

In the interest of assuring maximum flexibility in absorption by States of civil and criminal jurisdiction over members of consenting tribes, the bill permits the jurisdiction so acquired to be limited both geographically and by subject matter. (Conversely, jurisdiction previously acquired pursuant to Public Law 280 could be retroceded selectively.) This Department has in the past emphasized the desirability from a law enforcement point of view of not adding to the complexity of the existing jurisdictional structure. For this reason States and consenting tribes should be encouraged to shift jurisdictional responsibility *en bloc* whenever possible.

Retrocessions to the United States are subject to acceptance, presumably by the Secretary of the Interior pursuant to the authority of N U.S.C. 485 and 25 U.S.C. 2.

Title IV of the bill would amend section 1153 of title 18, United States Code. That section provides that any Indian who commits certain crimes in Indian country shall be subject to the same laws and penalties as other persons committing these offenses in places within the exclusive jurisdiction of the United States. If an offense by an Indian on an Indian reservation is not defined here, or elsewhere by Federal law, it is punishable, if at all, only by tribal courts under tribal law. Title IV would amend existing law to include the offense "assault resulting in serious bodily injury" in section 1153.

The assault statute applicable in places within the exclusive jurisdiction of the United States does not define or punish the offense set forth in title IV. The bill, also, provides no penalty for this offense. Consequently, any prosecution for the offense could be predicated only on the Assimilated Crimes Act (18 U.S.C. 13), and only in States in which such an assault is punishable under State law.

Titles V and VI of the bill involve matters for which the Department of Justice does not have primary responsibility and, accordingly, we have no comments with respect to these titles.

Subject to the comments and recommendations made above, the Department of Justice urges the enactment of this legislation.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

WARREN CHRISTOPHER,
Deputy Attorney General.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., March 28, 1968.

MR. LEWIS A. SIGLER,
Consultant on Indian Affairs, Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

DEAR MR. SIGLER: Your letter of March 16, 1968, requested answers to a number of questions relative to S. 1843. The questions and our responses are as follows:

"1. In your opinion, would the right of a defendant in a criminal proceeding to have the assistance of counsel tend to disrupt some tribal court proceedings where neither judge nor prosecutor is an attorney? Explain."

Comment: We believe that there could be some disruptive effect although our experience with the use of professional attorneys in tribal courts where the judge is not an attorney is so limited that we can do little more than speculate. What little experience we have had also indicates that the disruptive effect would vary with the degree of acculturation and sophistication of the Indian judge concerned. With even less experience as concerns prosecutors in tribal courts, we are not aware of any instance where a professional defense counsel has had any disruptive effect on the nonprofessional prosecutor. We do believe, however, that in general the presence of an attorney should be helpful.

"2. Do some tribal courts prohibit participation by attorneys? How many?"

Comment: Tribal codes typically contain a provision that prohibits the practice of attorneys in tribal courts unless rules of court adopted locally permit the practice. We do not have definitive information regarding local rules of court, but our impression is that practice of attorneys is usually not permitted. We have been able to identify, however, five tribal codes that permit practice of attorneys. These are Fort Totten, Pine Ridge, Rosebud, Standing Rock, and Turtle Mountain. The pueblos in New Mexico have a traditional court system which is not coded. It is our understanding that attorneys are not permitted.