

are considered in this day and age basic to the maintenance of a free and democratic society.

The constitution of each tribe for which we here testify generally provides that the powers of the governing council shall be subject to any limitations imposed by the statutes or Constitution of the United States. Leaving aside the question of whether such language already makes the Federal Bill of Rights applicable to tribal actions, our clients welcome legislation which would define and protect the fundamental rights of individual tribal members. Although such provisions in section 102 as the right of a criminal defendant to the assistance of counsel at his own expense may affect the current operation of some tribal courts, the long-range benefits of this section so far outweigh the temporary disruptions that may be caused in the administration of justice that its rejection by the Congress is unthinkable.

#### HABEAS CORPUS

Section 103 would make the writ of habeas corpus available in the U.S. district court to any person to test the legality of his detention by order of an Indian tribe. We believe that the Federal courts, as exemplified by the decision of the Court of Appeals for the Ninth Circuit in *Colliflower v. Garland*, 342 F. 2d 369 (February 4, 1965), may be inclined to adopt this rule even in the absence of legislation. Our clients, however, endorse action by the Congress to make clear that the great writ shall be available to their members, particularly where a claim is asserted that a constitutional right has been denied.

#### MODEL CODE

Section 201 would direct the Secretary of the Interior to prepare and recommend to the Congress "a model code to govern the administration of justice by courts of Indian offenses on Indian reservations." Development of a comprehensive model code will, we believe, encourage and assist tribes voluntarily to seek and achieve the basic goal of protecting individuals from arbitrary, unreasonable, or discriminatory governmental action. Moreover, if the code drafted by the Secretary, after consulting Indians and their legal representatives, becomes a true model, with variations allowed from the norm, each tribe would be able to adopt rules tailored to fit its own particular circumstances, including, where desirable, conformity to the laws of the State.

Since the enforcement of a model code incorporating principles embodied in the Federal Constitution is for Indians an educational as well as a political process, its adoption, of course, should be subject to tribal consent. By the same token, the enabling legislation should make clear that the specification of individual rights in the model code shall be without prejudice to any other rights now enjoyed by tribal members under the laws and Constitution of the United States.

#### STATE JURISDICTION

A major purpose of S. 1843 and H.R. 15122 is to repeal Public Law 280 of the 83d Congress—probably the most objectionable general legislation affecting Indians passed in the 20th century—and to sub-