

Now, is there any objection to the placing in the record of these papers, statements that I have suggested?

Hearing no objection, it is so ordered.

(The documents referred to follow:)

U.S. DEPARTMENT OF THE INTERIOR,

OFFICE OF THE SECRETARY,

Washington, D.C., March 27, 1968.

Hon. WAYNE N. ASPINALL,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Your Committee has requested this Department's report on two identical bills, S. 1843 which passed the Senate in December of last year and H.R. 15122, and on a similar bill, H.R. 15419.

President Johnson, in his recent message "The Forgotten American", said:

"A new Indian Rights Bill is pending in the Congress. It would protect the individual rights of Indians in such matters as freedom of speech and religion, unreasonable search and seizure, a speedy and fair trial, and the right to habeas corpus. The Senate passed an Indian Bill of Rights last year. *I urge the Congress to complete action on that Bill of Rights in the current session.*"

We recommend the enactment of S. 1843. We note that the provisions of this bill have also been incorporated into H.R. 2516 by the Senate.

Title I, which is modeled after the Bill of Rights in the United States Constitution, is in the form recommended by the Department in its report to the Senate Judiciary Committee in the 89th Congress.

Some of the constitutional provisions which protect rights and freedoms of citizens from arbitrary action by the Federal Government have been held by the courts to be inapplicable with respect to Indian tribal governments in actions which affect their tribal members. The principal decisions involve the first amendment to the Constitution, and concern religious freedom. In the cases of *Toledo v. Pueblo de Jemez*, 119 F. Supp. 429 (D. N.M. 1954), and *Native American Church v. Navajo Tribal Council*, 272 F. 2d 131 (10th Cir. 1959), the courts held that the guaranty of religious freedom does not restrain local tribal governments from actions that interfere with the freedom of religious choice of their members.

Such absence of restraint on tribal governments flows from a time when Indian tribal governments were regarded as sovereign nations; when Indians were not even counted in the enumeration upon which congressional apportionment was based; and when much of what is now Indian country was unexplored wilderness. Through the 19th century the rights of citizenship were progressively applied; many Indian individuals and groups of individuals were made citizens by special Acts; and finally in 1924, by Act of Congress, all Indians not already made citizens became citizens of the United States and the States in which they resided.

Since 1924 Indian citizenship and tribal freedom from constitutional restraint have been incompatible.

Many tribes have adopted constitutions which contain provisions affording constitutional protection to their members. For example, the constitution of the Rosebud Sioux Tribe provides that its governing body shall have certain enumerated powers "subject to any limitations imposed by statutes or the Constitution of the United States." There has been no judicial decision, however, holding that language is enforceable in the Federal courts.

Title I extends to the American Indian in his dealings with the Indian tribal governments basic rights and freedoms enjoyed by other citizens of the United States. These rights are specifically enumerated in the bill.

Title II directs the Secretary of the Interior to prepare and recommend to the Congress by July 1, 1968, a model code to govern the administration of justice by courts of Indian offenses on Indian reservations.

The Department now has a code, which is an operating code, rather than a model one. It is published in 25 C.F.R. 11. It applies only to tribes that have not adopted codes of their own, and only four tribes now use it. Two of those four are in the process of adopting their own codes. For its present limited use, the code has been adequate. The Senate Committee's report on this portion of the bill states:

"The procedures in title 25 are outmoded, impractical, and fail to provide for an adequate administration of justice on Indian reservations. For example,