

"3. On the basis of an estimate, how many tribes have a court system?"

Comment: We estimate that 62 tribes have a court system. This information updates the information appearing on page 242, *et seq.*, of Part I, Hearings before the Subcommittee on Constitutional Rights of Senate Committee on the Judiciary, August 29-September 1, 1961.

"4. On the basis of an estimate, how many tribal courts have judges who are licensed attorneys?"

Comment: We have identified five tribal courts having judges who are licensed attorneys. They are Fort Totten, Rosebud, Standing Rock, Turtle Mountain, and Fort Berthold.

"5. If the maximum penalty in a tribal court is fixed at \$500 and 6 months imprisonment, some Indian offenders who are tried in the tribal courts will be treated more leniently than the same type of offender is treated in the state courts. Is this type of discrimination wise? Why should there be a statutory limit on penalties? If the tribe can define the offense why shouldn't it also prescribe the penalty?"

Comment: Undoubtedly, Indian offenders are treated more leniently in some tribal courts than the same type of offenders in some state courts. But this difference in treatment also exists in the courts of the various political subdivisions throughout the country. There is at present no statutory limit on penalties in tribal courts. Tribes have the power to both define the offense and prescribe the penalty, subject only to rescission or disapproval by the Secretary of the Interior, in most cases, where the offense or penalty is deemed inappropriate. Penalties between the tribes may differ widely. A statutory limit on penalties is appropriate because the criminal acts treated in the tribal court system are minor, and the possibility of disproportionate punishments should be prohibited.

"6. Is the jury trial requirement compatible with present tribal custom and procedure? What percentage of the tribal courts provide for jury trial? How would you evaluate the results of the procedure?"

Comment: The jury trial requirement in tribal courts is compatible with the tribal court system. With the possible exception of the traditional court system of the pueblos in New Mexico, whose laws are based on custom and tradition, all tribal codes have provisions for jury trials. The latest information available to us is for the years 1960 and 1961. That information indicates that, in that 2-year period, of the more than 80,000 cases, civil and criminal, in only 58 cases were jury trials requested. We do now know why the use of juries has been so minimal.

"7. How many states have assumed civil or criminal jurisdiction under Public Law 280? Please furnish copies of the state statutes."

Comment: Five States have assumed jurisdiction in whole or in part. They are: Florida, Idaho, Montana, Nevada, and Washington. Copies of the state statutes are enclosed.

"8. Has any State assumed jurisdiction when the Indians involved opposed the action? Specify."

Comment: Idaho and Nevada assumed jurisdiction without consultation or consent. In 1957 the Washington legislature enacted a law that permitted the governor, upon request of a tribe, to extend jurisdiction by proclamation over the reservation. Thirteen of the small tribes in western Washington requested extension of jurisdiction. One of these tribes subsequently changed its mind and the governor revoked his proclamation. In 1963 the legislature enacted a statute, without consultation with or consent of the tribes, that assumed jurisdiction on a piecemeal basis over a limited category of subject matter. Florida assumed jurisdiction at the request of the Seminole Tribe. Montana assumed jurisdiction on the Flathead Reservation at the request of the Flathead Tribes.

"9. Do any tribes now subject to state jurisdiction want to terminate the jurisdiction?"

Comment: We know that the Quinault Tribe, one of the 13 in Washington that had originally requested the state to assume jurisdiction, has requested termination of the state's jurisdiction. We have had no formal expression of a desire by any other tribe to terminate state jurisdiction. Informal discussions from time to time with tribal leaders and individual Indians indicate some dissatisfaction with state jurisdiction.

"10. Are any States currently planning to assume jurisdiction? Specify."

Comment: We are not aware of any current plans on the part of any State to assume jurisdiction.

"11. Has any State that has assumed criminal jurisdiction failed to provide enforcement services comparable to those formerly furnished by the Bureau of