates the way in which the proposed program will contribute to improved programs for the specific target group.

(b) *Need.* (Maximum 10 points.) The need section clearly: (1) Describes the need for the proposed activity; (2) Provides specific evidence of the need; (3) Indicates specifically how the need will be met; and (4) Describes, where appropriate, ongoing and planned activities in the community relative to the need.

(c) *Objectives.* (Maximum 10 points.) The objectives: (1) Relate to the need; (2) Are significant for vocational education; (3) Clearly describe proposed program outcomes;

(4) Are capable of being attained; and

(5) Are measurable.

(d) *Plan.* (Maximum 15 points) The plan clearly describes the way in which the objectives will be accomplished by:

(1) The overall design for the proposed program; and

(2) The use of specific procedures to implement activities designed to accomplish each objective of each segment of the proposed program:

(3) A description of: (i) Specific activities to be conducted in the proposed program;

(ii) Instruments to be used in the proposed program;

(iii) Instructional material to be used in the proposed program, if appropriate; and

(iv) Population to be served in the proposed program; and

(4) Statistical and analytical procedures, if appropriate.

(e) *Management plan.* (Maximum 10 points) The management plan adequately describes the way in which personnel and resources will be utilized to accom-

plish each objective, the overall design, and each major procedure.

(f) *Evaluation plan.* (Maximum 10 points.) The plan includes valid and reliable instruments and procedures for assessing and documenting the impact of project results in terms of the achievement of project goals and objectives.

(g) *Applicant's staff competencies and experience.* (Maximum 10 points.) Points will be awarded on the extent to which the application clearly describes: (1) The competencies that are required for the proposed project;

(2) The names and qualifications (including project management qualifications) of the project director, key professional staff, advisory groups, and any consultants;

(3) Time commitments planned for the project by the project director, key staff, advisory groups, and any consultants;

(4) Evidence of past and successful experience of the proposed project director and key staff members in similar or related projects;

(5) Evidence of commitment to section 7(b) of the Indian Self-Determination and Education Assistance Act.

(h) *Budget and cost effectiveness.* (Maximum 10 points.) Points will be awarded on the extent to which the application provides a justifiable and itemized statement of cost which contains line items in the proposed budget and appears to be cost effective with respect to proposed results.

(i) *Institutional capability and commitment.* (Maximum 10 points.) The application provides adequate evidence of: (1) Institutional experience and commitment to the proposed work;

(2) Appropriate facilities and equipment; and

(3) Documented assurances of support from cooperating local educational agencies, postsecondary institutions, business, industry, or labor, if support from any of these groups is necessary for successful implementation of the project.

(Implements Sec. 103(a)(1)(B)(iii); 20 U.S.C. 2303; 25 U.S.C. 450f.)

§ 105.212 Additional factors for declining to contract.

In addition to the weighted technical review criteria listed in § 105.211, the Commissioner may use any of the factors listed below in making a decision whether to decline to enter into a contract with an eligible applicant.

(a) The program duplicates an effort already being made;

(b) Funding the program would create an inequitable distribution among tribes; or

(c) The applicant has not performed satisfactorily under a previous Office of Education award.

(Implements Sec. 103(a)(1)(B)(iii); 20 U.S.C. 2303; 25 U.S.C. 450f.)

§ 105.213 Hearing by the Commissioner after declining to enter into a contract.

After receiving notice from the Commissioner that the Office of Education will not award a contract to an eligible applicant, the tribal organization or the tribe shall have 30 calendar days to request a hearing, in writing, to review the Commissioner's decision.

(25 U.S.C. 450f.)

§ 105.214 Remaining funds.

From any remaining funds reserved for this subpart, the Commissioner is authorized to enter into an agreement with the Commissioner of the Bureau of Indian Affairs for the operation of vocational education programs authorized by this Act in institutions serving Indians as described in section 103(a)(B)(i) of the Act. The Secretary of the Interior is authorized to receive funds for that purpose. For the purposes of the Act, the Bureau of Indian Affairs shall be deemed to be a State board and all of the provisions of this Act shall be applicable to the Bureau of Indian Affairs as if it were a State board

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OTHER VOCATIONAL EDUCATION DISCRETIONARY PROGRAMS

PROGRAM	PROGRAM MANAGEMENT	ELIGIBLE APPLICANTS
Bilingual Vocational Education Vocational Training (65%)	Grants Federal Register	State agencies, local educational agencies, postsecondary educational institutions, private nonprofit vocational training institutions, nonprofit organizations created to serve a group whose language as normally used is other than English, and private for-profit agencies and organizations
Vocational Instructor Training (25%)	Training Grants Federal Register	States and public and private educational institutions
Instructional Materials Methods, and Techniques Development (10%)	Procurement Contracts Commerce Business Daily	States, public and private educational institutions, private for-profit organizations, and individuals
Project Support for Programs of National Significance	Procurement Contracts Commerce Business Daily	Public and for-profit and nonprofit agencies, organizations, and institutions and individuals
Vocational Education Personnel Development Graduate Fellowships	Fellowships Federal Register	Vocational Educators
Certification Fellowships	Fellowships Federal Register	Unemployed educators Skilled workers

Presentation to
National Advisory Council on Indian Education
Saturday, September 17, 1977 - Dallas, Texas

Mr. Chairman, members of the National Advisory Council on Indian Education, friends . . . Aloha kakou (greetings).

I am Winona Kealamapuana Ellis Rubin, Executive Program Director of ALU LIKE Native Hawaiian Project located in Honolulu, Hawaii. I was born on the island of Kauai. I am one-fourth Hawaiian and proud of my heritage. Mahalo (thank you) for the opportunity to address the Council today. This brief presentation will be in three parts, and I have asked Gard Kealoha and Paige Kawelo Barber to make a portion of the presentation.

In addressing the topic today -- "Amendments to the Indian Education Act" -- we wish to describe the context from which Native Hawaiians have requested the introduction of S857. The first part of the presentation will briefly describe the cultural-historical evolution of our Native Hawaiian people from the perspective of the Hawaiian, the second section will describe the specific effects of historical developments on Native Hawaiians today, and the third will deal with the intent of the education legislation.

Gard Kealoha, of one-half Hawaiian ancestry, was born on Oahu and currently is the Project Information Coordinator and the Corresponding Secretary of the Council of Hawaiian Organizations. He will be followed by Paige Kawelo Barber, full-blood Hawaiian, who was also born on Oahu and is the State Coordinator for Field Operations for ALU LIKE.

Part I - Gard Kealoha
Part II - Paige Kawelo Barber

In brief, Native Hawaiians are an aboriginal people whose Nation before the haole (foreigners) arrived was thriving and at a high

level of cultural development. The introduction of Western civilization brought some positive things but impacted on the lifestyle and rights of Native Hawaiians significantly -- and, unfortunately, negatively. In assessing the needs of Native Hawaiians throughout the State of Hawaii in 1976, ALU LIKE found that education repeatedly was given top priority with economic opportunity, Native Rights and health/social services also identified as meriting high priority for action.

Let us look at some information relative to education for Native Hawaiians. We know that:

1. The total number of Native Hawaiians in Hawaii as defined by the Native American Programs Act is approximately 150,000. This comprises over 19% of the population of the State of Hawaii.
2. Of the 150,000 Native Hawaiians approximately 8% are of full-Hawaiian ancestry.
3. Of the 150,000 Native Hawaiians about one-half or 75,000 are age 17 and under. Of that group 17,700 are age 5 and under.
4. There are nearly 57,000 Native Hawaiians of school age in Hawaii.
5. Of the 175,000 young people in the State enrolled in grades K-12, 35,000 or 20% are Native Hawaiian. Of the number 5% are full-Hawaiian.
6. In a recent extract of Department of Education data by Kellett Min the following indicators are present:
   --16% of those students suspended from public schools are Hawaiian.
   --17% of the students expelled are Hawaiian.
   --.2% of the "formal" drop-outs are Hawaiian (a somewhat misleading figure since many young Hawaiians are "drop-ins, i.e. present in school only intermittently).
   --19.8% of the students who graduate from high school are Hawaiian.
   --3% of all Hawaiiana public school students receive special education services.

--17% of the recipients of special education services are Hawaiian.
--24.7% of the students involved in court cases are Hawaiian.
---.2% of all Hawaiian public school students are in honors programs.
--5% of all honor program students are Hawaiian.

7. Per pupil expenditures by the Department of Education for 1975-76 were approximately $1,800.
8. Only 6-8% of the students enrolled at the University of Hawaii are Hawaiian, yet approximately 88% of the parents surveyed believed it very important that their children receive education beyond the high school.
9. Hawaiian adults have fewer who have completed high school (67%) than the general population (72%). Those persons with more Hawaiian ancestry have even fewer who have completed high school (51%).
10. Of the statewide certificated personnel in the public school system who work with youngsters, only 7% are Native Hawaiian.

I could go on with more data, but let me just say that Native Hawaiians have expressed a need for education which is more relevant and culturally sensitive to them and the financial means to afford them an opportunity in attainment of educational and career goals.

The introduction of legislation to amend the Indian Education Act was prompted by the expressed needs of the Native Hawaiians and a feeling that our ohana (extended family) concept in practice would allow us to be mutually supportive of American Indians and Alaskan Natives wherever and whenever we could. We already have that relationship with American Indians in Hawaii.

The Native Hawaiians have and will continue to insist that appropriations for Native Hawaiians be requested over and above the existing funding level for American Indians and Alaskan Natives.

We hope that with the combined strength of our aboriginal peoples -- American Indians, Alaskan Natives and Native Hawaiians -- we will be able to assist our people cooperatively to true self-sufficiency.

We ask your support of S857, your wise counsel on this and other measures; and we offer our hand in friendship whatever your decision may be.

Mahalo nui loa (thank you very much) for this opportunity to share our mana'o (thoughts) with you.

Testimony Presented

to

The National Advisory Council on Indian Education

Dallas, Texas

September 18, 1977

Reginald A. Begaye
Executive Director

Shayne Del Cohen
Program Analyst

A SCHOOL FOR ME, INC.
P. O. BOX 273
TOHATCHI, NEW MEXICO 87325

Members of the National Advisory Council on Indian Education and Collegues:

The Bureau of Indian Affairs reports that there are approximately 20,000 Indian children living on reservations who require special education services. It is estimated that nearly 10,000 of them are located in the Navajo and New Mexico area. In 1972 the GAO conducted an audit of the BIA education programs within their boarding schools. This was never done. A 1976 audit underscored this lack of response. Again the Bureau was asked to prepare a plan and implement services. A plan was drawn up empowering the Bureau to function as the 51st state for administering PL 94-142 monies. This plan, however, was rejected by special education authorities, (BEH) as insufficient and incompetently drawn. Responsibility for program design has been removed from Albuquerque to Washington, D.C., and it is obvious that nothing will transpire this year.

Meanwhile, there are many lives, not only those of students needing these services, but their peers and families who are effected by the unhappiness of children in an improper learning environment. Disservice to these children is also a great disservice to Indian communities, for in a developing society, every individual, no matter his skill or intellect, has a vital contribution to make.

I am concerned about the evolution of the Indian Education Act. The original intent was to give Indian groups the ability to provide educational programs to their children they felt were necessary or relevant. Yet half the monies were appropriated to Part A in an entitlement to public school districts, many times to perpetuate status quo situations. To put credit where it is due, some of the projects made significant strides in developing meaningful communication between districts and their local tribes. Programming, field support and technical assistance from Part A has been consistant and of a high caliber since program inception.

Part B & C has not enjoyed the same history. Part of the problem lies in making a relatively small amount of money available competively to all Indian tribes, organizations, etc. Part of the problem is that some tribes have such devastating conditions they had trouble deciding where to begin. In this situation, many tribes knew what their problems were, had inclinations of how to address or resolve them in atraditional methods, but did not have the sophistication or expertise in presentation to Washington via paper. Within a year, the funding requirements and format became such that a group needed substantial grantsmanship ability rather than a valid idea to get funded.

Yes, there were technical assistance groups funded. But too often, they were not knowledgeable enough about the different state or tribal laws for the areas they were to serve. It often is a story of too little, too late, for without a firm knowledge and walking acquaintanceship with community members, it often proved impossible for technical assistance groups to do more than interpret Title IV regulations or suggest proposal format.

There has also been a problem with the administrative offices. Irratic monitoring, changes in interpretation, and constantly changing deadlines do not create an environment of mutual respect and program building. Obvious conflects among staff and contracts and grants does not make good public relations. The pressure from "the HILL" is a result of this. What a shame that the first piece of truly meaningful legislation to be enacted for Indians in the 70's, through which they could get a handle on their education process, will be at legislative mercy due to instability of administrative leadership.

A SCHOOL FOR ME, INC., is one of the programs that gained impetus from infusion of Title IV funds. With the Navajo tribe concentrating on developing a comprehensive reservation-wide school system, programs for the handicapped have been left to smaller organizations to meet the needs of this population. This model of program development is consistant with the intent of the law - to develop innovative programs that meet the special needs of Indian students. We had looked forward to a three year period in which to develop and strengten our concepts, techniques and model of special education services. Our disfunding is a shock and disappointment and underlines the negative effects of pushed - back deadlines. However, our purpose of speaking to you and our concerns were developed prior to this notification, and it is to that we wish to address your attention.

In the spring of 1977, Secretary Califano signed what is known as Seccion 504 amendments to the Rehabilitation Act of 1965. As milestone legislation for the handicapped, this law guarantees freedom from discrimination in employment; access to HEW funded services, both physical plant and direct services; and a guarantee of education for all persons, no matter their disability. Handicapped is broadly defined to include any person who has a systematic deficiency which interferes with a life process. Systems are all those of the body including skeletal, endocrine, neurological, and emotional. Life processes are breathing, walking, eating, thinking, learning and working. Persons with alcohol related problems are included. As you can see, many, many persons will be affected.

The bill stipulates that no agency can be granted HEW monies if their facility does not meet the architectural standards for Handicapped established in 1965. We all know that these standards have been flagrantly

violated by contractors for the last decade. Secondly, many - too many - tribal programs are run in buildings abandoned and often condemned by the BIA or Indian Health Service.

Next, no client may be denied services due to his inability to reach the provider. If, for example, a program is located on a second floor with no elevator access, the program must go to a client. Dealing with a rural, isolated population will mean a great increase in manpower and transportation in order to guarantee services.

A third stipulation is that Education may not be denied to anyone of school age. If there is no program available in a school district, that district is still liable for placement of that child. This includes the fiscal burden.

There is no money in this bill, but the Office of Civil Rights has geared up to enforce it. PL 94-142 (the Special Education Act) which has funds to assist school districts to provide services, but as previously mentioned, is not yet universally established.

This one little section 504 of which surprisingly few people are aware, has many implications for every HEW and through PL 93-638, BIA program. In examining results of this law just in the realm of Indian education, I have a few questions, rehetorical in nature, to ask:

1. What will happen to the Indian controlled schools, already financially strapped, when they are mandated to provide such costly servic to their handicapped?

2. What will happen to the public schools when they receive a like mandate? Will they scrap their supplemental programs for Indian students in favor of providing special education programs to protect their federal income?

3. Where are schools initiating services going to get staff? Yes there are universitites turning out special education professionals, but

anyone having worked with a quality handicapped program, knows that it takes more than certified instructors to provide comprehensive care and education. In Indian country, it will not be possible to convince middle aged persons with family responsibilities to go away for training. Local schools will have no local manpower pool, yet they are required to submit a plan by September 1978 and to be in operation by September 1980.

4. How are these programs going to win community acceptance without local involvement? For too many years Indian children have been branded with negative terms due to educators' inability to work productively with them. Now comes another societal edict, one which could be a great resource to Indian people, but unless understood and programmed for their benefit, could be a vicious weapon to be used against them.

The A SCHOOL FOR ME, INC. Program, through trail and error has addressed many of these issues. We have seen that to be truly meaningful we must also work in preventative and infant stimulation areas, for many of the heart-rendering disabilities could have been avoided. We must also expend energy in creating employment opportunities for those who have reached their full academic potential, for to graduate students into a wilderness of unemployment or inactivity is a waste of the time, energy, and the dollars expended into education programs.

Title IV should not and does not have the responsibility for total programming, but as a financially empowering agent, should also be carefully aligned to tribal development. The professional staff of Title IV and the parent advisory groups which are responsible for program design should be encouraged to develop education programs which compliment tribal development. They should be given the tools to utilize other tribal, state, and federal resources in their program or institutional development. The philosophy of three year funding committment is right and proper as long as sufficient technical assistance is given to groups to facilitate conversion to other sources of income.

We at A SCHOOL FOR ME feel that we can serve as a model for special education programs and for meeting stipulations of handicapped legislation. We would like to share our experience with others. This is not just to show off the good, but also to share the hard times, the failures and the mistakes in order to save other groups from reinventing the wheel. If the mission of Title IV is truly to strengthen tribal involvement and administration of education programs, then the negative must also be discussed. This can be a positive learning experience for all concerned. I am sure the Congress would appreciate new knowledge added to the public domain rather than a series of harrassing phone calls from irate project directors or equally irate non-Indians who are feeling squeezed by increased tribal competence.

Hopefully, you as the Advisory Council on Education, will examine the continuously evolving issues affecting Indian education and direct your

funding priorities to them. National Indian development has come a long way in the past decade. More so than ever before, national affairs affect the future of Indian tribes and similarily, Indian affairs affect the future of the Nation. Educational efforts and techniques should be safeguarded to ensure that every child receives a firm foundation in the basics, but those efforts and direction should also reflect development tools which can safeguard Indian destiny and community. Please don't let those children, who, because of former neglect by health and education systems have been denied an appropriate education, be assigned a fate of dysfunction and isolation. Title IV can be the key to new action by Indian communities. It can be an example of a developing education system flexible enough to absorb all community members. It can be the way to promulgate values and lifestyles which expand human potential rather than suppress it. We in the field look to you for this strength.

Shayne Del Cohen

Shayne Del Cohen
Program Analyst

OPTIONS TO BE CONSIDERED FOR THE DISTRIBUTION
OF
JOHNSON-O'MALLEY EDUCATIONAL ASSISTANCE

Funds for Johnson-O'Malley Educational Assistance in 1978 will be apportioned as one allocation among the States based on the number of eligible Indian students for whom funds are sought, multiplied by a national average per pupil cost and a weighting factor which is intended to take into account the differences in education costs among the States.

The weighting factor is a number which is related proportionately to the differences in cost of education between the States. It is used as that number which attempts to give credit to those differences. The result is that this number, also, indicates how much more a student gets in one State than a number in another State. In the three options which follow, Option A gives an absolute percentage difference in the cost of education between the States; Options B and C are designed to limit the range of differences among States.

OPTION A

The weighting factor is the quotient obtained by dividing every State's cost of delivering educational services by the lowest State's cost.

OPTION B

The weighting factor is the quotient obtained by dividing every State's cost of delivering educational services by the lowest State's cost. Except that, for every State whose cost is below the national average, the national average will be used as that State's cost.

OPTION C

The weighting factor is the quotient obtained by dividing every State's cost of delivering educational services by the lowest State's cost. Except that, in considering a State's cost of delivering educational services, no State will be considered at a level less than 80% of the national average nor more than 120% of the national average.

****

The weighting factor obtained is then multiplied by the number of eligible students for whom funds are sought within the State. It is this multiplied by the weighting factor that increases the student count proportionately to compensate for the differences in the cost of delivering educational services between the States. The result of this multiplication, thus, gives a weighted student count for each State.

The sum of all weighted students gives a total weighted student count.

The total amount of funds available is then divided by the total of weighted students giving an allocation per weighted student.

This allocation is then multiplied by every State's number of weighted students to obtain a total State allocation.

All contractors within the State will receive the same amount for each eligible Indian student for whom funds were sought under a contract.

LIST OF ABBREVIATIONS AND ACRONYMS

ADMINISTRATION - President Carter's Administratio.

AIHEC - American Indian Higher Education Consortium

ANA - Administration for Native Americans, HEW

BIA - Bureau of Indian Affairs, U.S. Department of Interior

BOAE - Bureau of Occupational and Adult Education, OE/HEW

CICSB - Coalition of Indian Controlled School Boards

HEW - U.S. Health, Education, and Welfare Department

IEA - Indian Education Act (Title IV, P.L. 92-318)
PART A - Entitlement funds to Public School Districts
PART B - Discretionary Programs to Indian Tribes, Organizations, etc.
PART C - Adult Education Programs

LEA - Local Education Agency

NACIE - National Advisory Council on Indian Education

NACVE - National Advisory Council on Vocational Education

NASF - Native American Scholarship Fund

NCAI - National Congress of American Indians

NIEA - National Indian Education Association

NON-LEA - Indian Controlled Schools, alternative school

NTCA - National Tribal Chairman's Association

OE - Office of Education

OIE - Office of Indian Education

UIATF - United Indians of All Tribes Foundation

WICHE - Western Interstate Commission for Higher Education

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Exhibit No. 29

STATE OF MICHIGAN

WILLIAM G. MILLIKEN, Governor

DEPARTMENT OF MANAGEMENT AND BUDGET

GERALD H. MILLER, Director

COMMISSION ON INDIAN AFFAIRS
106 South Pine St.
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Lansing, Michigan 48909
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CONTROVERSY CONCERNING INDIAN
FISHING RIGHTS IN MICHIGAN

The controversy over fishing rights in Michigan has created a wave of racism that threatens to engulf the entire state's population for the next hundred years. Long suppressed attitudes and uneducated beliefs regarding American Indians are now erupting with regularity in almost every community.

This is the result of unsubstantiated articles utilized by mass media communication. News articles charge Indians of illegially fishing without mention of the fact that in April of 1971, the Michigan Supreme Court stated that Indians have the the right to hunt and fish.*

There is a great deal of rhetoric about the rape and depletion of the resources of the Great Lakes, but never any mention of the tearing asunder and loss of good community relations between Indian people and others in their respective communities.

It is the position of the Michigan Commission on Indian Affairs that the fishing dispute is a matter of Federal and Tribal officials to decide because of the unique and long-established relationship between the Federal Government and sovereign and indigenous tribes in North America.

*People Vs. Jondreau, 384 Mich. 539, 544; 185 NW2d 375 (1971)

MICHIGAN
THE GREAT LAKE STATE

Our concern is the rapidly growing hatred being generated by those who feel they have their own interests to protect, while eroding the legal and social rights of American Indians.

The pain suffered by Indian families either directly or indirectly involved in the fishing dispute is unconsciousable.

Indian people have had to suffer in almost total silence, because the suffering prompted by racial hatred and discrimination does not sell, as well as impending threats of resource depletion, violence and the final victory over Indian people.

The facts of the racial strife has been recognized by national periodicals across the nation, and of a few concerned citizens.*

My own father, who does not own any fishing apparatus, has feared for the safety of his and other Indian people's lives because of vigilante groups moving unimpeded by local and state law enforcement officials. These same groups have been monitored by Indians and others. The vigilantes are using Citizen Band radios to direct their efforts against Indian fishermen.

How long must Indian people have to suffer? How can the situation be explained to alleviate their pain and fears? Will this inflammatory rhetoric result in the death or maiming of a child or adult on either side? These questions have been put aside and have not been fully recognized as the major product of the fishing dispute.

The citizenry of Michigan cannot afford to continue to allow the civil rights of its members to be violated, nor can they allow

*THE NATION, September 17, 1977, pgs. 236-238

the children to become pawns in the cowboy and Indian game created by their parents.

Voluminous newspaper articles have assisted in creating this horrendous situation in which the innocent become the victims. (See Attachment I) Racial discimination is at an all time high with the lives of the innocent hanging in balance. (See Attachment II)

The Michigan Commission on Indian Affairs strongly urges this panel to assist the citizenry of Michigan to alleviate this dangerous situation.

ATTACHMENT I

ARTICLES FROM MICHIGAN NEWSPAPERS ON FISHING RIGHTS

[illegible]	Courier	Charlevoix	_____	Hearings on the question indian fishing treaty ri hts will be held from 9a to 5p.m. Jan.13 at the Pe oskey high school gymnas·
Jan-4-78	Courier	Charlevoix, MI.	_____	Novotny makes comments on indian fishing rights.
Jan-11-78	North Woods Call	Charlevoix, MI.	_____	Grass roots response to hearing on indian nets.
Jan-11-78	Unknown	Unknown	BY Dave Pitt.	Friday's subcommittee hea ing in petoskey regarding indian hunting and fishin rights.
Jan-12-78	Weekly Wave	Cedarville, MI.	_____	Indian fishing hearing lis is announced.
Jan-13-78	Unknown	Unknown	BY Dave Pitt.	Salan, sob's urge us act c fish.
Jan-13-78	News	Marquette, MI.	BY Dave Pitt.	Salan said federal govern- ment should act to protect the rights of all citizens while protecting "those fr agile resources such as ou fish and wildlife.
Jan-16-78	Unknown	Unknown	BY Dave Pitt.	Bay mills attorney charges racism ' in treaty dispute
Jan-16-78	News-Review	Petoskey, MI.	BY Dave Pitt.	U.S. claim to gill net pov ers takes state DNR by sur ·prise.
Jan-18-78	Sentinel	L'Anse, MI.	BY Rick Kinnunen.	Fishing rights for indians debated.
Jan-19-78	Republican News	St.Ignace, MI.	BY Wesley H. Maurer, Jr.	Scott said during the firs· year of gill net fishing i the St.Ignace area, mortal· ity on lake trout fromthe first stocking was estimat at 91 percent.
Jan-30-78	Daily Tribune	Cheboygan, MI.	_____	Indians are in a controver sy over recognition of their treaty fishing righ- ts.

2-1-78	Daily Mining Gazette	Houghton, MI	Paul Peterson	Indian DNR an formation stage. As Dakota said, tho tribe had fish and game regulation, but no way of enfor them.
Feb-1-78		Farmer's Advance	Camdem,MI.	_____ As part of the indian' winter hunting grounds the Mount pleasant are and isabella county we called ojibiway besse the place of the chipt
2-4-78	Record Eagle	Traverse City, MI	Gordon Charles	Indian fishing case letters urged. Indian groups believe they have a right under terms of the Washington treaty of 1836, to take fish from the Great Lakes regardless of state regs.
James Oberstar U.S. Rep.				
2-4-78	News	Alpena, MI		Boundaries commission to rule on consolidation of Tawas's Indian fish rights where the waste water treatme plant now stands.
Feb-9-78		Press	Unknown	_____ An ottawa chippewa indian found guilty of using gil nets to fish in great lak has lost his bid for an a peal.
Feb-10-78		News-Review	Petoskey, MI.	_____ Indian gill netter loses ppeal on treaty rights.
Feb-22-78		Northwoods Call	Charlevoix, MI.	_____ Politicians turn back on g nets.
Feb-22-78		Northwoods Call	Charlevoix, MI.	_____ Indian fishing and hunting rights controversy becomes more muddled and frustrati for conervation officer ev week if that's possible.
Feb-23-78		Enterprise	Tribune	_____ Court assesses indian $73C fish case.
2-25-78	Gazette	Kalamazoo, MI		Indian fishing rights to come before court, the case involving the Bay Mill and Chippewa Indians is intended to learn if the treaties of 1836 and 1855 abridged their fishing rights.

2-26-78	Free Press	Detroit, MI	Tom Opre	'78 Indian war: Who has fishing rights Federal district court in what may become the nation's landmark case involving Indian hunting and fishing rights. It's the first time an individual state has been sued by the Mich. United Conservation Club lawyer on behalf of the state non-Indian hunters and fishermen.
2-26-78	Press	Grand Rapids, MI	Tom McCarthy	Indian fishing rights trial opens here The suit centers on the fishing rights some Indians claim they hold under an 1836 treaty.
2-26-78	State Journal	Lansing, MI		Indians threaten fish. Regulations wil open Grand Traverse and Little Travers Bays to gill netting of lake trout and whitefish during spawning seasons by Bay Mills Indians, say fisheries biologists.
Feb-27-78	Tribune	Grand Haven, MI.	_____	Indian gillnet fishing wi wipe out the fish populat ons of the treaty zone.
Feb-27-78	Tribune	South Haven, MI.	_____	The end of the first phas Fox will decide whether t indians retain their abor ginal fishing rights.
Feb-27-78	Daily News	Greenville, MI.	_____	Chippewa's and Ottawa are fighting for their fishing rights under the treaty 18 36.
Feb-27-78	Press	Ypsilanti, MI.	_____	One article in the treaty reserved indian hunting r ghts while another sectior kept for the tribes the ri ght to fish in the upper peninsula's whitefish bay.
Feb-27-78	News-Review	Petoskey, MI.	BY Jim Doherty.	They voted to close littl traverse and grand traver bays to their commercial fishing this coming year.
Feb-27-78	Sentinel- Standard	Ionia, MI.	_____	The federal government and indians are suing the stat to save the fishing rights of ottawa and chippewa ind ians.

Feb-27-78	Commercial	Three Rivers, MI.	_____	Several indians have been rrested on charges of fish ing illegally.
Feb-27-78	Daily News	Hillsdale, MI.	_____	But after 19 years of dis-pute over the original tre aty, the indians signed an other pact with the federa government in 1855.
Feb-27-78	Argus-Press	Owosso, MI.	_____	Indians and federal goverr ment insist indians kept t ose rights.
Feb-27-78	Sentinel-Standard	Ionia, MI.	_____	A court battle over indi fishing rights goes to t ial before a federal judg Monday, nearly five years after its filing.
Feb-28-78	Unknown	Unknown	_____	Indians are claiming thei old fishing rights.
2-28-78	Press	Grand Rapids, MI		History lesson opens fishing rights trial. The trial on fishing rights of Michigan Indians began with a history lesson Monday. Chippewa & Ottawa. Indians claim that under a treaty they signed with the United States March 28 1836.
Feb-28-78	Argus Press	Owosso, MI.	_____	An expert on indian hist was to resume her testim today in round two of a f eral court battle over dian fishing rights.
Feb-28-78	Evening Chronicle	Marshall, MI.	_____	The state of michigan h no right to impose fish and hunting regulations indians as they are app ied to game and sport f hermen and hunters, fe al attorneys and lawye for bay mills and Sault Ste. Marie chippewa inc ians argue.

DATE	NEWSPAPER	LOCATION	WRITER	SUBJECT
,Feb-27-78	Evening Sentinel	Holland, MI.	_____	State officials claim the indian relinquished their hunting and fishing rights nearly 123 years ago.
,Feb-27-78	Daily Tribune	South Haven	_____	In the trial's first phi opening today,U.S. disti judge noel fox must dec' if the indians keep the' fishing rights under bot 19th century treaties.
,Feb-27-78	Daily Telegram	Adrian, MI.	_____	A court battle over ino fishing rights goes to ial before a federal ju today, nearly five year after its filing.
,Feb-27-78	Morning Sun	Mt. Pleasant, MI.	_____	On one section in the trea reserved indian hunting ri ghts another section kept indian tribes fishing righ
2-27-78	Chronicle	Muskegon, MI		Indian fishing rights trial gets under way. A court battle over Indian fishir rights goes to trial before a federal judge today, nearly five years after its filing.
Feb-27-78	Daily Report	Coldwater, MI.	_____	Bureau of indian affairs t take over fisheries manage ment of the entire great l. kes.
2-27-78	State Journal	Lansing, MI		Fishing rights trial to open, but one article in the treaty reserved Indian hunting rights while another section kept for the tribes the right to fish the upper Peninsula's Whitefish Bay.
Feb-27-78	Pioneer	Big Rapids, MI.	_____	They claim the DNR has vas: ly over estimated the numbe of whitefish and lake trout being taken by indians in whitefish bay.
2-27-78	Gazette	Kalamazoo, MI		Indian fishing rights battle opens in court. The U.S. Dept. of Justice is in the case to support rights Indians claim under an 1836 treaty

,Mar-1-78	Argus-Press	Owosso, MI.		The chippewa and ottawa in dians kept their fishing rights when they signed o er most of their land to the federal governmemt in 1836.
Mar-1-78	Daily news	Dowagiac, MI.		At issue is whether the s ate of michigan and the d partment of natural resou ces have the right to reg late hunting and fishing through indian reservatic
,Mar-1-78	Unknown	Unknown		Historian testifies for s cond day in indian fishin rights trial.
,Mar-2-78	Daily News	Dowagiac, MI.		Indian fishing traced ba in court testimony.
Mar-2-78	Daily News	Greenville, MI.		Indian fishing trial cor tinues. The 1836 treaty contains just one refere to fishing rights.
Mar-2-78	Argus-Press	Owosso, MI.		Indian fishing rights be- fore the 1836 treaty was signed.
Mar-2-78	Evening Sentinel	Holland, MI.		Witness to return in fis ing rights trial.
,Mar-2-78	Evening Chronicle	Marshall, MI.		Historian testifies in be half of indians seeking t keep fishing rights.
Mar-2-78	EnterPrise-Tribune	Leland, MI.		An attempt to define indi fishing rights in Northern Michigan.

Mar-2-78	Huron Daily Tribune	Bad Ax, MI.	_____	The federal government a· maintains that the treaty 1855 did not abridge the· shing rights it says were affirmed in the treaty of 1836.
Mar-2-78	Sentinel· Standard	Ionia, MI.	_____	Concedes treaty mention fishing once after conc ing that an 1836 treaty contains just one refer to fishing.
,Mar-2-78	Pioneer	Big Rapids, MI.	_____	A government witness cc ded wednesday, There is just one reference to f ing in the 1836 treaty fs the key to claims mi igan indians kept their ght to fish while givin their lands.
Mar-2-78	Tribune	Grand Haven, MI.	_____	Do you believe the state a right to regulate indi fishing in the same way regulates non-Indian fisl men and hunters.
Mar-2-78	Tribune	Grand Haven, MI.	_____	Indians engaged in comm cial fishing 1,000 year fore the signing of the eaty of 1836.
Mar-2-78	Evening News	Momroe, MI.	_____	Mrs. Tanner insist that in signing th treaty one year be michigan became a ate. The ottawa an chippewa indians n intended to give u their right to fis treaty.

,Mar-3-78	North Woods Call	Charlevoix,MI.	BY Peter Streketee.	The continuation of i an treaty fishing rigl into the 1970's and b yond not only endange fisheries resources.
,Mar-5-78	Press	Unknown		Tribesmen's commercial i hing on two bays banned indians.
,Mar-7-78	Evening Sentinel	Holland, MI.		Indian fishing halted on b
,Mar-7-78	Sentinel-Standard	Ionia, MI.		Tribes halt fishing by owr members.
,Mar-7-78	Detroit News	Detroit, MI.	BY Tom Dammann.	Two indian tribe curb cc ercial fishing to show ' good faith!
,Mar-8-78	Daily Mining Gazette	Houghton, MI.	BY Paul Peterson.	Tribal code remains the sa at keweenaw bay,says Dakot
,Mar-8-78 Arthur LeBlanc-Chairman of the bay mills indian community.	State Journal	Lansing, MI.		Indian tribes fighting t state for fishing rights insist their moves to ha fishing by their members grand and little travers bay are no concession to the state.
Mar-8-78	Gazette	Kalamazoo, MI.		Fishing ban explained by indians. Two indian trib fighting for fishing ri hts.
Mar-12-78	State Journal	Lansing, MI.	BY Frank Mainville.	But were not talking abo a handful of indians net- ting to feed the communi- but at least 125 card ca ring "Indians" for whom

Mar-12-78	News	Iron Mountain	BY Dave Schweisberg.	U.P. enmeshed in fishing rights netting. William Peter Jensen says, I'm n exploiting anything, I'm making a living for my f ily.
,Mar-16-78	News-Review	Petoskey, MI.		Bay mills and chippewa in ians claim the 1836 treat of Washigton guaranteed t umlimited hunting and fis ing rights in perpetuity.
,Mar-17-78	Daily Mining - Garzette	Houghton		The case inquestion is one involving the bay mills indian community and the Sault Ste. Mar band of chippewas vers the state of michigan. Fishing rights are the main bone of contentio
,Mar-17-78	News- Review	Petoskey, MI.		We all agree that fish with gill nets in the ring and fall when the lake trout are concetr ted in shallow waters the bay will have an a verse effect on the tr population.
,Mar-21-78	Morning Sun	Mt. Pleasant		The supreme court on m day let stand a minnes law requiring non-mem of the leech band of c ppewa indians to extra fee.
,Mar-21-78	Daily Globe	Ironwood, MI.		Three non-indian fisherm challenged the statue aft their arrest by state co servation officer in 197 for fishing on leech lak within the reservation w hout having paid the $1 special fee

Mar-25-78	Free Press	Detroit,MI.	_____	The surpreme court will have to sottle the war o indian fishing rights.
Mar-25-78	Record Eagle	Traverse, City	_____	The spring meeting of th grand traverse area spor fishing association is s eduled for tuesday, Apri 4, at 7:30 p.m. at the t verse city holiday Inn.
Mar-27-78	Evening News	Sault Ste. Marie	_____	Judge's illness delays i dian fishing case.

DATE	NEWSPAPER	LOCATION	WRITER	SUBJECT	
April-4-78	Evening News	Sault Ste. Marie			Their ancestors roamed the land freely, But michigan indians fight to hunt and fish as they choose.
April-4-78	News	Alpena, MI.			After five years period R pe said indians would be titled to 50 percent of t commercial fishing licens made available by the sta
April-4-78	Dialy Press	Escanaba, MI.	BY Mark Eisenlohr.		Filmed partly on location fairport and the garden p insula, The movie utilize the controversial indian shing rights issue to pre ent an intriguing plot.
April-5-78	Record Eagle	Traverse City	BY Gordon Charles.		Illegal indian gill netti in grand traverse bay hav not been disputed by high courts.
April-5-78	Mining Journal	Marquette, MI.			He estimated the indian c ch as between 200,000 an 300,000 pounds of trout a a similar amount of white fish.
April-6-78	Daily Tribune	Cheboygan,MI.			The houghton republic said his bill would a ow the indian communi to regulate all fishi on indian reservation
April-6-78	Daily Press	Escanaba, MI. x			His bill also would call research and planting an hatchery programs to inc ase the number of fish i great lakes.
April-6-78	News-Review	Petoskey, MI.			Duhamel has challenge the state on indian f hing rights and has b arrested for gill net

April-7-78	Free Press	Detroit, MI.		On indian rights (Free Pr march 25) for fishing and hunting was so one-sided that I thought I would jo your memory a little.
April-7-78	Daily Tribune	South Haven		Ruppe also said that i the first five years g any legislation "We ou ght to guarantee to th indian community the same amount of the com mercial fishing as the enjoy on the great lak today.
April-8-78	Daily Globe	Ironwood, MI.		A consulting firm has been hired by the bad river tribal council t draw up a new fish and game code for the rese vation.
April-9-78	State Journal	Lansing, MI.		The indians were forced t go to court where they pr ved they had a right to 5 percent of the fish.
April-12-78	Record-Patriot	Beulah, MI.	BY Pete Sandman	It will preserve to the indian community the aut ority to regulate fishin on indian reservations.
April-13-78	Mining Journal	Marquette		Indian must pay. The sup reme court let stand a minnesota law requiring non-members of the leech lake band of the chippewa indians to pay extra fees for fishing, hunting or gathering wild rice on th indian reservation.
April-13-78	Daily Press	Escanaba,MI.		Ruppe explained that a re cent michigan supreme cou ruling said that a lower court should determine fi hing in order to prevent harm to the fishery.

ɔril-14-78	Evening News	Sault Ste. Marie	_____	... Ruppe outlined the basics o his bill in a recent speech before the traverse area sp, fishing association in trav erse city.
April-15-78	Record Eagle	Traverse,City	_____	Carlson, a fourth-genera tion commercial fisherm Will speak on various as pects of great lakes fis ings included sport fish and commercial fishing a indian netting.
April-15-78	Daily Mining-Gazette	Houghton, MI.	_____	The case involves a ca dcarrying member of th Keweena bay indian cor unity who was arreste for deer" willful and illegal possession of deer" in december.
April-15-78	Daily Mining Gazette	Houghton, MI.	_____	The case involves a card- carrying member of the K eenaw bay indian commun who was arrested for "wi ful and illegal possessi of 'a deer" in december.
April-16-78	Free Press	Detroit, MI.	_____	Rep. Phillip Ruppe, R- Michigan, says he will introduce a bill givi michigan indians thre special commercial fis ing areas of their ow
April-16-78	Journal	Flint, MI.	_____	Rep. Phillip Ruppe says h will intoduce a bill in t house calling for federal intervetion in the dispu over indian fishing right in the upper great lakes.
April-17-78	Evening News	Sault Ste. Marie	_____	The state has no right to regulate indian fi ing and hunting pract- ices. The state conte regulation is necessa to protect the great ke fishery.

	News-Review	Petoskey, MI.	BY Jim Doherty.	Davis said he is oppo to anyone being able fish with gill nets o do anything the rest the people of the st cannot do.
April-19-78	Journal	Pinconning, MI.	BY Steve Griffin	This was all indian hun ing ground, Gilbert sai as we rested at one poi along the river. Indian particularly cherokees- used to come into this area to hunt.
Apr-20-78	Weekly Wave	Cederville. MI.	_____	Court could require th elimination of the use gill nets by indian wh might well resolve a ma part of the problems.
April-21-78	Evening News	Sault Ste. Marie	BY Kathy McNeely.	Fishing rights film open at the Soo theatre. The film, accoruing to reeve deals with indian fishin rights.
April-20-78	Record Eagle	Traverse City	BY Gordon Charles.	Carlson said he expects controversial indian net ing program being carrie out on some parts of the great lakes will be resc ved in three possible wa
May-2-78	News	Alpena, MI.	_____	Davis indicated state and federal matters h is involved in today indian fishing rights and the PBB controver
May-14-78	Press	Grand Rapids	BY Marcia Keegan.	The treaty that brought th buffalo back.
May-11-78	Harbor Light	Harbor Springs	BY Rt Rev. Dave Thornberry.	Let me assure you, I h no intention of discus the pros or cons of fi ing in michigan.
May-29-78	Press	Ypsilanti, MI.	_____	Carter should get h act together. Compl $120 million dam in Tennessee was more important than an e ngered species of f

DATE	NEWSPAPER	LOCATION	WRITER	SUBJECT
Jun-13-78	Evening News	Sault Ste. Marie	_____	The problem was, He said it difficult to fish when the lakes covered with ice, So
Jun-14-78	Detroit News	Detroit, MI	_____	Interstate warpath- several hundred Ameri Indians walked to Was ington D.C. hope to s President Carter and protest resolutions t the house of Represer atives which they cor end would take away their tribal Jurisdic tion and hunting, fis ing and water right.
Jun-14-78 Ned Curtis- DNR-Regional law chief.	Northwoods Call	Charlevoix	_____	Indian netters turn to Lake Huron, nothing le in whitefish Bay so th are going to start hit ing lake huron hard.
Jun-14-78	News	Alpena, MI.	BY Susan Grulke	Indian's gill nettin upsets Roger Cityans gill net fishing and Indian fishing right
Jun-15-78	News	Alpena, MI.	BY Susan Grulke	Rogers Cityans fustr ed by lack of means stop gill net fishin
6-15-78 Bill Mitchell Local Conservation officer	Presque Isle	Rogers City, MI	David McGlone	Wonder why there are no fish left? Men produced cards stating that they are Indians and it's legal for them to keep, sell or take any amount of fish regardless of size, in any mann they wish.

Jun-15-78	Presque Isle	Roger City, MI.	BY Jim Baumann	Indians found with trc gill nets. Mitchell pointed out that Mich-igan law prohibits gil net fishing near Cheb-oygan.
Jun-15-78	Evening News	Sault Ste.Marie		U.S. Policy on Indians needs review- - - Tobin response was to a recent letter to us. Attorney General Griffin B. Bell from sens. Warren G. Magn son and Henery M. Jackson (D-Wash.), prompted by a 1974 court decision on th Claims of Washington Stat Indians on expand fishing rights.

Dan Green- Respresents Sault Tribe Chippewa Indians- Is an Attorney.

DATE	NEWSPAPER	LOCATION	WRITER	SUBJECT
6-15-78	Evening News	Sault Ste. Marie, MI		It's difficult to fish when the lakes are covered with ice. So in winter, processed shell fish, primarily shrimp and lobster.
6-19-78	News Review	Petoskey, MI	Dave Pitt	Ottawa Association opposes Ruppa plan in fish dispute.

Waunetta Dominic
Chairwoman, Northern
MI Ottawa Indian Assoc.

Jun-20-78 William Palmer- is a Wisconsin Oneida Indian- Manager of rainbow Country fisheries.	Detroit News	Detroit, MI	BY Tom Dammann	Indians fish for Det market. They will st furnishing live lobs shrimp, oysters, whi fish, lake trout, sa mon and other produc
6-21-78	Daily Tribune	Cheboygan, MI		American Indians walked from Calif. Washington D.C. They say their way o life is threatened by 11 pieces of federal legislation that would strip them of land, mineral and wildlife claims they hold under treaties.

				mining, hunting, fishing and trapping rights.
Jul-2-78	State Journal	Lansing, MI	BY Frank Mainville	Feds after all wild l unsatisfied with the tensive controls the federal government al ready has over huntin and fishing. The Cart Administration is now eyeing new ways of ta ing over Jurisdiction resident wild life.
Jul-5-78 (MUCC) Ray Rustem- A field Represenative United Conservation Clubs. Dave McGlone- Sportsmen's Club Member Presque Isle County sportsmen's Club.	Outlook	Onaway, MI.		Gill net restrictions won't come soon or easy.
Jul-5-78 (DRN) G.M. Dahl- The chief of law enforcement.	Arenac Co Indepent	Standish, MI.		Indians don't get special fishing rights under 183(treaty.
Jul-9-78	Press	Grand Rapids	BY James Phillip's	Tribes are seeking lan in the east, water in west, fishing rights i the upper great lakes puget sound.

DATE	NEWSPAPER	LOCATION	WRITER	SUBJECT
Jul-9-78	Chronicle	Meskegon,MI.	BY James Phillips	Indian tribes press l water claims. Fishing ghts in the upper gre lakes.

Jun-22-78 Myre Keller- State Department Of Natural Resources.	News-Review	Petoskey	BY Dave Guzniczak.	Indian gill netters f ing waters of Norther Michigan.
5-24-78	Evening News	Cadillac, MI		Speak out, help Indians. These prop have to do with abrogation of all Indian treaties, abrogation of hunt and fishing rights guaranteed by pre vious administration and with the theft of Indian water rights and the abrogation of Indian civil rights.
Jun-24-78	Gazette	Kalamazoo, MI	BY Bob Novosad	Indian fishing righ at top of list. Ind fishing rights in t great lakes is the difficult Conservati issue in the state
6-27-78	Evening News	Sault Ste. Marie	Verna Lawrence	Favors control on lobbying Indian fishing and jurisdictional disputes.
Jun-27-78 Raymond Rustem- Michigan United Conservation Club..	News	Alpena, MI.	BY Susan Grulke	Pushing fight again Indian fishing near Roger City.
6-28-78	North Woods Calls	Charlevoix, MI		Three nights netting nets $1,500. for Indians. Bay Mills Indians killed 2,500 pounds of lake trout in nets of Charlevoix's south point in 3 evening of netting, according to conservation officers attempting to monitor the Indian netting.
6-28-78	Arenac Independent	Standish, MI		Indians with gill nets will wipe out the Huron fish. The Indians are coming and they are going to steal your fish, that's the alarm Richard Seiferlein, J is trying to spread up and down the Lake Huron shoreline.
6-29-78	Presque Isle advance	Rogers City, MI		Gill net restrictions won't come soon or easy. Indian fishermen have been seen with gill nets and large catches of lake trout near Rogers City this month.

DATE	NEWSPAPER	LOCATION	AUTHOR	SUBJECT
Jul-9-78	Press	Grand Rapids	BY Tom Dammann	Question of fishing righ still unresolved in that case, The state had arre ted a bay mills chippewa indian leader and charge him with fishing with g nets in violation of st law.
Jul-10-78	Press	Grand Rapids		Indians claim swamping charter boat, The owner of a charter fishing bo here has been cited by the U.S. coast guard wi gross negligence follow ing an incident friday which the boat of indi gill net fishermen alle edly was swamped.
Jul-12-78	Courier	Charlevoix, MI.	BY Tom Dammann.	Charter boat owner charge with swamping gill nette
Jul-13-78	Harbor Light	Harbor Springs	BY Jeanne Moore.	Indian regulate own fishi rights.
Jul-14-78	News- Review	Petoskey	BY Dave Guzniczak	No progress in indian treaty fishing cases.
Jul-18-78	Daily mining Gazette	Houghton	BY Kenneth Peter- son.	That is summary of a s atus report on the ind ian fishing dispute gi ven by scott recently at a meeting of the st ate natural resouces c mmission.
Jul-18-78	Detroit News	Detroit, MI.		Indians ask congress fc justice, We've come her to ask the government t guarantee our rights tc traditional fishing are

Jul-17-78 Fred Dakota- Leader- Leader of the Keweenaw Bay Indian Community.	Daily Mining Gazette	Houghton, MI.	BY Paul Peterson.	Fisheries bill is not pc ular.
Jul-20-78 Steve Frye- Manager- Magnus Park.	News-Review	Petoskey, MI	BY Dave Gużiczak	Protesters observe gill netters at work.

DATE	NEWSPAPER	LOCATION	WRITER	SUBJECT
Jul-20-78 Joseph Lumsden-Chief- Chippewa Sault Ste. Marie Tribe.	News	Iron Mountain, MI	BY Tom Ochiltree	Indian fishing rights.
Jul-20-78	Press	Grand Rapids	BY Ken Peterson.	With no end in sight fc settlement of the india fishing controversy, Th worst fears of michiga fisheries chief John Sc appear to be coming tru Important stocks of fis in the great lakes are clining.
Jul-20-78	Charlevoix Co.- Press	Boyne City, MI.	BY Kay Severin- sen.	Indian fishing contr versy rage on. In th old cowboy and india movies, there were g od guys and bad guys
Jul-20-78	Mining Journal	Marquette, MI.	BY Richard P. Smith.	Indians try to entorce the current fishing sit tion at the Keeweenaw b indian reservation. Thi one deals with the indi point of view.
Jul-20-78	Mining Journal	Marquette, MI.	BY Richard P. Smith.	Sportsmen, tribe fright ruppe. Hopes of settlin indian fishing rights q stions out of court was held July 12, in washin

Jul-20-78	Free Press	Detroit, MI.	_____	Indians call carter a hypocrite, The march pi tested legislation pen congress that would de indians their treaty r hts, including tribal sovereignty and fishin land and waters rights
Jul-21-78	Record Eagle	Taverse City	BY Dirk Nelson	Michigan administrator and indian fishermen f up Rep. Phillip Ruppe' (R-11) prosposal to pl. overall management of great lakes fisheries federal hands.
Jul-21-78	Evening News	Sault Ste. Marie	BY Kenneth Peterson.	Indians winning fishing b tle.
Jul-22-78	Daily Press	Escanaba, MI.	BY Tom Ochiltree.	Indian fishing rights, Indians had given up un regulated fishing right, in that subsequent trea ties.
Jul-24-78	Mining Journal	Marquette	_____	More treaty troubles, Michigan in fitting India treaty rights to modern conditions in great lakes fishing is just apart of bigger problem affecting much of the county
Jul-26-78	North Woods Call	Charlevoix, MI.	_____	Indian-Fed. Take over of lakes drawing protests.
Jul-26-78	North Woods Call	Charlevoix, MI.	_____	Indians sinking fishery, Petoskey angler charges.
Jul-27-78	Enter Prise-Tribune	Leland, MI.	BY Ken Peterson.	Fishing by indians cited for decline in lakes.
Jul-27-78	News	Iron Mountain	_____	Treaty Troubles, Indian treaty rights to Religious or Cecemonial of these latter species would be limited to seasons and manners of talking prescribed by Colorado law.

DATE	NEWSPAPER	LOCATION	WRITER	SUBJECT
Aug-3-78	Detroit News	Detroit	_____	Follow-up on the trial ir indian fishing and huntir rights in northern michig
Aug-3-78	Daily Press	Escanaba, MI	_____	Treaty troubles, Indian treaty right to Religiou or Ceremonial of these latter species would be limited. To season and manners of talking precr by Colorado law.
Aug-3-78	Daily Mining Gazette.	Houghton, MI.	_____	Indian fishing trea ies legality key to ispute.
Aug-8-78 Ruppe- member of congress.	Evening News	Sault Ste. Marie	_____	Ruppe warns indian righi litigants to compromise Phillip.
Aug-9-78	North Woods Call	Charlevoix, MI.	_____	Threats to kill hea up indian netters a sports fishermen is down to push and sh and threats to kill again, in the petos and charlevoix area
Aug-10-78	News-Review	Petoskey, MI.	BY Dave Pitt.	Indian fishing tria will resume in U.S. court Aug-15.
Aug-13-78	Detroit News	Detroit, MI.	_____	Testimony on wheyher th state of michigan has t right to regulate india fishing activities brok off march 3.
Aug-14-78	Detroit News	Detroit, MI.	_____	Indian fishing right resumes testimony be fore judge Noel.
Aug-19-78	Gazette	Kalamazoo, MI.	_____	Plaintiffs' case com plete in indians fis ing trial.

Oct-3-78	Daily Mining Gazette	Houghton, MI.	_____	A similar dispute in nort ern lower michigan has re sulted in differences bet ween indian fishermen and sportsmen.
Oct-4-78	Detroit News	Detroit, MI.	_____	The tribes have argued t fishing and hunting righ are protected under trea es with the U.S. governm and are not subject to s te regulation.
Oct-5-78	Detroit News	Detroit, MI.	_____	The suit seeking to estal lish unfettered indian f shing rights under the t aty of 1836, was filed b the Sault Ste. Marie and bay mills and against mi igan and its department natural resources.
Oct-5-78	Gazette	Kalamazoo, MI.	_____	The federal judge hearin michigan's marathon indi fishing rights trial say he has " agonized" over case and its possible im plications not only in m higan but around the nat
Oct-9-78	Record Eagle	Traverse City	BY Mike Ready.	A peshawbestown indian wa arrested with 1,800 feet gill nets.
Oct-12-78	Times	Bay City, MI.	BY Jeff Counts.	Gill netting by indians the great lakes has been ttacked as unsportsman l and against the law. Com ercial fishermen can't u the gill nets.
Oct-17-78	Herald	Benton Harbor, MI.	_____	The indians are fishing u der old treaty rights the DNR claims the rights no longer apply.
Oct-18-78	State Journal	Lansing, MI.	BY Associated Press.	Some sportsmen and the st te department of natural resources contend indian fishing has depleted the great lakes' fishery.

Sept-26-78	Press	Grand Rapids, MI.		The state of michigan be its defense tuesday in t battle with federal aurt ities over the fishing r hts of michigan indians.
Sept-26-78	Journal	Flint, MI.	BY Bob NOVOSAD	What could be the nati land mark case involvi ndian rishing and hun rights resumed today i U.S. district court in Grand Rapids.
Sept-27-78	Oakland Press	Pontiac, MI.		Indians in michigan gave their fishing rights and their lands more than 10 years ago, an expert on state's history says.
Sept-27-78	State Journal	Lansing, MI.		Mason also noted that un an 1836 treaty, Indians ecifically reserved hunt rights on land they cede the federal government f as long as the land rema ned unsettled. He said t was no such mention of f ing rights.
Sept-28-78	Leader	Linden, MI.	BY Judy Federick.	In addition to hunting a fishing skills, the indi were farmers.
Sept-30-78	Gazette	Kalamazoo, MI.		The indians, joined by t federal governmemt, argu indian fishing and hunti rights are protected und treaties with the federa government and are not s ject to state regulation

Sept-20-78	Daily Mining Gazette.	Alpena, MI.	BY Susan Grulke.	Expect heavier indian pressure in roger cit area.
Sept-20-78	Republican tribunes	Sandusky, MI.	_____	Federal court trial to de termine whether the state has a right to regulate i dian fishing in the great lakes area.
Sept-23-78	Detroit News	Detroit, MI.	_____	Over many generations the american indian has been badly used by the white m Native americans in michi gan are dead wrong when t proclaim their "rights" t empty our lakes of our gr test game fish.
Sept-24-78	News	Ann Arbor, MI.	BY Bob Novosad.	What could be the nation landmark case involving dian fishing and hunting rights resumes tuesday ir U.S. district court in grand rapids.
Sept-24-78	Daily Press	Escanaba, MI.	_____	Agreement restricting i ian commercial fishing lake michigan. Gov. Mil ken announced.
Sept-24-78	State Journal	Lansing, MI.	BY Frank Mainville.	Gov. William G. Millike announcement of a lake chigan fishing agreemen with the bay mills and Sault Ste. Marie band o chippewas open the door much speculation.
Sept-25-78	Gazette	Kalamazoo, MI.	BY Robert Novosad.	Before federal judge Noel Fox is the question of wh ther indians have unlimit rights from early treatie

DATE	NEWSPAPER	LOCATION	WRITER	SUBJECT
Sept-6-78	Daily Mining Gazette	Houghton	_____	Gill net fishing trial about Indian fishermen and sportsmen.
(MUCC) Robert Carlson, Joe La Beau, William Tyosh, Donald Carlson. MICHIGAN UNITED CONVERSATION CLUBS.				
Sept-14-78	Detroit News	Detroit	_____	Milliken will meet Indian on fishermen. The Indians will settle their fishing dispute.
(UPI) Indian fishermen, Sport anglers- Department of Natural Resources.				
Sept-15-78	Detroit News	Ann Arbor	BY BOB NOVOSAD	Fishermen Agree on pact this pertains mainly to sport fishermen and licensed Commercial fishermen.
(DNR) Sportsmen's Group- MICHIGAN UNITED CONVERSATION CLUBS.				
Sept-16-78	Detroit News	Detroit	_____	2 Indian tribes agree to curb gill fishing. Indian gill netters stop fishing virtually all of Lake Mich
Sept-17-78	Mining Journal	Marquette	_____	Indian fishing settlement close, Focuses on Indians use of gill nets claimed to understricted fishing rights in the state.
Sept-20-78	Record Eagle	Traverse City	_____	Indian fishing and injustice Indians claims fishing rights under an 1836 treaty allows them to use government banned gills nets and fishing Commercially in waters.
(UPI) Juanita Dominic- OTTAWA CHAIRMAN- MEMBERS OF BAY MILLS AND SAULT STE. MARIE BAND.				

Sept-16-78	Gazette	Kalamazoo, MI.		All-out violence bet ween indians and spo fisherman may be avo ded with a negotiate settlement worked ou by gov.William G. Mi iken.
Sept-16-78	Record Eagle	Traverse City	BY Mike Ready.	Forget the laws and the t eaties, and all that- wha do you think about this i dian fishing business? Ja et asked.
Sept-16-78	Record Eagle	Traverse City	BY Mike Ready.	Fishing regulations neede Indians say.
Sept-17-78	State Journal	Lansing, MI	BY The Associated-Press.	A group of indian commerc ial fishermen has agreed temporarily stop gill net ing on northern lake mich igan later this month in effort to resolve a feud ith local sportsmen.
Sept-20-78	Rcord Eagle	Traverse City		Right, sport fisherm Pollution is catchin up with you and all your weekend toys wo be able to keep the ear of judgement out of your eyes.
Sept-21-78	Leader	Linden, MI.	BY Judy Ferderick.	Wild game included swans, white and grey cranes; ea gles, quail, pheasant, pa tridge, geese and ducks. or 30 could be killed at one shot--- everytime.

,Sept-14-78	News	Saginaw, MI.	BY Bob Novosad.	Gov. William G. Mill ken, fearing that th fight over indian fi ing rights will expl
,Sept-14-78	Record Eagle	Taverse City	BY Mike Ready.	Indians, too, clash c treaty, agree that an 1836 treaty guarantee them fishing.
.,Sept-14-78	Journal	Flint, MI.	BY Bob Novosad.	Milliken assigns aic to negotiate cease- fire in indians fisl ing 'War!
,Sept-15-78	Press	Grand Rapids, MI.		Some indians offer to ha gill netting. Even thouc it was offered by some i dians it hasn't been rat fied by all, said the sp kesman, Denis Larson.
,Sept-15-78	Record Eagle	Traverse City	BY Mike Ready.	Most but not all indian g ll netters will stop fisl ing virtually all of lake michigan beginning sept.2
Sept-16-78	Press	Grand Rapids		That's michelle's conclus ion this week after hear answers to instapoll's qu stion: Should indians cor inue to have fishing rigl in lake michigan.
Sept-16-78	Press	Grand Rapids	BY Bob Novosad.	Indian-sport fishermen 'p ace' may head off lake vi lence.
Sept-16-78	State Journal	Lansing, MI.		A temporary agreement re tricting indian commerc fishing in lake michigar was announced friday by vern William Milliken

,Sept-13-78	Oakland Press	Pontiac, MI.	_____	Violence fears lead to i hing talks, there is a r congnition--- that poter al for violence is very gh.
,Sept-13-78	Record Eagle	Traverse City	BY Mike Ready.	Although many whites argue that indians t· day should not be gr ted any special priv leges, most of those concerned about indi· gill netting.
,Sept-13-78	Record-Eagle	Traverse City	BY Bob Novosad.	Milliken steps into risin battle over indian fishin
Sept-13-78	Evening News	Sault Ste. Marie	_____	The indians claim their r hts to unrestricted fish· Subject to tribal conser· ion ruling were guarantee by the treaty 1836.
Sept-14-78	Rcord Eagle	Traverse City	BY Mike Ready.	Court allows indians to fish freely, fish ing rights: Indians sportsmen.
Sept-14-78	News	Saginaw, MI.	_____	The indian fishing artic by Steven Smith in your ptember 10, woods and wa section was timely and f the point.
,Sept-14-78	News-Review	Petoskey, MI.	_____	Verna Lawrence said she a special trip to lower chigan to find out for h· self what is happening i· the indian fishing dilem
,Sept-14-78	Evening News	Sault Ste. Marie	_____	It seemed to be a good d· in terms of progress ove· indian fishing down stat

,Sept-11-78	Evening News	Sault Ste. Marie	_____	Milliken seeks meeti to air indian fishin dipute.
,Sept-11-78	Journal	Flint, MI.	_____	The documented decline great lakes commercial populations should be o concern to everyone in higan.
,Sept-12-78	Evening News	Sault Ste. Marie	_____	Especially where the tre specifies that fishing i privilege for person who qualif as one half india
,Sept-12-78	Record Eagle	Traverse City	BY Mike Ready.	If it wasn't for spo fishing, frank fort would be a nothing t patrick says.
. Sept. 13,78 Art LeBlanc - Bay Mills Tribal Chairman	Record Eagle	Traverse City, MI	Mike Ready	Pact may end Fishing dispute: The Indian fishing controversey, at least in North - west lower Michigan, may be over.
.,Sept-13-78	Citizen Patriot	Jackson, MI.	BY Bob Novosad	Fishing rights peace t s' deadline set. Whate agreement is reached, will not answer the la question of whether in ians have unlimitedfis rights. that issue is fore federal judge fox
Sept-13-78	News	Ann Arbor, MI.	_____	Indian fishing rights w explode into violence.
Sept-13-78	Times	Bay City, MI.	BY Bob Novosad.	Interim peace pact soug in fishing fight.

Sept-9-78	Record Eagle	Traverse, City	BY Gordon Charles.	During the early 1970s Average sport fisherme spending five hours fi ing on Keweenaw bay. T day the same angler ha to spend 17 hours fish ing the same waters in order to catch just on
Sept-10-78	News	Saginaw, MI.	———	Indian fishing most sto says steven smith.
Sept-10-78	Mining Journal	Marquette, MI.	———	Federal court to issue a temporary restraining or er prohibiting all peopl including indians, from unregulated fishing unti the whole question of in dian treaty right has be resolved by the courts.
Sept-10-78	State Journal	Lansing, MI.	———	Milliken says he "will n hesitate" to invoke an e ergency rule banning use gill nets on the great l es by all netters" if th is not substanial and ea progress within avery sh period of time.
Sept-10-78	Mining Journal	Marquette	———	Gill net fishing trial set. Four baraga count men charge with using illegal gill nets whil fishing in allegedly c ed waters will be trie in L'anse distict cour
Sept-11-78 John A. Scott- Michigan fisheries chief.	News	Alpena, MI.	BY Susan Grulke	New uproar in roger ci over indian fishing. Indians have set gill nets in lake Huron nor of rogers city near ho state park.

,Sept-1-78	News-Review	Petoskey, MI.		The indians however, clain they limit their catches t whitefish only.
,Sept-3-78	State Journal	Lansing, MI.	BY Frank Mainville.	Uncontrolled and unregul ated indian gill net fis ing.
Sept-3-78	Daily Press	Escanaba, MI.		A court battle over indian fishing and hunting rights in michigan was resumed august 14 in federal dist- rict court in grand rapids but recessed a week later.
Sept-3-78	Tribune	South Bend, MI.	BY Ray Gard.	The indian raised his har palm outward, in the univ ersal indian sign of peac Netting fish ok, tribes c aim, Court decide.
Sept-3-78	Record Eagle	Traverse City	BY Mike Ready.	Four weeks ago, however, they decided that rather than see it used by indi gill netters, they'd pre to have no ramp at all.
,Sept-5-78	Herald	Benton Harbor,		MUCC petitioning aga- nst indian gill nets.
Sept-8-78	Evening News	Sault Ste. Marie		Indian fishing fight, both sides shares som guilt.
Sept. 9,78	State Journal	Lansing, MI	------	Gov. William Milliken Friday called a meet- ing of parties involved in the Great Lakes Indian Fishing controversy, hoping to pre- vent violence and reach an agreement to protect fish stocks.

DATE	NEWSPAPER	LOCATION	WRITER	SUBJECT
Aug. 31,78 Evening Recorder	Albion, MI	----------		Indian Fishing target of Petition: The suit was filed in 1973 and, although some testimony has been heard this year, there is no indication as to when the case may decided.
Aug-31-78	Preque Isle Co	Roger City, MI.	_____	MUCC unrestricted fishing threaten to wipe out stoc of lake trout.
Aug-31-78	Antrim Co.News	Bellaire, MI.	_____	Illegal for you an your neighbor, Not legal for indians person claiming to indians.
Aug. 31,78 Daily News John Scott - head of Dept. of Natural Resources	Midland, MI	--------		Lake Trout taking beating: As court battl continue, Michigan's lake trout fishery i taking a beating.
Aug-31-78	State Journal	Lansing, MI.	_____	U.S. steps into indian shing rights dipute.
Aug-31-78	Evening News	Sault Ste. Marie	_____	The unfortunate aspe of indian fishing is that the real indian are not fishing.
Aug-31-78	Leader-Kalkaskian	Kalkaska, MI.	_____	Charlevoix, Petoskey Alpena, Traverse Cit and elsewhere come t the beaches and stan helplessly by as ind ian netters bring th fish to shore.
Aug-31-78	Daily Mining Gazette.	Houghton, MI.	_____	Set indian fishing r ghts case will be se for next week.
Aug-31-78	Detroit News	Detroit, MI.	_____	U.S. checks into alleged indian rights violations.

DATE	NEWSPAPER	LOCATION	WRITER	SUBJECT
Aug-30-78	Southgate Sentinel	Lincoln Park	_____	The MUCC petition would strain indians from fis on lakes superior, hur michigan until their ri are settled in the cour
Aug-30-78	Press	Oscoda,MI.	_____	A tension continues tc build between state fi ermen and indian gilln ers governor William M iken said thursday tha is checking into possi legal avenues to re-es lish michigan's author ties concerning fishin regulation.
Aug-30-78	Record-Patriot	Beulah, MI.	BY Thora Layman.	No commercial fis pleasure fishing sign of trouble w observed.
Aug-30-78	Iosco Co News	East Tawas, MI.	_____	Indians claim that right to unregulat fishing and nuncin was granted to the through the chippe treaty of 1854.
Aug-30-78	Record-Patiot	Beulan, MI.	BY Thora Layman.	Still another fish man remarked that tons of fish taken indians and sold a cents a pound amou to thousands of do ars a day.
Aug-30-78	Outlook	Onoway, MI.	_____	The michigan united co rvation club has launc a state-wade petition ive aimed at halting " uncontrolled and unreg ted indian gill net fi ing.
Aug-30-78	Farmer's Advance	Camden, MI.	_____	MUCC seeks end to unreg ated indian gill net fi ing rights.

DATE	NEWSPAPER	LOCATION	WRITER	SUBJECT
Aug. 29,78	Evening News	Sault Ste. Marie MI.	--------	Fishing: The Indians from Bay Mills are accused of taking anything they happen to land in their nets. Sport fishermen are vehement about seeing lugs bursting with trout, the species favored by sport fishermen.
Aug-29-78	Evening News	Sault Ste. Marie	BY Jane Jarvis	Indian fish situation potentially explosive. Bay Mills and Sault tri: fishermen from setting their gill nets in lake Michigan has taken the form of mass protest.
Aug-30-78	Taylor Tribune	Lincoln Park	_____	The MUCC petition would r strain indians from fishir on the lake superior.
Aug-30-78	Lincoln Parker	Lincoln Park	_____	MUCC fighting indians fis ing rights.
Aug-30-78	Record Eagle	Traverse City	BY Bill McCulloch.	Thousands of sport fisher- man also are expected here over the long weekend. and lawmen say the arrival of an indian fishing party co uld touch off a major con- forntation.
Aug-30-78	Ecorse Enterprise	Lincoln Park	_____	The MUCC's actions are ba on belief that unrestrict fishing is threatening to wipe out stocks of lake t out and poses a threat to other fishes.
Aug-30-78	Melvindale Messager	Lincoln Park	_____	The michigan united conve sation clubs has begun a statewide campaign to sto the indians from gill net ting.
Aug-30-78	Harbor Light	Harbor Springs,	_____	Petition to stop th indians gill nettin

DATE	NEWSPAPER	LOCATION	WRITER	SUBJECT
Aug-27-78	Gazette	Kalamazoo, MI.	_____	Judge who must deci a dispute over indi fishing rights.
Aug-28-78	Gazette	Kalamazoo, MI.	_____	Gov. William Milliken wa to be sure there is no v lence in a continuing di pute over indian fishing rights.
Aug-28-78 John Scott- Chief of the fisheries division.	Journal	Flint, MI.	BY Peter Plastrik	In the 1950s, Commeri al over fishing and n ural causes (The sea Lamprey Parasite) gre ly reduced the lake t populations, the gove or said.
Aug. 28,78 Art LeBlanc Bay Mills Tribal Chairman	Evening News	Sault Ste. Marie, MI	-------	"I think We'd have a majority of Michigan citizens behind us if they knew what's really happening," Bay Mills Tribal Chairman Art LeBlanc said of the Latest Indian fishing dispute on Lake Michigan.
Aug-28-78	Chronicle	Muskegon, MI.	_____	Gov. William Milliken nts to be sure there i violence in a continui dipute over indian fis rights.
Aug-28-78	Evening News	Sault Ste. Marie	BY Jane Jarvis	Fishermen harassed, Ind protection promised.The bay mills fishermen say they have been encounte increasing harassment f sports fishermen at nor ood, including shoving, being pieted with rocks and verbal racial abuse
Aug. 29,78	News Review	Petoskey, MI	Dave Guzniczak & Dave Pitt	Indians ask police protect operations of Gill Netters.

DATE	NEWSPAPER	LOCATION	WRITER	SUBJECT
Aug-25-78	Chronicle	Muskegon	BY Peter Plastrik	The warning was sounded thursday by Gov. Willia G. Milliken, Who said state officials were lo oking for a way to prev ent disastrous reductio in great lakes fish pop ulations.
Aug-25-78	Citizen Patriot	Jackson, MI.	_____	Michigan's $250 mill- ion -a-year recreatic fishing business coul be heading down the (rain- along with a $ - million state prog- ram to restock the great lakes.
Aug-25-78	Gazette	Kalamazoo, MI.	_____	MUCC seeks to block ndians on their fish- ing rights and gill netting rights.
Aug-27-78	Free Press	Detroit,MI.	_____	It's pretty obvious now " said the disgusted sp ort fisherman from Char levoix, " that judge fo is going to sit on it this nest and see what hatches.
Aug-27-78	Free Press	Detroit, MI.	_____	Protection at indian fis site
Aug-27-78	Press	Grand Rapids,MI.	BY Tom Dammann.	Gill netter removed t he boulders, helped l deputies as state po- lice stood by.
Aug-27-78	Mining Journal	Marquette, MI.	_____	The michigan indians fishing rights battl in federal court her has been delayed ind finitely.

DATE	NEWSPAPER	LOCATION	WRITER	SUBJECT
Aug-21-78	News-Review	Petoskey, MI.	BY Fran Martin, and Bob Clock.	Indian gill netters move base after norwood block ing.
Aug-21-78	Record Eagle	Traverse City	_____	Help needed in fishing spute, violence is sim ing near the surface of the dispute between inc commercial fishermen ar michigan's sports angle
Aug-21-78	Record Eagle	Traverse City	BY Jim Zeno.	New protests greet indi fishermen, sport fisher watch, argue with gill netters.
Aug-21-78	Evening News	Sault Ste. Marie	_____	The on-again, off-a in michigan indian shing rights battle federal court here off-again-inderinit
Aug-22-78	Daily Tribune	South Haven, MI.	_____	Five dozen demonstators m a group of indian fisherm off rex beach early monda to protest gill netfishin which they say is depleti the area of trout.
Aug-22-	News-Review	Petoskey, MI.	BY Bob Clock, and Fran Martin.	Discourage indian gill n ters from using the park a base of operations.
Aug-24-78	News- Review	Petoskey, MI.	_____	MUCC petitions for ha to gill netting.(MUCC has launched a state-wide petition drive i the indian gill net f ing contoversy.
Aug-25-78	Herald-Leader	Menominee, MI.	_____	Indian gill netting target of sportsmen

[illegible]	[illegible]	LOCATION	[illegible]	SUBJECT
Aug-17-78	Pioneer	Big Rapids	_____	The trial, which alreac has more than 800 pages of transcript and some 450 exhibits.
Aug-17-78	Press	Grand Rapids	_____	Witness says fishing vital to indian econ omy.
Aug-18-78 Dr. Charles-Cleland.-Professer-anthropology - An Archeology at michigan state University.	Pioneer	Big Rapids, MI.	_____	An east lansing anth opologist testified ursday that as far bi k as the year 800, G eat lakes indians usi small canoes and gil nets to trap whitefi
Aug-18-78	Evening News	Sault Ste. Marie	_____	Court overrules stat obsection at fishing trial.
Aug-18-78	Press	Grand Rapids	_____	LeBlanc said about 52 mei have fishing license gra ed by the committee.
Aug-19-78	Rcord Eagle	Traverse City	BY Gordon Charles.	Sport fishermen angry, G l net 'party' fizzles.
Aug-19-78	Press	Grand Rapids	BY Tom McCarthy.	Confusion on indian treat at start , Indian fishing dispute with the state ar its department of natural resources.
Aug-19-78	Pioneer	Big Rapids, MI.	_____	Chippewa indian tribe testified about fishi practices among their people and how those practices were handed down from generation generation.
Aug-20-78	Daily Press	Escanaba, MI.	_____	Indian fishing and hunti rights in michigan.

	Evening News	Sault Ste. Marie	_____	Indian fishing tri resumes. If the ju decides, whether t indians keep their ghts under the two eaties.
Aug-14-78	Oakland Press	Pontiac, MI.	_____	The indians claim 1836 treaty gives the right to hunt fish.
Aug-14-78	Gazette	Kalamazoo, MI	_____	Indians fishing rul near. Judge Noel Mc tackle the sticky q stion of indian fis ing rights this wee
Aug-15-78	State Journal	Lansing, MI.	_____	Indian fishing righ trial to hear anthr pologist.
Aug-15-78	Chronicle	Muskegon, MI.	_____	Chippewa indian trit is immune from state commercial fishing r gulations.
Aug-15-78	Press	Grand Rapids	_____	DNR officials contend that indians are boun by a state regulation prohibiting the use o gill nets for fishin
Aug-16-78	News-Review	Petoskey, MI.	BY Fran Martin.	He advised that the fishe men were coming in increas ing numbers, most of them from bay mills and sault ste. marie.
Aug-16-78	Courier	Charlevoix, MI.	----------	Fish problems, regarding the problems with the indian netting fish in this area: While I find it incredible that we are all suffe- ring with treaty provisions with a segement of our citizenry, namely indians.
Aug-16-78	Press	Grand Rapids, MI.	BY Tom Mc Carthy.	Attorney's indian fi shing trial objectio try judge's patience

ATTACHMENT II

INCIDENTS CONCERNING INDIAN FISHING
FROM
MICHIGAN INDIAN CITIZENS

ATTACHMENT II

INCIDENTS CONCERNING INDIAN FISHING

In spring of 1978, four Indian youths, ages 13 years, were fishing in the Boardman River in Traverse City when they were approached by some older non-Indian youths, ages 19. The older youths asked the youths what they were doing there and they replied that they were fishing. The Indian youths were then harassed by the older non-Indian youths. The older youths then threw two of the younger Indian youths bikes in the river and started fighting with them which resulted in the Indian youths receiving face cuts and black eyes.

In February of this year, an Indian youth went to court for a simple larceny charge. After the hearing adjourned, the Court Referee engaged in a discussion with the Indian youth and told him to stay out of trouble and "whatever you do, don't set gill nets in the bay." The Indian youth related this information to his mother, in presence of his attorney, and the attorney went back into the courtroom and talked to the court referee about the incident.

About the same time, February 1979, while grocery shopping, an Indian woman had bought some frozen fish and was checking her groceries out at the counter, she was harassed by several non-Indian people who questioned her about why she was buying fish. "What are you buying that (fish) for? There's plenty in the lake."

During the summer of 1978, shortly after three Indian persons were arrested, the local Indian Center received a call from an Indian man from another state and informed the center that 75 men were on their way to Michigan to assist the Indian people because they understood three Indians had been"killed". The correct information was given to this person which was that three Indian men had been arrested, not killed. He stated that this group of people were already on their way to Michigan and he would be joining them along the way. Several days later, this person showed up at the Indian Center to talk with Center employees. Apparently, during the way to Michigan, several of the cars dropped out the caravan and only a couple were present that day. However,he asked the Center people if there was anyone there that they wanted killed. After informing this gentleman of the situation of the fishing controversy, and that Indian people were waiting for a decision to be handed down on the fishing controversy. The group of people then headed back to their home state but informed the Center if they needed assistance of any kind, they would be back to help in their cause.

All Indian people everywhere are warned about putting "Indian bumper stickers" on their cars, because if non-Indian people see this, cars are being vandalized and stripped.

Indian people are being harrassed and followed if they are towing boats of any kind through a city.

ATTACHMENT II Continued

An Indian woman stated after they are through fishing, they call a buyer from several markets and sell their fish to them. The buyer always does his business after dark or in the early morning so no one sees who he is buying it from. The competitive selling of fish by Indian people to markets is becoming a problem, because they are competing against each other.

During a Rotary Club meeting in November of 1978, a group of Indian people who voluntarily operate a pre-school program for Indian children, asked for assistance in seeking funds to keep this program operating. During the meeting, several remarks were made by several of the members. One being: " What are you going to teach the children; how to fish?"

While enroute to a grocery store, an Indian woman was approached by several non-Indian men with remarks such as "Hey, Gill Net?" After she left the store on her return home, she was again harrassed and engaged in a discussion with them which resulted in her physically defending herself..

Often times, while in restaurants, Indian people are asked what the price of fish is, if someone has ordered it and they spot a person they believe to be Indian.

Indian children are constantly harrassed at school about fishing.

An Indian student was embarrassed by her teacher by a remark that was made about Indians. One of the local Indian centers was requested to send someone to the school and discuss the situation with the teacher. The teacher apologized and asked the Center employee to talk to the whole class about the awareness of Indian culture to further alleviate this kind of incident.

Exhibit No. 30

A NEW ANALYSIS OF

INDIAN TREATY FISHING RIGHTS AND THE DIVISION OF SALMON RESOURCES

IN THE PACIFIC NORTHWEST

AND

A DIFFERENT INTERPRETATION OF THE LAW AND MEANINGS OF "IN COMMON"

by Hank Adams

April 1979

A Personalized Summary of Studies
and Reports being completed under
The Contracted Studies Program at
The Evergreen State College;

Ms. Lynn Patterson, Faculty Sponsor
Olympia, Washington

A New Analysis of Indian Treaty Fishing Rights and the Division of Salmon Resources In the Pacific Northwest; and A Different Interpretation of the Law and Meanings of "In Common".

by Hank Adams, National Director
Survival of American Indians Association
P.O. Box 719
Tacoma, Washington 98401

INDEX TO ANALYSIS REPORT:

PRELIMINARY: Quotes on
Fisheries and Fishermen - 1

"Among the savage nations of hunters and fishers, every individual who is able to work, is more or less employed in useful labor, and endeavors to provide, as well as he can, the necessaries and conveniences of life, for himself, or such of his family or tribe as are either too old, or too young, or too infirm to go a hunting and fishing."

-- Adam Smith, The Wealth of Nations (1776). 1/

"I am decidedly of opinion, that the hunting and trapping on Indian lands, by American citizens, produce the most unhappy effects upon the mind of the Indians. They look upon their game as we do upon our domestic animals, and hold them in the same estimation. It is their means of support; they have nothing else to depend upon for subsistence. It is not, therefore, unreasonable to suppose, that they will not only steal from, but murder those who are depriving them of their only means of subsistence. *** But no Indians that ever I heard of, ever objected to traders, travelers, or others, killing what was necessary for their subsistence. That comes under the notion of hospitality."

-- Secretary of War John C. Calhoun's Report to the United States Senate (1824). 2/

"I make use of my right....and nobody can disturb me: a second, who has an equal right, cannot assert it to the prejudice of mine; to stop me by his arrival would be arrogating to himself a better right than he allows to me, and thereby violating the law of equality."

-- Emerich de Vattel, The Law of Nations (1760). 3/

"In the grand object of providing with food the human race, which the immutable principle of population itself finds it difficult to keep from an overflow, fisheries occupy a no less considerable place than that of second to agriculture. ** The man who should bring to perfection a more improved system of fishery regulations, would deserve the gratitude of his country."

-- Joseph Chitty, The Commerce of Nations (1824). 4/

PRELIMINARY: Quotes on
Fisheries and Fishermen - 2

"I observe great numbers of stacks of pounded salmon neatly preserved ... thus preserved those fish may be kept sound and sweet several years, as these people inform me, great quantities as they inform us are sold to the white people who visit the mouth of this river as well as to the natives below."

-- Captain William Clark, Journal of Expedition, at Celilo Falls on the Columbia River (1805). 5/

"It was here, and during this visit, we began seeing Indians in considerable numbers. Off the mouth of the Nisqually and several places along the beach and floating on the bay we saw several hundred in the aggregate of all ages and kind. There seemed to be a perfect abandon as to care or thought for the future, or even as to the immediate present, literally floating with the tide."

-- Ezra Meeker, Recounting summer on Puget Sound (1853). Ventures and Adventures of Ezra Meeker (1909). 6/

"The right of taking fish at all usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the territory....".

-- Article 3, Treaty of Medicine Creek (1854). 7/

"They catch most our fish, supplying not only our people with clams and oysters but salmon to those who cure and export it. *** The provisions as to reserves and as to taking fish.... had strict reference to their conditions as above, to their actual wants and to the part they play and ought to play in the labor and prosperity of the territory."

-- Territorial Governor Isaac I. Stevens, Letter transmitting Treaty to Washington, D.C. (1854) 8/

"The Puget Sound Indian is self supporting, because he is a fisherman."

-- Dr. Charles M. Buchanan, Indian Agent (1901) 9/

PRELIMINARY: Quotes on
Fisheries and Fishermen - 3

"It seems to me to be a crime against mankind..... to let the great salmon runs of the State of Washington be destroyed at the selfish behest of a few individuals, who, in order to enrich themselves.....have slandered and vilified those who oppose their plans and methods. These persons do not want the people of the State to know the truth of the matter, believing that if they do they will act to protect and conserve (the salmon resources)."

-- State Fish Commissioner Leslie Darwin, criticizing political pressures and the non-Indian fishing industry, upon leaving office. (1921) 10/

"Decision makers have traditionally been forced to make reflex socioeconomic inferences from biological data and legitimately self-serving fishermen testimony at increasingly volatile public hearings. The resulting mutual frustration traumatizes the difficult allocation process and everyone involved. **

Whatever the legal rationale, the court-ordered allocation provided unprecedented protection for the Indians' last-served commercial fishery on Columbia River salmon and steelhead. This had a traumatic impact upon competing non-Indian commercial and sport fishermen without allocation quotas. News media throughout the Northwest reported dire predictions that the Indian fisheries portended disaster for upriver salmon and steelhead runs. Packaged in the guise of "conservation" these often inflammatory charges further diverted precious public and political attention from the environmental problems inexorably reducing the number of upriver salmon and steelhead.

Years of exposure to these well-publicized charges, and the virtual absence of regional public information on critical environmental problems actually responsible for declining runs, have resulted in pervasive public miseducation."

-- (Joint State-Federal) Pacific Northwest Regional Commission, Columbia Basin Salmon & Steelhead Analysis (1976) 11/ ✔

"Let me become very unpopular by stating that access to future Atlantic salmon fisheries, both commercial and recreational, must be on the basis of allocation, lottery, sale or lease of fishing rights, or some combination of these. If we permit emotional attachment, historic privilege, or political expediency to mask our management knowledge, we will regret our blindness and be incapable of redressing our error."

-- Executive Director Wilfred Carter, International Atlantic Salmon Foundation (1978). 12/

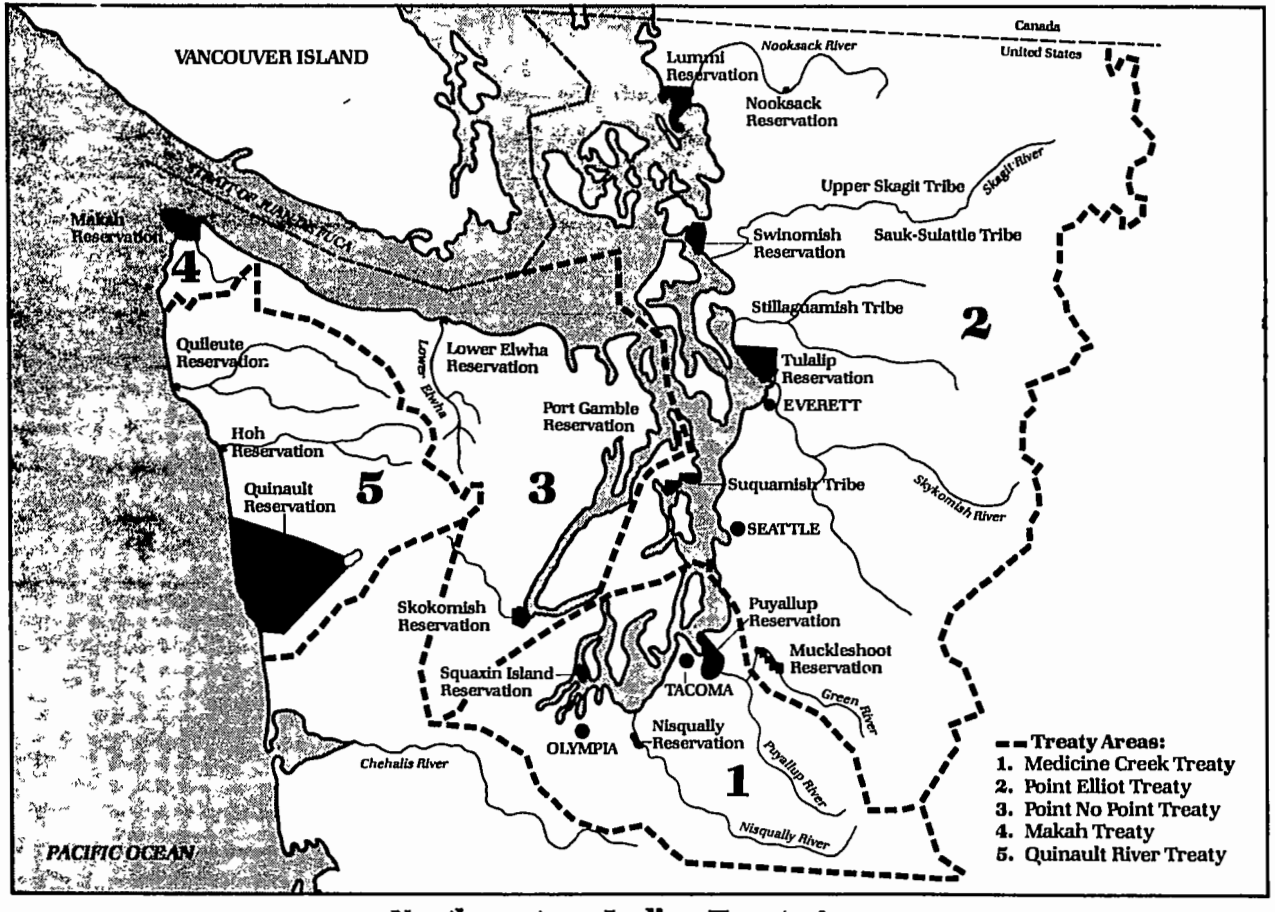
TABLE II.

INDIAN POPULATION OF WASHINGTON TERRITORY.

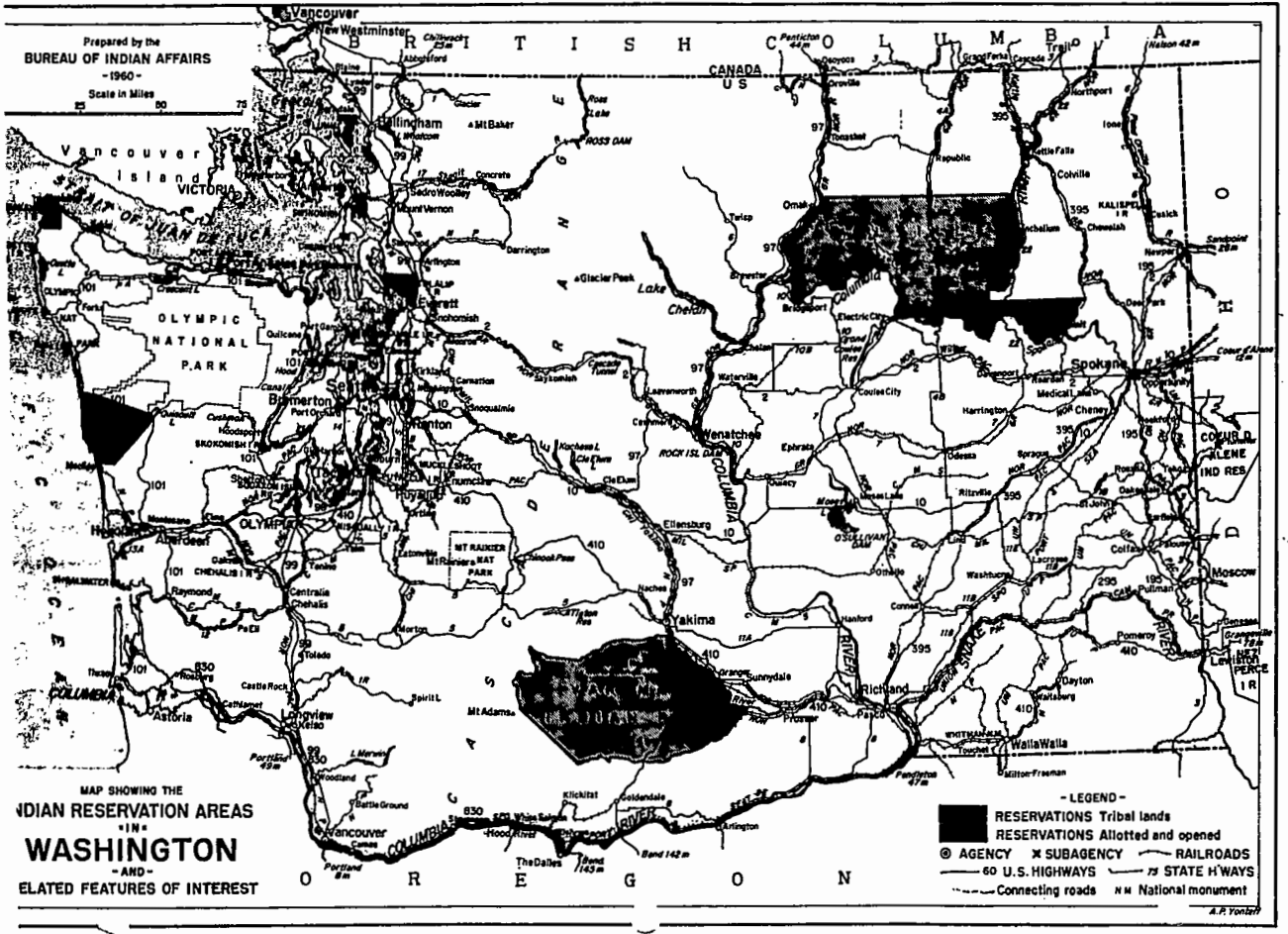
TRIBES.	Men.	Women and Children.	Lodges.	Tribal Strength.	Position.	Remarks.	Grand Geographical Divisions.
Salish, or Flatheads	...	...	60	350	St. Mary's River	Have 1000 cattle; 16 log-houses.	East of the Cascade Mountains.
Cootenays, or Flatbows	...	...	...	400			" "
Pend d'Oreilles, Upper and Lower	...	...	100	700	Clark's Fork	Killed 800 deer in 1854	" "
Cour d'Alenes	...	...	70	500	Cour d'Alene River		" "
Spokanes	...	...	...	600	Columbia Val., Oregon		" "
Säaptins, or Nez Perces	...	...	...	1,700	"	Kooskooskie and Snake Rivs., which see	" "
Pelouses	40	62	59	500	"		" "
Walla-wallas	...	...	...	300	"		" "
Dalles Bands	...	...	...	200	"		" "
Cascades	...	...	...	86	"		" "
Klikatats	...	...	...	300	"		" "
Yakamas	...	...	...	600	"		" "
Okinakanes	...	...	...	550	"		" "
Colvilles	...	...	...	500	"		" "
Tintinapain	...	...	...	75	"	Base of Cowlitz Mountains	West of the Cascade Mountains.
Cowlitz and Upper Chihalis	...	...	...	165	Cowlitz River	Tribes united by intermarriages	" "
Chihalis	...	...	...	300	Grey's Harbor, &c.		" "
Upper Chinooks	...	...	...	200	Columbia River	Mixed with Cowlitz and Klikatats.	" "
Lower Chinooks	32	34	...	66	"	Mixed with Chehalis and Cowlitz.	" "
Lower Chinooks, Shoalwater Bay	...	...	50	50		" " "	" "
Quinailee	...	...	...	500	Grey's Harbor, north.		Pacific Coast.

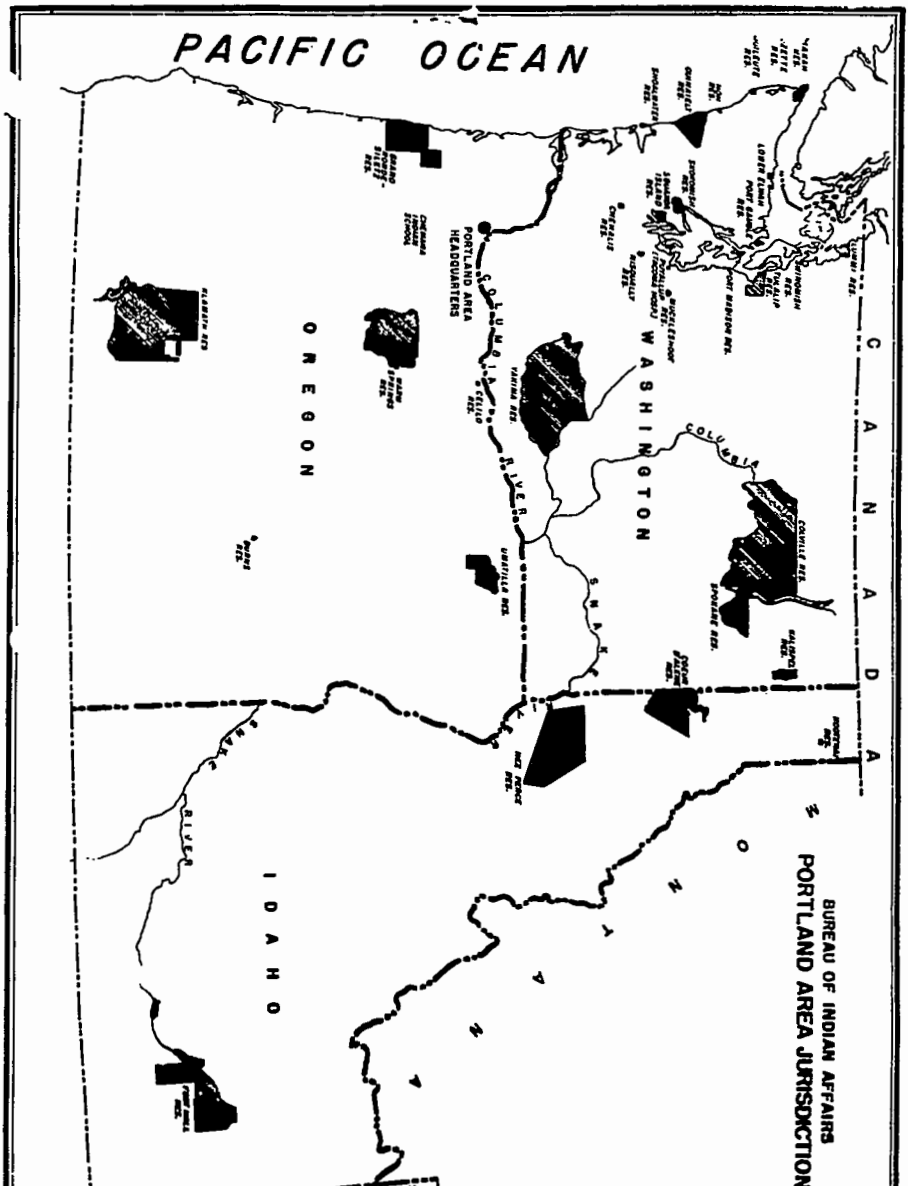
SOURCE: Information Respecting the History, Conditions and Prospects of the INDIAN TRIBES OF THE UNITED STATES, Part V; Henry R. Schoolcraft, LL.D. Published by Authority of Congress. J.B. Lippincott & Co., Philadelphia. (1855).

Cape Flattery	...	...	...	150	Straits of Fuca	Sklallam's	Pacific Coast.
Port Townsend	67	88	...	155	...	Kahtais	"
Port Discovery	24	26	...	50	...	Kaquaiths	"
New Dungeness	79	91	...	170	...	Stehllums	"
False Dungeness, &c.	...	...	...	475	...	...	"
Chima Kum	...	...	...	70	...	...	"
Toanhooch	128	109	...	245	Hod's Canal	...	"
Shokomish	...	...	...	200	"	Upper end	"
Case's Inlet, &c.	19	21	...	40	Puget's Sound	...	"
Carr's Inlet	14	13	...	27	"	...	"
Hammersly's Inlet	11	12	...	23	"	...	"
Totten's Inlet	2	1	...	3	"	...	"
Eld's Inlet	22	23	...	45	"	...	"
Budd's Inlet	...	...	...	20	"	...	"
South Bay	...	...	...	12	"	...	"
Nisqually River	84	100	...	184	"	...	"
Steilacoomish	...	...	...	25	Stalacoom Creek	Puget's Sound	"
Puyyallopamish	...	...	...	100	Puyallop River	"	"
Loquamish	215	270	...	485	Hood's Reef	"	"
Vashon's Island	16	15	...	33	...	...	"
Dwamish	89	73	...	162	Dwamish River	...	"
Dwamish	71	30	...	101	Dwamish Lake	...	"
Dwamish	...	...	...	8	White River	...	"
Dwamish	...	...	...	50	Green River	...	"
Main White River	...	...	...	30	...	...	"
Whitby's Island	161	188	...	350	...	Sinabomish River	"
Sinabomish River	...	...	...	300	...	Four bands	"
South Fork of Sinabomish	...	...	...	195	...	...	"
Stoluchwamish	...	...	...	200	...	...	"
Kikialis	...	...	...	75	...	...	"
Skagit river, and branches	...	...	...	600	...	...	"
Northern end of Whitby's Island, &c.	...	...	...	300	Canoe passage	Three bands	"
Samish	...	...	...	150	Bellingham's Bay	...	"
Nooksak	...	...	...	450	...	...	"
Nummi River	...	...	...	450	...	...	"
Shimiahmoo	...	...	...	250	Summi Point, &c. to Frazier's Riv., near lat: 49°	...	"
Total	1069	1008	339	14,915			



Northwestern Indian Treaty Areas
Western Washington


Prepared by the
BUREAU OF INDIAN AFFAIRS
-1960-
Scale in Miles
MAP SHOWING THE
NDIAN RESERVATION AREAS
•IN•
WASHINGTON
-AND-
ELATED FEATURES OF INTEREST
- LEGEND -
RESERVATIONS Tribal lands
RESERVATIONS Allotted and opened
AGENCY SUBAGENCY RAILROADS
60 U.S. HIGHWAYS 75 STATE H'WAYS
Connecting roads NM National monument
A.P. Yonkoff
Vancouver
New Westminster
B R I T I S H C O L U M B I A
CANADA
U S
Bellingham
Mt Baker
Vancouver Island
VICTORIA
OLYMPIC NATIONAL PARK
Everett
Bremerton
Renton
Seattle
Tacoma
OLYMPIA
Aberdeen
Hoquiam
Raymond
Centralia
Chehalis
Longview
Kelso
Astoria
Portland
Vancouver
Ellensburg
Yakima
Wenatchee
Moses Lake
Ephrata
Quincy
Grand Coulee Dam
Lake Chelan
Glacier Peak
Mt Rainier
Mt Rainier Nat Park
Mt Adams
Spokane
Coeur d'Alene
COEUR D'ALENE IND RES.
Pullman
Moscow
Lewiston
Clarkston
Richland
Pasco
Kennewick
Walla Walla
Dayton
Colfax
Colville
Republic
Omak
Okanogan
Chewelah
Newport
Sandpoint
Priest River
Grangeville
NEZ PERCE I R
COLVILLE I R
KALISPEL I R
CHEHALIS I R
QUINAULT I R
SQUAXIN I R
SKOKOMISH I R
SHOALWATER I R
COLUMBIA
SNAKE
YAKIMA
OREGON


PACIFIC OCEAN
C A N A D A
WASHINGTON
OREGON
IDAHO
COLUMBIA
SNAKE
PORTLAND AREA HEADQUARTERS
BUREAU OF INDIAN AFFAIRS
PORTLAND AREA JURISDICTION

The Five Species of Pacific Salmon

Chinook Salmon *(Oncorhynchus tshawytscha)*

CHINOOK

Lightly spotted on blue-green back, chinooks live from five to seven years, weigh up to 120 pounds. They are most famous game salmon, are sold commercially mainly in fresh or frozen state.

Coho Salmon *(Oncorhynchus kisutch)*

COHO

Bright silver in color, coho live three years, weigh up to 15 pounds. A popular sport fish, they are sold commercially fresh, frozen, canned and smoked.

Pink Salmon *(Oncorhynchus gorbuscha)*

PINK

Living only two years, pinks are smallest of Pacific salmon, weighing up to five pounds. They have heavily-spotted backs over silver bodies, and are also used only for canning.

Chum Salmon *(Oncorhynchus keta)*

CHUM

Resembling sockeye, chums have black specks over their silvery sides, and faint grid-like bars. Living three to five years, they weigh up to 10 pounds, are used only for canning.

Sockeye Salmon *(Oncorhynchus nerka)*

SOCKEYE

Blue-tinged silver in color, sockeye live four to five years, weigh up to seven pounds. Slimmest and most streamlined of the species, they are used solely for canning.

Introduction to Analysis of Treaty Rights and Issues:

This report is a summary of certain portions of work being concluded as part of a more comprehensive study of salmon fisheries which are affected by treaties between Indian Tribes and the United States, and which have been the source of continuing conflicts with the State of Washington. This summary concentrates upon several issues which were presented to the U.S. Supreme Court in arguments on February 28, 1979, or in preceding legal briefs, and which have been the focus of the controversy over Indian treaty rights to salmon and steelhead resources. That Court was asked to make a definitive interpretation of the treaty language, and to decide the merits of decisions rendered on these issues by the Washington Supreme Court and a U.S. District Court and the Ninth U.S. Circuit Court of Appeals -- the decisions of the State and Federal courts having been in substantial disagreement and contradiction to one another.

This summary differs from the studies upon which it is based in the several respects of (1) presupposing a general knowledge of the issues in controversy; (2) abbreviating discussion where knowledge is presupposed; (3) eliminating footnotes for citation of authority or sources for the text; and (4) allowing myself an indulgence of personal commentary or honest personal reflection on various issues and actions discussed. In some measure, this paper is an expression of revulsion to the high level of misrepresentations of facts, law, and cited authorities, plus omissions, contained in the voluminous briefs -- all dutifully footnoted -- to the U.S. Supreme Court. For reasons stated in this summary report, it is expected that its forthcoming opinion will be greatly at odds with my own analysis and objectivity. This paper, however, can have utility for other bodies considering the issues, or proposing actions to resolve the longstanding disputes over the fisheries.

PART I: General Discussion on the Indian Treaty Fishing Right.

In 1963, I began working with Nisqually and Puyallup Indians on southern Puget Sound for protection of their rights to take fish at ancestoral sites, both on and off their established reservations. On February 28, 1979, the Supreme Court of the United States heard arguments for the fifth time within that period directed toward interpreting the meaning of the 1854 Treaty of Medicine Creek's provision that: "The right of taking fish at all usual and accustomed grounds and stations if further secured to said Indians in common with all citizens of the territory...". That court had ruled several times previously on the same language dating from the first years of the century.

At present, two interpretations of the phrase, "in common with", are operational in the State of Washington in the management and division of salmon resources for the State and Tribes, or non-Indian and Indian fishermen. The separate interpretations were produced by the Boldt Decision and the Brown Decision. A different interpretation in the Belloni Decision was modified to incorporate that of Boldt. Significantly, both Judges Boldt and Brown each relied on 1828 and 1862 editions of Webster's American Dictionary of the English Language for reaching their differing interpretations.

My own judgement is that neither Boldt, Brown, nor Belloni, looked at the most appropriate source of authority for properly defining the words and determining the nature and extent of the right secured. I believe, as well, that no party in the present cases before the Supreme

Court supplied that tribunal with the necessary foundation in applicable legal authority for correctly interpreting the treaties involved. The best attempts since the 1905 Winans case were made to do so -- and the briefs by all parties were perhaps the most effective ever presented in support of the conflicting positions on the issues. Nonetheless, all failed to introduce the one body of law which could give coherence to the act of satisfactorily interpreting the disputed word, meanings, and fisheries law.

To give proper construction to these treaties, and to interpret its fishing provisions correctly, it is necessary to examine and apply the Law of Nations as prevailed in the first century of our national existence. The Law of Nations supplied the doctrines by which relations between Indian Tribes and the United States were formed. It validated the "doctrine of discovery" by which Europeans claimed the American continents; yet it imposed the requirements for extinguishing Indian title in perfecting those claims. It required that some quantity of lands and resources remain under Indian right for Indian needs. These requirements supplied motivation and framework for contracting the Treaty of Medicine Creek in 1854.

The sophistication and utility of the Law of Nations became most pronounced during the historic Age of The Enlightenment, in which its use and authority advanced among the countries of Europe. During the Revolutionary War, the Continental Congress adopted its tenets, claiming "cognizance of all matters arising upon the law of nations" in the positive law of the United States on December 4, 1781. While exercising a mutual influence upon the respective acts of one another, the Congress and the Constitutional Convention -- both meeting in Philadelphia in 1787 -- on successive days enacted the Northwest Ordinance and adopted the Commerce Clause, or congressional powers section, ultimately ratified in the Constitution of the United States. In

the same series of adoptions, the phrase "excluding Indians not taxed" was embodied in Article 1 of the Constitution.

The joining at a common time of these few provisions in the fundamental and positive laws of the United States is most pertinent. The Northwest Ordinance proclaimed the policy of "utmost good faith" toward the Indians, and declared that Indian properties should not be taken, except in "just wars" or by treaties properly executed by the United States. Immediate preceding language had declared that all new States entering the Union should enter on an "equal footing" with the original thirteen States. The Commerce Clause vested powers in the Congress to regulate commerce with the Indian Tribes, as with foreign Nations, and among the several States. Relatively few words follow before congressional powers are recited with respect to the "Law of Nations".

When these provisions were framed together by the Jeffersons, Franklins, Adamses, and Madisons of 1787, was not there some expectation of harmony in the existence of distinct federal, State, and Indian rights? When the Congress of 1889 authorized the establishment of Washington State, it restated the doctrine of "equal footing". The Statehood Enabling Act mandated that the State constitution "shall be republican in form, and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence." This section, which defines these "Indians" as "Indian tribes" and Indians in "tribal relations", seems to characterize the 1889 Congress as one trying to keep faith with the

earlier users of the language and phrases in 1787 -- or the authors of those most historic documents of 1776 and 1787.

Briefly, I should mention the recent series of decisions issued by the Washington State Supreme Court which ruled that the 1868 Fourteenth Amendment's "equal protection clause" prohibits recognition of Indians as a distinct class having distinct rights. If not explicitly, in effect, that court ruled that both the treaty fishing rights and the Boldt Decision itself are unconstitutional under both federal and state constitutions. In fact, the Amendment itself continues Indians as a distinct class of people and repeats usage of the phrase, "excluding Indians not taxed". Is the Enabling Act also unconstitutional because, in the same breath that the Congress decreed that Washington State should not violate the Constitution or the principles of the Declaration of Independence, it restated the permissibility and necessity of granting affirmative recognition to the distinct "civil or political rights", and "race" of Indians? The Fourteenth Amendment had already been part of that Constitution for 21 years.

The Washington courts and Attorney General have persistently held or argued the the treaties were interim measures, intended only to provide an "equal right" to each Indian -- identical to that of any individual non-Indian -- for fishing until such time as Indians were clothed with the protections of U.S. citizenship. Without their treaties or citizenship, the Attorney General claims, the territorial government and the successor sovereign State of Washington possessed complete power and right to deny all or any rights to Indians. Ironies abound here. What happened to that "equal protection clause" of the Fourteenth Amend-

ment? As a matter of history, the U.S. Supreme Court ruled that the Amendment's additional declaration of citizenship for all persons born in the United States did not apply to Indians, because actually they were born in the allegiance and jurisdiction of their tribes. However, as a matter of law and fact, most Indians under the Treaty of Medicine Creek became citizens of the United States in 1887 -- two years before Washington became a State. The General Allotment Act extended citizenship to all Indians who received land allotments under federal statute or treaty. The Nisqually, Muckleshoot and Puyallup Reservations had already been allotted under the treaty, as had other Puget Sound Indians.

For decades after these Indians were citizens, State laws prohibited them from fishing at sites off the reservations, or in the general non-Indian fisheries located any place more distant than five miles away from their particular reservation boundaries. In the 1968 centennial year of the Fourteenth Amendment, the U.S. Supreme Court ruled, in an opinion authored by Justice William O. Douglas, that citizenship does not qualify or diminish the rights held by Indians under treaties. In the Supreme Court today, the State's claim is that the treaties merely "elevated" individual Indian fishing rights to a level equal to what would be held under the State whenever citizenship might be conferred -- and which the State erroneously dates as beginning in 1924. Ignoring their own claim that Indians without a treaty and citizenship would have even fewer assertable rights than aliens or foreigners -- in essence, that non-treaty Indians would have been non-entities before citizenship, and must necessarily be invisible after citizenship -- the State presents

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the designedly frightening prospect that resident non-treaty Indians -- under an extension of the Boldt doctrines to them -- would possess an exclusive fishing right at all aboriginal sites, undiminished by treaty cessions and, thus, closed to all other persons. That is not a real prospect.

The reality engendered by an application of the State's position -- being a reversion to conditions prevailing prior to 1968 in all off-reservation waters -- is that Washington treaty Indians would have no different or greater rights than Washington non-treaty Indians. Significantly, any non-treaty or treaty Indian from any other place in the United States would possess the same equal and identical right. It would be defined for all as being those privileges allowed by the State to any citizen, perhaps differentiated for residents and non-residents of Washington. A primary reason I was compelled to move to Franks Landing in 1964 was to help combat the injustice which I perceived wherein Nisqually treaty Indians were recognized to have no greater fishing rights there on the Nisqually River than myself, a Montana Indian.

Another recurrent claim of the State has been that a recognition of tribal treaty rights to fish resources would deprive it of total control and sovereignty over all fish and wildlife resources within its boundaries. They argue that this renders Washington a second-class State in violation of the "equal footing" doctrine for equality with the original thirteen. In one of the first new State constitutions established after independence was declared in 1776, it was made expressly clear that the sovereignty of the State and the power of legislature exempted Indian rights from their reach. The 1777 Constitution of North Carolina declared first that "all

the territory, seas, waters and harbours, with their appurtenances" within that State's defined boundaries "are the right and property of the people of this State, to be held by them in sovereignty;". This immediately was conditioned by the proviso that: "provided always, that this declaration of right shall not prejudice any nation or nations of Indians, from enjoying such hunting grounds as may have been, or hereafter shall be secured to them". Additionally, it emphasized that prejudicial actions against the Indian rights could not be effected "by any former or future legislature of this state."

The extent to which the original thirteen States had assumed authority over Indians and Indian properties within their boundaries varied, and was in part dependent upon the colonial status of the State, or whether it had been (1) a provincial, (2) a proprietary, or (3) a charter colony. It depended as well upon the extent to which particular Indian tribes within their respective boundaries had maintained their own population strength, power, and independence. For most of the 17th and 18th centuries, several of the colonies lived under the treaty protection of Indian Nations, who defended their settlements against other invading tribes or European encroachments. Virginia, Maryland, Pennsylvania, and New York, each at one time or another existed under the treaty protection of the Iroquois Confederacy.

In that same period, some of the smaller tribes became tributary states to the colonies or to other larger and more powerful tribes. Two hundred years before the Medicine Creek Treaty was negotiated, Indians residing in Virginia became tributary States to the Crown of England, as represented by the Virginia government. The annual tribute of "three Indian arrows" and one deer are still, today in 1979, delivered each year

to the Governor of Virginia. In 1658, the Virginia Grand Assembly passed laws declaring that "there be no grants of land to any Englishman whatsoever (de futuro)" until all Indian men were confirmed in title to fifty acres of land. These allotments were to "lie together" and, in addition, Indians were to retain the "liberty of all waste and unfenced land, for hunting" in Virginia. In 1660, a commission was directed to immediately establish a reservation of land for the Indians of Accomack in that same proportion (50 acres per male) "for their maintenance with hunting and fishing excluded." The hunting and fishing extended beyond the reservation.

Although it is frequently supposed or taught in the schools that English settlement in North America was premised upon the pursuit of religious freedom; in fact, the first determined attempts at English colonization here was founded upon purposes of maintaining fisheries and drawing wealth from them. Its impetus came from the explorations and reports of John and Sebastian Cabot in 1497, particularly their accounts of the vast Newfoundland fisheries, where "dropping a basket in the waters finds it immediately filled with precious fish." England passed laws in the reign of Edward the 6th (1547-1553) with economic incentives to authorize, encourage and support permanent fishing settlements to exploit these great new resources in British North America.

In the early laws of the religion-based colony of Massachusetts, as in 1633, several principles of Indian relations were "declared and ordered". First, Indians were confirmed in their rights and title to lands used by them, under cited Biblical authority at "Genesis 1, 28, and Chap. 9.1, and Psalms 115, 16." Secondly, Indians were declared to

have a right of remedy and "relief in any of the Courts of Justice amongst the English, as the English have," against "any plantation or person of the English, (who) shall offer injuriously to put any of the Indians from their planting grounds, or fishing places." Finally, the laws allowed land and title to be granted to English persons, when such lands were free from and "not being under the qualification of right to Indians" -- confirming those rights then to the English under the "authority (of the law), from that of Genesis 1.28, and the invitation of the Indians."

From the early days of Massachusetts to the early days of American Independence, these several principles were generally applied. Relations with Indian tribes became more formal and more clearly settled by formal proceedings and treaty instruments. Changes in the law began to reflect radical changes occurring in both America and Europe regarding concepts of individual liberties and the rights of man. Fishing rights, as well, were being transformed along with the new progressions in social, economic, and political thought.

The population of the colonies at time of independence in 1776 combined for a total of 2,243,000 people, excluding some Indian tribes. The non-Indian population of the State of Washington in 1979 is about 3,700,000 citizens, and that of the nation now exceeds 220,000,000. Even in those days of sparse population, however, one of the most difficult problems for the more conscientious leaders of the States and United States was that of protecting Indian rights from violation by white citizens -- whether in the westward unsettled territories or where the Indian rights were clearly set forth in treaties or established State laws.

When Patrick Henry and John Marshal were members of the Virginia Legislature in 1784, for example, they led the efforts to protect Indian people and their rights, and to provide for strong punishment of offenses by whites against Indians. On the other hand, they sought to encourage assimilation of the two races. "To insure peace between the white man and the red and to produce a better race of human beings," Patrick Henry introduced a bill for the State to pay for "intermarriages between the whites and the Indians." The Virginia House passed the measure on the strength of Henry's "irresistible earnestness and eloquence", but it failed when he left the Legislature to become Governor. An interesting sidelight to the measure was its reflection on the status of white men and women, as well as Indians, in those days. A white man marrying an Indian woman was to be paid directly "ten pounds and five pounds more for each child born of such marriage." The monies were to be paid to the County Court for administration, with annual additional stipends for family clothing and education of any children to the age of twenty-one, in the instance of white women marrying Indian men. Some things, of course, are slow to change or in changing.

Impacts on Fishing Rights of the Law of Nations.

At the outbreak of the Revolutionary War in America, only the laws passed by the legislatures of Maryland, Connecticut, and Rhode Island, were not subject to approval or disapproval of the King of England or his Royal Governors. In essence, the colonies were governed by the English law, including the English common law. The granting and the measure of rights in America were largely determined by that law. Common law did provide for modifications to the uniform law which might

arise from or with local customs. The general self-government accorded the colonies also allowed departure from the general law which prevailed more uniformly in Great Britain itself. When Independence was declared, and the independent sovereign states established, immediately the new States and, later, the new Nation looked to the Law of Nations for aiding in the determination and development of their rights under established independence.

In the fishing cases presently before the U.S. Supreme Court, substantial discussion is made of the English common law and the property concepts regarding fisheries, particularly those "rights of common". My view that total disregard of the Law of Nations in these cases will flaw or fault the Court's final determinations is based in part upon the fact that these "rights of common" were falling into a state of disrepute in England itself during the 18th and 19th centuries -- and were expressly repudiated in the most authoritative treatises on the Law of Nations in use when America declared her independence in 1776. Fishing rights of subjects or citizens in England, historically thought in 1776 to originate in immemorial grants from the King, by the end of the 19th Century were construed by the Courts of England to have originated by right under the Law of Nature as applied to the Law of Nations. My argument is not that the bodies of law are mutually exclusive; indeed, they had the strongest interplay and influence upon the development of one another. Exclusion from consideration, however, of the more applicable body of law and principles, in my view, renders the whole consideration incomplete, and incapable of just comprehension or resolution.

As a fundamental principle of English property laws, all the territory within the realm belonged originally to the King, who also had absolute ownership of the seas and seashore, ab origine. All landowners were tenants to the King, and he their lord paramount. Under the feudal system and laws of tenure established after the Norman Conquest in 1066, almost the entirety of England was granted out, over time, in landed estates to particular subjects and their heirs. One of the main forms of the landed estates was that of the manor, being tracts of freehold land accompanied by manorial rights and privileges. The original grant from the king, when establishing the estate, might limit the extent and nature of rights and privileges in the land. Or, the grant might be without limit, either as to nature of rights or of time. The king might reserve some portion or category of rights to himself or the kingdom. General laws of the kingdom sometimes released specific reserved rights and vested them in the landowners, who were themselves lords of these manors. Other persons were able to hold, lease and use the manorial lands under various legal forms or grants and were as tenants to the landed estate or to the lord of the manor. Other persons might be inhabitants of the manor, without having established right or grant of tenancy.

Three of the American colonies, Pennsylvania, Delaware, and Maryland, were established under the feudal system, and were in the nature of feudatory principalities. The King's charter to William Penn in 1681 provides example of unlimited grant of rights in a landed estate, wherein Penn was granted "all the soil, lands, fields, woods, underwoods, mountains, hills, fenns, isles, lakes, rivers, waters, rivulets, bays and inlets, situate or being within or belonging unto the limits and bounds aforesaid,

together with the fishing of all sorts of fish, whales, sturgeons and all royal and other fishes, in the sea, bays, inlets, waters or rivers within the premises and the fish therein taken". Although Penn used the broad grant of right to him for establishing new models of property ownership, holdings, sales, and free use, his family retained personal control over all land grants up to the time of independence in 1776, and the grantees had status as tenants under the original charter. In his earliest grants, Penn included a specific covenant agreeing that he would act to extinguish Indian title to the same territory and properties.

In the earliest English law, virtually all fish and wildlife species were regarded as the King's own property, whenever not specifically granted for others' use or property. In that period, others might have access to fish or game in the kingdom, only after the king had satisfied his pleasure in food and recreation; and might choose, again at his pleasure and prerogative, to grant a mere permission to others for hunting and fishing. There existed no public or private rights in the fish and game, save the King's. By the time of issuances of the Magna Chartas in the 13th Century -- the first being proclaimed by King John at Runnymede in 1215 -- most the fisheries in England had been granted into private ownership or use, most often attendant to the granting of soil or manorial rights. Throughout the next six centuries, the public common right of fishing remained very limited in the places where it might exist, and with respect to different fish species available to public use. Magna Chartas had a primary purpose of protecting established rights and properties, in order that they might be secure against governmental abuse and the King. Fisheries, for the most part, had become feudalized; and property rights to them had become vested under the law of Magna Charta.

The general public's right to fish existed co-extensively with the King's ownership of territory in the seas and seashores, as well as in the high tide reach of creeks and navigable rivers -- except where such areas were proved to be in private ownership by established grant. The public and private rights did not include or extend to royal fish, or sturgeon, whale, porpoises and seals, except by specific grant -- as was the case in the charter to William Penn. [In Scotland, salmon were a royal fish.] These belonged exclusively to the Crown, and formed a part of its hereditary revenue. This was not "regarded simply as an attribute of sovereignty, but rather as a patrimonium, a beneficial interest constituting part of the regal hereditary property." Up through the 19th century, the English whalers were obligated to pay the Crown a portion of the value of each whale taken in both near and distant seas (a value on the whale's head to the King; the value of the tail to the Queen).

Common rights were to be distinguished as being either public or private, as were rights of common. Rights existing "by common right", were those held and enjoyed by the particular class of people or persons entitled to them by the common law and "custom of the Realm", or declared generally by its statutes. There existed the general "public common of piscary" (fishery) in the sea and navigable streams, as noted above; and there existed a "common of piscary", private in nature, to be enjoyed by defined populations related to particular landed estates, plus towns and villages, where "rights of common" had been acquired by tenancy, grant or other condition. The common fishery or common right of fishery in the public waters of the sea and navigable streams to high tide was open to and held by all subjects of the kingdom

The private common fisheries, or common right of fishery, were held only by distinct persons, corporate political bodies, and religious or educational institutions, capable under the law of receiving and holding a grant or title to property. The nature of the variable rights had uniform or common features wherever any such right might be held in England in the same manner. In other words, the class of rights was defined under the common law and as a common right for all parts of England where that class of rights in point of fact and in point of property might exist. However, in relation to any particular properties, only the specific people related to that property possessed a right to share in the territorially-prescribed common fishery; and their "common of piscary" did not extend to any other private common fishery in England, although they could participate in the public common fishery in the sea and navigable waters.

There were basically three forms of private fisheries, or private right in particular fisheries, in England -- apart from the patrimonial royal fish and fisheries, which were private to the Crown and not public. The three were: (1) common of fishery (communiam piscariam); (2) several fishery (separalem piscariam); and (3) free fishery (liberam piscariam). The "free fishery" originated as a private right, along with rights of "free warren", under the earlier English law when all rights in the fish and game of the kingdom were the exclusive property of the Crown. Under the King's prerogative of granting favors at his pleasure, or rights in return for services, grants of free fishery and free warren were sometimes made against the King's own exclusive right to persons for fishing and the hunting of rabbits and other small game -- frequently in consideration for persons performing services equivalent to royal game wardens in the vicinity where free fishery or free warren were then granted as a continuing right.

Characteristically, "free fisheries" did not include grants of the soil underlying the fishery or waters where it was to be enjoyed. At times, it was a right granted with respect to particular species or classes of fish in an area, and usually existed in public waters. The "several fisheries" were private and exclusive fisheries, closely associated with the companion ownership of the underlying soil. Fixed and permanent gear, such as weirs, dams, and stakes or staked nets, were allowable in "several fisheries", and generally characteristic of them. Shell fisheries and oyster fisheries quite often existed as "several fisheries" and as exclusive private property. The ownership of shellfish most often existed as incident to ownership of the soil. While oyster fisheries were also property-based in ownership of adjoining soils, the labors involved in their cultivation and care sometimes existed as an important element in their establishment as private and exclusive "several fisheries". Ultimately, although technical differences existed with respect to "free" and "several" fisheries, the two terms came to mean much the same thing; and ancient writers on the law, and of the instruments of law creating them, had come to use the terms, "liberam" and "separalem", indiscriminately. Both incorporated a franchise for commercial fishing, unless otherwise restricted in the grant creating the right.

"Common of piscary" existed as a "right of common", which was defined as "a right which one or more persons may have to take for his or their own use part of the natural produce of another man's land, the landowner being entitled to all that the commoners do not lawfully take." The commons existed in the "waste or unused" portion of a landed estate, whether it be the kingdom as a whole -- thus, the "public common of piscary" in the unappropriated areas of the sea and seashores and navigable streams -- or a manor, or a distinct township or village holding lands. The "right of com-

mon" was frequently referred to, and existed as, a "profit a prendre" or "common-a-prendre", in being "a profit coupled with the right to take it." It was distinguished under the English law from an "easement", which was "a privilege without profit". The profit a prendre was a right in or of property; an easement was not.

Common of piscary did not differ from other rights of common, including "common of pasture", "common of turbary" (for taking turf and peat for fuel), and "common of estovers" (products of the forests for fencing, building, and other basic uses). The right of common developed under the feudal system when the manorial lords granted certain rights to tenants and tenant populations for subsisting on unused portions of their estates. Additionally, certain forms of the right developed in relationship to the corporate bodies of villages and towns. A "township had a considerable share of self-government", and "as population increased, the lands in the neighborhood of a town passed into the control of the corporation for the benefit of the citizens." Unused resources on an immediately adjacent or neighboring estate might be commonable, or subject to the establishment of rights of common, or their granting from the true landowner; but estates beyond those neighboring were not disposed to grant rights of common to persons or populations more distant than neighbors.

The quantity of rights claimable under the rights of common, as a general rule, relied upon the limits, if any, prescribed in the deed or grant establishing them; the volumes of produce available to all established claimants of rights; and as a function of the population numbers relying upon the resources and rights. The landowner was legally restricted in his abilities to withdraw areas from the commons for his own use and profit, and was required to leave a sufficiency of the commons for the

the accustomed, usual, reasonable or necessary usage of those having rights of common upon it. Either the commoners or the landowners might seek a legal remedy for measuring or ascertaining the extent of any "right of common", as well as for maintaining or limiting the right to "a sufficiency". When the subject matter of the right became exhausted, as with peats or fuels, or when the lands were lawfully converted to some other purpose or use, the rights of common were extinguished or ceased in being. In the case of renewable resources, the rights could lapse or be suspended for the duration of insufficient produce, but they would not be extinguished. Upon the recovery of production and availability of supply, the exercise of the right could be resumed.

More often than not, in the more recent centuries, the common of fishery satisfied needs of households and home or local consumption. However, where commercial fishing had been allowed by grant, or established by custom or prescriptive usage, the common law favored its stability, and most immemorial fishing rights -- whether common, free, or several. Whatever the quantity of rights held, the owner of a right of common of fishing in a defined area or part of a river had "a right of action against any person who disturbs him either by trespass or nuisance, or in any other substantial manner." By the end of the 19th Century, legal actions for damages or injunctions became the basic forms for remedies available to commoners -- who, except for minor exceptions, were not allowed to "take the law into their own hands" to abate nuisances or interferences with their rights of common, or their denial by the landowner. The primary objection to "rights of common", expressed by some authorities on the Law of Nations and various economic theorists, was that landowners could be excluded from major portions of their properties and the produce being

taken from it -- and could be prevented from cultivating the agricultural lands "in the most advantageous manner". In that respect, owners of even large estates had come to complain that, in the "residue of their properties" not taken under rights of common, they were left without either produce or profit from their lands.

It can be noted that, although considerable references have been made by Washington State in its briefs to the U.S. Supreme Court regarding these various fisheries under the English law, the State has distorted the application of terms and meanings and has sought to recast their nature through claims of confused usage by authoritative writers in earlier periods. There appear deliberate misrepresentations of those authorities upon which the State does rely, at least for some selective fragments of thought or concepts. The tribal attorneys, while choosing in limited manner to refute some portions of the State's misrepresentations, on the whole have claimed that the ancient "common law of fisheries" could not have been known to Indian tribes making the treaties, and, consequently, remains immaterial to the treaty interpretations. This faulty assertion ignores the fact that the Tribes do not hesitate to rely upon other legal concepts and definitions of right which also have origin in English and other European doctrines. As Chief Justice John Marshall had earlier stated, such terms as "treaties", "nation", "sovereignty", or even "rights", were of non-Indian making, but applied to Indians -- and should not be construed against Indians or Indian understanding. A related doctrine of treaty construction is that "ambiguous terms" or "uncertain meanings" must be construed in favor of the treaty Indians. This doctrine can create a vested interest in claiming the "ambiguity" and "uncertainty" of even known terms or provisions for the purpose of extracting a more favorable application of terms than

might be allowable under a willing acceptance of usually-applied meanings.

In my own view, the state of the law and legal concepts preceding the treaty are extremely relevent. On the one hand, I believe it essential that, at minimum, the United States should be bound by its own understanding of terms it used in the treaties, even if some modification of application is required to accommodate a different understanding on the part of the contracting Indians. Additionally, the study of prior and contemporaneous applications of meanings and concepts can demonstrate purposes and intentions incorporated by the treaty, and which may be construable by intelligence or reason. If an extreme departure from prior applications of legal concepts and meanings of terms were intended, for instance, it is reasonably likely that the treaty makers would have utilized recourse to different words or terms to demonstrate that departure into new applications or new concepts in rights or law. On the other hand, a number of doctrines and concepts of rights developed and were given applicability because they were believed to be universal to the nature of mankind, or developed naturally as incident to man in nature and as a social being. In this respect, the application of various English terms or words were descriptive of conditions, or facts in being, among Indians; the use of a particular word did not create the condition or state of being. Regarding fisheries, the pre-treaty Indians of the Pacific Northwest held fisheries and fishing rights in varying forms that had parallel in the defined property concepts and doctrines of right existent among other peoples of the world, and already given expression in various applications of the English common law and in the advanced state of the "law of nations".

Two statements of the English common law relating to public and private fisheries, and using the term "in common with", cast additional light upon its applied usages. The first definitional declaration of public rights shows both extreme limitations and the broadest extent:

> "The general public have not, of common right, a right to fish in waters that are not tidal, though they happen to be navigable. ** They cannot acquire a right by prescription or otherwise, because a fluctuating and uncertain body like the public cannot in law prescribe for a profit a prendre in alieno solo, and, indeed, cannot be the grantee either of a several fishery or any other kind of real property.
>
> In the sea beyond the territorial waters, all subjects of this realm have by international law the right to fish in common with the rest of the world unless restrained by Act of Parliament."

The declared definition of a private common of fishery, from which the public was excluded, gives added cause for caution in construing the meaning or real applications of the term, "in common with":

> "Common of fishery is a liberty of fishing in a several fishery in common with the owner of the fishery, and perhaps also with others who may be entitled to the same right."

In the Supreme Court, the State argues that the very use of the term "in common with" denotes a "'common fishery' and 'common right of fishery'", or a "right 'for all mankind'"; and that previously "the terms 'common right of fishing' and 'common of fishery'" had been used "interchangeably in referring to the public right." The statements are patently incorrect.

Characteristically, the term "in common with" is expressive of a relationship between separately held or shared rights in a particular expanse of territory or waters. Those rights are not necessarily the same or identical in their own character, and the term "in common with" does not dictate what their character or classification must be. Rights held in common may be qualitatively and quantitatively different from one another. If the Medicine Creek Treaty were restated to embody the relationships that I believe were incorporated into its meaning by use of the phrase, "in common with", it would be given these several expressions:

> 1. The right of taking fish at all usual and accustomed grounds and stations is further secured to said Indians in profit with all citizens of the territory.
>
> 2. The right of taking fish at all usual and accustomed grounds and stations is further secured to said Indians in equality with all citizens of the territory.
>
> 3. The right of taking fish at all usual and accustomed grounds and stations is further secured to said Tribes in co-existent possession with Washington State.

Of course these restatements present some of the same problems of defining meanings as are confronted by the use of the term, "in common with". Part of the latter problem, however, has been associated with attempts to force meanings upon the phrase which can not be sustained by reason, history, or applications and usage preceding its entry into the language of the treaty.

Some brief discussions of the Law of Nations can aid understanding of both the rights and the relationships. First, it should be pointed out

that the Medicine Creek Treaty identified tribes and bands of Indians contracting the treaty, then stated, "who, for the purpose of this treaty, are to be regarded as one nation". The fishing rights section's reference to "said Indians" refers to that "one nation." Treaties themselves are generally classified as being "contracts between nations", as were those in the Pacific Northwest. Definitions for "nations" and "sovereignty" can be found in the 1760 volume of the Swiss scholar Emerich de Vattel's (1714-1767), Principles of the Law of Nature as it applied to The Law of Nations, which served as a primary source of influence and authority for the founders of the United States, and the authors of both the Declaration of Independence and the U.S. Constitution. In his famed Commentaries on American Law, Chancellor James Kent initiated his lectures with a history on the Law of Nations and noted that, "The most popular and the most elegant writer on the law of nations is Vattel, whose method has been greatly admired. ** He has been cited, for the last half-century, more freely than any one of the public jurists **." (1 Kent 18: 1828) Vattel wrote as follows:

> "What is meant by a nation or state? Nations or states are bodies politic, societies of men united together *** a moral person, who possesses an understanding and a will peculiar to herself, and susceptible of obligations and rights. *** Nations, or sovereign states, are to be considered as so many free persons living together in the state of nature."
>
> "Since men are naturally equal, and a perfect equality prevails in their rights and obligations, as equally proceeding from nature -- Nations composed of men, and considered as so many free persons living together in the state of nature, are naturally equal, and inherit from nature the same obligations and rights. Power or weakness does not in this respect produce any difference. A dwarf is as much a man as a giant **."

And, regarding sovereignty:

> "From the very design that induces a number of men to form a society which has its common interests, and which is to act in concert, it is necessary that there should be established a Public Authority, to order and direct what is to be done by each in relation to the end of the association. This political authority is the Sovereignty; *** It is evident, that, by the very act of the civil or political association, each citizen subjects himself to the authority of the entire body, in every thing that relates to the common welfare. The authority of all over each member, therefore, essentially belongs to the body politic, or state **. The sovereign authority is then established only for the common good of all the citizens."

When the Northwest treaties were made, the tribes were recognized as being in the character of "nations", and as having this attribute of "sovereignty". Overdrawn meanings, unfortunately, are also often imputed to these terms.

In determining the nature of fishing rights, it may be seen, the "law of nations" proceeds from different premises than those applied in the development of the ancient English law. Under Vattel's doctrines, the fishing rights of Northwest Indian Tribes would have existed substantially in a state of "perfect equality" prior to the making of the treaties, and would have continued in a state of equality even after admission of others to their fisheries by the terms of the treaties. That "equality" would have prevailed as much before the adoption of the Constitution's Fourteenth Amendment as afterward. It would have remained unaltered by Washington's statehood.

According to Vattel, fisheries might be possessed as either public property (res communes, or things common), joint property (res universitatis), or private property (res singulorem). The term, "common property", might "indifferently" be applied to properties held "in common, in such a manner that all the citizens may make use of them, and to those that are possessed in the same manner by a body or community"; or, to public property in the first instance, and to joint property in the second. Monopolies were condemned by the Law of Nations, although "exclusive fisheries" were not. In a 1916 review of a fishing right reserved to Seneca Indians under a 1797 treaty, the U.S. Supreme Court rejected a characterization of the right as "a joint property", as between Indians and whites, and used the phrase, "in common with", in reaching its decision -- although the "in common with" language did not appear in the 1797 treaty. That court would probably find no objection in characterizing the "exclusive reservation fisheries", also held by Tribes under the Northwest treaties, as being "joint property" of the respective reservation Tribes. Although the "exclusive right of fishing" on the reservations is held exclusively against all nonmembers of the particular Tribe; internally to the Tribe, the right might still be held in common, or it might be subject to assignment as several fisheries, similar to those fishing estates existing in the lower Quinault River.

The Indian right and aboriginal title to the lands, waters, and fisheries of the Pacific Northwest were recognized by the European Nations, and the United States, under doctrines of "immemorial possession or prescriptive usage" -- termed "immemorial prescription" in the Law of Nations, and "prescription or grant, time out of mind" in the English common law. While fisheries in the oceans and great seas were considered "imprescriptable",

it was internationally accepted that small and large nations "may appropriate to themselves, and convert to their own profit", fisheries on the coasts and inland seas. Vattel answers in the affirmative to his own rhetorical question on the issue: "if a nation have on their coast a particular fishery of a profitable nature, and of which they may become masters, shall they not be permitted to appropriate to themselves that bounteous gift of nature, as an appendage to the country they possess, and to reserve to themselves the great advantages which their commerce may thence derive in case there be a sufficient abundance of fish to furnish the neighboring nations?" He immediately followed that declaration of right with another applied principle of accepted law: "But if... the nation has once acknowledged the common right of other nations to come and fish there, it can no longer exclude them from it".

In many respects, the development of fisheries law is a history in conflict and interminable debate. It has not been unusual for "two different rights to the same thing to clash with each other", even though the different rights were "equal", as when rights were held "in common" between members of a nation or between two or more nations. The question of determining which rights "ought to yield to the other" in the event of clashes or conflict, as where two nations held "co-existent possession" to a common fishery in which their respective citizens enjoyed "equal rights", was answered in part by the following general principles from the Law of Nations:

> "The antiquity and origin of the rights serve, no less than their nature, to determine the question. The more ancient right, if it be absolute, is to be exerted in its full extent, and the other only so far as may be extended without prejudice to the former; for it could

> only be established on this footing, unless the possessor of the first right has expressly consented to its being limited.
>
> In the same manner, rights ceded by the proprietor of any thing are considered as ceded without prejudice to the other rights that belong to him, and only so far as they are consistent with these latter, unless an express declaration, or the very nature of the right, determine it otherwise. If I have ceded to another the right of fishing in my river, it is manifest that I have ceded it without prejudice to my other rights".

Several related principles and basic rules were observed for preserving the "equality of rights" held "in common" or under "co-existent possession". These particularly applied to "the use of the productions of the earth", such as fisheries; "those common things which are consumed in using them; and "in the use of common things which cannot be used by several" at the "same time". When resources were limited or "scarcely sufficient to supply the wants", or needs, of those establishing the first right to them, it was recognized that those needs should be satisfied before a second person or people might be relinquished a share of the right to that resource. The second claim of rights to the resource became operative for exercise with the existence of a surplus to the first claimant's needs -- on the principle that, where the earth's natural productions were placed in posture of being held or possessed "in common, nobody can arrogate to himself the use of a thing which actually serves to supply the wants of another." Essentially, the first possessor and user of the common resource was furnished with a priority right equivalent to such amount of the resource "sufficient to supply" his or their needs; and a second user or people, "who comes after, has no right to take them from the first -- to do so would be wrongly arro-

gating to themselves a superior right over the first, whereas the rights are supposed to be equal."

In form and substance, the common fishing right was a quantifiable right upon its establishment, and was founded upon principles of, or with the qualitative character of, equality. To be sure, equality dictated that the first possessor of the right should not be displaced, supplanted, or dispossessed by later claimants to the right. Accordingly, the quantifiable right of the first possessor was measurable to a greater degree of certainty than the secondary right of later possessors or entrants into the common fishery. In theory, that measure would be "sufficient to supply" the first claimant's needs. One example given by Vattel relating to the several categories of common resources upon which all possessors of a common right must subsist provided a statement of the general rule applying to the instance when one right "ought to yield to the other":

> "** I make use of my right in drawing that water, and nobody can disturb me: a second, who has an equal right, cannot assert it to the prejudice of mine; to stop me by his arrival would be arrogating to himself a better right than he allows to me, and thereby violating the law of equality."

These principles applied within territorial limits of nations. The fisheries within the oceans and great seas were considered "imprescriptable" and not subject to national possession. Then, as now, they were regarded as the "common heritage of mankind". Assuredly we note when England declared a public right for all its citizens "to fish in common with the rest of the world", England was not defining the measure of public rights to "common fisheries" within its national territory and subject to sovereign possession.

Treaties, Conservation, and the Fifty Percent Formula

The language in the Northwest Indian treaties of the 1850s, securing the "right of taking fish", does not appear in identical phrasing in any earlier Indian treaties. That right was reserved to America and American fishermen throughout the range of Canadian Atlantic shores and in the Newfoundland fisheries by the American Treaty of Independence in 1783. A later treaty with Great Britain in 1818 clarified that the right was secured "in common with" British subjects. Canadians had secured no similar rights in the American Atlantic coastal waters. For more than a century, the United States persistently claimed that both treaties had reserved a right to America and American fishermen strikingly similar in nature to those declared by the Boldt Decision to reside in Indian Tribes and Indian fishermen under their treaties. America claimed entitlement to half the resource in the territories covered by its early treaties, or half the produce of the resource under any partition or division of the right, even though located wholly outside the territory of the United States and being substantially within the territory of another nation.

Personally, I do not believe that the "fifty percent, plus" formulation for sharing of salmon originating in, or passing through, tribal customary fishing areas is a correct construction of the treaties' intent in securing the tribal fishing rights. There is substantial evidence in the minutes of negotiations between Territorial Governor and Superintendent of Indian Affairs Isaac I. Stevens and the various Indian tribes which supports that proposition, and such an understanding on the part of both Indian and non-Indian officials. In different treaty sessions, Indians speak of being willing to give up half their territories, if being left with half. Some talk of having two rivers, and of giving one and

keeping the other. On Fox Island in 1856, the Governor's party restated the purpose and effect of the treaties as having reserved "half the rivers and half the (Puget) Sound" for the Tribes' fishing, and "to protect you in your rights". In explicating the nature of private and public fishing rights under the English common law nearly two centuries earlier, Lord Chief Justice Matthew Hale of England in De Jure Maris (circa 1667) had recited the principle that manors on opposite sides of a river owned a "common of piscary" on their half of the river for the full distance of each manor. Yet, that was a territorial division, and part of the general system of boundaries associated with uncertain grants.

why

Nonetheless, treaties must look to reason for their interpretation, in the same manner as rights must rely upon reason for their validation. It is not reasonable that, in 1854 and 1855, a general opinion was formed or held that non-Indians -- numbering fewer than 4,000 in Washington Territory -- would immediately, upon ratification of the treaties, advance to an assertion of rights or claims upon half the volumes of harvestable salmon in the Pacific Northwest. On the other hand, the impracticality of that occurrence could be an explanation why an explicit equal division of fish -- half for the tribes, and half for non-Indians -- would not have been stated in the treaty, even if intended. For it could remain implicit in the phrase, "in common with", consistently with the treaty negotiations, and achievable only over time or with its passage accompanying population increases.

(It is definite that any recourse to the English common law, or to the Law of Nations, for determinations of meaning and applications of right would impose a limitation upon the allowable harvests by the collective body of non-Indians, and would prevent intrusion upon the established Indian fisheries or the established Indian right.) Three crucial points made by the

Washington Attorney General Slade Gorton in his brief to the U.S. Supreme Court invite a closer examination of these two related bodies of law, and other portions of the treaties themselves. His points were that: (1) Indian river fisheries, or a "right of fishing in public waterways 'was so unreasonable, as to be prohibited in the future by Magna Charta'" in 1215; (2) "that the proper exercise of the state's conservation power, (was) a matter not envisioned by the treatymakers"; and (3) that the Yakima Treaty provision for the right of travel "in common with citizens" renders the Boldt interpretation of the fishing right an unsustainable "absurdity", by requiring an exclusion of non-Indians from use of one-half the "public highways".

In fact, Magna Charta required the tearing down of weirs and other fixed fishing gear from navigable waters on the River Thames and the Medway, and certain other sites, but authorized their maintenance on the seacoasts. The primary purpose was to protect the public right of navigation, according to most writers; and to accommodate the passage of fish supplies to the upstream river fisheries. In both the common law and the Law of Nations, the right of navigation -- although but an easement, being a "right of way, not a right of property" -- has always been paramount to the right of taking fish. The most vociferous and bitter attacks upon Lord Hale's De Jure Maris were centered upon his support of the private rights in property and fisheries that both survived Magna Charta and became vested by it. The private right existed against both the King's right and the public right. Lord Hale's detractors, particularly in the early 19th Century, sought to disprove his arguments and favored a reassertion of the "rights of the Crown" in waters and fisheries. The premise and motivation for this was that a right of public fishing, theoretically, would also be

reassertable, co-extensively in territory with the rights of the Crown.

However, Lord Chief Justice Hale, and his supportive adherents in the following two centuries, noted that the affirmation of rights in the Crown accomplished more for the abuse of sovereign regal rights than it did for advancing a public interest and right. When noting that both public and private fisheries were subject to "the laws of conservation", Lord Hale strongly condemned the public conservation agencies, "commonly called commissions of conservancy or water-bailiffs", for abusing their authority and others' rights by exercising "a jurisdiction irregularly enough and to the damage of the people, and under the disguise of a public good". Later writers attacked the notion "that it is likely to be more beneficial to the public" if rights and properties were vested in the Crown as being "plausible, but not sound", on basis of actual practice and historical experience. They noted that citizens could "be restrained from making any encroachment on the rights of the public by simple process by any one who is aggrieved" by injurious private actions. They cited the violations of the common law and vested rights in property, abusively committed by the King's "closing ancient fishing grounds whereon poor fishermen have worked and got their living for centuries, for the advantage of limited companies and speculators", who were granted "exclusive fisheries" in an illegal dispossession of the fishermen in the ancient grounds. The Crown repeatedly and without restraint, they claimed, acted against the public interest; or, "without consulting the advantage or convenience or rights of the public in any way, and it does so readily whenever money is to be made." Thus, it was "submitted that the public is safer as to its rights if the subject is in possession. Him it can control, and he knows it, and will not transgress; the Crown it cannot practically control, and, if it acts detri-

mentally to the public, the mischief is done long before it can be checked, and, when done, who will dare attack the Crown to get the mischief remedied?"

The nature of the public fishery in England was comparable to the hook-and-line sportsfishery in the Pacific Northwest, except that their public fishery became subject to exclusion or substantial restrictions with the establishment of private rights in rivers and coastal waters. Neither the commercial fishing industry of the Northwest, nor the granting of a franchise for commercial fishing in England, would have been classified as a "public fishery" in the English law pre-dating the American and Indian treaties of 1783, 1818, 1854 or 1855. Substantial differences applied also to the classification of "public waters" in England as compared with the United States. For the most part, "navigable rivers and streams" in England were estuarial in location, and limited to the reach of high tidal flow. In the United States, the general rule approached another extreme where, "navigability in fact is navigability in law." Contrary to the Washington Attorney General's present claim that Magna Charta set a standard against, or outlawing, fisheries in rivers, its prohibitions were against obtrusive and fixed fisheries in marine waters. English jurists regarding Magna Charta as the first regulation of the salmon fisheries, apart from its intended protection of the public rights of navigation, have cited its effect of providing for passage and delivery of fish to upstream fisheries as its purposeful attribute and element.

Magna Chartas were to have restricted the Crown's establishment of new private and exclusive fisheries within England, and the owners of private fisheries and fishing sites thereafter were, in supposition, obligated to trace their fisheries' establishment, grant or creation, to dates preceding Magna Charta to sustain their claims of private right. Ownership of fisheries

were subject to transfer to new owners, and to inheritance as private property when established as a permanent estate or right. Six centuries after the final enrollment of the Magna Charta on the statute books of England, virtually all fisheries of any value were subject to claims of private right and usage. One claimed abuse of the Crown's right in granting new exclusive fisheries after Magna Charta occurred with King Charles II chartering of the Hudson's Bay Company in 1670, to have "exclusive trade of all the seas, bays, straits, creeks, lakes, rivers and sounds" of British North America, "not disposed of by prior grants", but including the exclusive right to "all sorts of fish". The original grant was challenged as being invalid on grounds that the charter was never confirmed by act of Parliament. Nonetheless, its claims remained vast in extent across North America, and the early treaties between Great Britain and the United States continued to prohibit entry into the "exclusive fisheries" of the Hudson's Bay Company.

Such grants of "exclusive trade", "exclusive right", and "exclusive fisheries", did not dispossess Indians of their rights in North America. The more frequent result of such corporate charters, and the later United States "factory system" for trade with the Indians, was to encourage Indian tribes in the increase of fish harvests, as well as in the hunting and trapping of various animals, for enlargement of the fish and fur trades. Again, in the present case before the Supreme Court, Washington State has asserted that the Oregon Treaty of June 15, 1846, between Britain and the United States acquired the region between the Columbia River and the 49^{0} parallel with all Indian rights already being extinquished. Of course, this also is at odds with both history and the law of the times. The law applicable in both nations, had been established firmly before American Independence at conclu-

sion of the French and Indian Wars in 1763, and reaffirmed after the War of 1812. After the 1763 Treaty of Paris, King George III had proclaimed on October 7, 1763, that territories westward and northwesterly of the colonies and the eastward drainages were reserved to the Indian nations -- until their rights might be extinguished by public treaties. That principle was incorporated in the Northwest Ordinance, and in the several territorial acts of the United States -- including that of Washington in 1853. (The law remains in the United States Code today, where the several territorial acts are codified at 48 U.S.C. § 1451, and asserts that rights of person or property pertaining to the Indians shall remain unimpaired, "so long as such rights remain unextinguished by treaty"; and which further declares that those tribes making treaties are -- "without the consent of such tribe" and "assent" signified "to the President" -- outside "the jurisdiction of any State or Territory".)

For Great Britain, the law of 1763 remained in force in the Pacific Northwest until the boundary was established between the two nations in 1846. After the Treaty of Ghent (1814), ending the War of 1812, both the U.S. and Britain agreed that various Indian "tribes or nations" would be restored in "all the possessions, rights, and privileges which they may have enjoyed" previously. In the Northwest territories, westward of the Rocky Mountains, the two nations later agreed in 1818 -- in the same treaty by which the "in common" fisheries in the Canadian Atlantic were resecured to the United States -- that all claims of right would remain unresolved, yet unprejudiced, pending agreement on a boundary, after a period of ten years. With respect to Indians, each of the two powers only claimed against one another a right of pre-emption for extinguishing the Indian title -- a right withheld by both until the boundary issue might be settled. England wanted the boundary to follow the Columbia River to the 49° parallel, and

eastwardly to the Rocky (Stoney) Mountains, where the boundary was settled at that parallel to the Great Lakes. Both countries encouraged settlers to advance into the region to enhance their claims. Increasing trade with the tribes, and the Indians' commodities for trade, were active pursuits of both nations. The issue was complicated by Russia's declaration that it claimed the right of "exclusive trade" with the native tribes throughout the Pacific Coast northward of California. In their earlier explorations and mapping of the region, Lewis and Clark had found an extensive trade in salmon among Columbia River Indians with both non-Indians and other tribes. In 1822, John Quincy Adams declared to Russia that the United States would not be constrained from any "right to carry on trade with the aboriginal natives, on the northwest coast of America." As a matter of history, the Indians' trade in fish to non-Indians increased, and fish caught and cured for export by non-Indians remained an occupation almost exclusive to Indians through the period of making the treaties in 1854 and 1855.

Significantly, officers of the United States did not consider the Indian title to all the lands of Washington Territory to be extinguished for some period after the treaties were made. An urgent appeal that all the treaties be finally ratified and permanent reservations be established, appearing as an annual report of 1858, was premised upon the view that most of Washington Territory remained "Indian country". The following excerpts illustrate that viewpoint and illuminate the issue of "jurisdiction" acquired over Indian activities under the treaties:

> "A few families of whites have recently opened a settlement at Gray's Harbor. They are a highly respectable set of people and excellent citizens. ** Government certainly owes these frontiersmen protection, and the most

effectual that can be granted is an extinguishment of the Indian title.

The suppression of the liquor trade, as the case stands now, is full of difficulties. This is an Indian country and it is not. Towns now stand upon ground where the Indian title is not extinct; the settlers have a right to bring their goods into the country, yet the intercourse law says that liquor shall not be taken into an Indian country. **

There are no civil officers in this town that have jurisdiction over the Indians, unless they commit a crime against the whites. Our courts have decided that an Indian murdering an Indian is not amenable to our laws, therefore it devolves entirely upon the officers of the Indian service to keep order among them. ** My reasons for moving (to Squaxin) were that Indians often made business with me an excuse for getting to Olympia; when here they procure liquor and cause much trouble. Now when they actually have business they can see me and have no temptation offered them. They will, I know, still come to Olympia, but the citizens can send them off if they choose. Those that make a profit by selling them liquor are a small minority of the citizens of Olympia, and I wish to see if the people will not take the matter in their own hands."

The offense of murder, it may be noted, remained outside the jurisdiction of both federal and state governments for another three decades -- when Congress made it an exclusive federal crime when involving any race as perpetrator or victim. Statehood did not bring jurisdiction over that offense when at least one of the persons involved was an Indian. It is not reasonable to claim that the treaties themselves conferred jurisdiction upon the anticipated State for exercising police power over Indians for the discernibly lesser offense of "illegal fishing" in the reserved territorial fishing grounds.

Two years before the United States contracted with the southern Puget Sound Indians with the Treaty of Medicine Creek, the multi-volume report to the Congress by Henry R. Schoolcraft, detailing the "history, condition and prospects" of American Indians, had proclaimed that "the world" could only honor America's "history of our dealings with the Indian tribes" in maintaining a "triplicate jurisdiction, between Themselves, the States, and the United States, with justice, (and) a high regard for their natural rights". In the same decade, Congress had required that contested land titles be adjudged with consideration of acquisitions from Indians under the "law of nations". The treaty itself was not silent with respect to an anticipated Statehood. The treaty's incorporation of the sixth article of the Omaha Treaty of 1854 provided for the regulation of Indian lands in Puget Sound and imposed certain restrictions against the exercise of State jurisidictions, "until a State constitution, embracing such lands within its boundaries, shall have been formed, and the legislature of the State shall remove the restrictions." State legislative action, however, was prohibited "without the consent of Congress." The transfers of jurisdiction to States over federal reservations, both Indian and U.S. military, in the subsequent history of congressional acts, have uniformly excluded treaty rights and those of hunting and fishing from the reach of jurisdiction conferred upon the States. Similarly as the people of North Carolina had exempted Indian hunting grounds from their 1777 Constitution's proclamation of sovereignty and independence, the citizens of Washington -- when enacting the State's fishing laws by Initiative 77 in 1934 -- excluded Indians "fishing under Federal (treaty) regulation" from claims of State jurisdiction, as previously had been done by perpetual compact with the United States in the State's 1889 Constitution.

The assertion of State jurisdiction over Indian fisheries is plainly alien to the whole fabric and history of American relations with Indian tribes. Where England had proclaimed its citizens' rights of fishing "in common with the rest of the world" in all parts of the globe, Parliament retained a regulatory jurisdiction over the English fishermen, wherever they might be disposed to exercise that permissible right. In the same manner, a global jurisdiction has carried with rights of navigation, or in the navigation of the seas by a country's ships and nationals. Where the United States had reserved its rights of taking fish "in common with" English fishermen within the Canadian territorial boundaries and adjacent seas, a succession of Presidents, Secretaries of State, and U.S. Ambassadors and negotiators uniformly insisted that the American fishermen were subject solely to the jurisdiction of the United States -- and not subject to British parliamentary or provincial jurisdiction in Canadian waters.

The Yakima Treaty's inclusion of language guaranteeing a right of travel "in common with" citizens on public highways, it may be emphasized, deals with an entirely different species of right from that of fisheries. However, natural law and the law of nations recognized that "the right of passage is also a remnant of a primitive state of communion, in which the entire earth was common to all mankind, and the passage was every where free to each individual according to his necessities." In defining a nation in relation to the law of nature, Vattel had pointed out that:

> "A state or civil society is a subject very different from an individual of the human race; ** and a particular rule which is perfectly just with respect to one subject, is not applicable to another subject of a quite different nature. There are many cases, therefore, in which the law of Nature

> does not decide between state and state in the same manner as it would between man and man."

And, in setting forth the rules and doctrines for the "interpretation of treaties" under the Law of Nations, Vattel wrote:

> "There is not perhaps any language that does not contain words which signify two or more different things, and phrases which are susceptible of more than one sense. ** We ought always to affix such meaning to the expression as is most suitable to the subject or matter in question. For, by a true interpretation, we endeavor to discover the thoughts of the person speaking, or of the contracting parties in a treaty. ** If any one of those expressions which are susceptible of different significations occurs more than once in the same piece, we cannot make it a rule to take it every where in the same signification. For, we must, conformably to the preceding rule, take such expression, in each article, according as the subject requires."

Rights of fishing and rights of passage or travel have a common origin in nature, and are amenable to common language in discussion -- but that does not make them to be one and the same thing. With the introduction of civil societies, property and domain, into nature, these different species of right are transformed and assume differing applications.

The treaty negotiations with the Yakimas included substantial discussion of conditions relating to future travel of the diverse and scattered tribes who were to be consolidated as "one nation" on that reservation. Differences were noted regarding the needs of Indians on Puget Sound. And, importantly, while an exclusive domain was being established for the Yakimas, negotiations simultaneously were concentrated on securing agreement for railroads, highways, and telegraph systems to pass through or near the reservation. Relevent statements of Governor Stevens and General

Joel Palmer, Superintendent for Indian Affairs in Oregon, in the Yakima Treaty sessions, aid understanding of the whole series of treaties. In part, Governor Stevens explained:

> "I will give briefly the reason for selecting these two Reservations. ** There is plenty of Salmon on these Reservations, there are roots and berries. * You will be near the Great Road and can take your horses and cattle down the rivers and to the Sound to market. ** You will be allowed to go one the roads, to take your things to market, your horses and cattle. You will be allowed to go to the usual fishing places and fish in common with the whites, and to get roots and berries and to kill game on land not occupied by the whites; all this outside the reservation. ** on Puget Sound, I have made treaties with all the Indians on that sound. * They have all agreed, should the President decide, to go on one Reservation. That Reservation is only about one fiftieth part as large as this; they have, however, few horses and cattle. * They take Salmon and catch whale and make oil. They ask for no more land. They think they have land enough. You will be farmers and stock raisers and wool growers and you need more."

General Palmer returned to the issue of reciprocal travel in his remarks:

> "My brother has stated that you will be permitted to travel the roads outside the Reservation. We have some kinds of roads perhaps you have never seen ** (and) may desire to run that road through your Reservation; if we desire to do so, we wish that privilege; that kind of road we call a railroad. *** Now if our chief desires to construct such a road through your country we want you to agree that he shall have the privilege. You would have the benefit of it as well as other people. ** Now as we give you the privilege of traveling over roads, we want the privilege of making and traveling roads through your country **."

There were significant reasons for framing the Yakima Treaty differently from the earlier coastal and Puget Sound treaties, without creating any differences in actual rights reserved to the separate tribes within and outside the reservations. The Point Elliott Treaty, in setting aside a full township of land at Tulalip, explained that the United States was acting with "a view of ultimately drawing thereto and settling thereon all the Indians living west of the Cascade Mountains in said Territory." Where designated tracts of land were set apart for Indian tribes under the Medicine Creek, Point No Point, Point Elliott, and Makah treaties, they were signified as being "for the present use and occupation" of the tribes, who were subject to relocation by the President. The Quinault Treaty provided for an undesignated "tract or tracts of land sufficient for their wants" "to be selected" -- not qualified by the term "present" -- "for their exclusive use, and no white man shall be permitted to reside thereon without permission". On the other hand, the reservation of the Yakimas designated in their treaty was intended from the outset to become their "permanent home" -- as the earlier treaties had indicated would be the case when final selections of reservations were made for the coastal and Puget Sound tribes.

Accordingly, when the Yakima Treaty secured an "exclusive right of taking fish in all the streams, where running through or bordering said reservation," it was known with certainty that rivers and streams actually came within the terms of that provision. Specific streams had been named in the provision establishing the reservation and its boundaries. To have omitted the "exclusive right" provision, could have allowed an erroneous claim that the "in common" provision permitted an entry into the reservation streams -- as a qualification of the earlier stated rights -- known to exist

as fishing grounds and stations. The minutes of all the treaty making sessions leave no doubt that it was intended in all cases that exclusive fishing rights would be obtained by the Tribes on their reservations. In the earlier treaties on Puget Sound, it would have been an exercise in nonsense to declare a specific "exclusive right of taking fish in all the streams, running through or bordering" the reservations -- when, in some cases, it was known that there were no such streams on the designated "temporary" reservations; and when the designation of such a right applied only to an uncertain possibility that the final reservations would include or border streams. The exclusive right, nonetheless, was declared by the several treaties in the term "exclusive use", but carried with the ultimate siting of the permanent reservations, and became accomplished and vested with the issuance of the presidential Executive Orders permanently establishing the various reservations under the treaty authorizations and power.

The present claim of Washington State that the treaties intended only that a "right of access" be accorded to individual Indians for passage to customary fishing sites off-reservation, and that nothing more than that was intended in securing a right of taking fish, is expressive itself only of wishful State thinking. The view violates reason and is not in accord with the facts prevailing in the treaty period. Certainly, it cannot be supposed that, in securing a portion of the right in an "exclusive" status, that the treaty conferred upon individual Indians that exclusive right for exercise in a great number of individually-held exclusive fisheries. In the case of both the exclusive and "in common" fishing rights -- as with the separate "Wenatshapam Fishery" reserved in the Yakima Treaty -- the rights were secured to the collective bodies of Indian people, termed "nations" by

the several treaties themselves. In treaties of the period, when there was intent to provide for individual Indian rights or properties in areas away from the main reservations being established, specific provisions were made for such individuals -- whether by permanent allotments, or by securing a life estate to specific individuals in property, both lands and fisheries.

In the series of decisions by the U.S. Supreme Court which examined the character of Indian political and property rights, dating from 1810 through 1832, Chief Justice John Marshall repeatedly noted that the various Indian tribes held their territory "in common". Preceding the making of the treaties of the 1850s in the Pacific Northwest, treaty Commissioner George Gibbs wrote that the Indian fisheries throughout the region "are held in common". In 1823, Justice Marshall had recited the "principle of universal law", whereby a people coming into a territory for the first time and subject it to their use, "acquire a title in common. The title of the whole land is in the whole society", he explained. "It is to be divided and parcelled out according to the will of the society, expressed by the whole body, or by that organ which is authorized by the whole to express it." Marshall had also stated that no different principle applied to Indians; in fact, even where treaties with the United States had provided for allotments to Indians. Regarding "a grant made to a native Indian, authorizing him to hold a particular tract of land in severalty", Marshall wrote that "such grant could not separate the Indian from his nation, nor give a title which our courts could distinguish from the title of his tribe.....". Certainly, this would be more firmly established where the property and property rights remained undivided and subject to "a title in common."

More than a quarter century after the Pacific Northwest treaties were ratified, the Secretary of the Interior addressed the same general

issue of Indian territorial ownership and relationships, as drawn from his observations of actual conditions prevailing among "most of the Indian tribes". He wrote to the President and Congress in 1883 that:

> "A title in severalty or to individual ownership of land is unknown in Indian polity, and they cannot understand why one should have a claim on or title to land that he does not occupy, any more than they can understand how one man can become the owner of more air than he needs. ** While he cannot comprehend individual ownership, he does know what title to his tribe means. He has been accustomed to hear the claim made that his tribe owns a section of the country. The invasion by one tribe of the region claimed by another has been the cause of innumerable wars. The denial of ownership in his tribe he fully understands, and whether that denial comes from a hostile tribe or from one of his own number, it is, in his opinion, a crime to be punished. The reservation belongs to the tribe in trust for all the members thereof if they wish to occupy it."

This "trust" relationship between tribe, as owner of its natural resources, and individual members is not dissimilar to the relationship between the State and its citizens respecting fish resources and fishing rights -- or, "natural rights, accruing to" the citizenry "as cestui que trustent in possession", under the English common law in the early 19th century.

Finally, the State claim that neither Indians or non-Indians, in making the treaties, could have "envisioned" "the proper exercise of the State's conservation power" is a claim better suited as an observation that its "proper exercise" has seldom been employed in the management of salmon resources since the inception of Statehood. Again as a matter of history and of law, conservation principles regarding salmon resources and fisheries had already been long-established in the English common law, the law of nations, and in the customs and ritual observations of Indian people

in the Pacific Northwest prior to the treaties. These principles addressed issues of resource and habitat protection, wise use, and the accommodation of multiple users and multiple interests in a common resource.

In England, the regulation of the salmon fisheries is traced to Magna Chartas and their restrictions against blockading passage of salmon to upstream fisheries. Impoundment of larger vessels and boats in their ports was authorized and undertaken to prevent operation of marine fisheries and interception of salmon before they reached their streams of origin. In the same period that these treaties were made, in England any person or company causing the destruction of salmon by polluting a spawning area or "introducting noxious substances into a river" was liable to a "penalty of seven years penal servitude." Rivers were generally closed to fishing for portions of the year and for portions of the week in each open season. In earlier times, conservation regulations were established for specific rivers. Later, more general regulations applied to all areas. Ultimately, under the English "Salmon Acts", local "conservation districts" were established for each salmon production system or river. When marine fishing districts were established for regulating harvests in the near seas and open ocean waters, the regulations and requirements or needs of the interior "conservation districts" had precedence and priority over any allowances in the marine districts.

The various Indian tribes demonstrated similar methods of conservation. The methods of preservation observed by Lewis and Clark for huge stores of salmon to be used in trade was itself a commentary on conservation and a practice against waste. The location of salmon fishing villages at great distances along the same streams or rivers gave testimony to a recog-

nition that inland and upstream users had to be accommodated in their needs for fish supplies and passage. Restraints against pollution and against disturbance of spawning salmon varied among the tribes, but were evident readily among most. The several observations of George Gibbs' regarding differing fishing methods among Nisqually Indians for different species of salmon illustrated concepts of wise use. The floating fish factory made up of innumerable canoes, filled with Indians of both sexes and all ages, harvesting Chinook salmon outside the Nisqually River in summer, showed an industry in immediate processing and a selectivity in siting fisheries for acquiring salmon in prime condition. For the winter chum, the Nisquallies could wait for the salmon to come to their dams and weirs for capture without suffering any deterioration in fish quality.

Any assumption that neither Indians nor whites had need to observe conservation because there existed such a great abundance of salmon in the Northwest is not a proper assumption. Some of the ritual observances of the tribes were likely premised in attempts to account for prior failures of the salmon to return in normal abundance. In the period awaiting ratification of the treaties by the Congress, the Indian agents reported such a failure in salmon returns to a number of Puget Sound streams in 1857. The archaeological and anthropological discoveries and studies of recent years on the Olympic Peninsula and in the Columbia River Basin have shown the existence of advanced fishing cultures among the tribes dating back several thousand years in continuity. A range of experiences in scarcity and abundance of resources in probability became impressed upon the common thought and customary practices relating to the salmon fisheries. In the Western World of 1854, salmon were an object of property and property rights; and in neither the United States nor in England were these resources considered

to exist in a state of inexhaustible supply.

generalized after the detail of earlier sections.

PART II: Personal Observations and Conclusions.

1. The Boldt Decision.

In my judgement, the Boldt Decision is fundamentally correct, yet flawed by its determinations regarding divisions of harvestable salmon resources among the various Indian and non-Indian fisheries, and in its attempts at implementation. Unfortunately, the correctness of its rule favoring principles of co-management of resources, probably, was not as strongly substantiated in the decision nor before the U.S. Supreme Court, as I believe it could have been.

A. Division of salmon resources.

The habits and nature of the fish species is an important factor in determining the character of rights which may apply to them.

To the extent that the salmon of any particular production system or natal stream may have occurred in an "inexhaustible supply", treaty tribes would have no right of restraint upon the harvests of non-Indians or others from those supplies, so long as volumes sufficient to satisfy the tribal needs were allowed passage to the Indian fisheries. Allowing passage, or curtailing harvest interceptions, is not the equivalent of -- in Attorney General Slade Gorton's words -- "shepherding the salmon into the Indian fisheries", any more than the Indians' treaty agreement to "not take shellfish from any beds staked or cultivated by citizens" was a promise to "shepherd" clams across the beaches to those fixed sites. In the case of salmon, "leave them alone, and they'll come home," etc.

In my view, the treaties would have subjected the salmon resources to a tribal "right of anticipation" (as phrased in the "law of nations") in assuring a priority right to returns of sufficient volumes of salmon neccesary for satisfying the collective tribal needs; but also to an "admeasurement of sufficiency" (in the manner of the English common law "rights of common") for determining that protected base amount or harvestable resource volume, and for establishing reasonable limits upon assertable claims under the treaty right. The numbers of salmon claimable would be more a function of determinable need than it would be a function of the total volume of fish available to all fishermen. Principles of population would also apply to the determination of measureable need. A tribe of 100 members would not have a right to the same volume of fish as a tribe of 1,000 or of 5,000. However, the measure of Indian needs in the resource would not operate as a function of the non-Indian population, nor of other non-tribal Indian populations.

what about commercial need - how is that determined

In transmitting the Medicine Creek Treaty to the national government for ratification in 1854, Governor Stevens noted that the treaty provision on fishing rights had "strict reference" to the part the Indians "play and ought to play in the labor and prosperity of the territory." He used similar language in addressing the Yakimas, along with Indians of Oregon and Idaho, at the Walla Walla treaty grounds in 1855. It seems certain that all the tribes on both sides of the Cascade Mountains were made to understand that non-Indians would be entering the salmon fisheries in indeterminate, but increasing, numbers. (General Palmer had advised the tribes that they could "no more stop the flow of whites, than we can stop the flow" of the Columbia River. To the misfortune of the fisheries, attempts were made ultimately only in the latter instance.)

It is also evident that the tribes were made to expect and know that they would have increasing opportunities for entering their fish into growing commercial trade with non-Indians, and for harvesting additional salmon for that purpose. The clear sense characterizing the negotiations was that the various Indian populations would be maintained and protected in their respective salmon fisheries and fishing sites, while enjoying an enhanced ability for deriving subsistence and livelihoods from the salmon resources through increasing trade. While this would imply a growth in harvests over historic pre-treaty levels, there were recorded expectations that some reduction would occur over time in community-level use or in the household reliance on salmon as dietary staple as an incident of increasing integration into the general monetary and economic system of the territory. This would represent some off-setting conversions in use, but with a probable net increase in the expected Indian fisheries throughout the future.

It is extremely doubtful that any of the treaties anticipated any 50-50, or half-and-half, division and sharing of salmon volumes between Indian and non-Indian populations, or their respective fishermen. At the time of the treaties, as Governor Stevens noted, the Indians "catch most our fish". Any such 50-50 sharing formula would have had to address a future point in time that, however indefinite, but, whenever reached, would have imposed 50-50 formula and limitation upon each body of Indian and non-Indian fishermen. As a general principle, treaties are directed toward the future. Yet, it would seem that any intent to divide the resources on such a definite percentage basis would have prompted the treaty authors to state that intent explicitly in time and quantity terms more indicative of such intent than is conveyed in the term, "in common with". The terms of treaty, rather, seemed structured for both immediate and permanent application, on principles accommodating rights both in being and to be.

B. The Effect on Harvests of On and Off Reservation Fisheries.

The existence of "exclusive" fisheries on Indian reservations, in addition to "in common" and "non-exclusive" fisheries off the reservations, is immaterial to the numbers of salmon required to accommodate the Indian treaty right, if it is governed by the relatively constant standard of "needs sufficiency". That standard would fluctuate relatively little, whether the total volume of resources was 8 million salmon or 30 million salmon. (By a 50% standard, it would range from 4 million to 15 million when applied to those base amounts.) The existence of the two fisheries can afford flexibility in accommodating the right; and provide substantial advantage when an "exclusive" fishery is favorably sited or situated with respect to an abundance of resources. The nature of the salmon species, and the common law standard sustaining the "stability" of fisheries, require restraint against pre-emption of these fisheries by intercepting harvests. Both the on-reservation and off-reservation fisheries are geographically defined and limited, or geographically fixed. For the respective tribes, the treaty right does not exist outside those geographic limits or boundaries. A variety of considerations may figure into the determination of where and when a tribe's primary fisheries would be operational. Foremost among these would be the interests of the resource, its conservation and sustained productivity. Another would be resource availability for satisfying the right.

C. Multiple Agency Management of the Resources.

The salmon represent a multiple-system resource which requires multi-system management for protection of each part or segment of the resource. Personally, I would prefer that each stream or drainage's resources had an independent, authoritative agency acting in their behalf against all abuses in use, and injuries to environment, throughout their life range.

The Boldt Decision was not involved with the question of treaty fishing rights on Indian reservations, and both the State and the Tribes agreed that State authority was excluded from the reservations. Extensive fish resources and stream habitats are included within varying degrees among the separate reservations. At least a dozen different reservations were accepted as being under the management authority and responsibilities of the tribal governments. The Boldt Decision did not materially increase the number of management agencies extant among the Tribes, although it did expand their regions of actual operations through recognition of the tribes' broader legal authority over both tribal members and fisheries, or treaty-secured resources. The Decision strengthened coordination and cooperation between the existing multiple fisheries agencies within each the State, Federal and tribal structures.

A consistent line of authority, dating back to Lord Selden's Mare Clausum, through Lord Chief Justice Hale's De Jure Maris, and beyond Vattel's Law of Nations, to the construction of America's treaties securing external fishing rights, supports a combining of jurisdiction and rights in the tribes over their treaty fisheries and tribal members. The jurisdiction originally held would not be surrendered except by express and explicit provision of treaty or agreement. The notable destruction of the Atlantic salmon resources, whether in England, Scotland, or America's New England States, was enabled by public conservation agencies taking irresponsible actions "disguised as the public good". Only after the greatest degree of damage was done did England act consistently, in the early and mid-19th Century, to provide for the systematic protection of stream-specific salmon resources by the establishment of stream-specific conservation agencies having primary purpose and power of protecting the salmon and the public

interests in that resource. Wisdom possessed by many generations of public managers, and embodied in the public laws for several centuries, was not employed in behalf of the salmon resources until the vast majority of individual systems, or species segments, had passed into extinction. In the name of the "public", and by the power of the "public authority", the public interest was repeatedly sacrificed to private benefit for very few.

2. Population, Racism, and Greed.

A 1976 public opinion poll commissioned by the Seattle Times to assess public knowledge of causes for declines in salmon resources and to measure reactions to the Boldt Decision indicated some interesting results. The random sampling showed that the wealthier and better educated among the non-Indian population were the least knowledgeable about the state of the salmon resources and actual causes for decline -- and the most overwhelmingly hostile to Indians and Indian rights under the Boldt Decision. The more distant from common experience with the respondents' lives an element in the structure of "fisheries problems" seemed to be, the more that "element" became the basic "problem". Foreign fishing fleets became the overriding problem; Indians followed as a close second. Dams -- being so beneficial in the lives of the respondents -- were perceived to be almost as beneficial to the salmon, and hardly measureable as a problem. The wealthier and better educated the respondents were, the more willing they were to provide a "wrong" answer than they were willing to admit that they didn't have or know the answer. The lesser educated and lower income non-Indians were more inclined to admit lack of knowledge, and to divide their sympathy or support between Indian and non-Indian fishermen and the fairness of the Boldt Decision. Persons making under $10,000 per year were five times more sympathetic and supportive toward Indians than those making

more than $20,000 a year. Fewer than 4% of the people in the higher income bracket thought Indians should catch more fish, while nearly 60% thought that non-Indian fishermen should have more. In 1977, Congressman Oon Bonker advised Nisqually tribal members that, whatever the true nature of the fisheries problems, the political solutions would have to follow the lines and lead of "public perceptions", whatever those might be.

A. Equal Opportunity in the Past Two Decades.

In the first year that I became involved with Medicine Creek Treaty Indians in southern Puget Sound on the fishing rights question, 13,000,000 salmon were havested by all fishermen in the State from all fisheries. The Muckleshoot Indians that year -- 1963 -- caught a grand total of 702 salmon of all species for all members of their tribe. Some treaty tribes -- both reservation tribes and non-reservation tribes -- were prevented from catching any whatsoever under the policies and enforced legal positions of the State. More than half, or 50%, of those 13 million salmon were harvested by fewer than 1,000 non-Indian fishing vessels or units. In almost every year since the 1974 Boldt Decision was issued, more than half the total salmon harvests in the State have been taken by fewer than 1000 fishing units or vessels owned and operated by non-Indians. Before the Boldt Decision, roughly 75% of the non-Indian commercial fishermen -- no matter what their total real numbers were -- were in position of sharing less than 30% of the salmon harvests; the sportsfishery averaged around 15%; and all the tribes divided the remaining 5% -- sometimes as few as 2%, but ranging up to 8% as in 1963. In 1962, the non-Indian commercial salmon fishery had numbered only 2,955 licensed vessels. In 1974, the year of the Boldt Decision, that number had climbed to 6,587 -- and that level had actually been exceeded in some of the intervening years, primarily on the part of the troll fishery.

Using the rough, but representative, figures from the preceding paragraph, wherein fewer than 1000 of the most effective and successful non-Indian commercial fishermen harvest 50% of all harvestable salmon, in both the past and present, one can perceive the problems of sharing in a different perspective. Whereas the remaining 2,000 non-Indian commercial salmon fishermen in 1962 might have derived a reasonable livlihood from the 30% of the resource available to them in that period; in 1974, 5,587 non-Indian fishing units were licensed to draw upon that same -- or a smaller -- portion of the total resource. It was actually a smaller portion than 30% in 1974, partly because there was some cumulative increase in the total Indian catch and percentage of catch in 1974 over pre-Boldt average harvests. However, the tribes were not starting from a zero base, and the first year percentage increase was not that substantial over prior harvest levels. The non-Indian commercial salmon fisheries of 1974, in fact, themselves experienced a cumulative harvest increase over 1973 catch levels for the combined species available in 1974. A patently inept, or deliberately dishonest, analysis of the Indian harvest impact on economic losses to non-Indian commercial fishermen for 1974, as compared to 1973 non-Indian fisheries, failed to account for the absence of pink salmon runs in the later even-numbered year. That U.S. National Marine Fisheries Service study of Boldt Decision impacts also conveniently ignored that the State had licensed approximately 800 new non-Indian commercial gillnetters for entry into the 1974 salmon fisheries. Those new additional units possessed a harvest capacity exceeding the total combined Indian fishing fleet for all tribes as existed either before or after the Boldt Decision. Even if some of those new entrants into the commercial fisheries were counted among the most successful, the effect was to add 800 new vessels to the section of non-Indian fleets harvesting after less than 30% of harvestable resources.

(1) Impacts of the New Growth Industries.

In the same period that I've worked for the protection of an Indian treaty fishing right, the non-Indian troll fishery has grown in such degree that it might even be considered as having established itself as a completely new industry with respect to increased harvest impacts upon salmon originating in the waters of Puget Sound, coastal streams, and the Columbia River system. That increased impact must be measured by the growth in both the American and Canadian trolling fleets, and would include their combined increase in harvest levels upon the chinook and coho species in particular. The commercial troll is the station of first removal of salmon supplies from the harvestable resource, and, when once removed, these volumes are no longer available to any interior fisheries, whether Indian or non-Indian. The increase in new Washington licensees in the commercial troll in the off-coastal waters since 1963 -- when Washington was totally committed to the policy of preventing any off-reservation fishing by Indians anywhere in the State -- has greatly exceeded the total number of all Indian fishermen licensed by the tribes for fishing in all waters available to them after the Boldt Decision. The Canadian troll has grown with comparable rapidity. The combined increases in sustained harvest levels for the American-Canadian troll fisheries upon coho and chinook salmon over the past fifteen years, generally exceeds the total harvests by Indian tribes in pre-Boldt and post-Boldt fisheries upon Washington-origin salmon of all species. The guarantee of sustained catch levels -- perhaps stabilized by the 200-Mile Fisheries Conservation Act -- coming with the opportunity of first harvests and removal has taken these fish supplies away from interior non-Indian fisheries for whom they were formerly available prior to the rapid new growth in the troll fisheries. The impact on Indian fisheries has been greatest where there are fewer or no intercepting fisheries between them and

the troll fisheries, particularly involving tne coastal streams and reservations.

The long term of unrestrained growth in the troll fishery, XX preceding the minor to meaningless restraints reluctantly imposed by the Pacific Marine Regional Council in 1978 and 1979, was fostered by various trade-offs of fish resources for both Canada and the United States, and on both the Atlantic and Pacific coasts. Although species other than salmon have figured in these trade-offs, the continued equal division between American and Canadian fishermen of the Canadian-origin Fraser River sockeye and pink salmon resources has constituted a key consideration. Adjustments in the IPSFC treaties were resisted by the United States because of the favorable terms to American inside fisheries, and not sought by the Canadian government when resource enhancement justified adjustments, because interim reciprocal agreements accommodated diversity in the Canadian salmon harvests -- including substantial growth in their troll fisheries through a heavy concentration on American-origin stocks of chinook and coho. New treaty drafts promise to institutionalize these arrangements, although lip service is paid toward a consideration of each nation becoming the primary beneficiary of new production of stocks originating in each country.

Two major issues of public policy affecting the permanency of these trade-off arrangements are in process of being settled in the curious mechanisms of closed committees and secret diplomacy. The process is fueled in a hotbed of special interests, who monitor its progress and furnish the judges of its probity. One issue is whether public policy favors the continued imbalances in harvests and production attendant with the allocation of disproportionate levels of the harvestable levels of two salmon species to a single commercial fishery in the ocean waters, pre-emptive even of the

long-established commercial charter industry and other ocean sportsfisheries -- in substantial degree -- and moreso to a range of inside fisheries, both Indian and non-Indian. The other public issue is whether it is sound policy to limit new production in those same two species, coho and chinook, in favor of the artificial propagation economics of massive new production in chum salmon. Personally, I question the soundness. I see as its consequence a general devaluation of the overall salmon resources. And, whatever the value of the chum resources in their own right, I do not think massive new production of the species satisfies an off-setting or replacement value for losses to the various fisheries and stream production systems associated with the general plans for low priority production of chinook and coho, and highest priority for optimum production of chum. The $33 million crash enhancement program of the State appears unwisely geared to short-term benefits that fail to redress damages to, and declines in, the species production levels in various river systems and regions which have resulted in large part from poor management policies and practices of the past. The plan calls for a reorientation of fisheries to conform with the supplies of fish that the State presently chooses to propagate; and fails seriously to consider the production needs for maintaining a range of existing fisheries, or to consult the preferences and desires of commercial fishermen and a fishing public.

(2) Financial Disaster in the IPSFC and Puget Sound.

Without question, the Boldt Decision's full implementation would have a substantial and cumulative adverse economic impact upon the incomes and opportunities of various non-Indian fisheries and fishermen, individually and collectively. The resource would be producing virtually the same economic benefits and returns to fishermen, but a greater share of those benefits would be allocated to Indian fishermen. Nonetheless, full implementation

would do nothing more than compound or aggravate serious economic ills which have long been existent in the non-Indian commercial fisheries. The Decision itself, almost without exception, cannot be blamed for the various economic damages attributed to it in the well-publicized, but unverified, compaints and charges emanating from non-Indian commerical fishermen and their spouses and attorneys. In fact, the Decision has provided the Fisheries Department with leverage for resisting pressures from political interests and user groups -- pressures which formerly it was not able to withstand -- for making decisions contrary to its best judgements, and enabled that Department to improve its standards for management decisions. The Decision's mandate that species spawning escapement goals be established and achieved against the claims of all fishermen -- Indian or non-Indian -- has been a blessing for the Fisheries Department as well as for the salmon resources. They have been able to perform that obligation with greater consistency than was possible prior to the Decision. Over time, increased benefits from the economics and produce of natural salmon production should materialize under the improved standards and practices, and accrue to the advantage of the resources, as well as user populations.

If culpability lies with any governmental unit for causing the economic ills and instability in the commercial salmon fishing industries, that unit would be the Washington Legislature. Its long history of resistance to rational management and licensing policies for the salmon fisheries provides a study in violations of the public trust and the public good. On the other hand, if all claims of impending economic doom for participants in the commercial fisheries were to be believed, that condition would constitute less a call for revision of the Boldt Decision than it would provide basis for demands that investigations be initiated into the designs and

practices of the banking industry, or finance and lending institutions, who have brought the claimed conditions about. Was it deliberately that these institutions have financed the ruin of a major natural resources and the destruction of industries reliant upon it? Must not the bank have known in 1970, or after 1974, that in giving a gillnetter or seiner money for his boat, that the bank would end up with both the boat and house of the borrowing fisherman? Didn't the bank know that as long ago as 1961? Or, are banks routinely oblivious to the economic state, or predominant failure in such enterprises as the commercial salmon fisheries of Washington, which they apparently financed so freely and generously? Are loss claims true?

In 1957, the International Pacific Salmon Fisheries Commission (IPSFC) advised the U.S. State Department and the State of Washington that serious problems had developed in the IPSFC fisheries because of the "rapid increase in fishing efficiency and fleet size." It requested that the United States Government encourage the State of Washington to provide a remedy through its licensing or regulatory authority "to reduce fishing efficiency" "by a minimum of 25 per cent" prior to the 1959 season. That was not done, and the IPSFC had to resort to the only device and authority available to it, which was "to reduce fishing time." In 1961, the IPSFC reported that the magnitude of the problems was growing, and that although the 1961 runs "yielded the third largest pack made on this cycle since 1917", "the industry generally considers 1961 a disastrous season". The most successful gear was that of purse seiners, yet fleets from both Canada and the United States complained that "they failed to make expenses." "Why?", the chairman of the International Commission asked, before answering: "The answer, plainly, lies in over-development of the fishery." He reported that the fishermen were destroying the "economics of the industry", "in spite of favorable total catches".

In that same report, the IPSFC pointed out that many fishermen could not expect any fishing success, because "gear is so abundant and efficient that each fishery in several different areas spread over 200 marine miles is taking virtually all of the fish in any area while the gear is being operated." The Washington Governor's Office and Legislature responded by commissioning a study of the problem by a team of University of Washington experts. Their February 1963 report and legislative recommendations noted that, "It would be difficult to find a riskier investment, even in periods of fairly good catches, than a salmon fishing vessel." The study found that purse seine incomes had averaged less than $4,000 in the preceding season -- and had even then included an average $4,631 "incentive" payment from fish buyers to whom they sold, or for whom they fished. All things considered, they reported, the entire purse seine fleet "operated at a substantial loss." Their survey of 600 gillnetters presented another bleak picture of conditions in the salmon fishing industry: "Gross incomes from Puget Sound fishing averaged $2,324 for the odd years 1959 and 1961, and only $1,711 in 1960, when no pink salmon were available. Net returns averaged less than half those amounts." As noted previously, the salmon fishing fleets have increased by approximately 4,000 vessels since the time of these earlier IPSFC and University of Washington reports and statements of concern about economic "disaster" in the commercial salmon fishing industry. The Washington Legislature did not act to halt increases in the fleets until 1974, and after the Boldt Decision was issued.

(3) Indian Fishing on the Columbia River.

Prior to the destruction of the Indian fishery at Celilo Falls on the Columbia River by construction of The Dalles Dam around 1956, more than

than 1200 individual Indian fishermen were harvesting an approximate annual average catch of 2¼ million pounds of salmon and steelhead, primarily at the Celilo site. About one-fifth the catch was retained for home use and tourist sales. Immediately after the inundation of Celilo Falls, there was a dramatic reduction in the Indian harvests, followed by a transformation in the nature of the Indian fishery. Where the prior fisheries had been characterized by "simple, inexpensive gear" -- such as dipnets -- the post-1957 fishery required primary reliance on "specialized, expensive gear" -- meaning, motored boats for operating gill nets of varying dimensions. By 1964, the total Indian harvests remained at about 40% of their pre-1957 level -- although their had been a reduction in Indian fishermen ranging up to 75% or more of the pre-1957 level of participants in the Indian fisheries above Bonneville Dam. One estimate for 1964 placed the number of Columbia River Indian fishermen at 150, or one-eighth the number fishing in the early 1950s. By that time, the treaty tribes were receiving roughly 275,000 pounds of salmon carcasses from federal and state (Oregon and Washington) hatcheries for "subsistence" purposes. (In 1978, the Washington Attorney General issued an opinion that hatchery carcasses could not lawfully be "given" to Indians, inasmuch as such gifts had not been authorized by State law. Sales to the Tribes, in accordance with State law, might be permissible under the Opinion.)

The renewal or rebuilding of an Indian fishery after the destruction of Celilo Falls was undertaken in resistance to regulations adopted by both the Washington Department of Fisheries and the Oregon Fish Commission, which jointly prohibited all commercial salmon and steelhead fishing in the Columbia and Snake Rivers upstream from the Bonneville Dam after 1958. Both States claimed a "conservation need" to close these historic Indian fishing areas -- the only fishing grounds for most Indians east of the Cascades -- to all future commercial fishing for salmon or steelhead. Records from both States'

agencies show an actual design of accommodating increased harvests by non-Indian commercial fishermen in the Lower Columbia River below the Bonneville Dam, as well as some of the growth on non-Indian fisheries in the ocean waters. In 1957, the District Engineer of the U.S. Army Corps of Engineers had issued a directive that local projects and Corps personnel "will not intervene in any controversy between the Indians and State fish authorities on enforcement of State laws", when they "may solicit your help in this connection." Actually, the States had sought a federal prohibition of continued Indian fishing under a "subordination of rights agreement" between the United States and the Tribes for protecting the operational integrity of The Dalles Dam Project. The States had hoped that the U.S. would use the authority of that agreement for closing 130 miles of river above the Bonneville Dam to Indian fishing -- while leaving the non-Indian commercial and sportsfisheries unaffected in the 140 miles of the Columbia River below Bonneville. Emphasizing that the States wanted to "prohibit all commercial fishing above Bonneville", the Corps of Engineers noted that, although "during the negotiations with the Indians it did not appear feasible to define all of the areas where" fishing should be restricted, the agreement had only specified "approximately 600 feet from any part of the dam, powerhouse, locks or fishways and includes the south bank of the river opposite the powerhouse" of The Dalles Dam only. The Corps concluded that, "in keeping with the intent of the agreement, Indian fishing.....will not be objected to, so far as this office is concerned, in the other areas of the reservoir."

The U.S. District Court for Oregon was later to rule that the 1958 regulations of Oregon for the Columbia and Snake Rivers, and their tributaries, were invalid and unlawfully discriminatory against Indians. The Ninth Circuit Court of Appeals upheld that decision in behalf of the

Umatilla Indians in February of 1963. After Congress failed to enact legislation in 1964, which would have either subjected all Indian fishing to State regulation or purchased these treaty rights from the Tribes, the Oregon Fisheries Director, Robert W. Schoning, dedicated the remainder of his tenure in that office to a goal of preventing a regrowth of the Indian fisheries to their historic levels. He wrote that the reduction of the Indian fisheries by two-thirds from pre-1957 levels, had allowed the non-Indian commercial fisheries to increase harvests by as much as 1½ million pounds, and "certainly is the most preferable distribution of the salmon harvests." He pointed out that the State had been spared the necessity of imposing even more restrictions on "our fishermen" than would have been required without reductions in escapements of the salmon to the Indian fisheries. In the 1970s, Mr. Schoning was appointed to a ranking regional position in a federal agency governing commercial fisheries policy, where he continued his efforts to "reduce the proportion of salmon taken by the Indians."

According the former Assistant U.S. Attorneys General Carl Martz and Edwin Weisl Jr., the United States felt obligated to bring lawsuits against both the States of Oregon and Washington in 1968 because of their "collusion in acting against the Indian treaty fishing rights", and also because of a reported plan or strategy for the two states to contrive a "friendly lawsuit" for attacking the treaties. Washington was to sue the State of Oregon for allowing Indians to fish for steelhead on the Columbia River, which was prohibited by Washington law. In 1968 and 1969, the Attorney Generals Offices of each Washington, Oregon and Idaho were providing joint counsel to Governors Dan Evans, Tom McCall, and Don Samuelson of the respective States on court decisions and legal strategies. After the 1968 Puyallup I decision was issued by the U.S. Supreme Court, the three Governors were

informed that the 1963 ruling of "the Umatilla case is no longer valid." That case had imposed a requirement of halting non-Indian fishing prior to acting for the prohibition or restriction of Indian treaty fishing, and then only when "indispensible" to conservation. Schoning advised the members of the Oregon Fish Commission in April 1969, that "notwithstanding the Supreme Court Decision in the Puyallup case", Oregon law would still not permit any Indian fishery above Bonneville Dam -- unless the "above-Bonneville fishery (is) open to Indians and non-Indians alike." He also advised them that Washington Fisheries Director Thor Tollefson had informed him that Washington could no longer "prohibit the use of setnets for an Indian fishery because they did not have a conservation basis for such a gear restriction" above Bonneville. Oregon did proceed to reserve the Lower Columbia -- being outside the primary customary fishing grounds of the Tribes -- for the non-Indian commercial fishery, and then to extend the area above Bonneville to non-Indian commercial fishermen on the same schedule as was then opened to Indians. The effect would have been to maintain non-Indians in their existing fisheries, while reducing the Indian harvests even further by the introduction of new non-Indian commercial fishing into the geographically-limited treaty fishing grounds. However, the Belloni Decision in the case of United States vs. Oregon became an operational remedy against that plan. Had not the State of Washington secured its dismissal as a party to that lawsuit, there likely never would have been a separate United States vs. Washington producing the Boldt Decision.

In recent decades, the salmon resources of the Columbia River system, including the Snake River on into Idaho, have suffered a great range of adverse impacts. It borders upon the obscene, at this late date, to have State fisheries managers now assess the costs of protective measures for some surviving stocks against the fish themselves or against "natural production"

of salmon. In large measure, the costs can be assessed against long-term dereliction of duty and dishonesty in government; or, agencies acting still "in disguise of the public good".

In recent months, the Yakima Nation has been exploring prospects of opening up Yakima tribal fisheries on Puget Sound, consistent with certain findings of facts in the Boldt Decision. While public statements have indicated a plan for an extremely limited fishery, I would have serious doubts that all 14 consolidated tribes and bands of the Yakima Nation were successor to a determined right of taking fish throughout the North-South expanse of Puget Sound. The right held under the Yakima Treaty would most likely be offset by an equivalent right of Puget Sound Indians on the Columbia River. Additionally, if there is any relationship to, or foundation in, the ancient common law on fisheries or the law of nations for these treaty rights, the Yakimas' "right of resumption" in Puget Sound fisheries might properly rely upon both "favorable circumstances" and a "sufficiency of resources" for satisfying the needs of, at least, the local resident tribes, before Yakima members might resume fishing.

B. The Value of Fishing for Steelhead.

Any Congressional Act totally prohibiting the commercial fishing of steelhead by treaty Indians would stand as a monument to both racism and irrationality. This would be moreso true, if the legislation followed the form of proposals contained in the "new artificial production programs" outlined in the final proposal of the Federal Task Force on Washington State Fisheries issued in 1978. Most, if not all, tribes have indicated substantial willingness to impose limitations upon the level of their steelhead harvests and to designate a large majority of streams as non-commercial or no-net

fisheries -- with exception of fewer than ten streams, where net fisheries remain reasonably justified or necessary in the foreseeable future. Quotas have been generally acceptable even on those streams. There exists substantial belief, as well, that a number of tribes can contribute significantly to the increased production of steelhead in a larger number of streams, including their enhancement or increased availability to sportsfishermen. As soon as the Federal Task Force decided to favor "de-commercialization" of steelhead, its members immediately struck steelhead from all the production plans in all tribal facilities that they proposed be funded. The Task Force informed the U.S. Commission on Civil Rights that its decisions on steelhead would have to be characterized as being purely "political"; and that, as far as management considerations and supplying steelhead to both Indian and non-Indians in numbers equal to or exceeding past catch levels, steelhead should constitute "no problem". The "problem" was "politics".

There has never been a complete public accounting of the sources of funding of artificially propagated steelhead in Washington streams. A number of artificial valuations have been issued and carried in the public news media. The claims of a sportsfishery subsidy to Indian commercial fishermen have been grossly exaggerated, and often contrived to include streams where no State plants of steelhead have been made. The sportsfishermen who buys a steelhead punchcard and a fishing license for a combined cost of around $10.00 to catch an average of two $140.00 (sports caught) steelhead would seem to be the person subsidized to a value of $270.00, minus his personal expense in catching them. That Game Department valuation for steelhead, however, is the valuation of artificial production costs of one of those two steelhead, plus the average expense costs for non-success by most steelhead fishermen. Sports-value for steelhead is partly dependent upon how much all other fishermen spent for their boots or waders and raincoats.

In the past 25 years, the rate of non-success among steelheaders has risen from little more than 50% to more than 80%. The 20% who catch the total of sports-caught steelhead carry home the artificial value in fish of money spent by the 80% who carry home nothing. Those who catch nothing, however, are yet accounted as having averaged a catch of 1+ or 2 steelhead for the year. The steelhead's montetary value to Indian families is both more real and direct, and counts only when caught. A pervasive attitude among many who would rather see the total destruction of the steelhead resource than have any caught commercially by Indians has been "rewarded", or transformed into near-reality, on the Puyallup River. There, annual sports harvests have been reduced by 90% -- and the Indian harvests reduced comparably to an allowable total of 446 steelhead this past season -- under the continuing jurisdiction and management of State Court Judges since 1962. Perhaps the Congress would be wise to take the Puyallup River steelhead resources into its receivership to appoint a responsible conservator for managing their recovery and the restoration of harvestable levels ranging between 13,000 and 19,000. Indian tribes themselves can play a vital role in providing increased opportunities in the catching of steelhead by a rapidly increasing non-Indian population in Washington State. A recognition of that positive role would serve that purpose and make the actual experience of catching a steelhead more accessible to more people in the future. Adherence to present State policy, or to the Federal Task Force proposals, will serve only the selfish ends of those calculators of false values --- who are satisfied that most people in the State will never have a real opportunity to catch a steelhead, by any means.

C. Task Force Proposals and "Equal Opportunity".

In the final months of the Ford Administration, an Inter-Agency Task Force on Washington Indian fishing rights was being developed to prevent establishment of a Commission, proposed in a bill by Congressman Lloyd Meeds, which would have been instructed to return proposals for extinguishing rights and authorities of Indian tribes. When the Carter Administration was inaugurated, discussions immediately commenced between its new policy-makers and the Washington Congressional Delegation for acting on the issues. On March 11, 1977, the Administration and the Delegation met and decided to utilize the Task Force plan to implement the measures that had been outlined in Congressman Meeds' earlier bill. It was agreed that the "first goal" should be the elimination of steelhead from Indian commercial fisheries by "trade-offs" for "a corresponding enhancement of salmon runs". An August 1977 target date was set for securing agreements with tribes on that particular point. Although other goals were less well-defined, the Task Force remained faithful to its initial instructions from Congressional members in its subsequent operations and reports. To do so, the Task Force was obligated to ignore the facts and findings ultimately developed by its contracted staff and consultants. From the beginning, the Justice Department was "assigned the nominal lead" for the effort, although the Administration stressed that "this should not be done publicly."

By the beginning of 1979, the $205,000,000 solution of the Task Force had been discarded at both the State and national levels. While the Indian fishery initially had been perceived as the "problem", or the Tribes' declared right to half the salmon resources, less than one-third of the designated price tag had any direct relationship to Indian projects -- and almost one-fourth of the portion which did, would have been directed toward

establishing new Indian fisheries or enlarging existing fleets. A more substantial fund was proposed for effecting a modest reduction in existing non-Indian fleets. The most promising feature of the Task Force Plan was its proposal for a doubling of salmon resources by construction of additional hatcheries and salmon propagation projects. However, the federal Office of Management and Budget (OMB) has since decreed that requests may not exceed $40,000,000 for total hatchery funding through Fiscal Year 1989 -- or the first ten years of any final plan adopted -- and including all federal, State, and tribal construction projects. By the time of making that determination at the beginning of 1979, both OMB and the Justice Department were working with reference to plans developed by the State and its non-Indian fishery user groups, rather than the outlines provided by the Task Force, per se. The content of the separate plans, nonetheless, have much in common. Most notable of these attributes are those proposed invasions of Indian reservation rights and resources, which were not at issue in the United States vs. Washington lawsuit and which stood as accepted rights and uncontested issues prior to the Boldt Decision -- and prior to the Task Force's regarding them as saleable, trade-off commodities for its Plan.

The same problems which existed in the IPSFC fisheries, as detailed by that commission and the University of Washington in the latter 1950s and early 1960s -- and not attributable to either Indians or the Boldt Decision -- would exist in the fisheries under the Task Force's "fleet reduction" and "equal opportunity" concepts. As was found in the Canadian (British Columbia) experience with "fleet reduction", single vessel efficiency increased and the sharing of resources became more disproportionate among remaining fishermen. It remained a "first opportunity equals success; later opportunity means failure" fishery, whether operating in the space of a single day or a season,

and for most vessels fishing within sight of one another. The most devastating evidence used against the Nisqually, Puyallup and Muckleshoot Tribes, in the cases brought against them by the State in 1962 and 1963, were those studies showing that as much as 80% and 95% of all available salmon passing through certain areas in 12 and 24-hour periods had been taken by the first onslaught of nets. Actually the expert witnesses had related information from the non-Indian fisheries in the Lower Columbia River and on Fraser River stocks -- and had never even seen the Indian river fisheries which they claimed "would destroy the resource". (The State withheld its own Departmental observations and statistics which proved high-level escapements beyond the individual and collective constellation of nets in these river fisheries regulated by the Tribes.) The proposals for "fleet build-ups" for various Indian tribes will only exacerbate existing problems in a number of geographically-fixed fisheries of Tribes, and compound inequities in the harvest opportunities available to other tribal members, plus other Tribes. If these new Indian boats do not share the designed-in, prevalent failure existent among non-Indians fishing at the "same time, same place, and with the same gear", they will continue to be blamed as the cause for that failure.

This nefarious use of the phrase, "equal opportunity" fishery, founded upon the principle of, "everybody takes his chances", is nothing more than another designed deprivational vehicle. It makes no more positive acknowledgement of the reserved treaty fishing rights than the State's prior zoning of all commercial salmon fishing into areas outside most Tribes' customary fishing grounds -- which were then encompassed in "salmon preserves" -- and limiting Indians to hook-and-line fishing in waters where major salmon species stopped biting or feeding. Ironically, the State-sponsored, non-Indian

user-group proposals for Congressional legislation is based upon defined allocations of resources to themselves -- and premised upon the belief that their rights, unlike "ancient treaty rights", should be inviolable. They have calculated their expenses and operating costs, additional to a generous measure for livelihood, to determine numbers of salmon which should be locked into any division of existing salmon resources, and increased supplies. Reluctantly, they agree to sacrifice the least successful fishermen from among themselves, but only through high-cost buy-back and premium bonus incentive programs. One can almost perceive, if not the legislative genius, then the self-serving spirit of former State Senator Augie Mardesich behind this proposal. Perhaps it would do more credit to him, than his prior earnest demand that all State and Federal funding for all Indians in all programs in the State be cut off completely until the tribes might relinquish all claims to treaty fishing rights. Such proposals, without complaint from press or public, would not disturb his annual $34,000 public-funded pension, but leave him free to supplement it with planned $700,000 summer fishing seasons similar to that announced in 1978. He can draw further from a lucrative law practice, yet be spared the public enmity which the Washington Congressional Delegation reserves for attorneys employed by Indian tribes. He truly is an architect of "equal opportunity" without equal, and perhaps as well as anyone illustrates how very nefarious "equal opportunity" can be, either in proposal or in application.

D. Pure Strains of Racism.

All members of the population have interest in the salmon and steelhead resources, but no person has an unlimited right to take from those resources. Where finite resources are sufficient in supply to sustain a commercial fishing industry, a society has an affirmative obligation to maintain a stable and healthy commercial industry -- a duty often violated in

both ancient and modern times -- or since first recognized as a societal, governmental, and economic principle. Both the public right and the private right in fish and wildlife resources theoretically is constrained before any one might do irreparable harm to the resources, or "destroy the subject matter of the right." The salmon resources cannot sustain an unlimited commercial industry upon them, and the industry must be limited before it destroys either the industry or the resources. All citizens of Washington State cannot be commercial salmon fishermen, and relatively few can secure a livelihood from those resources. Yet, it is in the interest of society that some do so. The present level of harvestable salmon would provide only two to three salmon for each of the 3.7 million people in the State, if the resources were subject to either a per capita harvest or distribution each year. The present level of harvestable steelhead would disappear after per capita distribution to less than one-tenth of the population. An acceptable allowance must be made for an equitable distribution or division of harvestable resources within a population -- which may be satisfied largely by a disinterest of most people taking a share personally. (Using another current example; we may concede that all people in the State have an interest in the resident or migratory moose herds found in a limited region of the State. No one is shocked that only three (3) persons will be able to hunt all the moose which may lawfully be killed in Washington in 1979. "All" equals "three moose" in this case; but they shall not be hunted, killed, and taken by 3.7 million people or hunters. A standard of "equality" can be maintained -- and is maintained -- among the total population, even though the total harvest and hunt shall be undertaken by fewer than one-millionth of the population.)

A different standard has been controlling in the harvests of salmon and steelhead by Indians and non-Indians in this State, both before and after the Boldt Decision. The rights of the treaties have been denied, and the

displacement of Indian people from commercial fisheries been rationalized, by "justifications" rooted in racism. While the combined numbers of both Indian and non-Indian commercial salmon fishermen for some time has been an ever-decreasing fraction of 1% of the total population in the State, the division of resources among them -- as managed by the State under its laws -- has not been perceived or made on account of their industry; but, instead, was given to one and taken from the other on account of race. It was claimed -- even when the Tribes' collective catches fell below 5% of the total salmon harvests -- that the Indians' fraction of 1% of the State population was asserting "superior" rights and taking an excessively disproportionate volume of salmon for that small segment of the population. That the non-Indians' fraction of 1% was taking 80% or more of the total salmon harvests was regarded as nothing more than their minimal, rightful share -- not because there were more than 3 million commercial fishermen among them, but on the grounds that 99% of the population in the State is non-Indian or predominantly white.

At the resource harvest level, this is tantamount to a claim that "shares" in the salmon not utilized by the white non-commercial fishermen, and non-fishermen, accrues to those white persons who are commercial fishermen -- and should be denied to those Indians who are fishermen. The more insidious form of applied racism comes with the operative notion that the total benefits of government spending of public funds on fish resources -- whether passing through State or Federal treasuries by general appropriations, or being expenditures from the various categories of dedicated funds or trust accounts derived from specified fees or taxed activities -- again, should accrue solely to white fishermen, commercial or sports. The notion that it is a process of whites collectively raising revenues for the benefit of whites,

undoubtedly, is widespread. However, that is not what the process, in fact, is supposed to be. The revenues originate with the total population, irrespective of race, and only a small portion of the total funds are derived from those direct users of the salmon and steelhead resources. As discussed previously with respect to steelhead, most fisherman who actually catch salmon or steelhead have gained a return value -- indeed, a real value -- that exceeds their personal contribution to governmental costs in management or production. The value of the actual catch, or harvested fish, general exceeds what they have paid for licenses, punch-cards, and in various taxes relating to their activities and the governmental functions regarding fisheries. This is true for both non-Indian and Indian fishermen. It is not a case of Indians being "subsidized", and non-Indian fishermen fully "paying their own way" or for the resources.

One of the most difficult problems for Indian people in the matter of resolving differences and disputes over issues of resources management and utilization has been the problem of institutional racism within both federal and State agencies. That is a subject which can not be adequately addressed in this paper. The extent to which its injurious forces are given free rein to work damagingly against Indian people is largely dependent upon the general political climate, the alignment of political parties in power within the federal and State governments, and with whom or where political and policy-making power resides within each of the two governments. In the last half century, in any given Administration, there have only been a few conscientious powerful persons in government who have blocked State efforts to totally restrict or eliminate the off-reservation treaty fishing rights. In the present national Admini-

stration, Indian people and Indian treaties of the Pacific Northwest stand without any defenders or advocates in their support, or with the fewest and least powerful of any Administration in the Twentieth Century. It is a new situation for the Tribes. If they must fight for their treaties and their tribal fishing rights in the immediate future, months or years, it will be the first time they have had to do so while there existed a moral vacuum in the highest levels of government -- in the White House, the Justice Department, and at Interior.

3. Additional Personal Views and Conclusions.

The final statements in this paper reflect personal views and opinions which are related to issues previously discussed and, in being consistent with the study of the treaty rights presented in pages 2-49, are relevent to a number of continuing problems and issues.

(1) The treaty fishing rights of Indians are not a right to, or guarantee of, wealth from the salmon and steelhead resources to any individual Indian or group of individuals. While the treaties were to ensure the return to the tribal customary fishing areas of sufficient fish to satisfy the collective needs of the tribes and their fishermen or families, including needs for an equitable livelihood from a commercial fishing industry, a 50% division of all salmon and steelhead resources passing into or through customary fishing grounds was not contemplated in the treaties. The nature and habits of the species allow that the Indian needs might constitute a volume of fish which could either exceed or be considerably less than 50% of harvestable numbers of salmon returning to their streams of origin, and not needed for spawning escapement; and the nature and habits of the species require a restraint upon interceptions of

the volumes or numbers of fish returning to satisfy those separate needs of sufficiency for, first, the spawning escapement and, secondly, the tribe and its fishermen. The treaties require that non-Indians accept that restraint in limiting their own individual and collective harvests in the conduct of any intercepting fisheries; and that they should impose that limitation upon themselves through their State government.

(2) The measure of "sufficiency" remains relatively constant, and itself incorporates the several, or all, categories of need. If the measure of "sufficiency" is being met by a sustained level of returning harvestable resources, that measure does not increase automatically with a new increase in resource production. For instance, if "sufficiency" is being satisfied by a given level of resource production, and there occurs a doubling of production; "sufficiency" is still satisfied at its former level, and does not double with the increase in production. The nature of the species will cause some fluctuations in production and, accordingly, effect periodic additions or deficiencies upon the measure of "sufficiency". Although increased production may be required to re-establish or attain a level of sufficiency, when that level is maintained, additional production is accounted to the surplus from which others' rights to the resources may be satisfied. Tribes might derive reasonable benefits from substantial surpluses, which might otherwise render a superior advantage to non-Indian fisheries and the levels of derivative income to fishermen, or which would not encroach upon sufficiencies in the non-Indian fishery volumes of supply. The total numbers of a Tribe's population, or the number of its fishermen, are material to its measure of needs--which is most closely proportionate to that number of fishermen deriving livelihood from the resource, more than any other factors considered in the determination of that measure.

(3) Hatchery fish introduced or released into the natural life patterns, habitat or environment, of other salmon and steelhead become subject to the Indian treaty right, and may contribute to its satisfaction in various manners and degrees. It is immaterial who owns or operates the hatcheries. The measure of fish volumes which may be taken under the claim of rights remains limited in the same manner as if the total resource was of natural production. The claim is limited to a sufficiency under the treaties, and not a fixed percentage, or 50%, of all available harvestable salmon.

(4) While the respective Tribes may enjoy advantages, or suffer disadvantages, relating to the geographic siting of their customary fishing locations -- and while the tribes should regulate their fisheries and fishermen in such manners as to utilize their locations to best advantage of all interests, including resource protection, maintenance of balanced production, equity among tribal fishermen, and so forth -- mobility within the fixed treaty fishing areas does not increase the amount of claimable resource volumes for harvest. If a tribe may permit a few of its individual fishermen to take excessive individual harvests, the remainder of that tribe's fishermen or members should sustain the burden of that excess, and another body of fishermen should not be compelled to suffer loss on account of it. When the limits or levels of stable fisheries are established, the adverse impacts of over-populating the respective fisheries with fishermen should be borne by those participants in the particular over-populated fishery, and burden of loss should not be imposed upon other fishermen or fisheries.

(5) The actions of the United States Government regarding the migratory fish resources originating within the aboriginal territories of the Tribes should conform to the obligations imposed upon it by the treaties

contracted with the Tribes in sequential order. To the extent that these resources and rights to them are controlled as subject matter of these several treaties, other federal determinations or dispositions regarding these resources should give precedence to the contracted obligations of the Indian treaties -- even above all other treaties -- unless or until the Indian rights might be extinguished by proper constitutional action of the United States. In its controls over, or in its failure to control, salmon fisheries outside the territorial and management jurisdiction of the State of Washington, the United States in the past has regularly acted obliviously to its obligations -- both to the Indian tribes and to the welfare of related salmon stream production systems -- under these treaties.

(6) Those Tribes whose aboriginal fishing grounds customarily extended into waters coming under the jurisdiction of the International Pacific Salmon Fisheries Commission should yet have recourse to those waters and the fish passing through them -- but, again, to an extent necessary to satisfy "sufficiency of needs", rather than 50% of total harvestable resources allocated to the United States. To the extent that the United States sacrifices other Indians' fisheries, or those Tribes' other fisheries, along with other stocks and species of salmon resources of Washington origin, in its agreements with Canada, there may be an assertable claim of rights to harvest an equivalency from the United States' IPSFC salmon allocations. It would be preferrable, for the good of the resources and for the best resolution of disputes among Indians and non-Indians, to act in agreements with Canada to minimize those sacrificial trade-offs in the future, as well as to control intercepting fisheries with some design of restoring optimum and balanced resources production in a number of stream systems in Washington.

In any case, to the extent that a Tribe's fishermen might satisfy, from the IPSFC fisheries, its collective or total tribal needs of sufficiency, there would occur a diminishment of need to satisfy the Tribe's measurement of right from other fisheries within its customary fishing areas or domain.

(7) The tribal treaty rights exist in the same character and nature as when the treaties were made in 1854 and 1855. They have not been changed, nor suffered diminution or modification by any Act of Congress in the interim. The state of the resources, subject of the the treaties, however, has changed. Numerous salmon stocks have suffered substantial declines, and the total volumes of resources have greatly decreased. The nature of salmon fishing rights, in my mind, requires recognition of the state of the resources, which partly determines controls imposed upon the exercise of rights in taking from them. Also, the nature of the right itself incorporates certain remedies to its violation or abuse -- by its own possessors, as well as by others. Remedies must apply against States and Tribes, additionally to individuals. The 50% division of fish decreed by the Boldt Decision, upon analysis, actually may not appear to be excessive in the furnishing of salmon to Indian fisheries, when considering the present state of resource volumes, exclusive of the Canadian-origin stocks in the IPSFC fisheries. Although the volumes most likely are not excessive, nonetheless I believe that 50+% division to be too arbitrary or strict in virtually every case of application -- and to be an avoidance of determinations of actual rights secured to Tribes as entities distinct from one another, similarly as distinct from the State. In fact, the 50% division can as readily and as wrongly be deprivational of Indian rights to distinct treaty fisheries under an applied implementation of that division, as an unchallenged implementation presumptively might prove excessive in other cases.

The more diminished or further removed from being an "inexhaustible" supply of harvestable fish, the more necessary it is to impose limitations upon the exercise of rights to the salmon. In order to satisfy an existing right, or to maintain an existing fishery, it may be necessary to prohibit an addition or entry of new harvestors upon that resource. To prevent destruction of that resource, it may become necessary to prohibit harvesting upon it altogether. Where more than one person or entity has a right to that resource, it is more equitable to subject that right to a "measured opportunity" or "measured equality" for sustaining the rights of all persons or entities in the resource, than it is to hazard the chance and emply designs whereby some have benefit of their right, and others are left with none, or no benefit of it. The nature of the treaty fishing right of the Tribes -- at least in my judgement -- incorporated the "laws of equality" as explicated in the "principles of the natural law as applied to the law of nations" given force prior to 1854. Generally, these would still be applicable today. The 50% division, while asserting a quantitative measure upon an indeterminate measure of resources, largely ignores the qualitative nature of the rights to them -- and those changes which that nature itself effects upon the exercise of rights when the volumes or conditions of the resources are in different states of being or supply. A consolidation of issues in the case of United States vs. Washington, instead of severing "environmental and hatchery issues" for a Phase II adjudication, might well have remedied or alleviated that deficiency.

A different approach for satisfying the Indian treaty right, and different standards for controlling management and harvest decisions and activities, would evolve from an application of this paper's analysis of the 1854 and 1855 treaties and treaty rights. Significantly, for instance, some tribes might be required presently to defer some measure of harvest rights

until such time as a recovery of resources and restoration of production levels might satisfy a more complete or full measure of rights. In a practical sense, Tribes such as the Nisqually are doing just that. If the right is construed as being 50% of whatever level of fish are available, then their rights can be considered fully satisfied when the harvestable resource remains at a near-zero, but divisible, base. It can not be construed as such, any more than it can be construed as 50% of the resource when it might exist at a "near-inexhaustible" state. In the low production state, a deferral of harvest rights may be suffered, with a "right of resumption" protecting them for future exercise upon a recovery of production. If that recovery shall carry production beyond the levels of sufficiency in needs, then that level or standard of sufficiency is invoked to impose a limitation upon the harvest rights. Of course, different production systems may satisfy distinct separate fisheries, and centuries of fisheries law has supported a concept of "stability" for distinct fisheries. Two prime examples of distinct fisheries, which scarcely supply a sufficiency to the fishermen relying upon them, are the Quinault River blueback salmon fishery and the Nisqually River winter chum fishery. Neither of those fisheries should be exposed to a diminishment or an impermissible increase of "instability" by an awarding of 50% of their volumes to altogether new fisheries, or fishermen who have not previously had any reliance upon them, in the absence of vastly increased new production to justify an entry of additional fisheries.

(8) In discussing standards which might be considered in the determination of extents to which the tribal treaty rights might be exercised or limited, I recognize that the most substantial causes for damages and injuries to the salmon resources, and for problems in the fisheries,

evolve from the pervasive failure of the State of Washington -- throughout its history -- to sustain a consistent program for the rational management of salmon resources and to employ reasonable control standards in the development and operations of the various commercial fisheries which have existed in any period of time. The current problems exist because of the contemporary disregard by modern governments of their duties to the salmon resources and to the total populations having interest in them. One may excuse the acts of 1856, when a United States military officer "sagaciously" threatened to destroy the fish resources of the Puyallup River, if Indians did not end their "war" on Puget Sound. But what can one say for the group of officials who met in the Governor's Office of the State of Washington in this very decade -- including the Governor, an Assistant Attorney General, the Director of Fisheries, the Director of Game, the Chairman of a Natural Resources Committee of the State Legislature, and a soon-to-be Justice of the State Supreme Court -- to inform non-Indian fishermen and their legal counsel of a strategy to virtually destroy the salmon resources of that same Puyallup River as a means for convincing the courts -- the United States Supreme Court -- that Indian treaty rights must be taken away? What does one say for the State's top fisheries managers, who participated in that meeting to explain that the State had confidence that it could bring the resources back, once the Indian treaty rights were eliminated under their strategy of pre-planned and State-regulated destruction of salmon resources? The problems are less the legacy of past generations than they are a product of modern politics habituated to the service of racist designs; the sacrifice of public interests for private advantage; and the result of public policy being forged in the constructs of deliberately dishonest actions and discourse.

(9) The various proposals for Congressional "solutions" to the "fishing rights problems" are committed to the proposition that commercial fisheries have been and ought to remain "greed-based industries". A most unfortunate aspect of the Boldt Decision's 50% allocation of resources to Tribes was its encouragement to some tribal fishermen that no limits should apply against individual harvests, and that half the total of all resources should be available to supply their personal wealth. Disparities in income levels among Indian fishermen, and among the several Tribes, have increased as the historic patterns of the white fisheries were adopted by these few Tribes and a small segment of the Indian fisheries. While the banners of "equal opportunity" and "free enterprise" are raised to justify a compounding of wealth for the wealthiest few among both Indian and non-Indian fishermen and vessel owners, and to sustain the lack of opportunity and the deprivation of benefits from the resources for most commercial fisherman -- Indian and white -- these phrases have been misapplied, partly as masks for greed and designed injustice. The economic principles advanced by Adam Smith in the year of American national independence were not devoid of "moral content" in proclaiming the positive attributes of "equal opportunity" and "free enterprise". These are not concepts or principles which countenance the looting of vulnerable natural resources, or a disproportionate division of them among men or industries whose endeavors in commercial fisheries historically are rooted in the moral purpose of feeding populations and satisfying needs of mankind from the natural productions of the earth.

Personally, I anticipate that the Supreme Court of the United States, and the Congress as well, will soon commit the matter of treaty fishing rights in the Pacific Northwest into either a new state of irresolution, or to "solutions" which are founded upon new injustices to Indians.

I do not perceive that either branch of government is prepared to act with reference to what Thomas Jefferson, in discussing treaties, characterized as, "the Moral Law of our Nature," to which mankind "is subjected by his creator", and which is to be embodied in a nation's treaties, and also be a primary determinant in their interpretation. It was "sometimes", as Jefferson stated, "called Conscience," and encompassed the "moral duty" that every man and every society owes to one another, and which constrains each from doing one another injury. I anticipate decisions that will be framed without reference to anything which the founders of the American nation would have recognized as being in the character of Morality, Conscience, Justice or Reason.

Hank Adams
April 1979

PART III: SELECTED BIBLIOGRAPHY AND PRIMARY SOURCES.

This bibliography is a listing of texts, manuscripts, essays, documents, legal opinions and briefs, and letter, memoranda, or file communications, which have been relied upon in writing this summary report. Parenthetical comments may follow some listed sources to denote usage in the text, or other importance of source content. Several categories of subject matter, time period, or the nature and form of source documents are indicated. Abbreviated citations are used when a source appears in a subsequent category afters its first citation.

A. Sources quoted in the Preliminary section, pp. ii - iv.

1. Smith, Adam, 1723-1790. An inquiry into the nature and causes of The Wealth of Nations (1776). Homewood, Ill., R.D. Irwin, 1963.

2. Senate Document No. 56, vol. III, 18th Congress, 1st Session, February 11, 1824, Request for Information from Secretary of War on plan for peace and trade with Indians; Sen. T.H. Benton, Chairman, Committee on Indian Affairs.

3. Vattel, Emerich de, 1714-1767. The Law of Nations; or, Principles of the Law of Nature as it applies. (1760) Translated from the French by Joseph Chitty, 1824. Philadelphia, T. and J.W. Johnson and Company, 1863.

4. Chitty, Joseph, 1776-1841. Commerce of Nations; A treatise on the laws of commerce and manufactures; five volumes. London, Printed by A. Strahan for H. Butterworth, 1824. Vol. 1, commercial law, including history of fisheries in Gr. Brit. and N. America, 1824.

5. Lewis, Meriwether and William Clark. Original journals of the Lewis and Clark expeditions, 1804-1806. 8 vol. Dodd, Mead and Company, New York, N.Y., 1905.

6. Meeker, Ezra. Ventures and Adventures of Ezra Meeker. Rainier Printing Company, Seattle, 1909.

7. Kappler, Charles J., Indian Treaties, 1778-1883. Interland Publishing Inc., New York, N.Y., 1972.

8. Stevens, Isaac I., Treaty Commissioner to Commissioner of Indians Affairs, Dec. 30, 1854, transmitting the treaty and proceedings of treaty commission from Dec. 7-26, 1854. National Archives, Record Group 75, Treaty No. 281, Special List No. 6, indexed at pp. 103-104. Washington, D.C.: 1949.

9. Senate Document No. 243, vol. 15, misc. 2, 66th Congress, 2nd Session, 1919-1920, transmitting a communication submitting a report made by the Secretary of War and the Secretary of the Interior as to the necessity for returning several tracts of lands to the Nisqually Indians.

10. Northwest Indian Fisheries Commission, "Formal Response to Settlement Plan for Washington State Salmon and Steelhead Fisheries", p. 94. Olympia, Washington, October 1978.

11. Pacific Northwest Regional Commission, Columbia Basin Salmon and Steelhead Analysis, Summary Report; Ed Chaney and L. Edward Perry, editors, for joint state-federal commission. Portland, Oregon, September 1, 1976.

12. Bryant, Nelson. "Eastern Salmon Fight for Lives," article, Copyright 1978, New York Times News Service. Printed in The News Tribune, Tacoma, Washington, Nov. 16, 1978, p. B-16.

B. Sources on the Law of Nations; Treaties; and Fisheries Law, Rights, and Regulation in England and America.

13. Magna Charta, text, 1215; Translation, The Making of Magna Charta.

14. Vattel, The Law of Nations, 1760.

15. Chitty, Commerce of Nations, 1824.

16. Smith, Wealth of Nations, 1776.

17. Jefferson, Thomas. "Opinion on the French Treaties, 1793.", The Portable Thomas Jefferson, Merrill D. Peterson, ed.; The Viking Press, New York, 1975.

18. Kent, Chancellor James, Commentaries on American Law; four volumes, 1829-1830, revised through six editions to 1846. Vol. 1, Law of Nations, from the Twelfth Edition, O.W. Holmes, Jr., ed. Vol. 3, fisheries law and federal Indian law, 5th edition, 1844.

19. Hale, Lord Chief-Justice, "De Jure Maris", circa 1667. Reprinted in Stuart A. Moore's, A History of the Foreshore and the Law Relating Thereto; Stevens and Haynes, Law Publishers. London, 1888.

20. Hall's Essay on The Rights of the Crown and the Privileges of the Subject in the Seashores of the Realm, and Of the King's Title to the Britjsh Seas, 1830; Revised and Corrected, together with extensive annotations, and references to the later authorities in England, Scotland, Ireland and the United States; from the revised, corrected and annotated Second Edition by R.L. Loveland, 1875; and published in the Third Edition, "With Notes, and An Appendix Relating to Fisheries, by Stuart A. Moore, A History of the Foreshore and the Law Relating Thereto; Stevens and Haynes, London, 1888.

21. Moore, Stuart A. A History of the Foreshore and the Law Relating Thereto; With Notes as to the Existence of Several Fisheries around the Coasts and in the Tidal and Non-tidal Rivers of the Kingdom. Stevens and Haynes, London, 1888.

22. "Commons and Rights of Common", A Complete Statement of the Whole Law of England, Vol. IV, pp. 441-614; The Earl of Halsbury and former Lord High Chancellor of Great Britain, editor in chief. Butterworth and Company, London, 1908.

23. "Fisheries", A Complete Statement of the Whole Law of England, Vol. XIV, pp. 569-641, annotated; The Earl of Halsbury and former Lord High Chancellor of Great Britain, editor in chief. Butterworth and Company, London, 1910.

24. Beveridge, Albert J. The Life of John Marshall, Volumes I and II; 1755-1801. Houghton Mifflin Company, New York, 1929.

25. Treaty of Independence, concluded November 30, 1782, and proclaimed April 11, 1783, between the United States and Great Britain; and Definitive Treaty of Peace, concluded September 3, 1783, and proclaimed, January 14, 1784, between the United States and Great Britain. (Article 3, titles, "Fishing Rights", and providing for a continuing "right to take fish" in remaining British territories.)

26. Treaty Convention of October 20, 1818. Transmittal of President James Monroe to the United States Senate on December 29, 1818, of Treaty and Documents, showing the course and progress of the negotions, dating from July 18, 1815, to December 29, 1818. American State Papers. Also, see S. Doc. No. 870, 61st Congress, 2d Session (1910); and House Ex. Doc. No. 84, 46th Congress, 2d Session (1881). (The 1818 treaty provides for a right of taking fish, or a modificiation of that right secured in the Treaty of Independence of 1782 and 1783, for citizens of the United States "in common with" inhabitants of British North America (Canada and Newfoundland). The published treaty and negotiation documents in the 1815-1819 period can possibly be construed as a guide to "contemporaneous understandings and applications" of the terms used in 1854 in the Indian treaties. The arbitrations and adjudications of fishing rights held under the 1783 and 1818 treaties, as modified by later treaties subsequent to 1870, occurring in the early 20th Century would not have the same import nor constitute a "contemporaneous application" which might have guided "understanding" of either party negotiating treaties a half century earlier in the 1850s. The parties presently before the U.S. Supreme Court in 1979, in my judgement, attach too much weight to the 1910 multi-volume Senate Document No. 84, and what transpired long after 1854 in the Canadian fisheries to American rights. To do so, suggests that the treaty authors of 1854 and 1855 were influenced more by a detailed comprehension of the future than they could have been influenced even by knowledge of or from the past.)

27. Frelinghuysen, Senator Theodore. "Senator Frelinghuysen on Indian Removal, April 9, 1830.", Documents of United States Indian Policy, Francis Paul Prucha, ed.; University of Nebraska Press, Lincoln, Nebraska. 1975. (Speech regarding use of Law of Nations in Indian policy of the United States.

28. Hobbs, Charles A., "Indian Hunting and Fishing Rights", George Washington Law Review, Vol. 32., No. 3, March 1964. (Provides some historical background to both Indian and non-Indian fishing rights. Perspectives of 1964 -- ten years before the Boldt Decision -- were held in a different context than 1979's.)

C. Sources Relating to the Status of Indian Rights and of Law and Policy Regarding Indians in the Colonial Period, and after Independence in the United States.

29. The Public Domain, Its History; With Statistics, and with References to the National Domain, Colonization, Acquirement of Territory; Administration and Several Methods of Sale and Disposition of the Public Domain of the United States, with Sketch of Legislative History of the Land States and Territories, and References to the Land System of the Colonies, and also that of Several Foreign Governments. Public Land Commission, Prepared by Thomas Donaldson of the Commission and Committee on Codification, from June 30, 1880, to August 7, 1882. House Miscellaneous Documents, No. 45, Part 4, 47th Congress, 2d Session. 1343 pages. Government Printing Office, 1884.

30. Blunt, Joseph. A Historical Sketch of the Formation of the Confederacy; Particularly with Reference to the Provincial Limits and the Jurisdiction of the General Government over Indian Tribes and the Public Territory. George and Charles Carvill, New York, 1825.

31. Laws of the Colonial and State Governments Relating to Indians and Indian Affairs, from 1633 to 1831, Inclusive: With an Appendix Containing the Proceedings of the Congress of the Confederation and the Laws of Congress from 1800 to 1830, on the Same Subject. Thomson and Homans, Washington City (D.C.), 250 pages, Compilation of Indian laws in the colonies and States; 72 pages, Compilation of laws of the Continental and U.S. Congress. 1832.

32. Davies, Bruce. "First Encounters" (24 pages) and "Colonial Relations" (24 pages); two essays from a study on Colonial Treaties and Indian Relations for the American Indian Policy Review Commission, a joint Commission of the House and Senate of the U.S. Congress, 1975-1977. Commission Files, Library of Congress. January 1976.

33. Collection of Colonial English Treaties. A Collection of Treaties and Treaty Documents from Miscellaneous Sources, and published compilations of treaties with the Six Nations (Iroquois), and a volume printed by Benjamin Franklin. Approximately 36 separate treaties, plus additional proceedings effecting agreements in the period between 1630 and American Independence for (1) the New England Colonies; (2) the Middle Colonies; and (3) the Southern Colonies. Compiled by Task Force One of the American Indian Policy Review Commission, 1975-76. Commission Files, Library of Congress, July 1977.

34. Regulating the Indian Department, House Report No. 474, 23d Congress, 1st Session, May 20, 1834. (This Report accompanied bills revising the "Indian Trade and Intercourse Acts", the organization of the Indian Department, and the organization of the Western Indian Territory (primarily Oklahoma, but then extending into what were to become adjacent States.) Those bills became law and, while being the first comprehensive restructuring of law and administration by law since 1802, these measures were controlling on Indian Affairs until after the Civil War. Subsequent treaties were drawn with reference to the 1834 laws, and its rationales and provisions were incorporated into the form and content of the treaties -- including those in the Pacific Northwest. Brief extracts from that Report are relevent to the expressions of concern cited at pages 37-38 of my analysis that Washington Territory would remain "Indian country" until the treaties were ratified and Indian title "extinguished": "It will be seen that we cannot, consistently with the provisions of some of our treaties, and of the territorial act, extend our criminal laws to offenses committed by or against Indians, or which the tribes have exclusive jurisdiction; and it is rather of courtesy than of right that we undertake to punish crimes committed in that territory by and against our own citizens. * It is not perceived that we can with any justice or propriety extend our laws to offenses committed by Indians against Indians, at any place within their own limits." (p. 13) "Our inability to perform our treaty guarantees arose from the conflicts between the rights of the States and of the United States. * The case is now free from all the embarrassments of conflicting rights. The guaranty now stands as an obligation which the Government will at all future time have power to perform; we can look around it, there is no doubt, no obscurity about it; even to the Indian eye it is as clear and well-defined as the edge of the circle of the sun. * The right of self-government is secured to each tribe, with jurisdiction over all persons and property within its limits, subject to certain exceptions, founded on principles somewhat analogous to the international laws among the civilized nations. Officers, and persons in the service of the United States....must necessarily be placed under the protection, and subject to the laws of the United States. To persons merely travelling in the Indian country the same protection is extended. * Some provisions, however, seems necessary to prevent the violation of the laws of the tribes, when such violation would not be an infringement of the laws of the United States. * As to those persons not required to reside in the Indian country, who voluntarily go there to reside, they must be considered as voluntarily submitting themselves to the laws of the tribes." (p. 18).)

35. Schmeckebier, Laurence F. The Office of Indian Affairs: Its History, Activities and Organizations. Appendix 5, pp. 397-508, titled, "Laws", provides a compilation of general statutes of the United States, enacted through the national history, and remaining in force as of July 1, 1927, regarding "the general rights, privileges, and restrictions of the Indians". (The 1834 Acts are partially included.) The Johns Hopkins Press, Baltimore, Md., 1927.

36. Schoolcraft, Henry R. Information respecting the History, Condition and Prospects of the Indian Tribes of the United States: Collected and Prepared under the Direction of the Bureau of Indian Affairs, Department of the Interior, per Act of Congress of March 3d, 1847. Published by Authority of Congress. Part V, Title XV, "Subjective Division, Statistics and Population", pp. 475-506. J.B. Lippincott and Company, Philadelphia, 1855. (The population chart at pp. v-vi, in the Preliminaries to this Paper, are from this source, at pp. 490 and 491.)

37. Snow, Alpheus Henry. The Question of Aborigines in the Law and Practice of Nations: Including a Collection of Authorities and Documents; Written at the Request of the Department of State. Chapter 3, "Aborigines as the Wards of the State which exercises sovereignty over them," at p. 31; Chapter 4, "The Relations between the Power over Aboriginal Tribes and the Power over Colonies," at p. 56; Chapter 6, "Rights of Aborigines in Land," at p. 114; "Duties of States as Guardians of Aborigines," at p. 174; "The Legal Effect of Agreements between States and Aboriginal Tribes," at p. 191; and Chapter 14, "The Doctrine of 'Intervention for Humanity' and its Effect on the Development of the Law of Nations regarding Aborigines." G.P. Putnam's Sons, New York and London, 1921. (This tract comes across as a defense or justification for global imperialism, and is not favorable in its views on the legitimacy of Indian rights, to which it devotes substantial discussion, from 1763 to the early 1900s. It would, on the other hand, impose more demanding obligations upon the United States in the trust relationship to Indians, which it does support. It is more interesting than it is authoritative; but makes some of the same cases, and on the same grounds, that are being carried into courts around the United States today by non-Indians and States attempting to extinguish rights of Indians.)

38. Report on Trust Responsibilities and the Federal Indian Relationship, Including Treaty Review, Task Force One of the American Indian Policy Review Commission, U.S. Congress. pp. 33-136 and 285-315. U.S. Government Printing Office, 1976.

39. "Tax Receipt," Photo with caption story, The Washington Post, November, 26, 1975. (Showing Indians in front of the State Capitol, carrying a deer bound to a pole; the caption states: "Continuing tradition dating back to 1646, Pamunkey Indian Chief Tecumseh Deerfoot presents Virginia Gov. Mills E. Godwin Jr. with tribe's annual tax payment, a six-point buck deer, in ceremony at Richmond Monday.")

40. Articles of Peace Between the Most Serene and Mighty Prince Charles II; By the Grace of God, King of England, Scotland, France and Ireland, Defender of the Faith, Etc., and Several Indian Kings and Queens, Etc., Concluded the 29th day of May, 1677. Published by His Majesties Command; Printed by John Bill, Christopher Barker, Thomas Newcomb and Henry Hills, Printers to the Kings Most Excellent Majesty. London, 1677. (Treaty with the Indians of Virginia, forming them as tributaries to the King of England, as represented by the Colony and Royal Governor of Virginia, and providing for an annual tribute. The Indian Kings and Queens were each to "have equal Power to Govern their own People, and

none to have greater Power than other, Except the Queen of Pamunkey, to whom several scatter Nations do now again owe their ancient subjection, and are agreed to come in an Plant themselves under her Power and Government". The English were not to establish plantations within three miles of the Indian townships. The treaty also provided that the "Indians have and enjoy their wanted conveniences of Oystering, Fishing and gathering Tobacco", or "anything else for their natural support" "upon the English Dividends" (commons). They were not to be "refused", so long as they provided advance notice of their "number and business". This was, in form, a "tributary relationship" under the Law of Nations, and caused these tribes to come under the sovereignty of Virginia, successively as a Colony, then a State. It differed in many respects from relationships formed with other Indian nations, more powerful and independent, during the colonial period and the first century of the United States history. The Law of Nations prescribed also that the "dignity of treaties" reflect "equal rank" among sovereigns, and that, if different titles did not denote equality in themselves, the higher ranking title might be used for both parties, irrespective of actual titles not used.)

D. Sources Relating to The Making of Treaties with Indians the Pacific Northwest, and the Nature of Indian Rights in the Salmon resources outside of Indian Reservations.

41. Swindell, Edward G., Jr. Report on Source, Nature and Extent of the Fishing, Hunting and Miscellaneous Related Rights of Certain Indian Tribes in Washington and Oregon; Together with Affidavits Showing Locations of A Number of Usual and Accustomed Fishing Grounds and Stations. 483 Pages, Including Part III, Appendices "A" and "B" Consisting of Minutes of Treaty Councils and A Digest of Treaty Provisions. Office of Indian Affairs, Division of Forestry and Grazing, U.S. Department of the Interior; Los Angeles, California, July 1942.

42. Senate Executive Document No. 1, 35th Congress, 2d Session, pp. 576-588, President's Message and Report of the Secretary of the Interior; No. 81, Annual Report for Puget's Sound District, Washington Territory, Indian Agency, Olympia, June 30, 1858. (Quoted at pages 37-38, this Report, regarding jurisdiction and "unextinguished" Indian title. Also, reports failures in Puget Sound salmon runs in the previous seasons.)

43. Fox Island Council Proceedings, Executive Order of January 20, 1857, Executive Order File 1850-92, Records of Bureau of Indian Affairs, Record Group 75, National Archives, Washington, D.C. Minutes of Indian Council between party of Gov. Isaac I. Stevens and men of the Nisqually, Puyallup and Snohomish tribes; Fox Island Reservation, August 4, 1856.

44. Lane, Barbara. Anthropological Report on the Identity, Treaty Status and Fisheries of the Nisqually Tribe of Indians. 31 pages. Transmitted as proposed final report, undated and without title page, to Mr. George Dysart, Regional Solicitor's Office, U.S. Department of the Interior, with cover letter dated March 1, 1973, for use as evidence in United States vs. Washington.

45. Lane, Barbara. Political and Economic Aspects of Indian-White Culture Contact in Western Washington in The Mid-19th Century. May 10, 1973. USA Exhibit No. 20, U.S. vs. Washington, Civ. No. 9213, U.S. District Court for Western District of Washington.

46. Lane, Barbara. Anthropological Report on the Identity, Treaty Status, and Fisheries of the Nisqually Tribe of Indians. USA Exhibit No. 25, U.S. vs Washington, 1973.

47. Exhibits in U.S. vs. Washington, 384 F. Supp. 312 (W.D. Washington 1974), submitted in 1973. JOINT APPENDIX, In the Supreme Court of the United States, October Term, 1978, On Certiorari Granted October 16, 1978; Nos. 77-983; 78-119; and 78-139, consolidated. Volume of proceedings, exhibits and testimony in evidence; 641 pages. State Printing Plant, Olympia, Washington, 1978; pp. 325 - 420. (Barbara Lane Reports, pp. 351-416.)

48. Report of the Puyallup Indian Commission, Transmittal to the President from the Secretary of the Interior, U.S. Department of the Interior, Washington, D. C., February 6, 1892.

49. Brief File No. 115973-17, Volumes I and II, "Nisqually Allotment Condemnations," Documents to 1925, relating to Nisqually and other Tribes on Puget Sound; Title & Records Section, Portland Area Office, U.S Bureau of Indian Affairs, Portland, Oregon.

50. Uncommon Controversy: Fishing Rights of the Muckleshoot, Puyallup and Nisqually Indians. A Report prepared for the American Friends Service Committee. University of Washington Press; Seattle and London, 1970.

51. Walker, Deward E., Jr. Mutual Cross-Utilization of Economic Resources in the Plateau: An Example from Aboriginal Nez Perce Fishing Practices. Illustrated. Report of Investigations No. 41, Laboratory of Anthropology, Washington State University, Pullman, Washington, 1967.

52. Stewart, Hilary. Indian Fishing: Early Methods on the Northwest Coast; Photos and Illustrations (more than 450). University of Washington Press, Seattle and London, 1977.

53. Viola, Herman J. Thomas L. McKenney, Architect of America's Early Indian Policy: 1816-1830. The Swallow Press; Chicago, 1974. (Some discussion of policy of designed efforts to increase Indian trade and industry in the Pacific Northwest, to enhance claims in opposition to comparable British claims and efforts.)

E. Sources Relating to the Status of the Salmon and Steelhead Resources of the Pacific Northwest; and Relating to Federal State, Indian, and Other Activities in the Controversy over Fisheries and Treaty Fishing Rights.

54. Royce, Bevan, Crutchfield, Paulick, and Fletcher. Salmon Gear Limitation in Northern Washington Waters, Publications in Fisheries--New Series, Vol. II., No. 1. University of Washington; Seattle, WA, February 1963.

55. The Seattle Times, Report Series, April 4 thru April 14, 1976. "Boldt Decision Liked by Few," Copyright report of results of poll by the G.M.A. Research Corp. or Bellevue; April 4, 1976; and "Salmon in river of no return: A Times report," introducing series, April 4, 1976.

56. Indian Fishing Rights, Hearings Before the Subcommittee on Indian Affairs, Committee on Interior and Insular Affairs, 88th Congress, 2d Session, on S.J. Res. 170 and S.J. Res. 171; August 5 and 6, 1964. Government Printing Office; Washington, D.C., 1964.

57. Miller, Denny M. The Off-Reservation Indian Fishery Conflict in the Columbia River Basin. Graduate thesis, 44 pages, plus appendices, A thru F, pp. 45-68, complete. Submitted to Graduate School of Public Affairs, May 16, 1968, University of Washington. Appendix G, "An Economic Evaluation of the Columbia River Treaty Fishery, 1948-1967", 28 pages, plus an untitled Statistical Appendix (25 pages), is a working draft and review copy submitted to the Washington Attorney General's Office and Fisheries Department for review. Contains author's corrections, additions and deletions, and additional notes; and AG reviewer's comments. Statistical charts bear typed headings, with numbers and notes in longhand.

58. Indian Fishing: Summary Reports on 30 of the principal steelhead streams of Western Washington. Washington Department of Game; May 11, 1971. (Comparative data on Indian and sportsfishery steelhead harvests, and estimated hatchery percentage of harvests, for 1970-71 season and on 5-year average; and additional information.) 32 pages.

59. Richards, Jack. The Economic Impact of the Judge Boldt Decision. Summary report prepared by the Regional Economist (Richards) of the Northwest Region, National Marine Fisheries Service, U.S. Department of Commerce, at request of "members of the Washington Congressional Delegation." 25 pages, including 12 Tables. March 3, 1975.

60. Dysart, George D. "Memorandum," dated April 25, 1975, from the Office of the Regional Solicitor to the Area Director, Bureau of Indian Affairs, noting "a number of deficiencies which cast considerable doubt on (the) major conclusions and on the objectivity and validity of the" Jack Richards' NMFS Study, dated March 3, 1975. 4 pages.

61. "A Comparison of the Commercial Catch of Spring Chinook Salmon Made by Gillnetters below Bonneville Dam and Indians above Bonneville Dam during the 1970 Spring Season on the Columbia River"; Research Headquarters, Oregon Fish Commission. 13 pages. Clackamas, Oregon; April 15, 1971.

62. "Status of Columbia River Salmon and Steelhead Trout"; Fish and Wildlife Committee, Pacific Northwest River Basins Commission; prepared by Dr. Fred Cleaver, National Marine Fisheries Service, with editorial action by the Commission's Committee. 50 pages. Portland, Oregon; May 1972.

63. "Columbia River Fish Runs and Commercial Fisheries, 1938-70: Status Report; 1973 Addendum"; Joint Investigational Report; Fish Commission of Oregon, and Washington Department of Fisheries. Volume 1, No. 4; January 1974. 46 pages.

64. "Columbia Basin Salmon & Steelhead Analysis: Summary Report"; Pacific Northwest Regional Commission, edited by Ed Chaney and L. Edward Perry for the joint federal-state commission. 74 pages. Portland, Oregon; September 1, 1976.

65. "Troll Salmon Fishery of the Pacific Coast: Draft Environmental Impact Statement/Preliminary Fishery Management Plan"; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce. 75 pages. Seattle, Washington; September 1976.

66. "Indian Fishery: A Summary of Present Extent and Nature of Commercial Fishing by Indians on the Columbia River and Elsewhere in the State of Washington", with Anual Indian Catch Statistics, 1935-1938. A 14 page position paper outlining perceived need to halt all Indian commercial salmon fishing, on and off reservations; and indicating support of various federal agencies, excluding the Office of Indian Affairs and the U.S. Attorney's Office. Washington Department of Fisheries, Olympia, Washington; circa December 1939.

67. "1964 Indian Fishery on the Columbia River and Vicinity"; Summary of comparative data on fisheries "prior to inundation of Celilo Falls", and following years. Two pages, dated January 18, 1965; with transmittal letter, dated January 20, 1965, from L. Edward Perry, Program Director, Bureau of Commercial Fisheries, Columbia Fisheries Program Office, U.S. Fish & Wildlife Service, U.S. Department of the Interior, to Director, P.W. Schneider, Oregon State Game Commission. Portland, Oregon.

68. "MEMORANDUM RE: Puyallup Tribe v. Department of Game et al."; Joint Memorandum to the Governors of Oregon, Washington, and Idaho, from 5 Assistant Attorneys General in the 3 States. 2 pages. Undated statement, advising that the attorneys' joint study of the May 27, 1968, U.S. Supreme Court Decision (391 U.S. 392) written by Justice William O. Douglas, offered "four major points" and conclusions. (Briefly, these were: (1) Appropriate State agencies may determine the "lawful means by which Indians, in common with all citizens, can fish at their usual and accustomed places;" (2) "Any regulation which is promulgated concerning a fishery should be a blanket one

and not be an 'Indian only' regulation;" (3) "The states can establish limits, seasons, manner and method of fishing gear restrictions, etc., by proper regulation and in conformity with existing statutes;" and that the States have "the exclusive power to regulate the resources. Neither the Indian Tribes nor the Federal government have authority to regulate off-reservation Indian fishing and hunting. * The "Indispensible" test established in the Umatilla case is no longer valid. * so long as recognized and legal procedures such as public notice and hearing are followed, regulation of fishing and hunting for conservation of these resources will be upheld as valid." Circa June 1968.

69. Communications exchanges between John B. Glude, Deputy Regional Director, Bureau of Commercial Fisheries, U.S. Fish & Wildlife Service, U.S. Department of Interior, commencing January 31, 1969, and Directors of Idaho, Oregon, and Washington Fisheries and Game departments and commissions, relating to Glude's solicitation of documents and information for the joint purpose of "conducting an analysis of the Indian fishing controversy in the Pacific Northwest in an attempt to clarify the role of BCF in relation to state and other Federal agencies" and "using this study as thesis material for a Master's Degree in Public Administration at the University of Washington this spring."

70. Letter from Oregon Attorney General Robert Y. Thornton to Oregon Congressman Wendell Wyatt, dated January 29, 1969, relating to the United States vs. Oregon lawsuit, assigned to U.S. District Judge Robert C. Belloni. Also, transmittal letters of copies to Idaho, Washington, and Oregon fish and game agencies and Assistant Attorneys General, dated January 30 and February 3, 1969. (Letter to Wyatt notes that "the Bureau of Commercial Fisheries of the Department of the Interior was and is opposed to the filing of the complaint, but that the Bureau of Indian Affairs prevailed in the prolonged inter-agency struggle within the Department." It suggests that the "new (Nixon) Administration" be urged to review "this litigation, (and) the past policies", for the possible result of dismissing the lawsuit or "to authorize negotiations for a mutually satisfactory consent decree." The three States' position, as stated in the Joint Memorandum to the Governors was included in the letter to Wyatt for indicating a "satisfactory" arrangement. The transmittals to the various other AG Offices and agencies were told, regarding the letter, "we have given it no publicity and do not think it ought to be bandied about.")

71. "Indian Fishing Situation"; An Oregon Fish Commission Intra-Department Memorandum, dated April 11, 1969, from Robert W. Schoning to Commissioners Huffschmidt, Smith and Eoff. 2 pages. (Discussed on page 66, this Report.)

72. "Conference of Washington Fish and Game Directors with Secretary Morton, Olympia, June 24, 1974", A Memorandum of Transmittal, dated June 26, 1974, from U.S. Fish & Wildlife Service Regional Director, R. Kahler Martinson, to USF&WS Director Lynn Greenwalt, forwarding a "Memorandum to the File", containing a report on the substance of the Olympia Conference prepared by Deputy Regional Director, L.

Edward Perry. (Participants included the Interior Secretary, his Solicitor, and his national and regional executive and special assistants, plus Martinson and Perry from the USF&WS; the State was represented by the Offices of the Governor and Attorney General, the Directors of the Fish and Game Departments, their top biological and administrative assistants, and members of the Game Commission. Secretary Morton was responsive to the State objections to proceeding with plans for a South Sound Federal-Indian hatchery, and letters of opposition to the Nisqually hatchery were invited as a basis for ending that project. According to Perry's memorandum report, the Secretary "agreed that multiple management never works and should be avoided. ** He suggested our contracting with the State agencies ...and he promised to get personally involved, with the aid of the Solicitor, to resolve some of the problems that were discussed. Contracting with the State would not only provide a financial solution, but also concentrate the management responsibility in the proper agency--the State." In his memorandum to the USF&WS Director in Washington, D.C., Martinson characterized the meeting, which was unannounced and kept secret from the Indian tribes, as "a good session".)

73. Minutes and Transcribed Notes of Meeting, August 30, 1971, in the Office of the Governor, State of Washington. 14 pages. A partial transcription of statements of the Governor, Directors of the Game and Fisheries Department, a legislator, and non-Indian fishermen, discussing Indian treaty fishing rights, particularly on the Puyallup River. The Fisheries Director asserts that damage to the fish runs "will really help our case in court", and that his top biologist says that the resource will not be destroyed "completely", and that they "can bring it up from there provided we have the right to regulate it. We think our course of action is right in the interest of the overall and longer range overview." A non-Indian attorney initially protests and expresses the view that he "would rather we could better our position in some other way." Before acquiescing in the strategy, he again asks, "Do you think this is the only way to impress the court?" The Governor demonstrates an ambivalent attitude in the meeting, and particularly warns against any acts of violence being taken against Indians by the non-Indian organizations. He also states a reflective view that, "These fish are not the property of just the sportsmen. They are, in a very real sense, the special property of the Indians with special rights that are beyond the course of any other citizen whatever." He also notes judicial problems with "banning all" Indian fishing, because the State had never acted to "close down commercial and sports fishing, and then what's left is for the hatcheries -- and 'Sorry, Indians, that's all that's left.'" From the files of the Washington Attorney General's Office.

74. "Steelhead and Indians," for game department employees ONLY; April 1961, a departmental informational communication. 7 pages. (Discusses the enactment of Senate Bill 119, prohibiting the "commercial shipment of steelhead", and Indian fisheries, noting: "In this fight, the Department and sportsmen have 'nothing to lose'." Includes statistical information for 9 streams and the related sportsfishery and Indian

harvests for particular seasons, and on 5-year and 12-year averages. For the Puyallup River, it details that the "sports catch" consisted of "88.63%", and the "Indian catch" of "11.37%", from a 5-year average harvest level of 12,395 steelhead per year. The internal communication also states that: "We have heard sportsmen express the fact that the Indians are taking all of the fish. This is not true, but the fact that they do not take more id due to water conditions **. Obviously the nets have to be removed during periods of high water when there is heavy floating debris. Additionally, nets become less efficient during periods of low, clear water, although this latter is somewhat offset by reduced movement of fish during these conditions." These admissions were never made in the continuing court challenges against Puyallup Indian fishing, as filed in 1962 and carried to the U.S. Supreme Court for three separate decisions between 1968 and 1976, and still remaining in the Superior Court of Pierce County.)

75. "Indians Net-Fishing the Puyallup River", a memorandum report from Game Director John A. Biggs to the Members of the State Game Commission, dated October 28, 1953, including report of Game Enforcement Chief Walter Neubrech. 7 pages. (Biggs writes that: "A preliminary investigation on our part indicates that there is considerable reason to feel that the rights of the Indians may be substantiated because of an old treaty. ** The situation has far greater implications than might ordinarily be found in a case of this type. The Puyallup River is perhaps our most heavily fished steelhead stream. On opening day of the steelhead season it is not unusual to find in excess of 1,000 fishermen using the stream to support a heavy and very productive run of steelhead, additionally, to support various species of the fall types of salmon." Noting that the treaty right "is now denied to them", Biggs informed the Commissioners that the departmental attorney's opinion that "the Indian may, in fact, be possessed of various substantial legal rights." Neubrech's report advised of several conferences, where "It was felt by all those present that these tracts of land in question were a part of the nearly depleted Puyallup Reservation and that Puyallup Indians could legally fish it;" and that "This Department has never felt it had jurisdiction to enforce any state laws against Indians on their respective reservations." After citing the extensive use made of the river by the non-Indian steelheaders, Neubrech remarked: "In conclusion, should the Indians exploit this river to their utmost, it is quite likely that some of the steelhead fishermen who fish this stream may take the law into their own hands in abaiting this nuisance." Interestingly, the specific land tracts identified in 1953 as being part of the reservation and outside State jurisdiction became the scene of a massive police assault against Indian persons encamped there in 1970 for purposes of asserting the treaty right.)

76. "Mashpee Lands," Hearing before the Select Senate Committee on Indian Affairs on S.J. Res. 86; October 21, 1977. Statement of Senator Hatfield of Oregon regarding irresolution of the fishing rights disputes in the Pacific Northwest, and the problem of "racism in all of its ugly manifestations." At page 38.

77. "Discussion Paper: Department of Interior Responsibilities in Pacific Northwest Fisheries Program as Related to the Court Decision of U.S. vs. Washington and its Implementation"; Prepared Jointly by U.S. Fish and Wildlife Service, Region 1, Portland, Oregon, and Bureau of Indian Affairs Portland Area, Portland, Oregon. 26 pages, plus 18 exhibits. November 29, 1976.

78. "Legislative Program: Natural Resources, Environment & Energy Area"; A Memorandum of the Carter-Mondale Transition Planning Group from Katherine Schirmer, Team Leader, Natural Resources Cluster, Policy Analysis, to Stuart Eizenstat; December 4, 1976. 40 pages. ("National Indian Policy" is the final item discussed in this paper. After stating that "two major initiatives are possible in this area", the memorandum does not recommend either initiative. On the first of these, an "Indian 'Marshall plan'", the Policy Analysis concludes: "Since the entire question of Indian rights and well being is so enormously complex -- and the solutions potentially very expensive -- we would recommend against carrying this out as an early initiative." Radical restructuring of Indian agencies in government is also recommended against with comments on the "sensitivity and the complexity of the Indian problem", and a final remark or reason: "and the viability of the issue does not diminish with time.")

79. Memorandum on the Boldt Decision, from the U.S. Fish and Wildlife Service to the Assistant Secretary (Interior) for Fish and Wildlife and Parks, dated March 18, 1977. 2 pages, with 4-page attachment. Prepared by James R. Fielding, Chief, Legislative Services, USF&WS, and detailing the results of a meeting of March 11, 1977, "held in Congressman Lloyd Meeds' office and attended by government agencies and Congressional members interested in the Boldt Decision." (Included Meeds and Congressmen Don Bonker, Norman Dicks, and Joel Pritchard, and staff members, plus Denny Miller for Senator Jackson, and Michale Steward and Mark Greenberg for Senator Magnuson.) Details establishment, structure, and goals of the new Federal Task Force on Washington State Fisheries.

80. Proposed Settlement for Washington State Salmon and Steelhead Fisheries, Presented to all the Participants in the Fishery on January 16, 1978, by the Regional Team of the Federal Task Force on Washington State Fisheries. 199 pages, plus summaries. Seattle; January 1978.

81. Settlement Plan for Washington State Salmon and Steelhead Fisheries, Prepared by The Regional Team of the Federal Task Force on Washington State Fisheries; John C. Merkel, Chairman; Dayton L. Alverson and John D. Hough, Members. 348 pages. Seattle; June, 1978.

82. Marasco, Richard and Anderson, Eric. The Washington Salmon Fisheries: An Economic Profile. October 1977.

83. "Report to the Regional Task Force concerning Steelhead"; prepared by John Meyers, U.S. Fish & Wildlife Service Olympia Fishery Assistance Office, Olympia, Washington. November 10, 1977.

84. Northwest Indian Fisheries Commission, "Formal Response to Settlement Plan for Washington State Salmon and Steelhead Fisheries". 99 pages, plus separate 13-page Executive Summary of Formal Response. Olympia, Washington; October 1978.

85. "Comments on Settlement Plan for Washington State Salmon and Steelhead Fisheries and Alternative Fishery Management Plan"; Prepared by the State of Washington, Department of Fisheries and Department of Game. 107 pages. Olympia, Washington; August 22, 1978.

86. Letter to Attorney General Griffin B. Bell and Secretary of the Interior Cecil D. Andrus in Washington, D.C., from Washington Governor Dixy Lee Ray and Attorney General Slade Gorton, dated September 25, 1978, and transmitting a 5-page outline for a "Proposed Settlement Plan - Northwest Fisheries Dispute", and incorporating the content of reports previously supplied to the Federal Task Force on Washington Fisheries by the "State of Washington and the Commercial-Recreational Fisheries Delegation".

87. "Comprehensive Northwest Salmon and Steelhead Fisheries Legislation - Detailed Outline of Suggested Settlement Terms by the State of Washington; 49 pages; January 8, 1979. Letter of Transmittal, 2 pages, from Washington Department of Fisheries Director Gordon Sandison to U.S. Senator Warren G. Magnusen, dated January 8, 1979.

88. Regional Task Force, "Summary: Meeting with Medicine Creek Tribes; November 18, 1977." 5 pages. Task Force Files; Seattle, Washington.

89. "Discussion Paper Re Resolution United States v. Washington - Negotiations"; dated January 19, 1979. (Inter-Departmental communication, including funding levels established and approved by the federal Office of Management and Budget (OMB) for projected spending and limits on all components, including "hatchery programs" "over the next 10 years in an amount not to exceed $40,000,000. Federal program will match state expenditures." This 5-page outline, containing five headings, titled: "I. Equal Opportunity Fisheries; II. Enhancement Program and Habitat Protection; III. Resource Distribution; IV. Interim Financial Assistance; and V. Management", was developed under the auspices of Assistant U.S. Attorney General James Moorman as basis for a Federal-State agreement on a "solutions package", "with or without the Indians' agreement." It was characterized as the response to the State's "Proposed Settlement Plan" of September 25, 1978, as transmitted to the U.S. Attorney General and Interior Secretary from the Governor and State Attorney General. Distribution was restricted to selected persons, with instructions not to permit copying. Tribes and their Fisheries Commission were not provided copies. A final form draft was scheduled for submittal to the State and release to the public on March 1, 1979, the day after oral arguments were to be made in the U.S. Supreme Court on the several consolidated cases before it. On objections from the Tribes and non-Indian citizens' organizations, the final proposal for agreement was delayed for transmittal to the State, first to March 15, 1979; and, then, deferred indefinitely. In a letter dated April 2, 1979, Interior Secretary Cecil D. Andrus and U.S. Attorney General Griffin B. Bell jointly wrote Governor Ray and Attorney General Gorton, informing them that "a federal response" to their September 25, 1978, proposal would have to be deferred until

"after the U.S. Supreme Court has ruled and we have a chance to assess the decision".)

90. Letter to Senator James Abourezk from Acting Secretary of the Interior Kent Frizzell, dated September 22, 1976, responding to 15 of the questions presented by Task Force One of the American Indian Policy Review Commission on May 28, 1976, and transmitting written responses and related documents. AIPRC files; Library of Congress, Washington, D.C. (Also, see Task Force Report, pp. 285-315; cited at note 38, this Bibliography, for questions responded to.)

91. U.S. Senate Select Committee on Indian Affairs, "Meetings of the American Indian Policy Review Commission; September 25, 1976, at Portland, Oregon." Vol 3, pp. 151-287; Meetings of the AIPRC. Committee Print, U.S. Government Printing Office; Washington, D.C., 1977. (A hearing conducted by U.S. Senators James Abourezk and Mark O. Hatfield on the issues of fisheries and fishing rights in the Pacific Northwest.)

92. "The Nomination of Lynn A. Greenwalt to be Director of the U.S. Fish & Wildlife Service," Hearing before the Committee on Interior and Insular Affairs and the Committee on Commerce, United States Senate; September 20, 1974. U.S. Government Printing Office; Washington, D.C. 1975.

93. "The Nomination of Dale Kent Frizzell to be Under Secretary of the Interior," Hearing before the Committee on Interior and Insular Affairs, United States Senate; October 22, 1975. U.S. Government Printing Office; Washington, D.C., 1975.

94. U.S. Commission on Civil Rights. "American Indian Issues in the State of Washington," Hearing held at Seattle, Washington; October 19-20, 1977; Volume I: Testimony. U.S. GPO; Washington, D.C., 1978. 330 pages. Volume II, Pre-publication transcript of Hearing held at Seattle, Washington; August 25, 1978; galley proofs, 140 pages, without index or contents and title pages.

95. Draft Fisheries Management Plan and Environmental Impact Statement for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon and California, Commencing in 1978; Prepared by the Pacific Fishery Management Council, Portland, Oregon; and National Marine Fisheries Service, NOAA, U.S. Department of Commerce, Seattle, Washington; October 19, 1977. (Management Plan, 133 pages; EIS, 25 pages; plus letters of transmittal.)

96. "Annual Meeting of the International Pacific Salmon Fisheries Commission"; December 8, 1978, Bellingham, Washington. 38 page transcript of minutes and informational tables and figures submitted; plus 6-page listing of recommended regulations and regulatory considerations for the 1979 IPSFC fisheries.

97. "Comparative Drafts: Discussion Draft Agreements", United States and Canada negotiations on a treaty to govern the management and allocations of salmon stocks of the Pacific Ocean. Drafts dated January 31, 1979; and February 2, 1979; and stating, "Draft Agreed Language;" "Canadian Proposed Language"; and "U.S. Proposed Language", in charting progress and remaining differences. U.S. Departments of State and Commerce.

98. Letter from Interior Secretary Cecil D. Andrus to John Martinis, Chairman, Pacific Regional Fishery Management Council, dated February 1, 1979, and recommending "significant reductions in the impact of the ocean fisheries beyond those proposed" by the Management Council for 1979 seasons.

99. Transmittal from Interior Secretary Cecil D. Andrus to Commerce Secretary Juanita M. Kreps, dated March 23, 1979, of request for changes in the Pacific Regional Fishery Management Council's offshore ocean fishery regulations for 1979; and of a report of the U.S. Fish & Wildlife Services assessment of "Impact of Proposed Ocean Fsihing Regulations on Conservation and Inside Indian and Non-Indian Fisheries"; dated March 23, 1979.

100. "Budget Justifications, Fiscal Year 1980, Bureau of Indian Affairs"; U.S. Department of the Interior. Budget Estimates for FY-1980 and Congressional Submission; BIA-185 pages. Rights Protection funding at BIA pages 74-82, including funds for fishing and hunting rights.

101. U.S. Justice Department. "Brief for the United States," In the Supreme Court of the United States, October Term, 1978, Case Nos. 77-983; 78-119; and 78-139; On Writs of Certiorari to the Supreme Court of the State of Washington and the United States Court of Appeals for the Ninth Circuit. 84 pages; Washington, D.C., February 1979.

102. Draft Brief for the United States, Case Nos. 77-983; 78-119; 78-139, in the Supreme Court. U.S. Justice Department. Draft dated January 8, 1979. (This draft was rejected for use in most elements of content, language, and argument. Its 165 pages compared to 94 pages in the typescript copy of the brief actually filed by the United States. The draft was demonstrably more effective in clarifying the factual matters before the Supreme Court; in presenting the historical record of the treaty negotiations, State actions and patterns of regulations injurious to the Indian right of fishing, and of the modern condition of the various fisheries and causes for problem; as well as being more effective in outlining alternative options for appropriate rulings by the Supreme Court, than the brief for the United States finally drafted and filed. The significant difference between the January 8 and February 1979 drafts was that the first dwelt upon the merits of the fishing rights issues and controversy; the filed brief stressed procedural questions and issues of judicial process. The irony of this construction and emphasis in briefs of the United States is that the U.S. Solicitor General had earlier acquiesced and joined in the request that the U.S. Supreme Court review the issues in controversy -- opposing the Tribes it represented as clients in that decision -- then, ultimately, ended up omitting many of its own-perceived strongest points in fact, refutation and argument, in favor of arguments on process and procedure, or a contention that the Supreme Court should not examine the history and facts behind the controversy before it. In other words, the Justice Department, Solicitor General, and the United States, in the end, relied most heavily upon those arguments and authorities, which initially would have supported a denial of review in the Supreme Court of those matters in which the United States and the Tribes had been the successful litigants, and on the basis of those grounds to which the U.S. shifted for the case when it actually went before the U.S. Supreme Court for review.)

103. Transcript of Oral Argument before the U.S. Supreme Court; Consolidated Cases Nos. 77-983; 78-119; and 78-139 (72 pages) at Washington, D.C., February 28, 1979.

104. Brief of Respondent Indian Tribes; Cases Nos. 77-983; 78-119 and 78-139, in the Supreme Court. 254 pages. Dated January 26, 1979.

105. Petitioner State of Washington's Brief; in the U.S. Supreme Court in Cases Nos. 77-983; 78-119; and 78-139. 115 pages; dated December 6, 1978.

106. Petitioner State of Washington's Reply Brief; in the U.S. Supreme Court, Cases Nos. 77-983; 78-119; and 78-139. 57 pages; dated February 22, 1979.

107. Brief and Reply Brief for Petitioners Puget Sound Gillnetters Association, Purse Seine Vessel Owners Association, et al.; Nos. 77-983, 78-119 and 78-139, in the U.S. Supreme Court, October Term, 1978. (No. 78-139)

108. Brief of Respondent Washington State Commercial Passenger Fishing Vessel Association; in the U.S. Supreme Court, Nos. 77-983, 78-119 and 78-139. (A principal in No. 77-983.)

109. American Friends Service Committee, and 8 other organization's "Motion for Leave to File and Brief of Amici Curiae"; in Cases Nos. 77-983; 78-119; and 78-139, before the U.S. Supreme Court. 17 pages; dated January 24, 1979.

110. American Institute of Fishery Research Biologists, "Brief of Amicus Curiae"; in the Supreme Court Cases Nos. 77-983; 78-119 and 78-139; 49 pages, plus 12-page appendix; dated November 1978.

111. "Brief for the United States: On Petitions for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit;" Solicitor General and Justice Department. Stating lack of opposition to grant of certiorari in Cases Nos. 78-119 and 78-139 in the Supreme Court of the United States.

112. Letter to Wade H. McCree, Jr., U.S. Solicitor General, and Leo Krulitz, Department of the Interior Solicitor, from Dennis C. Karnopp, attorney for the Warm Springs Tribes of Oregon, dated August 31, 1978. Claims that federal officers have "failed to take any account of the impact" upon Columbia River treaty fishing tribes, during the United States' "consideration of a position concerning the writ of certiorari to the Supreme Court", although two of the five federal court orders being appealled were from the U.S. District Court of Oregon, where the States of Oregon and Washington were joined with Tribes from both States in a cooperative compact for regulating fisheries on the Columbia.

113. Letter to U.S. Solicitor General Wade H. McCree, Jr., from Solicitor Leo Krulitz, U.S. Department of the Interior; dated August 18, 1978. States: "The Department of the Interior urges that the United States acquiesce in these Petitions for Writs of Certiorari."

114. Office of the Solicitor Memorandum, dated August 17, 1978, to the Solicitor from the Associate Solicitor for Indian Affairs, U.S. Department of the Interior, on the subject of "Certiorari in U.S. v. Washington. The Associate Solicitor recommends: "I recommend that the Department oppose certiorari as being neither a good legal position nor an adviseable resolution to any practical or political problems. ** I urge we oppose certiorari." (4 pages.)

115. Office of the Secretary Memorandum, circa August 16, 1978, to the Solicitor from the Assistant Secretary for Indian Affairs, U.S. Department of the Interior, on the subject of "Supreme Court Review of United States v. Washington. The Assistant Secretary advises that: "It is my firm belief that we should unalterably oppose Supreme Court Review. ** As trustee, we cannot reward the chaos and lawless atmosphere created by Washington State and its citizen-fishermen by acquiescing in their petition for certiorari. The United States won the decision; the law has been clear for the past four years."

116. "Litigation Memorandum", dated August 10, 1978, to "The United States Department of the Interior, Department of Justice and Solicitor General of the United States", from (5) "Undersigned Tribal Attorneys in United States v. Washington", concluding that: "The United States Should Oppose Review in Both Cases", and providing an 11-page statement of authorities, reasons, and opinions. An 11-page, "Appendix to Legal Memorandum: Distortions and Omissions in Petitions for Certiorari," is attached to this "Litigation Memorandum."

117. "Memorandum for the United States as Amicus Curiae", filed in the Supreme Court of the United States in Case No. 77-983, On Petition for a Writ of Certiorari to the Supreme Court of the State of Washington. 13 pages; dated February 1978. (Provides reasons and support for the stated "Conclusion: For the foregoing reasons, the petition for a writ of certiorari should be denied, or action on the petition deferred until the related federal cases are brought before the Court."

F. Court Decisions, Statutes, and Law Review Articles, Etc., Utilized or Referred to in this Summary Report.

118. Johnson, Ralph W. "The States versus Indian Off-Reservation Fishing: A United States Supreme Court Error"; Washington Law Review, Vol. 47, Number 2, 1972. pp. 207-236.

119. Frizzell, Kent. "Foreword to 'Evolution of Jurisdiction in Indian Country'"; Kansas Law Review, Vol. 22, No. 3, Spring, 1974. pp. 341 - 349.

120. Indian Civil Rights Task Force. "Development of Tripartite Jurisdiction in Indian Country," Kansas Law Review; Vol. 22, No. 3, Spring, 1974. pp. 350-385.

121. Ehlke, Richard C. "An Analysis of United States v. Washington -- Indian Treaty Fishing Rights in the State of Washington;" American Law Division, Congressional Research Service, The Library of Congress. 16 pages. Washington, D.C.; April 15, 1974.

122. "The Constitution of the United States"; House Document No. 93-414, 93d Congress, 2d Session. U.S. Government Printing Office, 1975.

123. "1971 Legislative Manual, State of Washington;" Forty-Second Legislature, Session of 1971; Olympia, Washington. (Contains constitutions and other organic laws of the State and the United States.)

124. "Fisheries Code: Relating to Food Fish and Shellfish;" Department of Fisheries, State of Washington, Olympia, Washington. State Printing Office; Olympia, Washington, 1978.

125. Johnson v. McIntosh, 21 U.S. 543 (1823). (Discusses "a title in common", at 595; Indian "nations" holding and using lands "in common with other lands", at 594; and "the title of his tribe" over grants of property to individual Indians "in severalty", at 593.)

126. Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 117 (1831).

127. Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832).

128. Elk v. Wilkins, 112 U.S. 98-109 (1884). (Relationships between Indians in tribal relations to his tribe, to citizenship, and the the Fourteenth and Fifteenth Amendments to the U.S. Constitution.)

129. Major Crimes Act; 23 Stat. 385.

130. General Allotment Act of February 8, 1887; 24 Stat. 388. (Conferring U.S. citizenship upon Indians receiving allotments under the provisions of the Act or of treaties.)

131. Geer v. Connecticut, 161 U.S. 519 (1896). (Discusses history of sovereign authority of States, or the people in collective sovereign capacity, over fish and game resources.)

132. United States v. Winans, 198 U.S. 371 (1905).

134. Kennedy v. Becker, 241 U.S. 556 (1916).

135. Puyallup Tribe v. Department of Game of Washington (Puyallup I) 391 U.S. 392 (1968).

136. Puyallup Tribe v. Department of Game (Puyallup III), 433 U.S. 165 (1977).

137. Maison v. Confederated Tribes of the Umatilla Indian Reservation, 314 F.2d 169 (9th Cir. 1963).

138. Sohappy v. Smith, 302 F. Supp. 899 (D. Ore. 1969) (Belloni Decision.)

139. United States v. Washington (Boldt Decision), 384 F. Supp. 312 (W.D. Wash. 1974), aff'd, 520 F.2d 676 (9th Cir. 1975), cert. denied, 423 U.S. 1086 (1976).

140. Indian Citizenship Act of June 2, 1924; 43 Stat. 253. (Declaring all "non-citizen Indians" to be "citizens of the United States; Provided, that the granting of such citizenship shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property.")

141. "Memorandum Decision", (The Brown Decision), Cause No. 158069, in the Superior Court of Pierce County, State of Washington; William L. Brown, Jr., Judge. 35 pages; Tacoma, Washington, December 19, 1974. (Resulted in Puyallup III, at note 136, above.)

SUBJECT-RELATED BACKGROUND OF THE WRITER:

The writer is an Assiniboine-Sioux Indian of the Fort Peck Tribes and Reservation, Montana, where he lived for the first two years of his life. He has variously resided in Washington (1946-1947)(1955-1979); The Dalles, Oregon (1947-1955); and Washington, D.C. (1965-67, U.S. Army; 1972-73, Trail of Broken Treaties; and U.S. House-Senate employee, 1975-77). His first familiarity with salmon fisheries came through periodic visits to Celilo Falls near The Dalles. His first familiarity with destruction of salmon resources came in attending the dedication for The Dalles Dam, when high explosives were used beneath the waters of the Columbia River to begin the project. As a high school and college student (Moclips H.S., 1957-1961; U of Washington, 1961-1963), living on the Quinault Indian Reservation on the Pacific Coast, the Quinault Tribe granted him special permission to maintain his livelihood and education by commercial net-fishing, clam digging, and fish-buying on their Reservation.

Throughout the 1960s, the writer worked, primarily as a volunteer, during all available time for the National Congress of American Indians; the National Indian Youth Council; and the Survival of American Indians Association, on projects relating to the protection of Indian treaty rights, and particularly fishing rights in the Pacific Northwest. During his Army period, he acted as the National Indian Youth Council's Washington, D.C., representive, and also worked to develop federal and private assistance for tribal fisheries programs and for Indians contesting State actions in the southern Puget Sound region (SAIA, and its corps of Nisqually-Puyallup organizers headquartered at Franks Landing on the Nisqually River.)

The writer moved to Franks Landing in 1968 to become Executive Director of SAIA, and has remained in that position, or as National Director, except for terms of leave to work in Washington, D.C., to the present time. The SAIA associated itself with the National Poor Peoples Campaign of 1968, and utilized the contacts developed during the writer's Army time in D.C., to secure financing of independent legal assistance to bring lawsuits against the States of Oregon and Washington by individual Indians; and for securing commitments from the Justice and Interior Departments to bring lawsuits in behalf of the United States and several tribes. The writer and his associates in SAIA, additionally, brought lawsuits in their own behalf, without benefit of lawyers, in State and Federal courts to challenge State laws and police actions, as well as abuses of governmental authority by members of the Puyallup and Nisqually Tribes -- including excessive fishing on-reservations.

SAIA members were denied intervention in U.S. v. Washington, as individual treaty Indians, having varied interests in the issues. The writer was later granted special order by Judge Boldt to appear in behalf of certain Nisqually Indians in certain capacity on matters affecting them. As a result of acting as White House Negotiator for the 1972 Trail of Broken Treaties; and subsequently as an intermediary for Counsel to the President Leonard Garment during the 1973 Wounded Knee confrontations; the writer was requested by the White House to prepare a "Comparative Analysis of Federal and Indian Complaints and Positions in United States vs. Washington", in 1972-73, for aiding in determinations of whether and how the federal positions should be modified and strengthened to best protect the treaty tribal rights.

After the Boldt Decision was rendered on February 12, 1974, the writer was engaged as fisheries manager for the Puyallup Indian Tribe, or Tribal Council, and worked in that capacity for the remainder of that year. That job required calling upon a wide range of resources in expertise from tribal members, and both Federal and State agencies. The development of a new tribal fisheries code, and of disciplined new fisheries consistent with the Boldt Decision -- and the rights of other tribes -- was another aspect of the job. (A steelhead harvest, projected in April 1974 to consist of no more than 35% of the 1974-75 season's total harvest, was found to be erroneous by only 1% after the final counts a year later.) In the same year, the writer worked at the request of the other treaty tribes in Western Washington on the organization and initial operations of the Northwest Indian Fisheries Commission. He was retained as its first Coordinator, and worked in various capacities as a researcher and writer afterwards.

On leave from SAIA, the writer accepted appointment as chairman of the Task Force on Trust Responsibilities and Federal-Indian Relations, Including Treaty Review (Task Force No. One) for the Congressional American Indian Policy Review Commission from July 1975 to August 1976. He remained in Washington, D.C., working on research and data gathering, until February 1977. At that time, he became a consultant to the Nisqually Indian Community on matters of governmental management and resources protection. In paid and volunteer capacities over the next year, he assisted Nisqually tribal officers and professional personnel in fisheries management planning; the acquisition of fisheries enhancement sites and rearing facilities under Drought Assistance Programs of the Interior and Commerce Departments; and in negotiating positions and draft agreements with the Federal Fisheries Task Force and the Washington Department of Fisheries. In August through December 1978, he was retained in continuing, part-time consultant status with the Select Senate Committee on Indian Affairs to write a monograph and reports on issues of Indian treaty rights to fish resources. This paper and the related research projects were initiated under that assignment.

The extensive prior personal involvement with the issues is the basic reason for providing this "statement of interest".

Hank Adams
April 1979

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