1. One provision of title II provides that in an Indian tribal court a defendant in a criminal case shall be entitled to the assistance of counsel. In an ordinary court of law, this would of course be a highly desirable provision. A tribal court, however, is not an ordinary court. Neither the judges nor the prosecutors are attorneys. They function in a most informal manner.

The fear expressed, which I believe should be evaluated, is that a defense lawyer in that kind of a court would so confuse the lay judges with formalistic demands that the system might collapse. That fear may or may not be well founded. We should find out. And from the hearings already held, I can state this to this committee, the way they arrive at justice in some of these Indian courts is perhaps more effective than the way some of our own courts arrive at justice.

2. Another provision of title II fixes a maximum penalty that can be imposed by a trial court of $500, and 6 months' imprisonment.

The split of jurisdiction between tribal courts, State courts, and Federal courts is technical and confusing. Some tribes have indicated that the maximum penalty provided by title II may be too low in some cases and might result in serious offenders escaping reasonable punishment.

All I think we have to do is look at our own court process today and read what is happening in some of our courts. And here are some people that are just as much American citizens as any of us, more so than perhaps some of us; they have their own procedures, their own trial courts, and they arrive at justice in their own way.

3. Trial by jury, although embedded in our common law, is foreign to the customs of many tribes. And by our treaties we permitted them to follow their own procedures. Before imposing this requirement in tribal courts, the probable results should be considered.

Other provisions of the bill are completely unrelated to civil liberties, and they do not belong in a civil rights bill. They relate entirely to sound Federal administration of the Indian affairs program.

For example, no question of civil rights is involved in the question of whether Indian laws should be collected and published by the Secretary of the Interior; whether a book entitled "Federal Indian Law" should be updated and republished; or whether secretarial regulations affecting Indians should be published separately or in the Federal Register. Those are administrative matters. They have nothing to do whatsoever with civil rights.

One other provision needs to be noted.

Title IV would substantially amend Public Law 280 of the 83d Congress by permitting States to assume partial jurisdiction over an Indian reservation. The Department of Justice has expressed serious doubt about the wisdom of this action.

Another change would require tribal consent before a State may assume any jurisdiction. Public Law 280 originated in the Interior and Insular Affairs Committee, and it is our intention to consider these two changes when Senate 1843 is scheduled for final hearings before our committee.

For these reasons, Mr. Chairman and members of the committee, I hope that this legislation goes to a conference committee, where it rightfully belongs.