
SELECTED ADMINISTRATION

OF JUSTICE ISSUES AFFECTING

AMERICAN INDIANS IN OKLAHOMA

OKLAHOMA ADVISORY COMMITTEE

TO THE UNITED STATES

COMMISSION ON CIVIL RIGHTS

This summary report of the Oklahoma Advisory Committee to the United States Commission on Civil Rights was prepared for the information and consideration of the Commission. Statements and viewpoints in the report should not be attributed to the Commission or the Advisory Committee, but only to individual participants in the community forum where the information was gathered.

LETTER OF TRANSMITTAL

MEMBERS OF THE COMMISSION

William B. Allen, Chairman
Murray Friedman, Vice Chairman
Mary Frances Berry
Esther Gonzalez-Arroyo Buckley
Sherwin T.S. Chan
Robert A. Destro
Francis S. Guess
Blandina Cardenas Ramirez

Melvin L. Jenkins, Acting Staff Director

Attached for your information is a summary report of a community forum held by the Oklahoma Advisory Committee in Oklahoma City on September 1, 1988. The Committee voted 11-0 to approve this document and transmit it to the Commissioners. The purpose of the forum was to gather information on the status of civil rights issues affecting American Indians in Oklahoma.

At this forum, the Advisory Committee heard from Indian legal and civil rights organizations, Federal and State law enforcement officials, and other individuals and agencies knowledgeable about Indian issues in the State. Significant new information was obtained concerning recent developments in the administration of justice relating to American Indians and these are detailed in the accompanying summary report.

The Advisory Committee believes this report, while not an exhaustive study, helps to fulfill its mandate of advising the Commission on issues which have civil rights implications in Oklahoma and the Nation.

Respectfully,

CHARLES L. FAGIN, Chairman
Oklahoma Advisory Committee

Attachment.

OKLAHOMA ADVISORY COMMITTEE

Charles L. Fagin, Chairman
Oklahoma City

Phyllis Fist
Tulsa

Dr. Donald J. Maletz
Norman

Wallace C. Johnson
Oklahoma City

Dr. Earl D. Mitchell
Stillwater

Rosa A. King
Oklahoma City

Angela Monson
Oklahoma City

Ethel C. Krepps
Oklahoma City

Charles H. Purdy
Bartlesville

Juanita Learned
Oklahoma City

Swannie Z. Tarbel
Tulsa

Acknowledgments

The Oklahoma Advisory Committee wishes to thank staff of the Commission's Western Regional Division for its help in the preparation of this summary report. The project was the principal assignment of John F. Dulles II. Support was provided by Grace Hernandez and Priscilla Herring. The project was carried out under the overall supervision of Philip Montez, Director, Western Regional Division.

TABLE OF CONTENTS

Introduction.....1

Walter Mills, Anadarko Area Director
Bureau of Indian Affairs.....4

Douglas Dry, Oklahoma Indian
Legal Services.....6

Dennis Belindo, Executive Director
Indian Tribes Community Development Association.....13

Steve Lamirand, Assistant Attorney General
State of Oklahoma.....15

William S. Price, United States Attorney
Western District of Oklahoma.....18

Hank Gibbons, Principal Legal Advisory
Federal Bureau of Investigation (FBI)
Oklahoma City.....20

Chuck Choney, Ray Foreman, Special Agents
Federal Bureau of Investigation
Oklahoma City.....21

Arvo Mikkanen, Associate Magistrate
Court of Indian Offenses (CFR).....22

Summary.....24

SELECTED ADMINISTRATION OF JUSTICE ISSUES
AFFECTING AMERICAN INDIANS IN OKLAHOMA

Introduction

The American Indian was in Oklahoma long before the white man set foot on this continent. The tribes moved freely over what is now the State of Oklahoma. It was not until the 19th century that artificial boundaries prevented the free movement of our land's first inhabitants.

During the 1830s, many tribes were forcibly removed from their homes in the southeastern United States to Indian territory, as Oklahoma was then known. The Cherokee Nation, a victim of this tragic injustice, reestablished itself with a constitution, legislature, judiciary, and public school system. The other Civilized Tribes (Creeks, Choctaws, Chickasaw, and Seminoles) also created sophisticated, governmental structures in their new home. After the Civil War, they were forced to enter into treaties which resulted in their confinement to a portion of what is now eastern Oklahoma. Other Indian tribes such as the Apache, Arapaho, Cheyenne, Comanche, and Wichita were then relocated to what is now western Oklahoma. While possessing less sophisticated governmental forms, these tribes resisted assimilation and to this day retain much of their distinct cultural heritage.

In the late 1880s, the Federal Government enacted allotment legislation which severely reduced the Indian's land base. The territory was opened up to white settlement in 1889 and in the ensuing great land rush, thousands of non-Indian homesteaders drove their wagons across the territorial line. The "Sooners," as they were called, soon outnumbered the Indians. Nonetheless, Oklahoma today has the second largest Indian population of any State. Today there are approximately 170,000 American Indians in Oklahoma (5 percent of the State's population), evenly divided between urban and rural areas. More than one-third of this number lives in the two largest cities - Tulsa and Oklahoma City.

In January 1972 the Oklahoma State Advisory Committee to the United States Commission on Civil Rights conducted 4 days of meetings in Tulsa and Oklahoma City to examine the civil rights concerns of American Indians living in Oklahoma. More than 60 persons presented views on major issues facing Indians in that State. Among the issues addressed were the education of Indian children, employment opportunities for Indians, the administration of justice, the availability and quality of health services to Indians, and the Bureau of Indian Affairs' (BIA) role in tribal operations and intratribal affairs.

In 1974 the Committee released a report, Indian Civil Rights Issues in Oklahoma¹, based on the meetings and additional investigative research, which provided an overview of civil rights problems affecting American Indians in Oklahoma. In the area of the administration of justice, the report found that American Indians in Oklahoma suffer from unequal protection and enforcement of the laws.² Also, it concluded that American Indians are not always aware of their civil rights in relation to the courts and due process.³ Police harassment and brutality were also found to be serious problems affecting American Indians.⁴

In September 1987 the Oklahoma Advisory Committee held a planning meeting in Oklahoma City and decided to conduct a community forum to update information on the status of civil rights issues affecting American Indians in the State. The Committee determined that it would review the 1974 report and endeavor to assess changes and developments occurring since that time.

¹Oklahoma Advisory Committee to the U.S. Commission on Civil Rights, Indian Civil Rights Issues in Oklahoma (1974).

²Ibid., p. 83

³Ibid., p. 84

⁴Ibid.

This followup meeting was designed to update information on a limited basis, as limited staff resources made a comprehensive and detailed evaluation unfeasible. The new project precluded indepth field investigations or legal research. It was limited to inviting selected individuals to present statements at a public forum. In the absence of subpoena powers, the Advisory Committee could not compel participation, and several significant officials declined to appear. These included tribal leaders, the Governor, and Bureau of Indian Affairs (BIA) officials. The BIA submitted a written statement; the Governor and tribal leaders gave no reasons for their failure to appear or to send representatives.

Despite these constraints, valuable information was obtained from forum participants, and the transcript yielded new and important information. Especially significant were contributions from those involved in administration of justice issues affecting American Indians in Oklahoma.

The Committee heard from the United States attorney for the Western District of Oklahoma, the assistant State attorney general of Oklahoma, representatives of the Federal Bureau of Investigation, and Indian organizations directly knowledgeable about law enforcement and judicial concerns.

Based upon a careful review of the transcript of the proceedings, this summary report was prepared on selected administration of justice issues affecting American Indians in Oklahoma. While other civil rights problems were addressed at the forum, including health, employment, housing, community development, and BIA trust responsibilities for Indian mineral resources, information received on these topics was limited and insufficient to provide any meaningful assessment of overall progress.

Forum participants agreed that major changes in American Indian administration of justice issues had occurred since the 1974 report, especially in light of recent Federal and State court decisions. This report summarizes these changes, based on the information presented to the Oklahoma Advisory Committee at its September 1, 1988, forum.

WALTER MILLS, ANADARKO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

Mr. Mills declined an invitation to appear at the forum. However he provided the Advisory Committee with a formal statement for inclusion in the record. Because of the importance of the Bureau of Indian Affairs in matters relating to American Indian administration of justice issues, and because this document provides necessary legal and historical information, the text of Mr. Mills' statement is summarized below:

According to Mr. Mills, in 1978 a "jurisdictional vacuum" was recognized by the Oklahoma Court of Criminal Appeals in its order in the State of Oklahoma v. Littlechief.⁵ This order and its parent order, U.S. v. Littlechief,⁶ held that the State of Oklahoma had no jurisdiction over criminal acts occurring between Indians in "Indian Country" as defined in 18 U.S.C. sec. 1151.

An estimated 457,861 acres of land held in trust by the United States of America for the benefit of individual Indians and tribes were then outside the jurisdiction of the available legal systems. These trust lands, Mr. Mills stated, are situated in former "reservation areas" under the administrative jurisdiction of four Bureau of Indian Affairs agencies located at Shawnee, Anadarko, Concho, and Pawnee. An estimated 26,809 Indians from 19 federally recognized tribes reside within these areas, which include all or parts of 26 counties. These former reservation areas were

⁵ 573 P.2d 263 (Okla. Crim. App. 1978).

⁶ No. 76-207-D, slip op. (W.D. Okla. Nov. 7, 1988).

established prior to statehood when the reservations were allotted to tribal members in trust under the General Allotment Act; surplus land, i.e., that land not allotted, was sold to non-Indians. This process resulted in a "checkerboarding" of trust land within Western Oklahoma, Mr. Mills explained.

Subsequent to the Littlechief decision, he continued, the Assistant Secretary for Indian Affairs established a Court of Indian Offenses (CIO) for the Anadarko Area tribes by publication of his order in the Federal Register on June 22, 1979; the CIOs were created under 25 Code of Federal Regulations section 11.1(b).⁷ In 1983 the Oklahoma Supreme Court recognized the lack of State civil jurisdiction in Ahboah v. Housing Authority of the Kiowa Tribe⁸ in which it was held that the State district court had no jurisdiction over forcible entry and detainer actions against Indian defendants who resided on trust lands; it extended the definition of Indian country to civil matters in Western Oklahoma.

Mr. Mills also told the Committee that in the Anadarko Area, the three Courts of Indian Offenses are located at the Anadarko, Pawnee, and Concho agencies. The three trial magistrates conduct proceedings in civil and criminal matters; five appellate magistrates are called together as needed to dispose of appeals. The five Oklahoma tribes in the Shawnee agency's service area have tribal courts; there is presently pending a contract application submitted by the Cheyenne-Arapaho Tribes that will implement a tribal court at the Concho Agency.

⁷The Courts of Indian Offenses (CIOs) are also known as Code of Federal Regulations Courts (CFRs), as they are established under the Code's authority. These two references are used interchangeably in this summary report.

⁸Ahboah v. Housing Authority of the Kiowa Tribe, 660 P.2d 625 (Okla. 1983).

The Anadarko area office supports the function of the magistrates as an independent judiciary, Mr. Mills commented. Although the question whether the CIOs are arms of the BIA or simply temporary mechanisms for the exercise of tribal sovereignty has not been resolved by the Federal courts, he stated his belief that it can at least serve as a model for tribes and to this end work to promote its freedom from BIA administrative operations. The tribes, at some time in the future, should have tribal courts that serve in protecting tribal members in a checks and balances system, Mr. Mills stated.

Mr. Mills explained that his office is serious in promoting the implementation of tribal courts rather than the indefinite continuation of CIOs. The CIOs are interim mechanisms to protect persons, property and rights; tribal courts are extensions of legally defined governmental units. With the establishment of their own courts, he noted, tribes in the area will take a great step forward as true governments. The primary obstacle to establishing tribal courts at the Anadarko and Pawnee agencies is the fact that these are multiple tribal agencies and the funds available are difficult to apportion among several tribes, he observed. He told the Committee that he is encouraging the tribes to adopt their own tribal ordinances as a necessary step to tribal courts. Hopefully, tribal court systems will follow after that, Mr. Mills concluded.

DOUGLAS DRY, OKLAHOMA INDIAN LEGAL SERVICES, INC.

Mr. Dry, an attorney with Oklahoma Indian Legal Services, Inc. (OILS), participated in the forum and presented a statement prepared by himself and other OILS staff members, including Susan Work, executive director, Henry A. Ware, and M. Leah A. Harjo. The statement contains significant legal and historical information, as well as policy positions of the organization. Excerpts from the statement are summarized below:

More than 150 years ago the United States Supreme Court recognized that Indian tribes possess a special sovereign governmental status as "domestic dependent nations," in the seminal Indian law cases of Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1, 17 (1831) and Worcester v. Georgia.⁹ Mr. Dry reminded the Advisory Committee that during the 1830s, the so-called Five Civilized Tribes were forcibly removed from their homes in the southeast to Indian territory, which is now the State of Oklahoma. These tribes established sophisticated governmental systems, built schools, and existed as separate nations within the United States until after the civil war, when they were forced to enter into new treaties which reduced their domains and forced them to crowd into what is now eastern Oklahoma. Numerous other tribes were then settled on reservations in western Indian territory. Their lands were allotted pursuant to the General Allotment Act of 1887, and Oklahoma Territory was established in 1890 in what is now western Oklahoma.

Following the civil war, Mr. Dry commented, the Five Tribes continued to exercise extensive governmental powers over their citizens until statehood in 1906. Due to the encroachment of non-Indian settlers, who were not subject to tribal rule, Congress forced the allotment of the Five Tribes lands, and attempted to strip them of governmental powers in the process.

From the time of statehood until the late 1970s, Mr. Dry stated, Indian tribes in Oklahoma continued to maintain their cultural and governmental integrity. Many adopted tribal constitutions pursuant to the Oklahoma Indian Welfare Act of 1936. However, it was not until 1978, when the Oklahoma Court of Criminal Appeals recognized the existence of Indian country in Oklahoma in State v. Littlechief, that tribes began to regain some of the legal footing which they had temporarily lost in the 20th century.

⁹ 31 U.S. (6 Pet.) 515 (1832).

According to Mr. Dry, the Littlechief case established that Oklahoma State courts do not have authority to exercise criminal jurisdiction over Indians committing crimes against Indians on trust allotments in western Oklahoma. It led to the creation of CFR (Courts of Indian Offenses) courts in western Oklahoma, which hear a variety of civil cases, including child welfare cases and misdemeanor cases arising in Indian country in western Oklahoma. These courts contribute significantly to the expansion of the tribal sovereignty of the tribes in western Oklahoma, Mr. Dry observed.

He noted that the Littlechief case was followed by other decisions recognizing the absence of State criminal jurisdiction in other types of Indian country, including Five Tribes allotments in eastern Oklahoma in State v. Brooks.¹⁰ This case was decided in 1986 and is currently on rehearing before the Oklahoma Court of Criminal Appeals at the urging of the United States Department of Interior. The Department of Interior has historically resisted the exercise of judicial powers by the Five Tribes, Mr. Dry mentioned, and its attack on the Brooks decision is another example of an apparent continuing battle by the Interior to restrict Five Tribes sovereignty. Interior recently lost this battle on another front in Muscogee (Creek) Nation v. Hodel,¹¹ a case in which the United States Court of Appeals for the District of Columbia held that the Muscogee Nation, which is one of the Five Tribes, has the power to exercise full blown judicial powers over its citizens in Indian territory. In summary, recent legal developments affecting Indian tribes in Oklahoma in the last 10 years have increased tribal activities in a variety of areas, both governmental and economic. This has enhanced the self-sufficiency of tribal members and their ability to determine their own futures, Mr. Dry told the Advisory Committee...

¹⁰ State v. Brooks, No. 2-801117, slip op. (Okla. Cr. App. Oct. 14, 1988).

¹¹ The Muscogee (Creek) Nation v. Donald P. Hodel, Secretary of the Interior, 85 F.2d 1429 (D.C. Cir. 1988).

Tribal-State Relations

In recent years Indian tribes have been involved in an ongoing battle with the Oklahoma Tax Commission, according to Mr. Dry. In Indian Country U.S.A. v. State,¹² decided in 1986, the Tenth Circuit Court of Appeals held that the State of Oklahoma has no authority to regulate bingo operations by a tribal enterprise in Indian country. In spite of that decision, the Oklahoma Tax Commission has continued to demand recognition of its taxation authority in a variety of cases, most notably cases involving Indian smokeshops.

Another problem noted by Mr. Dry is the difficulty in securing compliance by many of the State district courts with the Indian Child Welfare Act (ICWA).¹³ Although the State of Oklahoma was the first to pass its own IWCA to support and strengthen the purpose of the Federal ICWA, "many of the outlying State district courts have continued to find ways around the provisions of the act," he said. "It is often a very difficult process for the Indian community to gain the rights and protections of the ICWA through the State courts." On the positive side, he told the Committee, the Oklahoma State legislature passed a law during the 1988 session designed to improve tribal State relations by authorizing negotiations of tribal-State agreements, and also passed a law to improve the working relationship between the State and tribes with regard to economic development.

¹² Indian Country U.S.A. v. Oklahoma Tax Commission, 829 F.2d 967 (10th Cir. 1987) cert. den., sub nom., Oklahoma Tax Commission v. Muscogee (Creek) Nation, ___ U.S. ___, 108 S. Ct. 2870 (1988).

¹³ Indian Child Welfare Act of 1978, 25 U.S.C. ss1901-1963.

Administration of Justice

Tribal courts have realized the importance of due process and equal protection guarantees of the Indian Civil Rights Act (ICRA)¹⁴ Mr. Dry observed. They have done their best to staff with competent personnel. All tribal district courts currently have lawyers in positions as judges and prosecutors, he stated.

Tribal law operates within the original reservation boundaries and upon areas within the definition of Indian country. Mr. Dry noted that the law itself is based upon tradition and customary law. A few tribes have developed comprehensive codes, drafted to serve the particular health, education, and welfare needs of their members. Certain tribes have developed taxing ordinances and land use controls. The emphasis is placed on resolving issues rather than under the Anglo-standard of finding a victor, Mr. Dry stated.

Tribes using the Courts of Indian Offenses have a criminal code, although they must use, by analogy, laws of other jurisdictions in civil matters. However, there are no voids when it comes to protecting individual rights, Mr. Dry told the Committee. "It is conceivable that these tribes will make the transition to full tribal court status. Economic factors have prevented these tribes from developing their own tribal codes," he continued.

Tribal court existence predates Oklahoma statehood and yet it is only recently that there has been tribal court recognition. "The Indian wars are still alive in Oklahoma and take place in the courtrooms of Federal, State, and, now, tribal courts," Mr. Dry commented. "Judicial conferences between the three sovereigns have become a reality and great strides are now possible." Mr. Dry noted that the recent decisions of the Supreme Court of the

¹⁴ Indian Civil Rights Act of 1968, 25 U.S.C. ss1301-03.

United States, National Farmers Union,¹⁵ and Iowa Mutual Insurance Co.¹⁶ have confirmed the positions that tribal advocates have taken all along. The proposed Indian Civil Rights Act Amendments of 1988 seeks to undo these advances, according to Mr. Dry. "The sovereign rights of all Indian nations are being attacked under the guise of protecting individual Indian rights. The impact here in Oklahoma is to destroy the progress made by the tribes," he told the Committee. He continued, "Tribal courts, from our experiences, do not violate civil rights of defendants. The provisions of the Indian Civil Rights Act are applied in tribal courts. If there were instances of abuse it is well known that the habeas corpus relief is an available remedy in both tribal and Federal courts."

Mr. Dry then said that "if the Civil Rights Commission is looking for civil rights violations, it should move its focus from tribal governments to the cities (Anadarko, Watonga, Oklahoma City, and Tulsa). These are towns and cities with high Indian populations. "County officials are quick to respond to allegations of wrongdoing when the complainants are non-Indian. However, complain and be an Indian, you will see bureaucracy at its [worst], and justice come to a grinding halt," he told the Committee.

Mr. Dry called on the U.S. Commission on Civil Rights to recommend that more money be appropriated to the BIA Judicial Services. "This money can then be used to develop tribal codes by the many tribes currently under jurisdiction of the Court of Indian Offenses." He also suggested, that the Commission recommend that more monies be made available for tribal courts, including judicial staff training and the hiring of additional law enforcement staff.

¹⁵National Farmers Union Ins. Cos. v. Crow Tribe, 471 U.S. 845 (1985).

¹⁶Iowa Mutual Ins. Co. v. LaPlante, 480 U.S. ____, 108 S.Ct. ____, 94 LEd2d 10 (1987).

Mr. Dry concluded his remarks on behalf of OILS with the following observations:

Since the passage of the Indian Civil Rights Act, there have been many isolated allegations of violations of civil rights in the tribal governments. In August [1988] Senator Orrin Hatch introduced legislation into Congress which would amend the Indian Civil Rights Act and make tribal court decisions directly reviewable by Federal courts.

Those of us in Indian country see this legislation as a throwback to the 19th century when measures to remedy some perceived injustice would once again move in and take away additional sovereign powers of the various tribes...

The proposed legislation is directly contrary to the policies of self-determination and government to government relations. Perhaps the remedy would be not for Congress to undermine and diminish tribal sovereignty, but to infuse additional funding to enhance the quality of justice administered by tribal governments. The most Congress should do is to further study the issues before emasculating tribal governments. Our practice has revealed that the violations of the rights of the entire class of Indian people perpetuated by the local, State, and Federal governments far outweigh any isolated complaints of civil rights violations by tribal governments.

DENNIS BELINDO, INDIAN TRIBES COMMUNITY DEVELOPMENT ASSOCIATION

Dennis Belindo is executive director of the Indian Tribes Community Development Association. This organization, funded by the U.S. Department of Housing and Urban Development, assists 23 member tribes in four States with training and technical assistance designed to improve community development projects.

Mr. Belindo outlined several significant issues affecting tribal economic development. He asserted that the "most fundamental problem...is an underdeveloped legislative and judicial function." Tribal sovereignty, he explained, is really the exercise of judicial authority. The most important problem facing Indian tribes in Oklahoma is the lack of an adequate court system.

This creates a dilemma for outside interests who might be interested in initiating development projects in Indian country. The first thing they would look at, Belindo told the Advisory Committee, is the political infrastructure of the tribes. For instance, if there were a cause for them to bring action in a court system, "they probably could not get relief because they wouldn't have access to any court system other than the CFR (Code of Federal Regulations) Court," Mr. Belindo explained. And this, he added, is a court with very limited jurisdiction and authority.

He said that in talking to people in Japan regarding their interest in doing business with the tribes, he has received the response that the tribes are not ready for development. He continued:

Probably one of the basic reasons why they have not been ready is because of an inadequate Indian political structure. This has to do with courts, law enforcement, and the guarantees that the tribe could

give to a corporation that was going to locate in Oklahoma. One of the problems was that the corporations wouldn't have anyplace to bring a cause of action in a court situation, depending on whether or not the tribe has a tax code, law and order code, or criminal code. These types of things are basic.

Mr. Belindo also commented that the Oklahoma Employment Security Commission brought an action against five tribes in Oklahoma, seeking to require that they pay unemployment insurance to the State of Oklahoma. The tribes pleaded sovereign immunity and the case was dismissed. He emphasized that:

The Supreme Court has reiterated over and over that in regards to sovereign immunity, the tribe cannot be sued by the State unless Congress or the tribe itself acts to waive this immunity.

This creates an adversarial relationship between the tribes and State government, stated Mr. Belindo, and "gives rise to some of the basic problems of skepticism and inability of the tribes to relate to the State." At the same time, he continued, the State is willing to utilize the Indian culture as an attraction to industrial development. Indian people are ambivalent about this, he said.

Mr. Belindo noted that following the Littlechief decision in 1978, criminal jurisdiction on Indian lands did not extend to the State. While major crimes are within Federal jurisdiction, other crimes were not covered. Mr. Belindo was a tribal elected official and was part of a delegation that went to Washington, D.C., to approach the Secretary of Interior for funding of an interim court system. This became the CFR court system, which

Mr. Belindo noted, "is alive and well in the State." "The problem," he continued, "is that the old dependency syndrome has set in, where tribes, now that they have a CFR system, are not willing to develop their own system."

Mr. Belindo concluded that he did not think the continued dependence of the tribes on the CFR courts was a "good model."

He added:

For the tribes to be really sovereign, and to address their problems, they're going to need some assistance. And I would recommend to this panel that funding for tribal court systems be forthcoming as soon as possible.

STEVE LAMIRAND, ASSISTANT ATTORNEY GENERAL, STATE OF OKLAHOMA

Mr. Lamirand represented Attorney General Robert Henry at the Oklahoma Advisory Committee forum. He began by asserting that the attorney general's office "would certainly recognize that each federally recognized tribe, nation, or land in Oklahoma is a sovereign entity and that they possess all the attributes of sovereignty of which they have not been divested by the Federal Government."

Mr. Lamirand further stated that his office recognizes that the sovereignty of the Indian tribes predates the sovereignty of the United States Government, and "is unique to the Indian people as being the original inhabitants of this continent." Nonetheless, he pointed out, "Congress has complete authority over Indian tribes in all matters and can regulate, prohibit, whatever, in regard to the Indian tribes."

Mr. Lamirand explained that there is no formal relationship between the State of Oklahoma and any of the Indian tribes in Oklahoma. Relations "have been pretty much on an ad-hoc basis as problems have arisen," he noted.

There has never been a formal structure whereby State agencies could confer with Indian tribes to reach agreements and avoid litigation. "Many times," he stated, "the only relationship between the State and the various tribes has been litigation arising from some particular problem."

He said that there has been improvement in the administration of justice as more tribes have created their own courts. He viewed this as "a very positive occurrence." However, Mr. Lamirand expressed serious concern that the State does not have criminal jurisdiction over Indian people on Indian lands. This, he explained, leaves a gap where there is no law enforcement presence unless the tribe has its own law and order system, or the Federal Government steps in:

Ordinarily, the Federal Government only prosecutes the crimes listed under the Major Crimes Act, which are very serious crimes such as murder, rape, arson, and those are very limited. Other than those crimes, if there's no Native American law and order or court system in that area, there's effectively no law enforcement there. And that is a very undesirable situation for Indian people in Oklahoma.

Mr. Lamirand suggested that this problem needs to be addressed by Federal legislation and perhaps by agreements between the State and the various tribes. During the last session of the Oklahoma legislature, a bill was passed which authorizes the State of Oklahoma to enter into cooperative agreements with Indian tribes.

This, he felt, "opens up many possibilities for cooperation between the State and the tribes, not only in law enforcement, but in other areas as well."

In further describing State-tribal relations, the assistant attorney general said that until recently, the State very seldom solicited input from Indian people prior to taking actions affecting them:

Up until 10 years ago, Indian tribes in Oklahoma were considered by State government to be not much more than local affiliations of people, like a Moose Lodge or an Elk Lodge or something like that.

Some State agencies, he explained, have for all practical purposes closed their doors to Indian people. For example, the tax commission's attitude is: "Well, -Indian businesses which aren't taxed by the State of Oklahoma are eroding our tax base in a time of economic hardship." Mr. Lamirand commented that these State agencies don't take into consideration that "hundreds of millions of Federal dollars flow into Oklahoma every year to the Indian tribes and these dollars eventually go into Oklahoma's economy." Mr. Lamirand concluded by observing that the State of Oklahoma needs to work in a spirit of cooperation with the tribes "to try and solve problems before they escalate to litigation."

WILLIAM S. PRICE, UNITED STATES ATTORNEY, WESTERN DISTRICT OF
OKLAHOMA

Mr. Price told the panel that since 1974, when the Committee published its previous study on Indian issues in Oklahoma, the differences in the criminal justice system involving American Indians "are like night and day." This, he explained, is the result of the Littlechief case "in which for the first time everybody figured out what should have been obvious for 50 or so years, but no one had ever analyzed very deeply, which was that the Federal Government, not the State had jurisdiction over [Indian] allotment land."

Mr. Price noted that crimes committed on Indian allotment lands previous to this decision had always been prosecuted by local authorities. This was apparently considered to be "an established law of the land," he said. At the time of the court decision, he served as an assistant attorney general and began to see an influx of cases involving Indian allotment lands.

Mr. Price observed that Oklahoma is geographically unique in comparison to all other States with American Indian jurisdictions. In New Mexico, for example, there is the Navajo reservation which covers a large geographic area and has a substantial tribal structure. However, in western Oklahoma, and especially the allotment lands, he continued, there is a "checkerboard pattern" in existence. "You have to be a surveyor to be an effective law enforcement person in western Oklahoma," Mr. Price stated. He recalled a police officer showing him a stretch of road "in which every half mile was Indian country, [followed by] non-Indian country." If the officer stopped someone for speeding on Indian land, he could not issue a ticket due to lack of jurisdiction. "You're literally talking about thousands of different pieces of allotment land where an Indian citizen might have received his original allotment," Mr. Price

said. This is complicated by the fact there are over 30 different tribes in Oklahoma. There is no single tribal unit that can establish a tribal authority. Each tribe has its own jurisdiction, and there may be overlapping authorities in different counties. "I don't think any other State constitutes that kind of law enforcement problem," he said.

Mr. Price said that most States are covered by Federal statutes which turn over criminal jurisdiction in Indian communities to the States. However, he continued, prejudice in a particular community might make that an unfair practice. At the same time, victims of crimes are often confused regarding where they should file their complaints. Some Indian people are perplexed that they might have to travel hundreds of miles to a Federal court in Oklahoma City to resolve an essentially very local situation.

The United States attorney offered a possible solution to this dilemma: concurrent jurisdiction. This would allow the Federal Government to prosecute cases in which there was concern about the civil rights of individuals. Other cases, where that concern was not as important and there existed a fair forum in the State, could be prosecuted at the State level. The issue is "whether or not the system serves justice," he said. "Concurrent jurisdiction would simply mean that you have a choice."

Problems arise in emergency situations, he explained, where tribes request law enforcement assistance from sheriff's offices or local police. These entities sometimes resist due to jurisdictional constraints. There is also tension on the part of many tribes, who desire to keep jurisdiction within their tribes but would also like to be in a position to call local officials to act in emergency situations. This is especially a problem, he said, in the vast geographical area of western Oklahoma, where FBI officials may not be immediately available to assist the tribes.

HANK GIBBONS, PRINCIPAL LEGAL ADVISOR, FEDERAL BUREAU OF
INVESTIGATION (FBI) OKLAHOMA CITY

Mr. Gibbons explained that the FBI conducts all preliminary investigations into allegations of civil rights violations filed with the U.S. Department of Justice. These are considered a priority. The FBI forwards its reports to the Department's Civil Rights Division, where prosecutive opinions are rendered. In addition, the FBI serves as the criminal investigative agency relating to Indian country in Oklahoma. Under the Major Crimes Act, the agency is responsible for investigating cases involving 16 enumerated crimes. According to Mr. Gibbons, these are prioritized and most investigative resources are applied to crimes involving serious personal injury, including murder and rape. Secondary priority is given to property crimes. The FBI, under the General Crimes Act, also investigates other criminal activity in Indian country. "We place a very high priority on corruption in tribal government," Mr. Gibbons said.

He reinforced the U.S. attorney's concerns regarding jurisdictional problems, noting that it is extremely difficult to determine which law enforcement agency has authority in a particular case. This is particularly critical in situations where "local sheriff's departments are confused about making an emergency response that could save somebody's life or prevent a crime from progressing to a state where its harder to handle and harder to resolve."

Mr. Gibbons observed that the tribal courts and CFR courts are in the early stages of development and have limited jurisdiction. "The most they can penalize anybody is a misdemeanor penalty, a \$5,000 fine and less than a year in jail," he noted. These courts "have filled a vacuum very admirably since the Littlechief case, but they are limited" in scope.

He reiterated his perception that "there is this mass confusion over jurisdiction, where do you go and who can investigate [a case] and who was the perpetrator, who's the victim...?" Even experienced investigators get confused, Mr. Gibbons stated. There is a need to clarify these distinctions because Oklahoma has no reservation boundaries and Indian lands are a patchwork.

CHUCK CHONEY AND ROY FOREMAN, SPECIAL AGENTS, FEDERAL BUREAU OF INVESTIGATION, OKLAHOMA CITY

Mr. Choney told the Committee that the FBI has worked closely with Bureau of Indian Affairs investigators and tribal police departments. In addition, there have been many educational initiatives undertaken with local law enforcement agencies and county district attorneys to secure cooperation and assistance in criminal cases in rural areas. "Once word got out that [crimes on Indian land] were exclusive Federal jurisdiction, we had a lot of problems with the law enforcement officials out in rural areas saying, "We don't have jurisdiction out there, therefore, we're not going to send people out there," Mr. Choney said.

He also discussed FBI efforts to recruit more American Indians — in law enforcement. Mr. Choney actively recruits at colleges and universities in Oklahoma. When he first joined the FBI in 1976, he recalled, 18 special agents were American Indian. "Now we have 40, and its a slow increase, but the increase is there."

Roy Foreman, who is a supervisor on the desk which handles civil rights cases, said that the FBI has had very few civil rights cases in Oklahoma, ranging from about "five to eight police brutality cases in the State at any time, which I consider very, very good." The FBI representatives at the forum all stated that they receive few complaints from American Indians. "No matter what we do," Mr. Choney observed, "the Indian people will not come forward...I believe its a feeling that nothing is going to get

done." In response to an inquiry from the panel, the U.S. attorney and the FBI representatives stated that no complaints or referrals have been directed to them alleging tribal violations of the Indian Civil Rights Act (ICRA).

ARVO MIKKANEN, ASSOCIATE MAGISTRATE, CFR COURT

Mr. Mikkanen told the Committee that the CFR Court system, also known as the Court of Indian Offenses (CIO), now serves the Kiowas, Comanches, Apaches, Wichitas, Caddos, Delawares, Ft. Sill Apaches, Poncas, Kaws, Pawnees, Tonkawas, and the Oto Missouri Tribe. At one time they also served the Citizen Band Pottawatomie Tribe, the Absentee Shawnees, Kickapoos, Shawnees, and the Cheyenne Arapahos. However, these tribes are now under a true tribal system.

Mr. Mikkanen said that Indian jurisdictional problems in Oklahoma are the result of "a very unfortunate situation when Indians lost most of their lands at the time of statehood." Mr. Mikkanen explained: -

At one time the entire State of Oklahoma was Indian land. There were about 30 to 40 different tribes and we had continuous reservations, which were one large block of land. However, at the time of statehood, various settlers negotiated agreements, usually under coercion with the tribes to forcibly allot out the lands. This resulted in the practice of assigning parcels of land, usually 160 acres in size, sometimes larger, to specific Indian individuals at the time of statehood. Indian people would select their sections of land.

However, the size of the parcels were so small that there was a tremendous amount of land left over. And that is when you had the Oklahoma land rushes, where non-Indians took the residual Indian lands that were not specifically assigned to Indian people.

What this means is that the tribe was left with only a fraction of the land it originally held and now it was apportioned in a checkerboard pattern. Therefore, the Indians don't have one continuous large body of land over which the tribes can assert jurisdiction.

The Littlechief decision held that the State of Oklahoma did not have jurisdiction over Indian lands. Subsequently, an interim court system was established under the provisions of the Code of Federal Regulations (CFR) until such time as the tribes have the funds and capabilities of setting up their own tribal courts.

According to Mr. Mikkanen, the CFR Court is a tribal court funded by the Federal Government subject to regulations in the Code of Federal Regulations. "It more or less fills the gap of jurisdiction," since State law no longer applies. Most of the judges in the CFR court system are licensed attorneys and are well aware of the Indian Civil Rights Act, he continued.

Within the CFR court system rules, there is a remedy for habeas corpus within the Court of Indian Appeals, Mr. Mikkanen stated. However, if someone feels their rights have been violated, they may also go to Federal court and seek a writ of habeas corpus under the ICRA, which is the remedy that Congress provided when the statute was enacted.

Mr. Mikkanen described other CFR rules designed to protect individual rights. These include provisions for recusal of judges where conflicts of interest may apply and procedures for pooling of judges to assure that cases are not heard by related family

members. This is especially important among the smaller tribes, he noted. He also said that the Kiowa tribe has incorporated all the guarantees of the ICRA into its constitution and made it Kiowa law.

Mr. Mikkanen concluded by observing that the Federal Government does not allow certain litigation against itself under its powers of sovereign immunity. Congress must pass a statute establishing a right to sue. For example, the Congress set up the U.S. Claims Court to address Indian claims against the U.S. Government. Prior to this specific legislation, Indian tribes could not pursue remedies for past wrongs. In the same manner, he observed, Indian tribes are protected by sovereign immunity and enjoy the same privileges as the U.S. Government.

Summary

The Oklahoma Advisory Committee had insufficient resources to conduct a thorough review of civil rights issues affecting American Indians in Oklahoma. It was not possible to update all of the subject areas covered in the Committee's extensive 1974 study. Despite this, the Advisory Committee believes that new information provided at its September 1, 1988, forum, especially relating to judicial and law enforcement functions, is timely and significant. The Committee hopes that the Commissioners will find this summary to be of value.

The Committee heard from key administration of justice officials and Indian rights advocates. All agreed that jurisdictional issues affecting American Indians in Oklahoma are exceedingly complex and that law enforcement and judicial agencies need to work in a mutually cooperative manner. They also concurred in recommending the provision of additional resources to enable Indian tribes to develop their own tribal court systems. There was considerable support expressed for promoting increased cooperation and dialogue between Indian people and State government officials. The Advisory Committee received information which

appeared to indicate progress in certain areas since its 1974 report was released. More American Indians had been recruited for employment by the FBI and fewer cases of police brutality or misconduct were reported. Establishment of tribal and CFR courts provided a more immediate source of judicial relief for American Indians in Oklahoma and these systems were perceived as filling a void in the State's legal system. At the same time, this forum reinforced the earlier finding that American Indians are not always knowledgeable about their rights and due to complex jurisdictional problems, law enforcement agencies are not always responsive to critical situations requiring their attention in Indian country.

The Advisory Committee believes this document should be referred to the Secretary of Interior, the Assistant Attorney General for Civil Rights, U.S. Department of Justice and the Governor of Oklahoma for their review and consideration. The Advisory Committee hopes that its inquiry into American Indian civil rights issues might further improve the administration of justice for Indian people in Oklahoma.