

RIGHTS OF MEMBERS OF INDIAN TRIBES

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HEARING
BEFORE THE
SUBCOMMITTEE ON INDIAN AFFAIRS
OF THE
COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
HOUSE OF REPRESENTATIVES
NINETIETH CONGRESS

SECOND SESSION

ON

H.R. 15419 and Related Bills

TO ESTABLISH RIGHTS FOR INDIVIDUALS IN THEIR RELATIONS
WITH INDIAN TRIBES, AND FOR OTHER PURPOSES

FRIDAY, MARCH 29, 1968

Serial No. 90-23

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RIGHTS OF MEMBERS OF INDIAN TRIBES

FRIDAY, MARCH 29, 1968

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INDIAN AFFAIRS
OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 1324, Longworth House Office Building, Hon. Wayne N. Aspinall (chairman of the full committee) presiding.

The CHAIRMAN. The Committee on Interior and Insular Affairs will be in session for the business regularly scheduled to come before it. It has been requested that one of the Pueblos present be permitted to give a short invocation as we begin the proceedings this morning. If all of us will please stand, Governor Sanchez will lead us in prayer.

(Invocation by Governor Sanchez.)

The CHAIRMAN. Thank you very much, Governor Sanchez.

The business that we have before us at this time is a consideration of H.R. 15419, by our colleague, Mr. Berry, H.R. 15122 by Congressman Cunningham for himself and Mr. Denney, and S. 1843.

Without objection, the House bill, H.R. 15419, together with the Senate bill, S. 1843, a bill to establish rights for individuals in their relations with Indian tribes, to direct the Secretary of the Interior to recommend to the Congress a model code governing the administration of justice by courts of Indian offenses on Indian reservations, to protect the constitutional rights of certain individuals, and for other purposes—Mr. Berry's bill, to establish rights for individuals in their relations with Indian tribes and for other purposes—will be made a part of the record at this place.

Hearing no objection, it will be so ordered.

(H.R. 15419, H.R. 15122, and S. 1843 together with attachments follow:)

[H.R. 15419, 90th Cong., second sess.]

A BILL To establish rights for individuals in their relations with Indian tribes, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—RIGHTS OF INDIANS

DEFINITIONS

SEC. 101. For purposes of this title, the term—

(1) "Indian tribe" means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government;

(1)

(2) "powers of self-government" means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and

(3) "Indian court" means any Indian tribal court or court of Indian offense.

INDIAN RIGHTS

SEC. 102. No Indian tribe in exercising powers of self-government shall—

(1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

(2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

(3) subject any person for the same offense to be twice put in jeopardy;

(4) compel any person in any criminal case to be a witness against himself;

(5) take any private property for a public use without just compensation;

(6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;

(7) require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of six months or a fine of \$500; or both;

(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(9) pass any bill of attainder or ex post facto law; or

(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

HABEAS CORPUS

SEC. 103. The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.

SEC. 104. The provisions of this title shall take effect upon the expiration of one year following the date of its enactment.

TITLE II—EMPLOYMENT OF LEGAL COUNSEL

APPROVAL

SEC. 201. Notwithstanding any other provision of law, if any application made by any Indian, Indian tribe, Indian council, or any band or group of Indians under any law requiring the approval of the Secretary of the Interior or the Commissioner of Indian Affairs of contracts or agreements relating to the employment of legal counsel (including the choice of counsel and the fixing of fees) by any such Indians, tribe, council, band, or group is neither granted nor denied within ninety days following the making of such application, such approval shall be deemed to have been granted.

TITLE III—LAWS RELATING TO INDIAN AFFAIRS

SEC. 301. (a) The Secretary of the Interior is authorized to publish and keep current on an annual basis the laws relating to Indian Affairs that are contained in (1) Kappler, "Indian Affairs, Laws, and Treaties," and (2) the looseleaf system now maintained in the Department, with such additions and deletions as he considers appropriate.

(b) There is authorized to be appropriated to carry out the provisions of this section such sum as may be necessary.

[H.R. 15122, 90th Cong., second sess.]

A BILL To establish rights for individuals in their relations with Indian tribes; to direct the Secretary of the Interior to recommend to the Congress a model code governing the administration of justice by courts of Indian offenses on Indian reservations; to protect the constitutional rights of certain individuals; and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—RIGHTS OF INDIANS

DEFINITIONS

SEC. 101. For purposes of this title, the term—

(1) "Indian tribe" means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government;

(2) "powers of self-government" means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and

(3) "Indian court" means any Indian tribal court or court of Indian offense.

SEC. 102. No Indian tribe in exercising powers of self-government shall—

(1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

(2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

(3) subject any person for the same offense to be twice put in jeopardy.

(4) compel any person in any criminal case to be a witness against himself;

(5) take any private property for a public use without just compensation;

(6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;

(7) require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of six months or a fine of \$500, or both;

(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(9) pass any bill of attainder or ex post facto law; or

(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

HABEAS CORPUS

SEC. 103. The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.

EFFECTIVE DATE

SEC. 104. The provisions of this title shall take effect upon the expiration of one year following the date of its enactment.

TITLE II—MODEL CODE GOVERNING COURTS OF INDIAN OFFENSES

SEC. 201. The Secretary of the Interior is authorized and directed to recommend to the Congress, on or before July 1, 1968, a model code to govern the administration of justice by courts of Indian offenses on Indian reservations.

Such code shall include provisions which will (1) assure that any individual being tried for an offense by a court of Indian offenses shall have the same rights, privileges, and immunities under the United States Constitution as would be guaranteed any citizen of the United States being tried in a Federal court for any similar offense, (2) assure that any individual being tried for an offense by a court of Indian offenses will be advised and made aware of his rights under the United States Constitution, and under any tribal constitution applicable to such individual, (3) establish proper qualifications for the offices of judge of the court of Indian offenses, and (4) provide for the establishing of educational classes for the training of judges of courts of Indian offenses. In carrying out the provisions of this title, the Secretary of the Interior shall consult with the Indians, Indian tribes, and interested agencies of the United States.

SEC. 202. There is hereby authorized to be appropriated such sum as may be necessary to carry out the provisions of this title.

TITLE III—JURISDICTION OVER CRIMINAL AND CIVIL ACTIONS

ASSUMPTION BY STATE

SEC. 301. (a) The consent of the United States is hereby given to any State not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country situated within such State to assume, with the consent of the Indian tribe occupying the particular Indian country or part thereof which would be affected by such assumption, such measure of jurisdiction over any or all of such offenses committed within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over any such offense committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute, or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing, or the control, licensing, or regulation thereof.

ASSUMPTION BY STATE OF CIVIL JURISDICTION

SEC. 302. (a) The consent of the United States is hereby given to any State not having jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country situated within such State to assume, with the consent of the tribe occupying the particular Indian country or part thereof which would be affected by such assumption, such measure of jurisdiction over any or all such civil causes of action arising within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute, or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

RETROCESSION OF JURISDICTION BY STATE

SEC. 303. (a) The United States is authorized to accept a retrocession by any State of all or any measure of the criminal or civil jurisdiction, or both, acquired by such State pursuant to the provisions of section 1162 of title 18 of the United States Code, section 1360 of title 28 of the United States Code, or section 7 of the Act of August 15, 1953 (67 Stat. 588), as it was in effect prior to its repeal by subsection (b) of this section.

(b) Section 7 of the Act of August 15, 1953 (67 Stat. 588), is hereby repealed, but such repeal shall not affect any cession of jurisdiction made pursuant to such section prior to its repeal.

CONSENT TO AMEND STATE LAWS

SEC. 304. Notwithstanding the provisions of any enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil or criminal jurisdiction in accordance with the provisions of this title. The provisions of this title shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes, as the case may be.

ACTIONS NOT TO ABATE

SEC. 305. (a) No action or proceeding pending before any court or agency of the United States immediately prior to any cession of jurisdiction by the United States pursuant to this title shall abate by reason of that cession. For the purposes of any such action or proceeding, such cession shall take effect on the day following the date of final determination of such action or proceeding.

(b) No cession made by the United States under this title shall deprive any court of the United States of jurisdiction to hear, determine, render judgment, or impose sentence in any criminal action instituted against any person for any offense committed before the effective date of such cession, if the offense charged in such action was cognizable under any law of the United States at the time of the commission of such offense. For the purposes of any such criminal action, such cession shall take effect on the day following the date of final determination of such action.

SPECIAL ELECTION

SEC. 306. State jurisdiction acquired pursuant to this title with respect to criminal offenses or civil causes of action, or with respect to both, shall be applicable in Indian country only where the enrolled Indians within the affected area of such Indian country accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose. The Secretary of the Interior shall call such special election under such rules and regulations as he may prescribe, when requested to do so by the tribal council or other governing body, or by 20 per centum of such enrolled adults.

TITLE IV—OFFENSES WITHIN INDIAN COUNTRY

AMENDMENT

SEC. 401. Section 1153 of title 18 of the United States Code is amended by inserting immediately after "weapon," the following: "assault resulting in serious bodily injury,".

TITLE V—EMPLOYMENT OF LEGAL COUNSEL

APPROVAL

SEC. 501. Notwithstanding any other provision of law, if any application made by any Indian, Indian tribe, Indian council, or any band or group of Indians under any law requiring the approval of the Secretary of the Interior or the Commissioner of Indian Affairs of contracts or agreements relating to the employment of legal counsel (including the choice of counsel and the fixing of fees) by any such Indians, tribe, council, band, or group is neither granted nor denied within ninety days following the making of such application, such approval shall be deemed to have been granted.

TITLE VI—MATERIALS RELATING TO CONSTITUTIONAL RIGHTS OF INDIANS

SECRETARY OF INTERIOR TO PREPARE

SEC. 601. (a) In order that the constitutional rights of Indians might be fully protected, the Secretary of the Interior is authorized and directed to—

(1) have the document entitled "Indian Affairs, Laws and Treaties" (Senate Document Numbered 319, volumes 1 and 2, Fifty-eighth Congress) revised and extended to include all treaties, laws, Executive orders, and regulations relating to Indian affairs in force on September 1, 1967, and to have such revised document printed at the Government Printing Office;

(2) have revised and republished the treatise entitled "Federal Indian Law"; and

(3) have prepared, to the extent determined by the Secretary of the Interior to be feasible, an accurate compilation of the official opinions, published and unpublished, of the Solicitor of the Department of the Interior relating to Indian affairs rendered by the Solicitor prior to September 1, 1967, and to have such compilation printed as a Government publication at the Government Printing Office.

(b) With respect to the document entitled "Indian Affairs, Laws and Treaties" as revised and extended in accordance with paragraph (1) of subsection (a), and the compilation prepared in accordance with paragraph (3) of such subsection, the Secretary of the Interior shall take such action as may be necessary to keep such document and compilation current on an annual basis.

(c) There is authorized to be appropriated for carrying out the provisions of this title, with respect to the preparation but not including printing, such sums as may be necessary.

[S. 1843, 90th Cong., first sess.]

AN ACT To establish rights for individuals in their relations with Indian tribes; to direct the Secretary of the Interior to recommend to the Congress a model code governing the administration of justice by courts of Indian offenses on Indian reservations; to protect the constitutional rights of certain individuals; and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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(1) "Indian tribe" means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government;

(2) "powers of self-government" means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and

(3) "Indian court" means any Indian tribal court or court of Indian offense.

INDIAN RIGHTS

SEC. 102. No Indian tribe in exercising powers of self-government shall—

(1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

(2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

(3) subject any person for the same offense to be twice put in jeopardy;

(4) compel any person in any criminal case to be a witness against himself;

(5) take any private property for a public use without just compensation;

(6) deny to any person in a criminal proceeding the right to a speedy and

public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for

obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;

(7) require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of six months or a fine of \$500, or both;

(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(9) pass any bill of attainder or ex post facto law; or

(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

HABEAS CORPUS

SEC. 103. The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.

EFFECTIVE DATE

SEC. 104. The provisions of this title shall take effect upon the expiration of one year following the date of its enactment.

TITLE II—MODEL CODE GOVERNING COURTS OF INDIAN OFFENSES

SEC. 201. The Secretary of the Interior is authorized and directed to recommend to the Congress, on or before July 1, 1968, a model code to govern the administration of justice by courts of Indian offenses on Indian reservations. Such code shall include provisions which will (1) assure that any individual being tried for an offense by a court of Indian offenses shall have the same rights, privileges, and immunities under the United States Constitution as would be guaranteed any citizen of the United States being tried in a Federal court for any similar offense, (2) assure that any individual being tried for an offense by a court of Indian offenses will be advised and made aware of his rights under the United States Constitution, and under any tribal constitution applicable to such individual, (3) establish proper qualifications for the office of judge of the court of Indian offenses, and (4) provide for the establishing of educational classes for the training of judges of courts of Indian offenses. In carrying out the provisions of this title, the Secretary of the Interior shall consult with the Indians, Indian tribes, and interested agencies of the United States.

SEC. 202. There is hereby authorized to be appropriated such sum as may be necessary to carry out the provisions of this title.

TITLE III—JURISDICTION OVER CRIMINAL AND CIVIL ACTIONS

ASSUMPTION BY STATE

SEC. 301. (a) The consent of the United States is hereby given to any State not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country situated within such State to assume, with the consent of the Indian tribe occupying the particular Indian country or part thereof which would be affected by such assumption, such measure of jurisdiction over any or all of such offenses committed within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over any such offense committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute, or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing, or the control, licensing, or regulation thereof.

ASSUMPTION BY STATE OF CIVIL JURISDICTION

SEC. 302. (a) The consent of the United States is hereby given to any State not having jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country situated within such State to assume, with the consent of the tribe occupying the particular Indian country or part thereof which would be affected by such assumption, such measure of jurisdiction over any or all such civil causes of action arising within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute, or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

RETROCESSION OF JURISDICTION BY STATE

SEC. 303. (a) The United States is authorized to accept a retrocession by any State of all or any measure of the criminal or civil jurisdiction, or both, acquired by such State pursuant to the provisions of section 1162 of title 18 of the United States Code, section 1360 of title 28 of the United States Code, or section 7 of the Act of August 15, 1953 (67 Stat. 588), as it was in effect prior to its repeal by subsection (b) of this section.

(b) Section 7 of the Act of August 15, 1953 (67 Stat. 588), is hereby repealed, but such repeal shall not affect any cession of jurisdiction made pursuant to such section prior to its repeal.

CONSENT TO AMEND STATE LAWS

SEC. 304. Notwithstanding the provisions of any enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil or criminal jurisdiction in accordance with the provisions of this title. The provisions of this title shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes, as the case may be.

ACTIONS NOT TO ABATE

SEC. 305. (a) No action or proceeding pending before any court or agency of the United States immediately prior to any cession of jurisdiction by the United States pursuant to this title shall abate by reason of that cession. For the purposes of any such action or proceeding, such cession shall take effect on the day following the date of final determination of such action or proceeding.

(b) No cession made by the United States under this title shall deprive any court of the United States or jurisdiction to hear, determine, render judgment, or impose sentence in any criminal action instituted against any person for any offense committed before the effective date of such cession if the offense charged in such action was cognizable under any law of the United State at the time of the commission of such offense. For the purposes of any such criminal action, succession shall take effect on the day following the date of final determination of such action.

SPECIAL ELECTION

SEC. 306. State jurisdiction acquired pursuant to this title with respect to criminal offenses or civil causes of action, or with respect to both, shall be applicable in Indian country only where the enrolled Indians within the affected area of such Indian country accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose. The Secretary of the Interior shall call such special election under such rules and regulations as he may prescribe, when requested to do so by the tribal council or other governing body, or by 20 per centum of such enrolled adults.

TITLE IV—OFFENSES WITHIN INDIAN COUNTRY

AMENDMENT

SEC. 401. Section 1153 of title 18 of the United States Code is amended by inserting immediately after "weapon," the following: "assault resulting in serious bodily injury."

TITLE V—EMPLOYMENT OF LEGAL COUNSEL

APPROVAL

SEC. 501. Notwithstanding any other provision of law, if any application made by any Indian, Indian tribe, Indian council, or any band or group of Indians under any law requiring the approval of the Secretary of the Interior or the Commissioner of Indian Affairs of contracts or agreements relating to the employment of legal counsel (including the choice of counsel and the fixing of fees) by any such Indians, tribe, council, band, or group is neither granted nor denied within ninety days following the making of such application, such approval shall be deemed to have been granted.

TITLE VI—MATERIALS RELATING TO CONSTITUTIONAL RIGHTS OF INDIANS

SECRETARY OF INTERIOR TO PREPARE

SEC. 601. (a) In order that the constitutional rights of Indians might be fully protected, the Secretary of the Interior is authorized and directed to—

(1) have the document entitled "Indian Affairs, Laws and Treaties" (Senate Document Numbered 319, volumes 1 and 2, Fifty-eighth Congress) revised and extended to include all treaties, laws, Executive orders, and regulations relating to Indian affairs in force on September 1, 1967, and to have such revised document printed at the Government Printing Office;

(2) have revised and republished the treaties entitled "Federal Indian Law"; and

(3) have prepared, to the extent determined by the Secretary of the Interior to be feasible, an accurate compilation of the official opinions, published and unpublished, of the Solicitor of the Department of the Interior relating to Indian affairs rendered by the Solicitor prior to September 1, 1967, and to have such compilation printed as a Government publication at the Government Printing Office.

(b) With respect to the document entitled "Indian Affairs, Laws and Treaties" as revised and extended in accordance with paragraph (1) of subsection (a), and the compilation prepared in accordance with paragraph (3) of such subsection, the Secretary of the Interior shall take such action as may be necessary to keep such document and compilation current on an annual basis.

(c) There is authorized to be appropriated for carrying out the provisions of this title, with respect to the preparation but not including printing, such sum as may be necessary.

Passed the Senate December 7 (legislative day, December 6), 1967.

Attest:

FRANCIS R. VALEO,
Secretary.

[S. Rept. 841, 90th Cong., first sess.]

PROTECTING THE RIGHTS OF THE AMERICAN INDIAN

The Committee on the Judiciary, to which was referred the bill (S. 1843) to establish rights for individuals in their relations with Indian tribes; to direct the Secretary of the Interior to recommend to the Congress a model code governing the administration of justice by courts of Indian offenses on Indian reservations; to protect the constitutional rights of certain individuals; and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

AMENDMENTS

Strike all after the enacting clause and insert in lieu thereof the following:

"TITLE I—RIGHTS OF INDIANS

"DEFINITIONS

"SECTION 101. For purposes of this title, the term—

"(1) 'Indian tribe' means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government;

"(2) 'powers of self-government' means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and

"(3) 'Indian court' means any Indian tribal court or court of Indian offense.

"INDIAN RIGHTS

"SEC. 102. No Indian tribe in exercising powers of self-government shall—

"(1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

"(2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

"(3) subject any person for the same offense to be twice put in jeopardy;

"(4) compel any person in any criminal case to be a witness against himself;

"(5) take any private property for a public use without just compensation;

"(6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;

"(7) require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of six months or a fine of \$500, or both;

"(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

"(9) pass any bill of attainder or ex post facto law; or

"(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

"HABEAS CORPUS

"SEC. 103. The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.

"EFFECTIVE DATE

"SEC. 104. The provisions of this title shall take effect upon the expiration of 1 year following the date of its enactment.

**"TITLE II—MODEL CODE GOVERNING COURTS OF INDIAN
OFFENSES**

"SEC. 201. The Secretary of the Interior is authorized and directed to recommend to the Congress, on or before July 1, 1968, a model code to govern the administration of justice by courts of Indian offenses on Indian reservations. Such code shall include provisions which will (1) assure that any individual being tried for an offense by a court of Indian offenses shall have the same rights, privileges, and immunities under the United States Constitution as would be guaranteed any citizen of the United States being tried in a Federal court for any similar offense, (2) assure that any individual being tried for an offense by a court of Indian offenses will be advised and made aware of his rights under the United States Constitution, and under any tribal constitution applicable to such individual, (3) establish proper qualifications for the office of judge of the court of Indian offenses, and (4) provide for the establishing of educational classes for the training of judges of courts of Indian offenses. In carrying out the provisions of this title, the Secretary of the Interior shall consult with the Indians, Indian tribes, and interested agencies of the United States.

"SEC. 202. There is hereby authorized to be appropriated such sum as may be necessary to carry out the provisions of this title.

"TITLE III—JURISDICTION OVER CRIMINAL AND CIVIL ACTIONS

"ASSUMPTION BY STATE

"SEC. 301. (a) The consent of the United States is hereby given to any State not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country situated within such State to assume, with the consent of the Indian tribe occupying the particular Indian country or part thereof which would be affected by such assumption, such measure of jurisdiction over any or all of such offenses committed within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over any such offense committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

"ASSUMPTION BY STATE OF CIVIL JURISDICTION

"SEC. 302. (a) The consent of the United States is hereby given to any State not having jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country situated within such State to assume, with the consent of the tribe occupying the particular Indian country or part thereof which would be affected by such assumption, such measure of jurisdiction over any or all such civil causes of action arising within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

"(b) Nothing in this section shall authorize the alienation, encumbrance, or

taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute, or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

"(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

"RETROCESSION OF JURISDICTION BY STATE

"SEC. 303. (a) The United States is authorized to accept a retrocession by any State of all or any measure of the criminal or civil jurisdiction, or both, acquired by such State pursuant to the provisions of section 1162 of title 18 of the United States Code, section 1360 of title 28 of the United States Code, or section 7 of the Act of August 15, 1953 (67 Stat. 588), as it was in effect prior to its repeal by subsection (b) of this section.

"(b) Section 7 of the Act of August 15, 1953 (67 Stat. 588), is hereby repealed, but such repeal shall not affect any cession of jurisdiction made pursuant to such section prior to its repeal.

"CONSENT TO AMEND STATE LAWS

"SEC. 304. Notwithstanding the provisions of any enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil or criminal jurisdiction in accordance with the provisions of this title. The provisions of this title shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes as the case may be.

"ACTIONS NOT TO ABATE

"SEC. 305. (a) No action or proceeding pending before any court or agency of the United States immediately prior to any cession of jurisdiction by the United States pursuant to this title shall abate by reason of that cession. For the purposes of any such action or proceeding, such cession shall take effect on the day following the date of final determination of such action or proceeding.

"(b) No cession made by the United States under this title shall deprive any court of the United States of jurisdiction to hear, determine, render judgment, or impose sentence in any criminal action instituted against any person for any offense committed before the effective date of such cession; if the offense charged in such action was cognizable under any law of the United States at the time of the commission of such offense. For the purposes of any such criminal action, such cession shall take effect on the day following the date of final determination of such action.

"SPECIAL ELECTION

"SEC. 306. State jurisdiction acquired pursuant to this title with respect to criminal offenses or civil causes of action, or with respect to both, shall be applicable in Indian country only where the enrolled Indians within the affected area of such Indian country accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose. The Secretary of the Interior shall call such special election under such rules and regulations as he may prescribe, when requested to do so by the tribal council or other governing body, or by 20 per centum of such enrolled adults.

"TITLE IV—OFFENSES WITHIN INDIAN COUNTRY

"AMENDMENT

"SEC. 401. Section 1153 of title 18, United States Code, is amended by inserting immediately after 'weapon', the following: 'assault resulting in serious bodily injury'.

"TITLE V—EMPLOYMENT OF LEGAL COUNSEL

"APPROVAL

"SEC. 501. Notwithstanding any other provision of law, if any application made by any Indian, Indian tribe, Indian council, or any band or group of Indians under any law requiring the approval of the Secretary of the Interior or the Commissioner of Indian Affairs of contracts or agreements relating to the employment of legal counsel (including the choice of counsel and the fixing of fees) by any such Indians, tribe, council, band, or group is neither granted nor denied within ninety days following the making of such application, such approval shall be deemed to have been granted.

"TITLE VI—MATERIALS RELATING TO THE CONSTITUTIONAL RIGHTS OF INDIANS

"SECRETARY OF THE INTERIOR TO PREPARE

"SEC. 601. (a) In order that the constitutional rights of Indians might be fully protected, the Secretary of the Interior is authorized and directed to—

"(1) have the document entitled 'Indian Affairs, Laws and Treaties' (Senate Document Numbered 319, volumes 1 and 2, Fifty-eighth Congress) revised and extended to include all treaties, laws, Executive orders, and regulations relating to Indian affairs in force on September 1, 1967, and to have such revised document printed at the Government Printing Office;

"(2) have revised and republished the treatise entitled 'Federal Indian Law'; and

"(3) have prepared, to the extent determined by the Secretary of the Interior to be feasible, an accurate compilation of the official opinions, published and unpublished, of the Solicitor of the Department of the Interior relating to Indian affairs rendered by the Solicitor prior to September 1, 1967, and to have such compilation printed as a Government publication at the Government Printing Office.

"(b) With respect to the document entitled 'Indian Affairs, Laws and Treaties' as revised and extended in accordance with paragraph (1) of subsection (a), and the compilation prepared in accordance with paragraph (3) of such subsection, the Secretary of the Interior shall take such action as may be necessary to keep such document and compilation current on an annual basis.

"(c) There is authorized to be appropriated for carrying out the provisions of this title, with respect to the preparation but not including printing, such sum as may be necessary."

Amend the title so as to read:

"A bill to establish rights for individuals in their relations with Indian tribes; to direct the Secretary of the Interior to recommend to the Congress a model code governing the administration of justice by courts of Indian offenses on Indian reservations; to protect the constitutional rights of certain individuals; and for other purposes."

PURPOSE OF AMENDMENTS

This amended bill represents the consolidation of five individual bills (S. 1843, S. 1844, S. 1845, S. 1846, S. 1847) and one joint resolution (S.J. Res. 87) introduced on May 23, 1967. As originally introduced, these measures covered the six major areas in which the rights of Indians have been neglected for years. As amended, S. 1843 was used as the vehicle for combining the provisions of the six original measures. The committee feels that the omnibus bill is the most expeditious method of securing for the American Indian the broad constitutional rights afforded to other Americans.

LEGISLATIVE HISTORY

In 1961, the subcommittee began its preliminary investigation of the legal status of the Indian in America and the problems Indians encounter when asserting constitutional rights in their relations with State, Federal, and tribal governments. Approximately 2,000 questionnaires, addressed to a broadly representative group of persons familiar with Indian Affairs, comprised an important segment of this investigation. The preliminary research, the first such study ever undertaken by Congress, demonstrated a clear need for further congressional inquiry.

Accordingly, hearings were commenced in Washington in August 1961, and moved to California, Arizona, and New Mexico in November. The following June, hearings were held in Colorado and North and South Dakota and finally concluded in Washington during March of 1963. These hearings and staff conferences were held in areas where the subcommittee could receive the views of the largest number of Indian tribes. During this period, representatives from 85 tribes appeared before the subcommittee.

S. 961 through S. 968 and Senate Joint Resolution 40 of the 89th Congress were introduced in response to the findings of the subcommittee based on these hearings and investigations.

On June 22, 23, 24, and 29, 1965, the subcommittee, meeting in Washington, received testimony relative to these measures. Additional statements were filed with the subcommittee before and following the public hearings. In all, some 79 persons either appeared before the subcommittee or presented statements for its consideration. These persons included representatives from 36 separate tribes, bands, or other groups of Indians located in 14 States. Four national associations representing Indians, as well as three regional, federated Indian organizations, presented their views. Members of Congress, State officials, and representatives from the Department of the Interior also submitted opinions on this legislation.

The 1965 hearings revealed the necessity of revising some of the original measures, combining two of them into title I, and deleting two proposals from the legislative package. The six titles of S. 1843, as amended, are products of the recommendations of the Subcommittee on Constitutional Rights as reported in its "Summary Report of Hearings and Investigations on the Constitutional Rights of the American Indian, 1966."

On May 23, 1967, Senator Ervin and others cosponsored S. 1843 through S. 1847 and Senate Joint Resolution 87. Because extensive hearings were held on similar measures in the 89th Congress, no further hearings were necessary.

PURPOSE OF LEGISLATION

The purpose of S. 1843, as amended, is to insure that the American Indian is afforded the broad constitutional rights secured to other Americans.

TITLE I

The purpose of title I is to protect individual Indians from arbitrary and unjust actions of tribal governments. This is accomplished by placing certain limitations on an Indian tribe in the exercise of its powers of self-government. These limitations are the same as those imposed on the Government of the United States by the U.S. Constitution and on the States by judicial interpretation.

Title I is designed to remedy a situation first brought to light in the 1961 hearings of the Subcommittee on Constitutional Rights and found to be a continuing problem.

The quasi-sovereign character of Indian tribes, Indian self-government, and particularly the administration of justice, are factors which may deny both procedural and substantive rights to the residents of Indian communities. This denial results from the fact that particular restraints on the United States do not apply to the operation of tribal governments. While a great deal of blame has been placed on Indian governments for these denials, the Federal Government and the States must share the responsibility for the Indian's lack of constitutional rights.

It is hoped that title II, requiring the Secretary of the Interior to recommend a model code for all Indian tribes, will implement the effect of title I.

Accordingly, the provisions of title I are scheduled to take effect upon the expiration of 1 year from the date of enactment, thus affording Indian tribes a period in which to prepare themselves for a new concept of law and order.

TITLE II

The purpose of title II is to provide for a model code which will safeguard the constitutional rights of the American Indian. The Secretary of the Interior would be directed to draft a model code of Indian offenses which would apply uniformly to all Indian courts in Indian country, thus assuring that all Indians receive equal justice under Indian law. It is also envisioned that the model code

would incorporate those rights enumerated in title I, which places certain limitations on Indian tribal governments in the exercise of self-government, particularly in the administration of justice.

TITLE III

The purpose of title III is to repeal section 7, Public Law 280, 83d Congress, and to authorize the United States to accept a retrocession by any State of all or any measure of the criminal or civil jurisdiction, or both, acquired by such State pursuant to the provisions of that law, as it was in effect prior to its repeal by this title. The consent of the United States is also given to any State to assert civil and criminal jurisdiction in Indian country where no State jurisdiction now exists and where the consent of the Indian tribes is obtained by popular referendum of all the enrolled adult Indians within the affected area.

TITLE IV

The purpose of title IV is to add to the "Major Crimes Act" the offense of "assault resulting in serious bodily injury." This new crime would amend section 1153 of title 18 of the United States Code.

TITLE V

The purpose of title V is to expedite the approval of contracts between Indian tribes or other groups of Indians and their legal counsel when such approval by the Secretary of the Interior or the Commissioner of Indian Affairs is required by law.

TITLE VI

The purpose of title VI is to update and expand the volumes entitled "Indian Affairs, Laws, and Treaties" (S. Doc. No. 319, 58th Cong.), the treatise entitled "Federal Indian Law," and to prepare an accurate compilation of the opinions of the Solicitor of the Department of the Interior.

NEED FOR LEGISLATION

The need for legislation to protect the rights of the American Indian became evident as the Subcommittee on Constitutional Rights conducted its studies and hearings over the past several years, beginning in 1961.

TITLE I

A. Denial of rights by tribal governments

When the subcommittee began its investigation of the constitutional rights of American Indians, Chairman Ervin wrote the Attorney General of the United States requesting his views on the constitutional rights of American Indians. Attorney General Kennedy replied as follows:

"All the constitutional guarantees apply to the American Indians in their relations with the Federal Government, or its branches, and the State governments to the same extent that they apply to other American citizens. It is not entirely clear to what extent the constitutional restrictions applicable to the Federal Government, or its branches, and to the State governments are applicable to tribal governments, but the decided cases indicate there are large areas where such restrictions are not applicable."

Indian tribes in the United States have been recognized and treated as distinct and independent political communities since early 1800. Indian tribes possess and exercise inherent powers of self-government which derive from the sovereign character of the tribe and not by grant or cession from Congress or the States.

Several sections of the Constitution have been used to establish restraints on Indian self-government although Congress has exercised its powers to legislate such restraints on numerous occasions. The tribe retains quasi-sovereign authority over its internal affairs, and thereby exercises final, unchecked authority over many facets of an Indian's life.

The contemporary meaning of tribal sovereignty is defined in the case of *Iron Crow v. Oglala Sioux Tribe*, 231 F. 2d 89 (8th Cir. 1956), as follows:

"It would seem clear that the Constitution, as construed by the Supreme Court, acknowledges the paramount authority of the United States with regard to

Indian tribes, but recognizes the existence of Indian tribes as quasi-sovereign entities possessing all the inherent rights of sovereignty except where restrictions have been placed thereon by the United States itself."

In discussing the scope of the meaning of tribal sovereignty, Felix Cohen in his book entitled "Federal Indian Law," said:

"The whole course of judicial decision on the nature of Indian tribal powers is marked by adherence to three fundamental principles:

"(1) The Indian tribe possesses, in the first instance, all the powers of any sovereign state.

"(2) Conquest renders a tribe subject to the legislative power of the United States, and, in substance, terminates the external powers of sovereignty of the tribe, e.g. its power to enter into treaties with foreign nations, but does not, by itself, affect the internal sovereignty of the tribe; that is, its power of local self-government.

"(3) These powers are subject to qualification by treaties and by express legislation by Congress, but, save as thus expressly qualified, full powers of internal sovereignty are vested in the Indian tribes and in their duly constituted organs of government."

The courts have repeatedly upheld the quasi-sovereign status of the tribe; however, the Congress has the prerogative placing limitations upon tribal autonomy.

Since 1885 and the enactment of the Seven Major Crimes Act, tribal authority has been markedly circumscribed by congressional action. That sovereignty, moreover, has been further limited in those instances in which States, acting pursuant to Public Law 83-280 have undertaken to assume civil and criminal jurisdiction over Indians. There remain, however, significant areas in which the tribe retains complete authority over the lives of its members.

One of the most serious inadequacies in tribal government arises from its failure to conform to traditional constitutional safeguards which apply to State and Federal Governments. As Senator Anderson, a member of the Committee on Interior and Insular Affairs has noted: "An Indian citizen has all the rights of other citizens while he is off the reservation, but on the reservation 'in the absence of Federal legislation' he has only the rights given to him by the tribal governing body."

Chairman Ervin has made a similar observation: "It appears that a tribe may deprive its members of property and liberty without due process of law and may not come under the limitation of Federal and State governments as stated in the Bill of Rights. However, the sovereignty of an Indian tribe can be limited by acts of Congress."

In examining the legal status of the American Indian, it is first necessary to appreciate what transpires where tribal law denies Indians the constitutional protection accorded other citizens. As a corollary consideration, it is also important to understand whether a tribal Indian can successfully challenge on constitutional grounds specific acts or practices of the Indian tribe. A negative response to this question was given in *Elk v. Wilkins*, 112 U.S. 94 (1884) for example, where the unilateral renunciation of tribal affiliation by an Indian was held to be insufficient to confer citizenship. An affirmative act of recognition by the Federal Government was deemed essential to establish citizenship. Absent such an affirmative act a State was able to deny Indians the right to vote in a State election. Only recently has this right been held to be irreconcilable with the 15th amendment and the Citizenship Act of 1924, 43 Stat. 253 (1924), 8 U.S.C. 1401 et seq. See e.g., *Montov v. Bolack*, 70 N. Mex. 196, (1962); *Harrison v. Laveen*, 67 Ariz. 337 (1948).

Because general acts of Congress were thought not to be applicable to Indians, general constitutional provisions received similar interpretation. In *Talton v. Mayes*, 163 U.S. 376 (1896), the Supreme Court refused to apply the fifth amendment to the Constitution to invalidate a tribal law that established a five-man grand jury. In this case the Court held that the Cherokee Nation, as an autonomous body, had the power to define crimes and independently provide for criminal procedure. Recognizing that the fifth amendment limits only the powers of the Federal Government, the Court rejected the argument that the power of local government exercised by the Cherokees was Federal in nature, that is, based on the Constitution. The Court also said:

"It follows that as the powers of self-government enjoyed by the Cherokee nation existed prior to the Constitution, they are not operated upon by the Fifth Amendment which, as we have said, had for its sole object to control the

powers conferred by the Constitution on the National Government." (163 U.S. 376 at 384 (1894)).

Only a limited number of cases involving the denial of constitutional rights in Indian court proceedings reach the Federal courts due to the absence of a right to appeal tribal court decisions to Federal courts. The case of *Colliflower v. United States*, 342, F. 2d (1965), virtually stands alone in upholding the competence of a Federal court to inquire into the legality of an order of an Indian court. Federal courts generally have consistently refused to impose constitutional standards on the tribes on the theory that these standards apply only to State or Federal governmental action. For example, the guarantee of representation by legal counsel has been held not to apply in tribal court action. In *Glover v. United States*, 219 F. Supp. 19 at 21 (D. Mont. 1963), the Court stated:

"The right to be represented by counsel is protected by the Sixth and Fourteenth Amendments. These Amendments, however, protect * * * [this right] only as against action by the United States in the case of the * * * Sixth * * * [Amendment], and as against action by the states in the case of the Fourteenth Amendment, Indian tribes are not states within the meaning of the Fourteenth Amendment."

In the case of *Native American Church v. Navajo Tribal Council*, 272 F. 2d 131 (10 Cir. 1959), the Court by implication, held that a tribal Indian cannot claim protection from illegal search and seizure protected by the fourth amendment. The case involved the relationship between tribal law and first amendment guarantees of freedom of religion. The Native American Church is a religious sect to which many Indians belong. Peyote, a hallucinating agent, is used by members of this church in their religious ceremonies. Its use is often prohibited by State and tribal laws. In *State v. Big Sheep*, 75 Mont. 219 (1962), for example, the constitutionality of a tribal ordinance prohibiting its importation and use was challenged on the grounds that it violated the first, fourth and fourteenth amendments. The tenth circuit denied relief noting lack of Federal jurisdiction, and observed that internal affairs such as police powers were solely within the cognizance of the various tribes and that the general law of the United States could not interfere with purely internal matters. (272 F. 2d 131 at 134-135.) In refusing to concede the applicability of the fourteenth amendment to Indian tribes, the court stated:

"No provision in the Constitution makes the First Amendment applicable to Indian nations nor is there any law of Congress doing so. It follows that neither under the Constitution nor the laws of Congress, do the Federal courts have jurisdiction of tribal laws or regulations, even though they may have an impact to some extent on forms of religious worship." (272 F. 131 at 135.)

In 1954, an effort to redress tribal infringements of religious freedoms by involving civil rights statutes also failed in the case of *Toledo v. Pueblo De Jemez*, 119 F. Supp. 429 (D. N. Mex. 1954). In this case, six Jemez Pueblo Indians brought an action for declaratory judgment against their tribe, the tribal council, and its governor charging that they had been subjected to indignities, threats, and reprisals solely because of their Protestant faith. Despite a tribal ordinance purporting to guarantee freedom of religion, the tribal council had refused to permit them to bury their dead in the community cemetery and had denied them permission to build a church. The court acknowledged that the tribal government acts represented a serious invasion of religious liberties; however, it concluded that these actions were not taken "under color of any statute, ordinance, regulation, custom or usage of any State or Territory," as required to invoke the Civil Rights Act, 119 F. Supp. 429 at 431-432. Thus, the Indians had no cause of action under the Civil Rights Act in the Federal courts.

In addition, a tribe can impose a tax (see *Barta v. Oglala Sioux Tribe*, 259 F. 2d 553 (8th Cir. 1958), cert. denied, 358 U.S. 932 (1959); *Iron Crow v. Oglala Sioux Tribe*, 231 F. 89 (8th Cir. 1956), or revoke tribal membership rights without complying with due process requirements. *Martinez v. Southern Ute Tribe*, 249 F. 2d 915 (10th Cir. 1957), cert. denied, 356 U.S. 960 (1958).

These cases illustrate the continued denial of specific constitutional guarantees to litigants in tribal court proceedings, on the ground that the tribal courts are quasi-sovereign entities to which general provisions in the Constitution do not apply.

Section 102 of title I provides that any Indian tribe in exercising its powers of local self-government shall, with certain exceptions, be subject to the same limitations and restraints as those which are imposed on the Government of the United States by the Constitution.

TITLE II

A model code is needed to enumerate Indian rights and specify trial and appellate procedures. Testimony before the subcommittee has shown that tribal courts have a variety of rules of evidence, procedures, and concepts of justice, which in many instances, are devoid of fundamental guarantees secured by the Constitution. Individual Indians have suffered many injustices as a result of vacillating tribal court standards, untrained judges, and unwritten tribal laws.

The present code of offenses, which is operative in the courts of Indian offenses and which serves as a pattern for the codes of tribal courts, was established more than 80 years ago. It is found in title 25 of the Code of Federal Regulations, part II, which deals with law and order on Indian reservations. Sections 11.2 CA-11, 37 CA of title 25 sets out the jurisdiction of the court of Indian offenses and the number, duty, qualifications and procedures for the appointment of the judges. Also contained in these sections are a definition of the method of setting up the appellate proceedings and rules concerning jury trials and the selection of jurors, use of professional attorneys, appointment and duties of clerks of court, recordkeeping, issuance of warrants, detention procedure, bail procedures, et cetera.

25 C.F.R. also sets out the crimes and punishment under the Code of Indian Tribal Offenses. Approximately 58 criminal offenses are within the jurisdiction of the courts of Indian offenses, and sentences range from 5 days to a maximum of 6 months.

The procedures in title 25 are outmoded, impractical, and fail to provide for an adequate administration of justice on Indian reservations. For example, under the existing code, the total number of challenges in selecting a jury, pre-emptory and challenges for cause, is three. Subpoenaed witnesses are paid by the party calling them their actual traveling and living expenses incurred, if the court so direct, and the fee for jury duty remains 50 cents a day. Questions before the court regarding the meaning of laws, treaties, or regulations are frequently referred to the superintendent for his opinion even though he is not a lawyer and lacks a legal training.

A new model code is necessary if there is to be a sensitivity to our traditional and constitutional standards in Indian courts. A code applied uniformly to all Indian courts would also assure individuals subject to their jurisdiction the same rights, privileges, and immunities under the U.S. Constitution as are guaranteed other citizens of the United States being tried in a Federal court for similar offenses.

TITLE III

In 1953, Public Law 83-280 (67 Stat. 588) conferred to certain States civil and criminal jurisdiction over Indian country. In many instances, this has resulted in a breakdown in the administration of justice to such a degree that Indian citizens are being denied due process and equal protection of the law. Tribes have been critical of Public Law 83-280 because it authorizes the unilateral application of State law to all tribes without their consent and regardless of their needs or special circumstances. Moreover, it appears that tribal laws were unnecessarily preempted and, as a consequence, tribal communities could not be governed effectively.

The Subcommittee on Constitutional Rights in its "Summary Report of Hearings and Investigations of the Constitutional Rights of the American Indian" arrived at the following conclusion concerning legislation to remedy Public Law 83-280:

"Indian governments do not, of course, bear full responsibility for those denials of rights which have occurred or which in the future may occur. It appears, paradoxically, that the States have also erred, both by failing to prosecute offenses and by assuming civil and criminal jurisdiction when that assumption was clearly against the wishes of the Indian peoples affected. Concurrent jurisdiction by the United States in the first instance and a repeal of Public Law 280 or at least its modification to include tribal consent as a precondition of the State's assumption of jurisdiction, would seem to provide a suitable remedy."

TITLE IV

As a result of an early Supreme Court case, *Ex parte Crow Dog*, 109 U.S. 556 (1883), which held that State courts lacked jurisdiction over offenses committed in Indian country, Congress enacted the "Major Crimes Act" in 1885. This law presently provides Federal courts with jurisdiction over the crimes of

murder, manslaughter, rape, incest, assault with intent to kill, assault with a dangerous weapon, assault with intent to commit rape, carnal knowledge, arson, burglary, robbery, embezzlement, and larceny committed by an Indian against another Indian or other person.

Those crimes not prosecuted in Federal courts fall within the jurisdiction of Indian tribal courts, which by Federal law, cannot impose more than a 6-month sentence. Presently, aggravated assaults committed in Indian country cannot be prosecuted in Federal courts.

In a report on comparable legislation (S. 967) in the 89th Congress, the Subcommittee on Constitutional Rights concluded:

"Besides extending protection to the rights of individual Indians, it is also important that the legitimate interests of the Indian communities in a lawful and peaceable order be recognized. Accordingly, it is essential that provision be made for the trial and punishment of offenses not now dealt with in an adequate manner by tribal authorities."

TITLE V

As a result of his guardianship powers, the Secretary of the Interior has been provided authority to approve contracts between Indian tribes and their attorneys. Despite efforts of the Department of the Interior in 1960 and 1962 to expedite approvals of tribal attorney contracts, administrative delay in approving such contracts is a continuing problem. Frequently these delays extend for over a year and consequently impose so severe a hardship upon tribes in need of counsel that they constitute a denial of due process of law.

The subcommittee in its 1966 "Summary Report of Hearings and Investigations of the Constitutional Rights of the American Indian," made the following conclusion regarding title V:

"Blame for the denial of the rights of Indians must also be assigned, at least in part, to actions of the Government of the United States. In addition to the actions implicit in the foregoing, reference is also made to the delays Indian tribes have experienced in the approval by the Secretary of the Interior of contracts with their attorneys. To the extent that such delays take place, Indian peoples are denied, in a very broad sense, the fundamental right of counsel. To the credit of the Department of the Interior, however, it is apparent that very few such delays have occurred since 1962."

Accordingly, the subcommittee made the following recommendation:

"Even though delays in approval of attorneys' contracts have become less significant since 1962, there is still no guarantee that the previous unfortunate situation won't recur. Accordingly, the subcommittee recommends enactment of S. 968 (now title V). Mindful that the arbitrary time limit may result in a perfunctory disapproval of contracts, this legislation will nevertheless force the Department of Interior to take a position promptly on these contracts."

TITLE VI

The research of the Subcommittee on Constitutional Rights into the legal status of the American Indian involved an examination of the legislative, judicial, and administrative interpretations available on the subject. The volumes entitled "Indian Affairs, Laws and Treaties" (S. Doc. No. 319, 58th Cong.) proved to be an invaluable research tool despite the fact that the last volume was published in 1938. The treatise entitled "Federal Indian Law," originally prepared by Felix S. Cohen in 1940, and last revised in 1956 by the Department of the Interior, was also useful.

Equally important in appraising the legal status of Indians are the opinions of the Solicitor of the Department of the Interior which have the force and effect of law. However, many of the opinions of the Solicitor have not been published and made available to those interested in Indian affairs.

An updating of these documents and other materials relating to Indian affairs not only will assist students, courts, agencies, and others attempting to secure information pertaining to Indian affairs, but also will provide an aid to individual Indians and Indian groups in achieving their rights as American citizens.

In its "Summary Report of Hearings and Investigations on the Constitutional Rights of the American Indian, 1966," the subcommittee concluded:

"The need for adequate and up-to-date research tools in the area of Indian affairs is pronounced. If our Indian citizens are to receive benefits in full measure from their own efforts, as well as from the activities of their attorneys and of scholars working on their behalf, full and easy access must be had to relevant

documentary sources. Instances of out-of-print, out-of-date, and out-of-circulation materials must be corrected * * *

SECTION-BY-SECTION ANALYSIS OF S. 1843, AS AMENDED

TITLE I

Section 101 contains the definition of certain items, "Indian tribe" is defined to mean any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government. The term "self-government" means and includes all governmental units (executive, judicial, legislative, and other tribunals, bodies, officers, etc.) by and through which powers are executed as to individual Indians. "Indian court" is defined to mean any Indian tribal court or court of Indian offense.

Section 102 enumerates the constitutional rights guaranteed to Indians by this act by placing limitations on tribal government units exercising powers of self-government in their dealings with individual Indians. Specifically, section 102 (1) through (10) prohibits Indian tribes in exercising powers of self-government from doing the following:

(1) Making or enforcing any law prohibiting the free exercise of religion, or abridging the freedom of speech, press, or assembly, or the right of the people peaceably to assemble and to petition governmental units for a redress of grievances;

(2) Violating or abusing individual Indians in their person, home, or possession, and securing protection to individual Indians against abuses in the search and seizure of their persons, homes, and possessions;

(3) Subjecting any person for the same offense to be twice put in jeopardy;

(4) Compelling any person in any criminal case to be a witness against himself;

(5) Taking any private property for a public use without just compensation;

(6) Denying to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense at his own expense;

(7) Requiring excessive bail or fines and inflicting cruel and unusual punishment. (The penalty of a \$500 fine or imprisonment for a term of 6 months or both would remain the maximum limitation as to punishment for any one offense);

(8) Denying to any individual Indian within its jurisdiction equal protection of the laws or deprive any person or liberty or property without due process of law;

(9) Passing any bill of attainder or ex post facto law; or

(10) Denying to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

Section 103 provides that the privilege of the writ of habeas corpus shall be available to any person in a court of the United States to test the legality of a detention by order of a tribal court.

Section 104 provides that the provisions of title I shall take effect upon the expiration of 1 year following the date of its enactment.

TITLE II

Title II directs the Secretary of the Interior to prepare and recommend to the Congress a model code governing the administration of justice by Courts of Indian Offenses on Indian Reservations.

Section 201 directs the Secretary to include provisions in the model code which would:

(1) Assure that any individual being tried for an offense by a court of Indian offenses shall have the same rights, privileges, and immunities under the U.S. Constitution as any citizen being tried in a Federal court for a similar offense;

(2) Assure that any individual being tried for an offense by a court of Indian offenses will be advised and made aware of his rights under the Constitution and any applicable tribal constitution;

(3) Establish proper qualifications for the office of judge in the court of Indian offenses; and

(4) Provide for the establishing of educational classes for the training of judges of courts of Indian offenses.

In carrying out the provisions of the proposed bill, the Secretary of the Interior is directed to consult with Indians, Indian tribes, and interested agencies of the United States.

Section 202 authorizes Congress to appropriate such sums of money as may be necessary to carry out the provisions of this title.

TITLE III

Section 301(a) authorizes a State to assume jurisdiction over any or all criminal offenses committed by or against Indians on Indian country in the State, and to punish an offender in accordance with State law. Before a State can assume criminal jurisdiction, consent of the tribe(s) on Indian country in the State is required.

Section 301(b) prohibits the alienation, encumbrance, or taxation of real or personal property, including water rights, of any Indian or tribe held in trust by the United States or the regulation of such property in a manner inconsistent with any Federal treaty, agreement, or law, and the deprivation of hunting, fishing, or trapping rights afforded any Indian or tribe under Federal treaty agreement, or statute.

Section 302(a) authorizes a State to assume jurisdiction over any or all civil causes of action between Indians, or to which Indians are party, which arise in Indian country in the State and to apply State law to such causes of action. Before a State can assume civil jurisdiction, consent of the tribe(s) on Indian country in the State is required.

Section 302(b) prohibits the alienation, encumbrance, or taxation of real or personal property, including water rights, of any Indian or tribe held in trust by the United States; the regulation of such property in a manner inconsistent with any Federal treaty, agreement, or statute; and the adjudication by a State, in probate proceedings, the ownership or right to possession of such property.

Section 302(c) provides that tribal ordinances or customs adopted by an Indian tribe consistent with applicable civil State law shall be given full force and effect in the determination of civil causes of action.

Section 303(a) authorizes States that have acquired civil and criminal jurisdiction over Indian country to relinquish such jurisdiction to the United States.

Section 303(b) repeals section 7 of Public Law 83-280, which grants civil and criminal jurisdiction to States, but will not affect any cession of jurisdiction to a State prior to its date of repeal.

Section 304 provides that enabling legislation related to the admission of a State to the Union will not bar any State from removing any legal impediment to the assumption of civil or criminal jurisdiction as authorized under this act.

Section 305(a) provides that legal proceedings before any court or agency of the United States immediately prior to a cession of jurisdiction to a State under this act would not abate, and that such cession take effect on the day following final determination of such legal proceeding.

Section 305(b) provides that cession by the United States under this title shall not deprive a U.S. court of jurisdiction over any offense cognizable under the laws of the United States committed before the effective date of the cession. In such cases, cession shall take effect on the day following the date of final determination of the proceeding.

Section 306 requires that before State jurisdiction acquired by this title becomes applicable in Indian country, consent of a majority of the enrolled Indians within the affected Indian country must be obtained at a special election held for this purpose.

TITLE IV

This title adds to the "Major Crimes Act" the crime of "assault resulting in serious bodily injury," thus making possible Federal prosecution for the commission of this act in Indian country.

TITLE V

This proposal provides that applications related to the employment of legal counsel made by Indian tribes and other Indian groups to the Secretary of the Interior of the Commissioner of Indian Affairs are deemed approved if neither approved nor denied within 90 days from the date of filing.

TITLE VI

Section 601 authorizes and directs the Secretary of the Interior to revise and republish Senate document 319, 58th Congress, and the treatise entitled "Federal Indian Law." This section directs that an accurate compilation of the official opinions of the Solicitor of the Department of the Interior be compiled and maintained on an annual basis, and that Senate document 319, containing treaties, laws, Executive orders, and regulations relating to Indian affairs be kept current on an annual basis. The section authorizes the necessary funds for carrying out the purposes of title VI.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law to which no change is proposed shown in roman):

TITLE III

(67 Stat. 588 (1953), Public Law 83-280)

[Sec. 7. the consent of the United States is hereby given to any other State not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this Act, to assume jurisdiction at such time and in such manner as the people of the State shall, by affirmative legislative action, obligate and bind the State to assumption thereof.]

TITLE IV

(18 U.S.C. 1153)

§ 1153. Offenses committed within Indian country

Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, rape, carnal knowledge of any female, not his wife, who has not attained the age of sixteen years, assault with intent to commit rape, incest, assault with intent to kill, assault with a dangerous weapon, *assault resulting in serious bodily injury*, arson, burglary, robbery, and larceny within the Indian country, shall be subject to the same laws and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

As used in this section, the offenses of rape and assault with intent to commit rape shall be defined in accordance with the laws of the State in which the offense was committed, and any Indian who commits the offenses of rape or assault with intent to commit rape upon any female Indian within the Indian country shall be imprisoned at the discretion of the court.

As used in this section, the offenses of burglary, assault with a dangerous weapon, and incest shall be defined and punished in accordance with the laws of the State in which such offense was committed.

The CHAIRMAN. Without objection, the report from the Department of Interior, under date of March 27, 1968, together with a report from the Office of the Attorney General, under date of March 29, together with a letter under date of March 28, 1968, which is in response to some questions sent by Mr. Sigler to the Department, which has attached to it some very pertinent material, will be made a part of the record at this place. In asking for this request, the acting chairman of the subcommittee, the chairman of the full committee, wishes to make this public announcement. One of the greatest impediments to the consideration of constructive legislation, especially during this era, it appears, is the fact that when some people introduce legislation, it seems that it should be considered immediately. And they also seem to have the idea that they should have the legislation considered and approved without following any regular procedure, legislative procedure.

Now, this committee has had before it for some time these bills we are considering today. We have had on our agenda a desire to consider these bills. Even though the bills were introduced some time ago, you can see the cooperation that we have had from the departments downtown when we receive reports on these bills under date of March 28 and 29—27 and 29, and a report on the letter that was sent on March 16, answered on the 28th.

The chairman of the full committee, who is now acting chairman of the subcommittee, just does not appreciate the fact that we get into so much criticism because things are not done on time, and yet we just have to drag reports out of the Department.

Also it is not in the interests of good government that the procedures between the two bodies of Congress are such as they are at the present time. The House of Representatives must follow strict rules. They have a rule that nothing that is not germane to a bill can be considered. The other body has no rule of germaneness. All they have to do is enter into an agreement, and they can tack anything on to any particular piece of legislation and send it back here.

Now, what has happened as far as the so-called Indian civil rights bill—and nobody knows at the present time whether it is civil or whether it is rights or not, but they know it is headed toward the Indians—is that there has been no chance at all for the House of Representatives or its legally constituted committee to consider this legislation, and there is a drive at the present time by some people who simply have caught the imagination and the glamor of the use of the term "civil rights" to bypass entirely the consideration by the committee having jurisdiction.

Now, if the rules of the House mean anything, they mean that when a bill is introduced and forwarded to a committee, that that committee shall consider the legislation, and any procedure which intends to upset the orderly legislative process in the House of Representatives should be frowned on.

I do not know whether I am for this bill or whether I am against this legislation in its present form, or whether it can be put into a position or a condition that I can support. I doubt very much if the Indians of the United States of America have any greater friends than they have right on this committee. The gentleman who is the subcommittee chairman, who is necessarily absent because of a death in his family, is known to be one of the greatest friends that the Indians have ever had. And yet there are those in Congress who would pass this piece of legislation through the House of Representatives without any consideration at all being given to it—not even a chance to make any satisfactory record on the floor of the House.

I say to my Indian friends, and also to the Representatives of the present administration—there was not enough consideration in the other body, as far as this legislation is concerned, to write a satisfactory record as to what is involved. None of the points which are raised by him of our Indian friends were considered.

So as far as I am concerned, we are going to consider this piece of legislation just exactly as we have considered any other piece of legislation. I hope that even though we do not have too many members present this morning, that we can proceed as rapidly and as constructively as is humanly possible to do so.

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,

under the existing code, the total number of challenges in selecting a jury, pre-emptory and challenges for cause, is three. Subpoenaed witnesses are paid by the party calling them their actual traveling and living expenses incurred, if the court so direct, and the fee for jury duty remains 50 cents a day. Questions before the court regarding the meaning of laws, treaties, or regulations are frequently referred to the superintendent for his opinion even though he is not a lawyer and lacks a legal training.

"A new model code is necessary if there is to be a sensitivity to our traditional and constitutional standards in Indian courts. A code applied uniformly to all Indian courts would also assure individuals subject to their jurisdiction the same rights, privileges, and immunities under the U.S. Constitution as are guaranteed other citizens of the United States being tried in a Federal court for similar offenses."

While we might differ on the question of whether the present "operating" code is "outmoded", etc., we would agree that probably it could be improved and updated.

We now encourage each tribe to adopt a code that conforms as much as possible to the law of the State involved. Our goal is to make the Indians a part of the States in which they reside. A model code could be drafted in a manner that is consistent with that effort.

We note also that the bill calls for the development of a "model code," but it does not require the tribes to adopt all or any part of it. We believe that this is wise.

Title III, which relates to State assumption of civil or criminal jurisdiction over Indian reservations, changes the present law now embodied in section 7 of Public Law 280, 83d Congress:

(a) by requiring consent of the tribe occupying the reservation before a State may assume jurisdiction;

(b) by making explicit an authority which we believe is now implicit—an authority to assume partial jurisdiction, or piecemeal jurisdiction, either by geographic area or by subject matter; and

(c) by authorizing the United States to accept a retrocession of jurisdiction from any State that acquired jurisdiction under the present provisions of Public Law 280.

The first of these changes is highly desirable. Our files are replete with resolutions and communications from many Indian groups urging this change. The change would do much to allay the fears, whether real or imagined, of the Indian people that they may be subjected to strange courts before they are ready, or before they are assured of fair and impartial treatment.

The second change is a change of form and not a change of substance, because the present law permits the States to assume partial jurisdiction either by geographic area or by subject matter. Some of the States have in fact done so. For example, Nevada has assumed jurisdiction over limited areas. Idaho has assumed jurisdiction over limited subject matter (compulsory schools, public assistance, domestic relations, mental illness, juvenile delinquency, dependent children). Washington has assumed jurisdiction over both limited areas and limited subject matter.

Inasmuch as this part of title III is a clarification rather than a change of present law, we have no objection to it.

The third change gives the United States permissive authority to accept a retrocession of jurisdiction. It does not specify the official who may exercise the permissive authority on behalf of the United States. Presumably, it would be the Secretary of the Interior.

Title IV creates a new crime of "assault resulting in serious bodily injury" within the Indian country. While we believe that the enactment of Public Law 89-707, 80 Stat. 1100, 18 U.S.C. 1153, 3242, makes unnecessary any further legislation relating to assault within the Indian country, we do not object to this additional crime. The law now covers assault with a dangerous weapon, assault with intent to commit rape, and assault with intent to kill.

Title V provides that any application for a contract or agreement relating to the employment of legal counsel requiring approval of the Secretary of the Interior or the Commissioner of Indian Affairs will automatically be in full force and effect if approval is neither granted nor denied within a period of 90 days after application for approval is filed with the Secretary.

On November 26, 1962, the Commissioner of Indian Affairs delegated authority to the Area Directors to approve tribal attorney contracts. Prompt action is now

taken on proposed contracts or agreements for the employment of legal counsel by Indian tribes. When there is a delay in the approval of a contract or agreement for the employment of legal counsel, it is for the purpose of an investigation pertinent to the contract or agreement, which is necessary to protect the interests of the Indians.

Practically all contracts require some changes to conform them to statutes and policies. At the present time the Area Director as his representative negotiates the necessary changes with the attorney, after which there is prompt approval. In some cases a contract is approved subject to agreement of the parties to a specified change. This procedure makes it possible for the contract to have an earlier effective date than would be possible if a new contract had to be drafted, executed, and resubmitted for approval. It would be a disservice to the tribes to preclude the use of this procedure.

We believe that the present procedure is working satisfactorily, and that this title is not needed; however, we do not view it as significantly changing our present practices or procedures. We believe that we can act within the prescribed time.

Title VI directs the Secretary of the Interior to revise and extend volumes 1 and 2 of Kappler, "Indian Affairs, Laws and Treaties". The revision is to include all treaties, laws, Executive orders, and regulations relating to Indian affairs in force on September 1, 1967. The revision must be kept up to date on an annual basis.

We believe these proposals to be desirable and are prepared to carry them out.

The Bureau of the Budget has advised that the enactment of S. 1843 in its present form is in accord with the President's program.

Sincerely yours,

HARRY R. ANDERSON,
Assistant Secretary of the Interior.

OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., March 29, 1968.

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

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on S. 1843, as passed by the Senate, a bill "To establish rights for individuals in their relations with Indian tribes, and for other purposes."

This Department joins the President, of course, in urging that the Congress complete action on this bill.

Title I of the bill would create a legislative bill of rights for Indians in relation to their tribal governments, patterned closely after the Bill of Rights in the United States Constitution. While in their relations with the Federal Government and State and local governments Indians possess the same rights and immunities under the Constitution as other citizens generally, the Constitution does not limit or restrict the power of tribal governments. Specifically, under existing law Indian tribes in their self-government are not bound by the Fifth or Fourteenth Amendments of the Constitution or other provisions of the Bill of Rights *Barta v. Oglala Sioux Tribe*, 259 F. 2d 553, 556-557 (C.A. 8, 1958), and *Native American Church v. Navajo Tribal Council*, 272 F. 2d 131 (C.A. 10, 1959). However, in a recent case *Colliflower v. Garland*, 242 F. 2d 369 (C.A. 9, 1965) the Ninth Circuit held that *habeas corpus* was available in a Federal court to an Indian under tribal sentence, suggesting that there are some limitations on the powers of an Indian tribe in relation to its members.

The legislative bill of rights which would be provided by Title I does not impose standards on the tribes which they cannot meet, nor does it seriously impair their ability to function as tribal governments.

Section 102(1) secures the right to freedom of religion but does not restrict the establishment of religion by tribal governments. This is responsive to the theocratic nature of many tribal governments. To require a change would in effect challenge the basic structure of tribal society.

Section 102(6) guarantees to the accused in a criminal proceeding the right to counsel at his own expense. The fact that this is a departure from recent

United States case law requiring free counsel for indigents does not necessarily mean it is repugnant to modern judicial standards when viewed in the context of Indian court practices. In most Indian tribes there is no organized bar association. Thus, attorneys are not generally available to represent defendants. In addition, the prosecution in tribal courts is often informal and may be presented without the assistance of professional attorneys. Finally, the tribal cases generally deal with traditional and customary law where the expertise or trained counsel is not essential.

Section 102(8) protects the individual against tribal officials by requiring equal protection and due process principles.

Section 102(10) secures the right to a jury trial of not less than six persons to any person accused of an offense punishable by imprisonment.

The Federal right to a jury trial for all suits at common law involving more than \$20.00 is generally considered a burden in modern judicial practice. The six rather than twelve-man jury is more adaptable to the nature of Indian tribal proceedings which often have an informal character.

The Department of Justice believes that enactment of title I of this bill into law is extremely desirable.

Title II of the bill would authorize and direct the Secretary of the Interior to recommend to the Congress for enactment a model code to govern the administration of justice by courts of Indian offenses. The code would provide for the same constitutional rights of criminal defendants as presently are recognized in Federal courts, and would also make provision for judges of the courts of Indian offenses.

Apparently the code to be formulated would be made applicable only to those courts of Indian offenses governed by the Department of the Interior's law and order regulations (25 C.F.R. 11.1 *et seq.*), and not to tribal courts operating under tribal codes. There is some basis for suggesting that after the model code proposed by the bill is drafted, congressional action on it should be in the form of a mere recommendation that Indian tribes adopt the code, rather than imposition of its provisions by statute. The Department of Justice expresses no view on this matter. In any event tribes now administering their laws through tribal courts would be free to adopt the model code if they found its provisions constructive and desirable.

So far as the Department of Justice is aware there is general agreement on the desirability of the provisions of title II dealing with establishing qualifications for and the training of judges of courts of Indian offenses. Indeed, the Department suggests that the Congress in the future should explore means of making legal training available for judges of tribal courts other than those designated as courts of Indian offenses.

Title III of the bill would give the consent of the United States to assumption by States of civil and criminal jurisdiction on Indian reservations to the extent determined by a State and consented to by the tribe occupying the affected Indian country, would authorize acceptance by the United States of retrocessions of any measure of the jurisdiction which may have been acquired by States under Public Law 280, 83d Congress (act of Aug. 13, 1953, 67 Stat. 588), as amended; 18 U.S.C. 1162 and 28 U.S.C. 1360, and would repeal Section 7 of Public Law 280 which authorized States to assume civil and criminal jurisdiction over tribes without their consent.

In general, States at the present time do not have jurisdiction over criminal offenses committed on Indian reservations by or against Indians, or over civil causes of action which arise on Indian reservations between Indians or as to which Indians are parties. However, Public Law 280, as amended, granted to six States (Alaska, California, Minnesota, Nebraska, Oregon and Wisconsin), with certain exceptions, jurisdiction with respect to criminal offenses and civil causes of action arising in Indian country within such States. Section 7 of the Public Law, which title III would repeal, gave consent to States not having jurisdiction to assume it at such times and in such manner as the people of the State determined. It appears that three States (Florida and Montana, and Washington as to certain reservations) have assumed jurisdiction over Indian reservations within their boundaries under the last mentioned provision.

A principal effect of title III would be to substitute for the present section 7 of Public Law 280 provisions (subsections 301(a) and 302(a)) requiring tribal consent to assumption of Indian country jurisdiction. The President, in his March 6, 1968 message, urged the Congress to enact legislation providing for tribal consent before extensions of jurisdiction take place. The Department of Justice also urges the enactment of such legislation.

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.

"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

Indian Affairs and the tribe? Specify and explain. What has the Bureau of Indian Affairs done to assure adequate services, before the State acted? afterward?"

Comment: Shortly after Public Law 280 became effective in 1953, a number of allegations were made by Indian leaders that law enforcement services by the States and local subdivisions were inadequate to the reservations' needs. We know that transfer of jurisdiction by Public Law 280 created additional financial burdens that local subdivisions were hard pressed to assume. For example, the affected counties in Nebraska could not, without state financial aid, provide services to the Indians. This was also true in Wisconsin. Indians in California and Minnesota complained then and have continued to complain of inadequate services. Before Public Law 280, the Bureau of Indian Affairs carried on consultations with the Indians and the five States that would be affected by the law to make certain that the proposal was clearly understood. In many cases, California, for example, Public Law 280 meant simply the legalizing of a de facto situation, since the Bureau was providing very little, if any, in law enforcement services. The Bureau had only one law enforcement agent in California. Before state assumption of jurisdiction, the Bureau provided services to the limit of funds available. Since state assumption of jurisdiction, the Bureau has provided no direct assistance as authority therefor was lacking. The Bureau has continued to counsel with both tribes and local authorities to communicate and interpret the needs of the Indians, and assist with an understanding of such needs.

"12. Has the assumption of partial state jurisdiction created any problem of which you are aware? Explain."

Comment: Assumption of partial or "piecemeal" jurisdiction has resulted in various types of problems. For example, Idaho assumed jurisdiction over selected areas of subject matter and specified that such jurisdiction was concurrent with that of the tribes. As a result local authorities look to the tribes to continue assuming jurisdiction, and the tribal authorities look to the State to assume jurisdiction, and, frequently, no action is taken. In other instances, as in the case of Washington, local authorities may disregard their jurisdiction or refuse to assume it on the ground that the state assumption was invalid in the first instance even though the state supreme court may have already ruled on the precise question.

We wish to point out that since the enactment of Public Law 280 in the 83d Congress, there has been almost total support for those proposals which would amend Public Law 280 to provide for tribal consent. During the period covered by the 84th through the 89th Congresses, approximately 23 bills were introduced to amend Public Law 280 to provide for consent of the tribes. All have had the united support of the Indian tribes. Again, the Indian tribes and Indian interest groups, such as the National Congress of American Indians, actively support the proposed amendments. Lastly, the President, in his recent message to the Congress on the American Indian, strongly urged the enactment of "Legislation that would provide for tribal consent before such extension (Public Law 280) of jurisdiction takes place." S. 1843 carries out this recommendation. The requirement of consent should solve most problems of state assumption of jurisdiction.

Sincerely yours,

(S) HARRY R. ANDERSON,
Assistant Secretary of the Interior.

The CHAIRMAN. We have a full calendar today. It will be the purpose of the chairman to listen first to the Members of Congress, and then to the Governors who are here from the Pueblos, and then the visiting State representatives, and then we will get to the Department, and then we will get to the attorneys later on.

The chairman does not think it will be humanly possible to clear up this matter today.

First I wish to recognize one of the sponsors of the legislation, our good colleague, who himself has been a tremendous aid and help to the Indians, Mr. E. Y. Berry, for any statement he may wish to make.

Mr. BERRY. First, Mr. Chairman, let me commend you on the statement that you have made, and let me assure you that I think—that

I know everyone on this committee, and I think everyone on the full committee, appreciates your statement.

I am not going to take time now, because we have a lot of people who have come a long way to be heard.

Thank you, Mr. Chairman.

The CHAIRMAN. Without objection, the statement of the Honorable Glenn Cunningham, one of the sponsors of the bill, will be made a part of the record at this place.

(The prepared statement of Glenn Cunningham, referred to, follows:)

STATEMENT OF THE HONORABLE GLENN CUNNINGHAM, A MEMBER OF CONGRESS
FROM THE STATE OF NEBRASKA

Mr. Chairman, on February 6, 1968, I introduced in the House of Representatives a bill to clarify the rights of our individual Indian citizens in their relations with the tribes. My bill, H.R. 15122, on which you are holding hearings today directs the Secretary of the Interior to recommend to the Congress a model code governing the administration of justice by courts of Indian offenses on Indian reservations, to protect the constitutional rights of certain individuals and for other purposes.

This bill is identical to the legislation sponsored by Senator Ervin, the Chairman of the Constitutional Rights Subcommittee of the Senate Judiciary Committee. Senator Ervin's bill, S. 1843, passed the Senate without objection on December 7th.

I was pleased when President Johnson included a recommendation of legislation guaranteeing constitutional rights for American Indians in his message of March 6th. I quote from the President's message:

"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."

Mr. Chairman, because of my long interest in the plight of our American Indians, members of the Omaha Indian tribe with a reservation in Macy, Nebraska, frequently visit my district office in Omaha. I held a meeting with members of that tribe in January of this year.

In my subsequent review of their problems and in discussions with members of the Senate Subcommittee on Constitutional Rights, I was shocked to learn that these first Americans do not have the protection of even the most basic of our constitutional rights. In their relationships with the tribal government, reservation Indians are not guaranteed freedom of speech, freedom of religion or any of the other basic freedoms guaranteed by our Bill of Rights. I believe my bill, H.R. 15122, before this Committee today will go a long way toward solving some of the problems facing the Indian.

TITLE I

Title I of the bill would grant to the American Indians enumerated constitutional rights and protection from arbitrary action in their relationship with tribal governments, State governments, and the Federal Government. Investigations have shown that tribal members' basic constitutional rights have been denied at every level.

The Federal courts generally have refused to impose constitutional standards on Indian tribal governments, on the theory that such standards apply only to State or Federal governmental action, and that Indian tribes are not States within the meaning of the 14th amendment.

Under this rationale, for example, tribes have been permitted to impose a tax without complying with the due process requirements, tribal membership rights can be revoked at the will of tribal governing officials, and Indians have been deprived of the right to be represented by counsel.

Under the provisions of Title I, tribal governments are prohibited from:

(1) Making or enforcing any law prohibiting the free exercise of religion, or abridging the freedom of speech, press, or assembly, or the right of the people

peaceably to assemble and to petition governmental units for a redress of grievances;

(2) Violating or abusing individual Indians in their person, home, or possession, and securing protection to individual Indians against abuses in the search and seizure of their persons, homes, and possessions;

(3) Subjecting any person for the same offense to be twice put in jeopardy;

(4) Compelling any person in any criminal case to be a witness against himself;

(5) Taking any private property for a public use without just compensation;

(6) Denying to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense at his own expense;

(7) Requiring excessive bail or fines and inflicting cruel and unusual punishment. [The penalty of a \$500 fine or imprisonment for a term of 6 months or both would remain the maximum limitation as to punishment for any one offense];

(8) Denying to any individual Indian within its jurisdiction equal protection of the laws or deprive any person of liberty or property without due process of law;

(9) Passing any bill of attainder or ex post facto law; or

(10) Denying to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

TITLE II

Title II is designed to implement the provisions of Title I. It directs the Secretary of the Interior to recommend to Congress a model code governing the administration of justice by courts of Indian offenses on Indian reservations. The present code, drawn up over 30 years ago and found in title 25 of the Code of Federal Regulations is outmoded and fails to provide for adequate administration of justice. For instance:

(1) Indians serving on tribal juries receive only 50 cents a day for jury service.

(2) The total number of challenges in selecting a jury is only three, including peremptory and challenges for cause.

(3) Trial by jury may be had only if a trial judge finds that there is substantial question of fact involved, and, even then the jury is composed of six persons who may render a verdict by a majority vote. Furthermore, there is no provision for a grand jury to determine if probable cause exists.

(4) Subpoenaed witnesses are paid their actual traveling and living expenses by the party calling them only at the discretion of the court.

(5) Questions before the court regarding the meaning of laws, treaties, or regulations frequently are referred to the superintendent for his opinion even though he is not a lawyer and has no legal training.

TITLE III

This title repeals section 7 of Public Law 280, 83d Congress (67 Stat. 588) and authorizes States to assert civil and criminal jurisdiction in Indian country only after acquiring the consent of the tribes in the States by referendum of all reserved Indians.

In 1953, Public Law 280, 83d Congress (67 Stat. 588) conferred to States civil and criminal jurisdiction over Indian country. Tribes have been critical of Public Law 280 because it authorizes the unilateral application of State law to all tribes without their consent and regardless of their needs or special circumstances. Moreover, it appears that tribal laws are unnecessarily preempted and, as a consequence, there was no law and order in some tribal communities.

The repeal of section 7 of the act of August 15, 1953 (67 Stat. 588), however, does not affect States which have already assumed jurisdiction under Public Law 280.

TITLE IV

In 1885, Congress enacted the "Major Crimes Act," which presently provides Federal courts with jurisdiction over the crimes of murder, manslaughter, rape, incest, assault with intent to kill, assault with a dangerous weapon, assault with intent to commit rape, carnal knowledge, arson, burglary, robbery, embezzlement, and larceny committed by an Indian against another Indian or other person. The Federal courts have jurisdiction over these crimes where the States have not

assumed criminal jurisdiction over Indian offenses. This title adds "assault resulting in serious bodily injury" to the "Major Crimes Act." Without this amendment an Indian can commit a serious crime and receive only a maximum sentence of 6 months. Since Indian courts cannot impose more than a 6-month sentence, the crime of aggravated assault should be prosecuted in a Federal court, where the punishment will be more in proportion to the seriousness of the offense.

TITLE V

This title provides that applications related to the employment of legal counsel made by Indian tribes and other Indian groups to the Secretary of the Interior or Commissioner of Indian Affairs are deemed approved if neither approved nor denied within 90 days from the date of filing.

Frequently, these delays in approving contracts extend for periods far exceeding a year and, consequently, impose so severe a hardship upon tribes in need of counsel that they constitute a denial of due process of law.

TITLE VI

This title authorizes and directs the Secretary of the Interior to revise and prepare the documents entitled, "Indian Affairs, Laws and Treaties" (S. Doc. 319, 58th Cong.), "Federal Indian Law," and the opinions of the Solicitor of the Department of the Interior. This title will assist many groups in helping Indians achieve their rights as American citizens.

For most Americans claiming deprivation of some right afforded them under the laws and treaties of the United States or State laws, it is a simple matter to have an attorney look up the law and court interpretations thereof, and to bring suit based on the result of such legal research. For the American Indian such a solution is difficult because of the inadequacy and sometimes even the total absence of legal documents. For instance, the latest edition of the document, "Indian Affairs, Laws and Treaties" was published in 1930 and the official opinions of the Solicitor of the Department of the Interior relating to Indian affairs are not always published and have never been compiled in one document.

Mr. Chairman, I believe this legislation is sound, it is the result of a six-year study by the Senate Subcommittee on Constitutional Rights, and I believe it to be a common sense way of giving the American Indian the basic rights which all other Americans enjoy.

The CHAIRMAN. Unless there is an objection, the statement of the Honorable Robert V. Denney, Congressman from the State of Nebraska, and a coauthor of the bill with Mr. Cunningham, will be made a part of the record at this point.

Hearing no objection, it is so ordered.

(The prepared statement of Congressman Denney, referred to, follows:)

PREPARED STATEMENT OF CONGRESSMAN ROBERT V. DENNEY, FIRST CONGRESSIONAL DISTRICT OF NEBRASKA

First of all, I would like to thank the distinguished Chairman from Florida, Mr. Haley, for giving me the opportunity to present testimony before this Committee in support of H.R. 15122 and related legislation. As you know, that bill was introduced by Congressman Cunningham and myself on February 6, 1968.

The main purpose of this bill is to give full constitutional rights to the American Indian. It is ironic indeed that the first settler of this country, the Indian, has, in many instances, been denied rights that are guaranteed to those who settled this country many years later.

TITLES I AND II

The purpose of Title I is to protect individual Indians from arbitrary and unjust actions of tribal governments. This is accomplished by placing restraints on Indian tribe powers of self-government. These limitations are the same as those imposed on the Government of the United States by the U.S. Constitution and on the States by judicial interpretation.

Title I is designed to remedy a situation first brought to light in the 1961 hearings of the Subcommittee on Constitutional Rights and found to be a continuing problem.

The quasi-sovereign character of Indian tribes, Indian self-government, and particularly the administration of justice, are factors which may deny both procedural and substantive rights to the residents of Indian communities. This denial results from the fact that particular restraints on the United States do not apply to the operation of tribal governments. While blame has been placed on Indian governments for these denials, the Federal Government and the States must share the responsibility for the Indian's lack of constitutional rights.

It is hoped that Title II, requiring the Secretary of the Interior to recommend a model code for all Indian tribes, will implement the effect of Title I.

Accordingly, the provisions of Title I are scheduled to take effect upon the expiration of 1 year from the date of enactment, thus affording Indian tribes a period in which to prepare themselves for a new concept of law and order.

Title II will establish a model code which will safeguard the constitutional rights of the American Indian. The Secretary of the Interior would be directed to draft a model code of Indian offenses which would apply uniformly to all Indian courts in Indian country, thus assuring that all Indians receive equal justice under Indian law. It is also envisioned that the model code would incorporate those rights enumerated in Title I, which places certain limitations on Indian tribal governments in the exercise of self-government, particularly in the administration of justice.

TITLE III

The purpose of Title III is to repeal section 7, Public Law 280, 83rd Congress, and to authorize the United States to accept a retrocession by any State of all or any measure of the criminal or civil jurisdiction, or both, acquired pursuant to that law. United States consent is also given to any State to assert civil and criminal jurisdiction in Indian country where no State jurisdiction now exists and where the consent of the Indian tribes is obtained by popular referendum of all the enrolled adult Indians within the affected area.

TITLE IV, V AND VI

Title IV would add to the "Major Crimes Act" the offense of "assault resulting in serious bodily injury." Under existing law, aggravated assaults in Indian country cannot be prosecuted in Federal courts.

TITLE V

The purpose of Title V is to expedite the approval of contracts between Indian tribes or other groups of Indians and their legal counsel when such approval by the Secretary of the Interior or the Commissioner of Indian Affairs is required by law. Study has shown that administrative delay in approving these contracts is a continuing problem. Delays of more than a year in some cases have effectively prohibited due process by denial of counsel.

TITLE VI

The purpose of Title VI is to update and expand the volumes entitled "Indian Affairs, Laws, and Treaties" (S. Doc. No. 319, 58th Cong.), the treatise entitled "Federal Indian Law" and to prepare an accurate compilation of the Opinions of the Solicitor of the Department of the Interior. Since these opinions affect the legal status of Indians, it is imperative that they be easily accessible to provide aid to individual Indians and tribes to achieve their rights as American citizens.

CONCLUSION

The Omaha-Winnebagos Reservation which has approximately 2,100 Indians is in Thurston County which is part of my Congressional District. Current estimates are that there are over 5,000 Indians in the State of Nebraska.

I have visited the Reservation and talked with tribal leaders there as well as receiving their representatives here in Washington. They are good citizens. I personally know of the sacrifices that they have made for the United States on the battlefield since World War I. I believe they have more than earned their rights. It is time we gave them those rights. Enactment of H.R. 15122 will be a step in that direction.

The CHAIRMAN. Unless there is an objection, a statement of the Honorable Samuel J. Ervin, a U.S. Senator from the State of North Carolina, will be made a part of the record.

(The statement, which was submitted after the hearing was completed, and which comments on the testimony of other witnesses, is on p. 131.)

The CHAIRMAN. Now, this takes us, then, to our first witness of the morning, who is Mr. Domingo Montoya, chairman, All Indian Pueblo Council of New Mexico, accompanied by Mr. Tom Olson, attorney for All Indian Pueblo Council of New Mexico, and by Mr. Benny Atencio, chairman of the Legislative Committee, All Indian Pueblo Council of New Mexico.

We are very glad to have you gentlemen before the committee.

Let me ask you this.

Will this testimony be given in English or will it be necessary to have an interpreter?

Mr. OLSON. It will be given in English, Mr. Chairman.

The Chairman. Very well.

STATEMENT OF DOMINGO MONTOYA, CHAIRMAN OF THE ALL INDIAN PUEBLO COUNCIL OF NEW MEXICO, ACCOMPANIED BY TOM OLSON, ATTORNEY FOR ALL INDIAN PUEBLO COUNCIL OF NEW MEXICO, AND BENNY ATENCIO, CHAIRMAN OF THE LEGISLATIVE COMMITTEE, ALL INDIAN PUEBLO COUNCIL OF NEW MEXICO

Mr. MONTOYA. I am Domingo Montoya. Due to some problem I am having with my throat, I am going to ask my secretary, one of my officers, to read the Pueblo statement. It will be presented by Mr. Ramos Sanchez.

The CHAIRMAN. All right. You may proceed.

Mr. MONTOYA. I would like to at this time announce that we have here—

The CHAIRMAN. Do you have a written statement?

Mr. MONTOYA. Yes.

The CHAIRMAN. You may proceed.

Mr. MONTOYA. I would like to announce to the hearing here that the Pueblos are really concerned on this legislation, S. 1843. We have gone to great sacrifice to get here to this hearing to show the concern of our people. We have 13 tribes here in New Mexico. I would like all of you to stand up, please—the members of the New Mexico delegation.

The CHAIRMAN. Very happy to have you here this morning, to show your interest in the legislation.

Mr. MONTOYA. I want to thank you, and we will proceed with the statement.

The CHAIRMAN. You may proceed.

(The prepared statement of Mr. Domingo Montoya was read by his secretary, Mr. Ramos Sanchez, as follows:)

Mr. MONTOYA. Thank you, Mr. Chairman for extending to us the privilege of appearing before you today with reference to S. 1843 and companion measures, including H.R. 15122. As you can well understand by the attendance of the Pueblo leaders present in this room,

we consider these bills to be one of the two most important measures confronting Indian people for the past several years.

The purpose of titles I and II of S. 1843 and H.R. 15122, entitled "To establish rights for individuals in their relations with Indian tribes, and for other purposes," is that of protecting the individual members of tribal groups from discriminatory or unjust treatment at the hands of their rival governing bodies and tribal courts by extending to Indian reservations the guarantees set forth in certain of the first 10 amendments to the U.S. Constitution. It may be argued the intent of the proposed Federal legislation is to strengthen tribal government, not to destroy it.

For many modern-day Indian communities, the form of government and the procedures followed in the administration of justice are recent innovations, introduced in the past 50 years. Traditional forms of government, where they in fact existed, have long since disappeared from the scene to be replaced by new forms patterned after Anglo-American systems. Perhaps for these tribes the provisions of S. 1843 might well be considered an improvement, and for some the proposed legislation may indeed be needed.

However we, the Pueblo Indians of New Mexico, are unique in such features as our form of government and our history. Before the arrival of the first Europeans in 1540 we were already living peacefully in villages situated along the Rio Grande and other river systems in New Mexico; not only were we already living here, but our ancestors had lived in various regions of the Southwest for many centuries before 1540.

Our ancestors comprised the most advanced and sophisticated tribal groups in North America north of Mexico; and at the time of Coronado's entry it is debatable whether we or the Spaniards were, in fact, the more civilized. Our ancestors were overcome by the force of Spanish arms, and they became subjects of the Spanish Crown because that was the price of survival—they lost some of their independence and ceased to be the free people they were before the conquest; but they did not lose their language, their religion, their form of social organization or the other essential features of their way of life. This heritage they jealously and artfully protected; and it is this heritage that has been handed down generation after generation, century after century, and persists to this present day.

For this reason we look upon ourselves as unique among present-day American Indians. Our traditional way of life did not break down and disappear like that of most tribal groups; it has undergone change in the past century or more, but the change has been gradual—and because it has been gradual our people have not suffered to the extent other tribes suffered when their way of life suddenly underwent violent change.

Admittedly we Pueblos differ from our American neighbors in many ways, especially in our system of government and related features of our internal tribal life. But despotism, injustice, and mistreatment of our people are not among the elements that distinguish us from our neighbors and fellow citizens. We are, perhaps, more like a large family in each pueblo than we are like a nation. Within the family we have our own way of doing things; but like the members of a family we respect one another. And above all else, we respect the traditions that have come down to us across many generations.

We do not object to the principles set forth in S. 1843, because these same principles are part and parcel of our own traditional concepts of justice and our way of life; the procedures required by the proposed legislation are, however, highly objectionable to us because they tend to eliminate our traditional ways of attaining the basic objectives of justice and equity. Not only would the proposed innovations destroy our own judicial system, but they threaten the whole structure of our Pueblo governments since all of its functions are interlinked.

Let us examine only a few of the serious threats to our institutions, contained in S. 1843.

1. Introduction of a jury system is superfluous, from our point of view. The most stable and respected members of our communities compose our councils; our councils administer justice and they are by their very composition, in the nature of a jury. To us it is no more logical to use a jury system for the settlement of internal matters within the extended "family" that makes up a pueblo than it would be to use a similar system within the framework of an Anglo-American family as a means for enforcing internal rules or resolving internal disputes. Further, a formal jury system, if required in our pueblo courts, would constitute an expense for which we have no funds. Most of the pueblos have limited income for public purposes.

2. Section 102(6) requires public trials, compulsory process for obtaining witnesses in favor of the accused and the right of the defense to hire counsel. Again, we cannot afford the expense involved in operating our courts after the fashion of outside, tax-supported institutions, and we have no funds with which to retain the prosecuting attorney we would need if the defendant were to be represented by legal counsel. In addition, an attorney who does not have intimate knowledge and understanding of our system, and the social values inherent therein, could not function adequately, and there are no attorneys with such knowledge.

3. Section 103, habeas corpus, opens an avenue through which Federal courts, lacking knowledge of our traditional values, customs, and laws, could review and offset the decisions of our councils sitting as courts and acting on the basis of our own laws and customs as tribal courts.

4. Title II requires the drafting of a model code to govern the administration of justice in all tribal courts. The objection to a model code is implicit in foregoing paragraphs. We, the pueblos of New Mexico, are unique; a code and court procedures applicable to other communities, including perhaps other Indian communities, simply are not adaptable to our traditional way of administering justice.

We prefer to establish our own code of tribal laws, and we prefer to continue to administer justice following the procedures we have always followed. Our All-Indian Pueblo Council is presently working on a model code to be submitted to each of the 19 Indian pueblos for consideration. Through this code we are trying to reduce to writing our traditional form of justice, both substantively and procedurally.

We hope to incorporate the principles that our courts have traditionally employed—that is, seeking to make the injured party, or the one against whom the offense is committed, whole. For example, if one of our members should injure another to the extent that the injured party for a period of time could not work his fields or provide for his family, our system traditionally requires the aggressor to substitute

his services in providing for the injured and his family. Since such an offense is against the tribe as well, we sometimes exact an additional penalty for the tribe in the form of community work. Is not this better than merely exacting a fine or imposing a jail sentence? We think so.

If our pueblos were focal points of social disorder, crime, and violence it would mean that our traditional system of social control was no longer effective, and we would perhaps be more receptive to the innovations proposed in S. 1843—but such is not the case. The crime rate per 1,000 population in our pueblos is 54—it is 51 per 1,000 in urban United States (1966). Our rate is less than one-third the rate for all Indians under the Albuquerque area office (177 per 1,000). These statistics, we believe, reflect the fact that we are doing almost as well as urban America at a very small fraction of the cost—in fact, if we had the funds with which to provide police protection and social services of the type provided in most American cities our crime rate would be far below the present level and, we are convinced, far below urban levels.

It is our urgent request that S. 1843 be amended to exclude the pueblos of New Mexico from the provisions of titles I and II. Or, if the Congress is unwilling to make such exclusion, we urge that the provisions of the subject titles I and II be applicable only to those tribes and pueblos which consent to their application in a referendum called for that purpose by the Secretary of the Interior.

Protection of the rights of individual citizens is part of the American system of government, and we as Pueblo Indians are in full agreement with our national objectives. But there is more than one way of attaining that goal; we have a traditional way that has proven effective since long before the white man came to these shores, and we wish to continue its use within our own communities.

We believe that the American system includes the right of its people to be different from the majority if they so desire, provided that being different does not violate the rights of their fellow citizens. We conform willingly to National, State, and municipal rules and procedures outside our pueblos; we ask only that we be permitted to follow our own procedures within our extended pueblo families. They are part of our private lives as Indians.

In closing, I wish merely to add that we of the Pueblos of New Mexico heartily subscribe to the provisions of titles III, IV, V, and VI of S. 1843 and particularly title III. We believe that the proposed amendment to Public Law 280 to require Indian consent before a State may take over criminal and/or civil jurisdiction is long overdue and recommend its adoption at an early date. When adopted, this will serve to erase some of the fears the Indian people now have.

Thank you, Mr. Chairman.

The CHAIRMAN. As I understand, Mr. Montoya, you desire to have the resolutions which are attached to this statement made a part of the record?

Mr. MONTOKA. Right.

The CHAIRMAN. Unless there is objection, that will be done.

(The resolutions accompanying Mr. Montoya's prepared statement follow:)

RESOLUTION

The following resolution was duly adopted by the All Indian Pueblo Council at a regularly called meeting held on the 23d day of March, 1968.

Whereas the Congress of the United States is presently considering S. 1843 and companion measures including H.R. 15419, seeking "to establish rights for individuals in their relations with Indian tribes and for other purposes"; and

Whereas Title I and Title II of S. 1843 in the opinion of this Council constitutes an attack upon our inherent authority to administer justice within our pueblos and among our members in our traditional way; and

Whereas we believe that the intent of the Legislation is such as to insure to Indian people certain basic guarantees of freedom of religion, freedom of speech, and freedom from governmental oppression, but that the Pueblos have a long historical background of being among the first to be concerned with such freedoms and virtually without exception have administered their government within the Pueblos for many centuries without encroaching upon the individual freedoms of its membership, so long as any such member shall recognize and respect the similar freedoms of the remainder of the membership; and

Whereas we believe that the procedures required by Title I and Title II of S. 1843 prevent us from continuing to practice our traditional system of government and further would destroy our heritage and our ability to preserve our system: Now, therefore, be it

Resolved, That the All Indian Pueblo Council of the nineteen Pueblos of New Mexico hereby expresses its objection to Title I and Title II of S. 1843, insofar as the same apply to the Pueblos of New Mexico, and further, that it hereby respectfully petitions the Congress of the United States to specifically exclude the Pueblos from the effects of Title I and Title II of S. 1843 and related bills; and be it further

Resolved, That copies of this Resolution be sent to Senator Anderson, Senator Montoya, Congressman Walker, Congressman Haley, Congressman Celler, and to such others as to the Chairman may appear appropriate.

DOMINGO MONTOYA,
Chairman.

Attest:

VICTOR A. SARRACINO,
Secretary.

RESOLUTION

The following Resolution was duly adopted by the All Indian Pueblo Council at a regularly called meeting held on the 23d day of March, 1968.

Whereas the President of the United States by Executive Order 11399 established the National Council on Indian Opportunity under the chairmanship of the Vice President of the United States; and

Whereas the All Indian Pueblo Council foresees this as a giant stride in developing at long last a realistic policy in relation to Indian matters; and

Whereas the All Indian Pueblo Council wishes to express its gratitude to the President for taking this highly commendable and desirable measure; and

Whereas the Executive Order further provides for the appointment of six Indian leaders to participate and serve as members of the National Council; and

Whereas the nineteen Pueblos of New Mexico have a membership approximating thirty-thousand Indian citizens have a historical background such as greatly distinguishes them from other Indian tribes within the United States, and have preserved since time immemorial a government unique in form and in substance and which has been in recent years recognized as one of great learning and significance: Now, therefore, be it

Resolved by the All Indian Pueblo Council of the nineteen Pueblos of New Mexico, That it hereby expresses its gratitude to the President of the United States Lyndon B. Johnson, for establishing the National Council on Indian Opportunity, and expresses its great hope that this Council will erve to meet the objectives as enunciated by the President in his special message to the Congress on Indian matters; and be it further

Resolved, That the All Indian Pueblo Council respectfully petitions the President to appoint as an Indian member of said Council a representative from and among the 19 Pueblos of New Mexico; and be it further,

Resolved, That copies of this Resolution be transmitted forthwith by the chairman of the All Indian Pueblo Council to the President of the United States, the Vice President of the United States, the Secretary of the Interior, and to such others as he may believe appropriate.

DOMINGO MONTOYA,
Chairman.

Attest:

VICTOR A. SARRACINO,
Secretary.

The CHAIRMAN. I notice that you have an unsigned statement here on behalf of the Governor. I would rather this statement be left out, and we will put in the letter that we have. With this understanding, the statement of the Governor of New Mexico which is unsigned will be left out of the record.

Do you have any further statements?

Mr. OLSON. No, Mr. Chairman.

The CHAIRMAN. This is a statement of the All Indian Pueblo Council of New Mexico.

May the acting chairman commend the members of the council for this fine statement. Not only is it constructive criticism, but also there are recommendations as to how to take care of this particular group of American Indians.

You are well aware of the fact that there is in the so-called present civil rights bill—and I use the phrase advisedly—this section that has to do with titles II, III, IV, V, and VI of the Indian Rights bill that is now before the House. You are aware that it is there.

You are aware also that the attempt at the present time of those in favor of the bill, because it carries a housing provision, to have it passed without any amendment would permit no amendments on the floor of the House. You are aware of that.

Mr. OLSON. We are aware of that.

The CHAIRMAN. Now, do you have any difficulties as far as the people who you represent with housing in the State of New Mexico?

Mr. OLSON. Mr. Chairman, if I may, I will answer that.

The CHAIRMAN. All right, Mr. Olson.

Mr. OLSON. In view of the fact that the chairman is having difficulty with his voice this morning, he asked me to discuss these matters.

Mr. Chairman, of course, the Indian people do have trouble with housing from the standpoint of substandard housing. They are interested in improving their housing. But as far as fair housing, no, there is no problem.

The CHAIRMAN. As far as discrimination, as far as these tribes are concerned, this does not bother them a bit, because they stay on their own reservations to a great extent, and when they go elsewhere they are not bothered in New Mexico or any part of the West; is that correct?

Mr. OLSON. That is correct, Mr. Chairman.

The CHAIRMAN. Mr. Montoya, you folks consider yourselves as regular American citizens, do you not?

Mr. MONTOYA. We certainly do, yes.

The CHAIRMAN. Are you denied as a people any of the rights set forth in the Constitution of the United States of America, and in particular with those amendments to the Constitution known as the Bill of Rights?

Mr. MONTOYA. I do not think we are denied them.

Mr. OLSON. Mr. Chairman, if I may answer that—certainly the Pueblos feel they were perhaps the originators of the Bill of Rights, as far as they were concerned, in their relationships with their members. They do take the position that the guarantees of the first 10 amendments are not enforceable in the State or Federal courts as between the relationships of the Pueblo and its individual members—that these may not be, at the present time, be enforced in Federal courts.

The CHAIRMAN. As soon as they get off the reservation, then they become subject to the provisions of this part of our National Constitution.

Mr. OLSON. That is correct, Mr. Chairman.

The CHAIRMAN. In other words, it might be considered, but yet it is not definitely so, a nation within a nation. They have never taken this extreme position, is that correct?

Mr. OLSON. Mr. Chairman, if I may, I would like to answer it like this. They do feel that they do retain some of the elements of sovereignty. They are amenable or subject to the laws of the Congress of the United States, certainly. But they cherish and prize this heritage of theirs. It is their position that with—should the rights of 1843, and particularly as enumerated in the statement of the chairman, that it would tend to destroy their government. Their judicial system, as it is presently practiced, is so interwoven with their whole way of life—their executive policy, their customs and traditions within the Pueblo, that to sever one and say “No, this must be subject to the qualifications of the Bill of Rights as enunciated by the Supreme Court in recent decisions,” would completely destroy their ability to govern themselves in accordance with this long practice of history and tradition.

The CHAIRMAN. May the chairman just take a minute now to refer to this statement on page 5, where the statement is to the effect that this particular group in these Pueblo units, they consider their operations as a family, and their punishment goes accordingly, whatever it may be. This is not the only place under the American flag where this sort of a method of disciplining members of a group is followed. Take the Islands of Samoa, the Polynesian people—crimes even as atrocious as murder are taken care of very easily by the system of governing that they practice.

In order to show remorse for the act committed and the desire to make amends, the consequent punishment, whatever it may be, is assessed by the people of the governing body of the people involved.

It is your understanding that if the present proposal, S. 1843, or H.R. 15122, were adopted like they are at the present time, that this would completely take away from the Pueblo tribes this method of governing their own people.

Mr. OLSON. Mr. Chairman, it is our opinion, or the opinion of the Pueblo leadership, as evidence in the back of this room, that this would certainly serve to destroy the operations as they presently exist—for these reasons principally.

First, we do have a situation where they would not have the funds to provide for attorneys—OK—even if we have an attorney representing the accused, they would feel that they have an obligation to have an attorney to represent them, or an attorney to advise—

The CHAIRMAN. As you know, Mr. Olson, there are those in Wash-

ington in the Federal Government that think they ought to furnish not only the prosecutor, but also the defender in such matters as this all over the Nation.

Mr. OLSON. Yes, I am aware of that.

The CHAIRMAN. They do have that great urge on the part of some of our people, to go thus far, and take away and destroy all individual responsibility.

Mr. OLSON. But bearing in mind, Mr. Chairman, that some of our tribes are located very remotely, it is going to be most expensive. It is certainly prohibitive as far as the Pueblo is concerned to retain counsel to provide these services. Secondly, we have a jury system. As we well know, the Pueblos have been a stable people. They have lived in the same area geographically for centuries and centuries. In some of the Pueblos, particularly the smaller ones, I find it hard to believe that a jury of tried and true citizenry of the Pueblo could be found that would meet the qualifications that are presently imposed by the Supreme Court of the United States to serve as a juror in a criminal affair.

Thirdly, we would have the situation of the habeas corpus into the Federal district courts, to test the jurisdictional features. Now, we again point out that the Supreme Court again has imposed certain tests of constitutionality—of jurisdiction, rather, to meet the constitutional test that we doubt seriously the Pueblos could meet. This would require a highly trained and expensive police force, it would require the matter of—well, I am certain the chairman is aware of all of these problem areas. We doubt that the system as it is presently practiced could meet these very restrictive and severe tests that are presently imposed under the Bill of Rights.

This is not to say that the Pueblos are opposed to the Bill of Rights themselves.

As I pointed out earlier, the Pueblos believe that they perhaps originated the Bill of Rights within this country. They allow complete freedom of speech, complete freedom of religion, complete freedom in whatever they want, so long as they live within it—with respect that is attendant to family life one toward the other within the Pueblo.

The CHAIRMAN. One thing about the United States of America—we all claim that right, to be the originators, or have our progenitors claim the right to be the originators of the complete freedoms we have. As a descendant of an old Saxon, I claim that right, too.

The gentleman from Washington, Mr. Meeds.

Mr. MEEDS. Thank you, Mr. Chairman.

First, let me apologize for not being here to hear your testimony. I did have an opportunity to read through it. I would like to compliment you on the testimony, and also on the facility and ability to retain your precious heritage. There is a lot to be said for this ability in this day and age.

I do have some questions, however. May I preface this remark, Mr. Chairman, with the statement that I have five Indian tribes on reservations in my own congressional district, all of whom are in favor of this legislation as it is, and I think I have some obligation to them, and also to many of the other Indian people in the Nation.

My first question is—let us assume that this legislation does not pass. Isn't it possible that the State of Arizona could, under Public Law 280—or New Mexico, pardon me—pass legislation which would be

more restrictive of your tribal rights and traditions and heritages than the legislation presently before us?

Mr. OLSON. That is correct. We, of course, recognize as Public Law 280 presently stands, the State could adopt a constitutional revision. It would require in our case a constitutional revision by the State of New Mexico. But they could do this, and assume such jurisdiction. It is for this reason that, of course, in the statement I think you will note that we do endorse title III of S. 1843.

Mr. MEEDS. I notice you are in favor of that.

Assuming that it was an all-or-nothing matter, however, and that the situation—

The CHAIRMAN. Now, just a minute. I do not want the gentleman to get this group of witnesses into the position that they have to testify as to all or nothing. I made a statement before the gentleman came that we were going to follow the orderly legislative process. And anything that has to do with blindfolding and shutting up the mouth of one of the coordinate bodies of Congress is not looked upon with favor by the chairman.

Mr. MEEDS. Mr. Chairman, I think I should be free to pursue by line of questioning. I have legitimate interests in this matter.

The CHAIRMAN. You can go ahead. But this meeting is to assume that we have jurisdiction of a bill that came to us legally, according to our procedures.

Mr. MEEDS. That is very true, Mr. Chairman. But the situation that I am describing may well arise. And I think we are entitled to an answer on that question.

The CHAIRMAN. All right. I think the witnesses know how to answer the question now. Go ahead.

Mr. MEEDS. Assuming that the situation should arise that the situation should be that it is all or nothing, would it be the testimony of this group that they would rather have nothing—that is to say, a repeal of Public Law 280, and the other things that go with—that you do fear in this legislation?

Mr. OLSON. If I may answer the question like this—and I would prefer that this question be directed to some of the Indian people that will later testify.

Certainly we would hate to have to make a choice, because the Pueblos of New Mexico do not like Public Law 280, but they do not like the Civil Rights of 1843 as it is presently written. I would guess, after long and serious deliberation, that the All Indian Pueblo Council, the Pueblos of which it is composed, would take this position in relation to that. If they had to make a choice, they feel that S. 1843 is going to destroy them, they would say "No"—if it is all or nothing at all, we will take nothing at all. We would rather live with Public Law 280 as it presently stands and accept the provisions of S. 1843.

Mr. MEEDS. Now—

The CHAIRMAN. Would my colleague yield at this point. You have had the Sword of Damocles hanging over your head since 1954, is that correct? It has not bothered you to date.

Mr. OLSON. That is correct.

Mr. MEEDS. How many people do you represent—how many Indians?

Mr. OLSON. Approximately 30,000. Perhaps a few in addition to 30,000.

Mr. MEEDS. Do you know of any other organized groups of Indians who oppose this Indian bill of rights?

Mr. OLSON. No, I do not specifically, though I am advised that the National Congress of American Indians recently adopted a substitute resolution which, by implication, would support the position of the Pueblos here.

Mr. MEEDS. Is it your testimony that the Congress of American Indians is not supporting this legislation as it is?

Mr. OLSON. If I may, Mr. Meeds, I would like to read the resolution. I would be reluctant to interpret the resolution for the National Congress of American Indians.

Resolution No. 2, dated March 4-5, 1968. It was adopted at a meeting here in Washington, D.C. It is signed by the President, and by the chairman of the Resolutions Committee.

It reads as follows:

American Indian Civil Rights Bill, S. 1843. Whereas the National Congress of American Indians, in executive council, representing American Indian tribes, assembled at a duly called and convened session at the Willard Hotel on March 4-5, 1968, in Washington, D.C., goes on record as supporting S. 1843, with the understanding that the wording of the definitions of Subsection 3, of Section 101, and as written and stated in Section 102, apply only to the Court of Indian Offenses.

Now, therefore, be it resolved, on this fifth day of March, 1968, that the Executive Council of the National Congress of American Indians goes on record as being in support of S. 1843 with the above understanding.

Mr. MEEDS. What was your understanding that that does?

Mr. OLSON. Subsection 3, section 101, which is the definition of Indian court. And they would make that apply, the definition, to mean any Indian tribal court or court of Indian offense—they would change that to apply only to the court of Indian offense. And the reason I cannot be more specific, Mr. Meeds—I am not certain whether they are referring to what are commonly known as the commissioner's court, under title XXV CFR, which are known as the court of Indian offense, or what they are referring to. I am unable to answer the question any more specifically.

Mr. MEEDS. Mr. Chairman, will we have the opportunity to hear the testimony of the Congress of American Indians?

The CHAIRMAN. They have filed a statement for the record. We have not put it in the record yet. The gentleman can see it.

Mr. MEEDS. May I ask unanimous consent it be inserted at this point?

The CHAIRMAN. It was stated it will be put in the record at the proper place.

Mr. OLSON. If the chairman please, we would have no objection to introducing this resolution. We have only a Xeroxed copy of it.

The Chairman. The resolution is in order, if it is not already in the record as a part of your statement. But it is not in order to place the statement of some other group in the record until the proper time.

Mr. MEEDS. I notice in your statement—I think very candidly on a number of occasions you use the word "unique," that this is a unique situation, and I am sure it is.

Would it be your feeling that the general good of the other American Indians would be served by the adoption of this legislation?

Mr. OLSON. It would be our position that we are not certain whether it would fit the needs. We would be most reluctant to speak for the

rest of the American Indians. But as far as the Pueblos we do believe they are unique. What we would like to see, as far as we are concerned, that the Pueblos be excluded by an amendment to section 101, section 1, and section 3, to specifically provide that the definitions as employed in title I would not include the 19 Indian Pueblos of New Mexico.

The CHAIRMAN. So the record is complete—if this overall major bill we are talking about, civil rights bill, is supposed to be an anti-discrimination bill against the rights of minorities, it is your position that you feel even though this group is a minority group, they have a right to have their rights protected also; is that correct, Mr. Montoya?

Mr. MONTOKA. That is correct.

The CHAIRMAN. Thank you very much.

Mr. MEEDS. And if there were minority groups within your organization, would you feel that they also have a right to have their rights protected?

Mr. OLSON. Certainly. We take the position that at no time have their rights ever been encroached upon.

Mr. MEEDS. If there were people living within your Pueblos who wanted to practice a different religion than you have, you feel they should have a right to do that?

Mr. OLSON. Certainly. They not have the right, but they are presently practicing various religions.

Mr. MEEDS. And have a right to have that right protected.

Mr. OLSON. Correct.

Mr. MEEDS. Are you acquainted with the case of *Toledo v. Pueblo Jemez*?

Mr. OLSON. Yes.

Mr. MEEDS. I have not been able to read the case. If you have, perhaps you could enlighten me on it. It is my understanding in that case the tribal government would not let certain members of the Pueblo bury their dead and practice their religion, and go to church as they desired in the specific location they asked. And they alleged had certain property rights taken from them, and that the Federal court, the Federal judge in New Mexico, Judge Hatch, held he had no authority to protect them, these members alleging this. Is that correct?

Mr. OLSON. That is correct—that he held he had no jurisdiction.

Mr. MEEDS. Then what happened after that?

Mr. OLSON. We do have the Governor of Jemez Pueblo here today, and I think he might be prepared to answer this question. And I think it would come far better from him than it would from me; though I will, if the Congressman wishes.

The CHAIRMAN. The Chair does not wish to go into this matter at this time, inasmuch as neither one of you has read the basic case. If you cannot get to that, there is no need to hash over the lawsuit.

Mr. OLSON. I would like to have this in the record—

Mr. MEEDS. Pardon me, Mr. Chairman. This is my time.

Perhaps we can answer it this way—if the chairman does not want to go into it.

Would you agree that if the facts are as I have stated them, these people have been deprived of their basic right to religious freedom?

Mr. OLSON. I would agree to that, Mr. Meeds. But I would also wish to make it clear that I do not agree with the facts as stated.

Mr. MEEDS. Would you then tell me in what respect you differ?

Mr. OLSON. I would say that this lawsuit, just like any lawsuit, could be framed on a statement of facts that were not proven. That this in fact did not exist within the Pueblo of the Jemez at the time. And I would further add at the present time one can visit the Pueblo of Jemez, and he can find the dissidents that brought the lawsuit are presently living there enjoying their religious freedom as any other citizen. There is no further difficulty. There are perhaps at least three or four different Christian faiths practiced within the Pueblo Jemez. And they have church facilities. And there is no problem.

Mr. MEEDS. But if a Federal court, or a court somewhere does not protect this right, and if a Federal court says that it has no authority or jurisdiction to look into this right, wouldn't you agree with me that the right of religious freedom is substantially in jeopardy?

Mr. OLSON. If I could, I would like to answer the question that way.

Again, accepting the statement of facts as made by the Congressman, I would agree. But I do not believe this exists within the Pueblos as they presently have their government, and that by assuming something that has not happened, and in all probability won't happen, by accepting this as the answer, you are denying to them to keep the type of government they presently have.

The statement has been made by the chairman of the All Pueblo Council, and by many of the governors here—they would invite the committee to make an investigation of the freedoms within these Pueblos, to determine for themselves that there is no discrimination. But by the adoption of the language of title I, providing for these things, that the Pueblos will in fact be discriminated against in their own way, and they will be destroyed. This is the position that they take.

Mr. MEEDS. I am even more concerned with the fact as to what the judge said—that he had no right to protect these so-called rights.

The CHAIRMAN. If the gentleman has any questions to ask of the witness, this is fine. But as far as argument back and forth with the witness, the Chair is going to call a halt to this.

Mr. MEEDS. Mr. Chairman, I do not mean to argue with the witness.

The CHAIRMAN. We do not know all the facts of the case. It is all right to ask any questions that you want to, Mr. Meeds.

Mr. OLSON. If I could answer—

The CHAIRMAN. We have too many other witnesses from out of town we are going to hear today.

Mr. MEEDS. Mr. Chairman, if complete knowledge of all the facts is a criterion for a member to pursue a line of questioning in this committee, we are out of order most of the time.

The CHAIRMAN. You ask your questions, and quit arguing with the witness.

Mr. MEEDS. I am not arguing with the witness, Mr. Chairman.

The CHAIRMAN. All right. Now, proceed with your questions.

Mr. MEEDS. I will reserve the balance of my time, Mr. Chairman.

The CHAIRMAN. Mr. Berry.

Mr. BERRY. Thank you, Mr. Chairman.

First I want to join in stating this was an excellent statement that was prepared here. I want to commend the Pueblo organization on putting this very fine statement together. I also commend your counsel, Mr. Olson.

I just have a couple of questions.

You say in your statement that you are preparing a criminal code, a code of criminal ethics. Will it be necessary that this code, when prepared, be approved by the Department of the Interior?

Mr. OLSON. It may vary from pueblo to pueblo, Mr. Berry, for this reason: I think perhaps three of the pueblos have adopted the constitutions under the Indian Reorganization Act which will require approval of any model code. The remainder of the pueblos—

Mr. BERRY. How many are there?

Mr. OLSON. There are 19 pueblos in New Mexico.

Mr. BERRY. Sixteen—

Mr. OLSON. Sixteen have not organized under the Indian Reorganization Act of 1934. Those 16, it is questionable whether they would have to submit their code. I would be reluctant to say specifically, because I am not certain as to what the regulation is currently of the Department of the Interior would be on this.

Mr. BERRY. One more question.

In the State of New Mexico, would a referendum be required before Public Law 280 becomes effective?

Mr. OLSON. It would require a constitutional amendment, yes; and this of course would require an affirmative vote.

Mr. BERRY. And the State has never voted on it?

Mr. OLSON. No.

Mr. BERRY. I think that is all, Mr. Chairman.

The CHAIRMAN. All right.

The gentleman from Washington.

Mr. MEEDS. Thank you, Mr. Chairman.

I notice some hesitation, or some, certainly, inference—I get some inference from your statement that you are concerned about the right of habeas corpus, and you can correct me if I am wrong on this, but does not habeas corpus presently apply to the situation with which you are faced?

Mr. OLSON. No, Mr. Meeds, it does not. The courts have held consistently that the Federal courts have no right to inquire into an Indian jurisdictional matter.

Mr. MEEDS. At the risk of incurring the displeasure of the chairman—I have read the case—I am informed that the case of *Cauliflower v. Garland*, at least in the Federal district in which you are in, or the circuit which you are in, has held that habeas corpus applies. Am I correct or incorrect?

Mr. OLSON. This could be correct. I have to read the decision again. It escapes me for the moment. But our district courts, where it has been exposed to this problem, have taken the position that they cannot explore an Indian tribal court function.

Mr. MEEDS. You are in the Ninth Circuit Court?

Mr. OLSON. No; we are in the Tenth.

Mr. MEEDS. That case was a Ninth Circuit Court decision.

As an attorney, does it not bother you that a writ of habeas corpus does not run to people in these United States, whether they be on Indian Reservations or anywhere?

Mr. OLSON. It does not bother me with reference to the 19 pueblos, because I am intimately familiar with the operation of the pueblos,

and their prizing of these same freedoms that are guaranteed to us as citizens of the United States—there just is no problem.

Mr. MEEDS. Aren't we as citizens of the United States guaranteed the right of habeas corpus?

Mr. OLSON. Yes, that is correct.

Mr. MEEDS. We just assume it does not run to them. So when you say they have all the rights that we have, are you sure that is correct?

Mr. OLSON. Bearing in mind, Mr. Meeds, that the right of habeas corpus is to test that certain basic fundamental rights of a citizen are met in meting out justice to him, if you will.

Mr. MEEDS. By a court of law?

Mr. OLSON. Right. That it tests the jurisdiction—under our recent Supreme Court decisions, the petition for habeas corpus is to test the jurisdiction of the trial court at the time it held the hearing, or whether his fundamental rights have been so abridged as to void the court of jurisdiction over the accused in the case. Well, as I say, my personal observation in relation to the operation of the 19 pueblos that they insure to each of its citizenry that these basic rights—we are talking about the right of a man's home is his castle, and you cannot break down the door to illegally search and seize. That is a fundamental right. They do not have this problem in the pueblos.

Mr. MEEDS. As long as the right does not run to this jurisdiction, if they change these laws or regulations, this question could never be tested that way.

Mr. OLSON. That is correct.

But what I am saying is that the 19 pueblos have enjoyed this type of government since at least prior to 1540, and we do not know how many centuries—eight, nine, 10 centuries before 1540. And the citizenry has yet to make a valid complaint that these rights have been abridged. And do we need to face a problem that does not exist?

Mr. MEEDS. If we were to find an instance where a valid complaint were made, would you agree, then, that something ought to be done, so the writ of habeas corpus does run?

Mr. OLSON. Do you have to take a whole bottle of pills to solve one minor headache?

Mr. MEEDS. Perhaps not.

The CHAIRMAN. The Chair is going to get away from this. These are arguments. I do not want argument.

Mr. MEEDS. Mr. Chairman, as long as the questioner might disagree, there might be what the chairman considers to be an argument.

The CHAIRMAN. Just state the facts as they are.

Mr. MEEDS. If it were to appear to you that the overwhelming majority of American Indians were in favor of the legislation as proposed, would it still be your position that it should not be adopted as proposed?

Mr. OLSON. Yes, Mr. Meeds. It is the position of the Pueblos that should they endorse legislation such as this, they would be signing their own death warrant.

Mr. MEEDS. In effect, then, you are speaking of the "unique" position of the Pueblos?

Mr. OLSON. That is correct.

Mr. MEEDS. I think that is all, Mr. Chairman. Thank you.

The CHAIRMAN. Any more questions?

Mr. Sigler, do you have any questions?

Mr. SIGLER. No, Mr. Chairman.

The CHAIRMAN. Thank you very much.

The next witness is Gov. Pat Calabaza, accompanied by Mr. Benny Atencio, and Mr. Mateo Aragon.

Are you going to speak in English or in—

Mr. ATENCIO. The Governor would like to make a statement in Indian first. Then we will follow.

The CHAIRMAN. All right, Governor.

**STATEMENT OF GOV. PAT CALABAZA, SANTO DOMINGO PUEBLO,
N. MEX., ACCOMPANIED BY INTERPRETERS BENNY ATENCIO AND
MATEO ARAGON**

(Governor Calabaza at this point in the hearing made a statement in the Indian language.)

Mr. ARAGON. Mr. Chairman, speaking on behalf of my Governor's statement, according to our appointment by our councilmen, we are appointed to be present here at this date here in Washington, D.C. Many years ago, long before any white man came to this continent, we Pueblo Indians have already formed a self-government which we know among ourselves and is in our heart. After when the Spanish came and explore our country, when the Spanish went back later on—around 1680, the Spanish Government gave each pueblo showing that they are recognized to carry on their self-government—they gave the Spanish cane.

When Mexico became independent, she gave a symbol to each pueblo showing that it will be known that we have our own self-government. Then around 1840 or 1850, when the United States took over, then 1863, during the administration of Abraham Lincoln, the United States gave us, each pueblo, a cane. And our people respect our self-government and our council and people still want to retain our self-government.

Now, from now on I will let Benny Atencio go ahead to read the statement that was prepared by our councilmen. I thank the chairman.

The CHAIRMAN. Mr. Aragon, may I ask you one question? Are these the same canes, or are these canes in place of the others that were given to you?

Mr. ARAGON. Yes, they are the same canes. The one was given to—our cane from Mexico was turned over to the Lieutenant Governor, and the Lieutenant Governor has it.

The CHAIRMAN. All right, Mr. Atencio.

Mr. ATENCIO. Mr. Chairman, members of this committee, I wish to thank you for the opportunity to be here today and express the views of my Pueblo on S. 1843 and companion bills. This is my first visit to this great city and to these halls where so many important decisions affecting our world, our Nation, and our people are made.

The people of my Pueblo believe that a decision of importance to the Indian people is under discussion by this committee today. Their concern is perhaps best shown by the fact that for the first time in history a Governor of my Pueblo has been authorized by our council to come to Washington and give testimony.

This was not a decision lightly made or an easy undertaking for my people, but they believe the effects of the legislation under dis-

cussion is of such importance to the Pueblos that they made an all-out effort to send me.

For many centuries our Pueblo has been located on the warm and sunny banks of the Rio Grande in New Mexico. We were a closely knit community having an organized government long before the white man touched the shores of this part of the world. First came the Spanish, then the Mexican Government, and finally that of the United States to reign as the supreme sovereign. However, each in turn, after long and careful consideration, found our system had merit and insured to us the privileges of self-government in our traditional way. As a measure of this assurance, each government presented us with a "cane." No possession of our Pueblo has more significance or meaning, for our ancestors were given these with the solemn commitment that we could continue to retain the government we had and we have without fear of encroachment of reprisal.

But now we are faced with legislation such as that proposed by parts I and II of S. 1843. We are gravely concerned over this legislation, for we feel that should it be adopted and invoked among the Pueblos, our form of government as we have learned to know it and cherish it over these many centuries will at long last fall.

Our system of justice through law and order is so interwoven with the rest of our government, our heritage, and our way of life, that to have it controlled by outside influences will, in our opinion, destroy it.

This is not to say that we are opposed to the basic freedoms and liberties prescribed by the Bill of Rights and as set forth in section 102 in S. 1843. We believe that the Pueblo Indians of New Mexico have long cherished and enjoyed these same rights and privileges without fear and encroachment by their Pueblo leaders. Almost without exception, we think the truth of this statement will be brought out by our nearly 30,000 members. But to now have the burden placed upon our system of appearances of trained attorneys and review by the Federal courts would be to impose us people who have little or no understanding of our system of government and justice.

It is for the foregoing reasons that I appear here today, Mr. Chairman, and respectfully join in the comments made by our chairman of the All Indian Pueblo Council. I respectfully petition that the Pueblos be excluded from the provisions titles I and II of the S. 1843 and all similar measures.

The CHAIRMAN. Thank you very much, Mr. Atencio. Of course the people of the Pueblos realize that they are accepting one of the freedoms of our country at the present time as they appear before Congress to make their position known and petition Congress; is that correct? And except for this question of jurisdiction within their own area, they respect all other of our constitutional provisions including the Bill of Rights?

Mr. ATENCIO. That is true.

The CHAIRMAN. Who notified Governor Calabaza and his people that there might be some rights that they presently have that were jeopardized by this legislation?

Mr. ATENCIO. Mr. Chairman, under the All Pueblo Council, we get together each month, since time immemorial, and we discuss the legislation that affects the Pueblo Indians. We have a constitution,

joined by the intertribal groups in Pueblos, in New Mexico, we discuss the legislation, and take it back to our respective communities.

The CHAIRMAN. Were they requested or given any opportunity to appear before the committee of the other body when S. 1843 or its predecessor legislation was considered?

Mr. ATENCIO. To our knowledge the Santa Domingo Pueblo has never been contacted or consulted in the formulation of the bill.

The CHAIRMAN. The gentleman from Washington.

Mr. MEEDS. Thank you, Mr. Chairman. When were you contacted about the testimony which you gave today?

Mr. ATENCIO. I think in the middle or early fall of 1967.

Mr. MEEDS. When did you decide to come and testify?

Mr. ATENCIO. We have been working on this bill since then, discussing and trying to interpret to our tribal people whom as you see we had to discuss the complicated bills, and they have always been concerned and requesting to have an opportunity to present their position.

Mr. MEEDS. When did you decide to come and present it?

Mr. ATENCIO. This was decided when we were assured that there would be a hearing, last week.

Mr. MEEDS. When was that, sir?

Mr. ATENCIO. That was last Thursday.

The CHAIRMAN. If my colleague will yield. Let the record show there were no hearings on this legislation in the other body in 1967. The hearings were held in the previous Congress.

Mr. MEEDS. Yes, Mr. Chairman.

Mr. Atencio, you are the tribal attorney for this group?

Mr. ATENCIO. No; I am not an attorney, but I am one of the tribal spokesmen.

Mr. MEEDS. Could you tell me how a trial is held? Say that one of your people is accused of a violation of what we would consider to be a criminal violation under ordinary circumstances, and he is charged and brought to some kind of a determination, as to whether he committed this crime or not before your tribe. Would you explain to me the procedure that you go through?

Mr. ATENCIO. Mr. Chairman, Mr. Meeds, I would like to yield this then to one of our other tribal spokesmen. He has lengthy knowledge of the proceedings.

Mr. MEEDS. That is fine.

The CHAIRMAN. Mr. Aragon.

Mr. ARAGON. Mr. Congressman, Mr. Chairman, I served as a lieutenant-governor four terms. According to any procedure or any case, a criminal case trial, the governors handle it. And we have been officers which are sort of a jury group. The governors sit there as a judge, and the lieutenant governor and his officers may consider any offense on any crimes, and will decide who will be guilty. And we do fine and give certain limits, when they should pay.

Mr. MEEDS. These eight people sit in public, where anybody can listen to them in the tribe?

Mr. ARAGON. Yes.

Mr. MEEDS. What is the extent of the punishment which they can mete out? What is the worst thing they could do to an offender?

Mr. ARAGON. The punishment—sometimes we fine them so much.

Mr. MEEDS. Pardon?

Mr. ARAGON. Sometimes we fine them so much, according to the amount. Or if they have no money to pay, they would put them up for community services.

Mr. MEEDS. Do you have any kind of what we refer to as jail, or a place where people are incarcerated, kept?

Mr. ARAGON. No.

Mr. MEEDS. You do not. Now——

Mr. ARAGON. May I add to that?

Because we respect the traditional government there, we felt that it is not necessary to have anyone in jail or retain anyone, because our people and we young people recognize and respect these things. Therefore, if there is such crime, if they notify us there will be a hearing, or to be there at a certain date, we do not have to run around or have anybody chasing us like in the cities.

Mr. MEEDS. That is very commendable.

Do the persons that are accused, do they come before this organization, the governor and these people who are deciding?

Mr. ARAGON. Yes.

Mr. MEEDS. In all instances?

Mr. ARAGON. Yes.

Mr. MEEDS. Could your governor and group fine a man who was not there? Say he did not come to trial, didn't receive notice or he did not appear. Could they go ahead without him?

Mr. ATENCIO. Every person who is charged with a crime is notified. As a matter of fact, the governor and his staff meet every night to discuss the daily activities of the tribe, and is charged with it, and they are not paid or compensated in any way. So they serve in this respect, all our tribal officers and officials. But the individual charged with the crime is notified and given the privilege of representation by one of the tribal spokesmen if this is requested.

Mr. MEEDS. Is this done without charge—the tribal spokesman will represent him without charge?

Mr. ATENCIO. That is right.

Mr. MEEDS. So that if you were required to furnish counsel or someone to represent him, this would be no additional cost, would it?

Mr. ATENCIO. Not to an individual, no.

Mr. MEEDS. Since you have eight people, if there is a minimal requirement that six people sat, you would be well within that requirement, too, would you not? And if the bill required that it be a public hearing, where anybody could come, this would not give you any problem, would it?

Mr. ATENCIO. This is already practiced in our system.

Mr. MEEDS. That is what I am saying. These three things we talked about are already practiced.

Mr. ATENCIO. That is right.

Mr. MEEDS. So there would be no additional cost to you in utilizing these additional things—not additional, because you are doing them already.

Mr. ATENCIO. The additional costs would be incurred if we were to require a trained attorney whom we have to hire or bring in from outside.

Mr. MEEDS. A member of the bar.

Mr. ATENCIO. That is right. And besides, they have no knowledge of our tribal language. As you see, most of this is conducted in the tribal language.

Mr. MEEDS. If it did not have to be a member of the bar and could under this law be one of your tribal spokesmen, or a person designated in your tribe to represent defendants, this would be no additional cost?

Mr. ATENCIO. This is true.

Mr. MEEDS. What additional cost do you feel would follow from the adoption of the Indian bill of rights?

Mr. ATENCIO. I do not think we are in a position, but I am sure it will cause a lot of confusion, especially in Santo Domingo, because these things are new to them in the white men's society. So we cannot say what additional cost, because I am sure there will be quite a confusion. I can only say that much. It will cost some, but I do not know how much.

Mr. ARAGON. In other words, I will say we have no other resource in the community.

Mr. MEEDS. Now, could you enlighten me on this? If a person wanted to practice a religion in your Pueblo which was totally different than what you practice, and what is accepted, what most of the people practice, could he do so?

Mr. ATENCIO. I do not think there would be any objection, but I do not think this has ever happened, and we doubt if it will ever happen in Santo Domingo.

Mr. MEEDS. You personally—you gentlemen there would have no objection to someone practicing a different religion.

Mr. ATENCIO. No.

Mr. MEEDS. It would be perfectly all right.

Mr. ARAGON. In other words, Mr. Meeds, I would say we already have our own customs and religion, including when the Spanish came they baptized our forefathers, and we still include the two together.

The CHAIRMAN. May I ask a question?

In other words, you practice your native religion, as has been changed from time to time by the Spanish Church that came first, and it is now a religion which is acceptable as far as any religion is concerned in the United States, is that correct?

Mr. ATENCIO. True.

Mr. MEEDS. What would happen in your group if a young man or a young woman in your group would publicly say in a meeting somewhere that the system which you practice is all wrong, and that you ought to be using a different system, without regard to what system? What would happen? Would that person be punished any way?

Mr. ATENCIO. As you know, we recognize the freedom of speech, freedom of press, and this is carried on in Santo Domingo. So there would be no action taken.

Mr. MEEDS. What if a group of people were to get together, a group which is not tribal leadership, and maintain as a group that you should have some other system. Would there be any impediment, any reason they should not be able to do that under your present law?

Mr. ATENCIO. I believe if the committee or anyone interested—and I repeat Mr. Olson's testimony—if they were interested in finding this

out, they should contact and come to our communities and hear from the people. But I believe at Santo Domingo you will find they do have the respect of the tribal councils, and they go along with whatever decision is made. But if the majority of the group—I am sure that the tribe will discuss if there are changes.

Mr. MEEDS. What if it was not a majority? What if it were just a few what you might consider to be troublemakers, who were questioning as a group the authority of your tribal leaders?

Mr. ATENCIO. Well, this has never happened at Santo Domingo, but I am sure that the leadership of the community will give every opportunity to hear their case or review whatever might come up.

Mr. MEEDS. I guess I am not making myself clear.

Do they have the right to do this?

Mr. ATENCIO. Yes.

Mr. MEEDS. They have the right. It has never happened before, but they have the right to do this.

Mr. ATENCIO. That is right.

Mr. MEEDS. They would not be punished in any way for doing it, is that correct?

Mr. ATENCIO. I doubt if they will be, no. They will be given an opportunity to discuss this with the majority of the group. If it is something—

Mr. MEEDS. What if they did not want to discuss it with the majority group?

Mr. ATENCIO. May I take a few minutes, if I may? I would like to talk to the Governor.

Mr. Meeds and Mr. Chairman, if we be given an opportunity to call on the attorney of the All Pueblo Council, the Governor requests he would like to consult with him. Mr. Olson.

Mr. MEEDS. Very well.

Mr. ATENCIO. If there are other questions—

Mr. MEEDS. That was my last question, Mr. Chairman, If we could have an answer to that.

The CHAIRMAN. The question is, Mr. Atencio, whether or not an individual would be punished by the tribe—

Mr. MEEDS. A group, Mr. Chairman.

The CHAIRMAN. A group—an individual or a group, let us say young people who step out these days and think they know more than their senior citizens, would they be punished by any method, ostracism, or denial of the privileges of the society of the Pueblo, or anything like that?

Mr. ATENCIO. We feel that there will be no punishment in such matters. And I think we need to be more specific in the case, because as I said, we have never experienced this, and I do not think anything is forthcoming. Anybody that has come up with an individual case, he has every right to do what he wants to, or speak what he wants to say.

Mr. MEEDS. You have never had a person or a group in effect deny the authority of the tribal governing body and speak out against them as a group?

Mr. ATENCIO. Not at Santo Domingo, no, no.

Mr. MEEDS. That is a very fine community. Thank you.

The CHAIRMAN. Mr. Berry.

Mr. BERRY. I have only one question.

Could I ask how the Governor is chosen? How he is elected to his term of office?

Mr. ATENCIO. Santo Domingo, as in probably most other pueblos, they are chosen or appointed—they are not elected—they are appointed by the elders, the tribal councilmen. And they serve for 1 year. And the same way with all the officials.

Mr. BERRY. Thank you very much. How are the council members chosen?

Mr. ATENCIO. The councilmen—they reach the position through—once they have served the positions of lieutenant governor, the governor, or any one of the high officials of the tribe, they become councilmen, and serve indefinitely.

Mr. BERRY. You do not have a regular election?

Mr. ATENCIO. No, sir; we do not.

Mr. BERRY. Do you vote? State and Federal elections?

Mr. ATENCIO. Yes, we do.

Mr. BERRY. Thank you.

Mr. McCLURE. I have no questions, Mr. Chairman.

The CHAIRMAN. Thank you very much for your testimony and your appearance before the committee.

The next witness is Gov. Robert E. Lewis, Zuni Pueblo, N. Mex.

Governor, we are glad to have you here as a witness.

You may proceed. Do you have a statement?

Mr. LEWIS. Yes, sir.

STATEMENT OF GOV. ROBERT E. LEWIS, ZUNI PUEBLO, N. MEX.

Governor LEWIS. Mr. Chairman, Honorable Congressmen, in sincere appreciation I would like to express my gratitude to the fact that you have given us the opportunity to present testimonies on proposed Indian legislation that is presently causing uneasiness among our people; namely, the Ervin bill, S. 1843, and H.R. 15122, and especially titles I and II of these bills.

My fellow leaders and I, of different Pueblo tribes in New Mexico have come a far piece to convey to you in simple truth our situations upon which we have no room to exaggerate nor elaborate upon. We come before you as elected leaders from your respective States, which makes us mutual public servants. The one main difference being that we still communicate with our people in two languages, whereas you use only one—the language we are now using.

I know for a fact that the majority of you have never been to my Pueblo. Perhaps you have been to some, but not long enough to become acquainted with our situations and problems. So putting it bluntly, you really know nothing about us. We, in Zuni, understand that S. 1843 and H.R. 15122 are based on hearings set up in various places off the reservations in 1961. No recent followup investigations of what we are now planning and doing have been made. Why?

If this had been done, it would have been found out that several of our Indian tribes have their tribal constitutions, as well as now operating under their own tribal codes. Some, as in Zuni, have been drafting theirs. Using two languages, this takes time. Besides working on these matters, we are all very much involved in economic de-

velopment programs which we know will bring up our economic structures to a better level. Poverty programs are also in operation. All these things mean practical training and education, to many of us, in planning and administration.

To prove to you that we are actually doing what needs to be done, I am presenting the committee a copy of our tribal constitution in draft. This backs up the statement of former Gov. Warren Ondelacy in answer to your questionnaire of August 1961, regarding a document which would have in writing those things concerning civil rights to individuals, as well as a law-and-order code.

In these days when all governments, from the local level to the very top, are swamped with workloads far beyond their capabilities because of limited personnel and funds, and everything operates on limited time basis, it is very difficult to get across the main points to do any good or be very effective, in many cases. Although we try to be brief, where we are concerned, this is very difficult. There are some factors that we have to go into and we are sincerely hoping that time will be taken to read our statement. A bit of history even has to be included to bring the picture into clearer focus, and because up to the present the communications gap from us to you is so evident, we cannot afford to be stingy with words.

There is a distinct difference between the Pueblo Indian and the nomadic tribes. This is very important to keep in mind because it has a direct bearing on the legislation we are discussing at this time. This is why:

Long before the first Norsemen, or whatever, touched the shores of what is now our United States, the Pueblo Indian was here as the first builder. Ruins all over our Southwest indicate and prove this fact, as well as our existing Pueblos. In all the places they built multistoried pueblo communities, there apparently were no hostile marauding tribes. It takes several years to build such structures and live, no one knows how long, in these places if there was not a feeling of safety. He was an agriculturist and a craftsman also. But the best part is that their government setup was so good that it is still evident today.

Through Spanish rule and up to now, the Pueblo Indians have kept together, are still together. A lot of our custom laws handed down are still being used. Our two-court systems mete out justice in the fullest sense and outside courts can look to these and learn something. Civil rights are not new to any of us. Our courts have operated in a more than satisfactory manner, and there has never been any complaints about the fairness of the system. Changing times force changes to be made in many areas. As far as Indians are concerned, we have a lot of adjustments to make. But we know our problems. Concerning our judicial situations, we understand the streamlining that we need to do to comply with today's needs. So we are doing something about this.

There are two areas where we are greatly handicapped at this time—educationally and financially. In coping with the problems of today, there is great need in these areas and if you do not have these, we feel like, at time, we are shoveling sand against the tide. When legislation is proposed and these factors are not considered, you only create another problem for the Indian.

Not all of us have natural resources income, and we have practically scraped the bottom of our budget barrel to come to this hearing. We have no college graduates working with us on our tribal programs yet.

This will eventually change and we are only doing our best with what we have right now, to set up a foundation that our young people one day will have, and improve on as they go along.

These are the points the Zuni Tribal Council hope you will earnestly consider before making your decision on H.R. 15122:

(1) Pride in accomplishment creates confidence, self-assurance, and cooperation in people. As a sovereign government recognized under the Constitution of the United States, let us do our own thinking and doing. If this law is passed, without excluding titles I and II, then you are taking the "paternalistic" attitude the Bureau of Indian Affairs has already been made the goat with, but they had reasons. They work directly with us. Superintendents and area directors know our problems, and should be utilized. Besides, passing this bill would seem more like democracy is thrown to the winds and we are being dictated to.

(2) The time element involved is much too short. Many tribes will have to drop everything to concentrate on this matter and a sloppy job will result. We are talking from experience now, and the matter is too important to jeopardize. A minimum of 5 years should be considered.

(3) A financial hardship will be placed on many tribes. Some tribes cannot even scrape up matching funds to participate in many good projects they desire to do, let alone hire and pay judges right now, as well as jurymen.

(4) Our legal aid component under OEO is a wonderful program in educating our people in the procedures of law, the simple as well as the more intricate. We have a fine cooperative working relationship with both State and Federal agencies of law and order.

We cherish our rights and freedoms, and are very close to our lands, what little we have left. We take pride in the fact that our tribal government has endured all these centuries and we firmly believe that if we did not in our own way and in our governments, indicate these to the individuals, we would long ago have disbanded as tribes, and sought a better way somewhere else. We also are proud to share democracy with all latecomers who came here seeking the freedoms and liberties they did not have in their own countries. Let us work together to preserve these. Let us prove that we can build around the good things we have and we assure you that it will conform to everything required.

Thank you.

The CHAIRMAN. Governor, did you prepare this statement?

Governor LEWIS. Yes, sir.

The CHAIRMAN. Where did you get your education?

Governor LEWIS. I graduated from the Phoenix Indian Vocational High School in 1933, sir.

The CHAIRMAN. May I commend you, not only on a statement that is well put together, but also a statement that has many basic principles that are necessary to carry on the representative form of government.

You speak Zuni as well as English?

Governor LEWIS. Yes, sir.

The CHAIRMAN. What is the common language between the Pueblos themselves?

Governor LEWIS. I believe Spanish.

The CHAIRMAN. Most of the people, then, are trilingual; is that

right? They speak their own language, Spanish, and a good many of them now speak English?

Governor LEWIS. Yes, sir. But only a very small percent of my people can talk Spanish. It is the older people who do.

The CHAIRMAN. The gentleman from Washington.

Mr. MEEDS. Thank you, Mr. Chairman.

Governor, my compliments also on your testimony and upon your statement. I wish I had more time to come down and watch the operation, the things about which you speak.

I do not want to be repetitive here. You have been present and heard all of the other witnesses; have you not?

Governor LEWIS. Yes, sir.

Mr. MEEDS. So I will try to be very brief.

First of all, in your Pueblo, you would not make any law—there would not be any law against the free exercise of any religion; is that correct? A person could exercise any religion?

Governor LEWIS. In fact, sir, we have a Christian Reform Mission and a Catholic Mission in our community.

Mr. MEEDS. And a person could speak freely, and could criticize the governing body of your organization?

Governor LEWIS. Yes, sir.

Mr. MEEDS. He would not be punished for this; is that correct?

Governor LEWIS. No, sir.

Mr. MEEDS. Assuming he did not advocate overthrow of it forcibly, or something like that?

Governor LEWIS. We would let him proceed as far as he can go.

Mr. MEEDS. And people can print what they want, within reason, without advocating the forceful overthrow?

Governor LEWIS. With basic truths; yes.

Mr. MEEDS. Is there any limit within which people can write what they want in your pueblo?

Governor LEWIS. I do not think we would put a limit to anything they would want to write, provided it has some truth or bearing on a particular matter.

Mr. MEEDS. Who would decide whether it has bearing?

Governor LEWIS. Well—could I give an example, sir?

Mr. MEEDS. Sure.

Governor LEWIS. We had trouble with our arts and crafts program. We were opposed by our friends in the nearby town of Gallup, and of course they put out a lot of untruth. It made it very hard for us to get started. But we never retaliated through the news media. We let them go ahead. We had a job to do. We had a beneficial program to set up for our people. And that was our main object.

Mr. MEEDS. You felt stronger for it; is that right?

Governor LEWIS. Yes, sir.

Mr. MEEDS. As the other gentlemen have testified, there would be no law or rule against anyone, a group getting together, and discussing things, and even coming out against the pueblo governing body?

Governor LEWIS. No, sir.

Mr. MEEDS. And saying that you should have a sufficient system?

Governor LEWIS. They are perfectly free to do what they wish.

Mr. MEEDS. Now, a thing we have not gone into with the other witnesses—could you explain to me the kind of living quarters that members have in your tribe? Do they have individual houses?

Governor LEWIS. We have—my pueblo is the largest of the New Mexico pueblos. The population is 6,000. We have homes—in the central part of our community it is pretty congested. And so we are setting up a housing program for the young people to have their own homes, and provide for their families in this way. But that portion of our community also was the multistory part.

Mr. MEEDS. Does each family have a residence, where they are separate and apart from everyone else, a place they call their home?

Governor LEWIS. Yes, sir.

Mr. MEEDS. Is it the father or the husband king of that place?

Governor LEWIS. The head of the house.

Mr. MEEDS. You would not go in and search his home without his permission, would you?

Governor LEWIS. No, sir.

Mr. MEEDS. How do you arrest a person, so to speak—how do you bring him before your governing body to be charged with a crime, and be brought before your governing body for a violation?

Governor LEWIS. It is according to what type of a situation has been created. Sometimes a violent situation will arise. A call will come in—most of the times they come in from the relatives—that somebody is disturbing the peace. And so they request a policeman. And we send him down. Sometimes by the time they get there, they are asleep, and they are notified at the door, our patrolman does not go inside—they do not barge in, unless they are requested or invited in.

Mr. MEEDS. In every instance, though, where someone is charged, or is going to be brought before your group, he has a reasonable notice of that?

Governor LEWIS. Yes, sir.

Mr. MEEDS. Would you say if a person was accused of some violation, and convicted of it, in our terms—the judgment was he had to do certain things—and he did these, would you or could you under your code, under your model code or the code you are working on now, or in any of your prior laws, could you bring him in and charge him with the same thing again, and inflict punishment on him for the same thing all over again?

Governor LEWIS. After he had already been——

Mr. MEEDS. After he had been punished.

Governor LEWIS. No, sir.

Mr. MEEDS. Could you, under your law, under the way it is carried out, you require a person—could you make a person stand up and say what he did if he didn't want to talk?

Say before your governing body he is charged with some kind of offense, and he says, "I do not want to talk about it." Would he have to talk?

Governor LEWIS. No, sir. If he desired representation by another person, and wished to use him as an attorney, you might say, and what to tell him—sometimes our people cannot express themselves too good, even in their own language. And so they get an older person, or somebody that can talk fluently to represent them.

Mr. MEEDS. What if he did not want representation, he did not want to say anything in his own defense, he just did not want to talk. Would he have to?

Governor LEWIS. You could not force a man if he did not want to talk.

Mr. MEEDS. You would not compel him to.

Governor LEWIS. No, sir.

Mr. MEEDS. OK.

The CHAIRMAN. Are you trying to prove that they flog each other?

Mr. MEEDS. No, Mr. Chairman. That is not my purpose at all. I am sure they do not.

Would you, under your law in any way—first of all, what is the situation with regard to property rights? Do individual members of your tribe own individual pieces of land?

Governor LEWIS. Yes, sir.

Mr. MEEDS. Could you, under your present law, or what you are working on, could you take that property away from him without compensating him in some way for it?

Governor LEWIS. Could I use another example, sir?

Mr. MEEDS. Sure.

Governor LEWIS. In answer to your question; first, no. For instance, in this housing project, some of the people I mentioned in the congested areas do not have land of their own to build homes on. So the tribal council is acquiring land, paying for it, and setting up a subdivision on one side of our pueblo. We would compensate or we would—

Mr. MEEDS. If you take land that belongs to any individual, you always pay a reasonable price for it?

Governor LEWIS. Providing he wants to sell it.

Mr. MEEDS. What if he does not want to sell it?

Governor LEWIS. We cannot force him to. It is his property.

Mr. MEEDS. OK.

Now, do you have the same situation described before, the other gentleman described about the way you try people for offenses?

Governor LEWIS. Yes.

Mr. MEEDS. They had eight of the Governors and Lieutenant Governors, representatives there?

Governor LEWIS. That is right.

Mr. MEEDS. Do you have that same system?

Governor LEWIS. Yes, sir.

Mr. MEEDS. It is held in the open, where anybody can watch it.

Governor LEWIS. Yes. We have it in the tribal council hall, and anybody can come in.

Mr. MEEDS. You do not try to keep people out?

Governor LEWIS. No, sir.

Mr. MEEDS. Does that person have the right to be represented the same as the other gentleman testified?

Governor LEWIS. Yes, sir.

Mr. MEEDS. Does he have a right to be told what he is charged with and be informed of the charges that are against him?

Governor LEWIS. Yes. He is notified in plenty of time.

Mr. MEEDS. You would not proceed without doing that?

Governor LEWIS. No, sir. He has to be present.

Mr. MEEDS. Now, say that a person is charged with some violation, and somebody else said he did this. Would that person who says he did this have to come before your group and testify about what he did?

Governor LEWIS. Would you clarify the question, please.

Mr. MEEDS. I am sure I am not making myself clear.

Say that Joe told the tribal council that Bill stole some of his corn. Now—and Bill was charged with stealing his corn. Would Joe have to come before this group that you talk about and tell them that Bill stole the corn?

Governor LEWIS. In other words, he would put himself in as a witness?

Mr. MEEDS. Right.

Governor LEWIS. There would have to be witnesses to the incident.

Mr. MEEDS. In my illustration, would Joe have the right to question Bill—to be there and hear him give that testimony, and to question him?

Governor LEWIS. Joe would have to be there as a witness.

Mr. MEEDS. Could he question the witness? Could the person that is charged question the witness, he or his attorney? Would they have a right to question him?

Governor LEWIS. Yes.

Mr. MEEDS. You do not go in a backroom and talk it all over, and then come out and pronounce your sentence?

Governor LEWIS. No, sir.

Mr. MEEDS. OK.

And—we have already talked about the right to representation.

Now, what is the extent of the punishment that this group can inflict? What is the worst thing they can do to a person?

Governor LEWIS. Well, providing a case has been settled—oftentimes, the higher court deals with cases where the older and regular procedures are carried out of course. But say if you were a Zuni, and I stole a sheep from you, and everything proved out that it was—I was guilty—witnesses saw me, and the sheep was in my corral, and so I was guilty. I would have to pay you that one sheep back, plus nine more. And this refers to what Mr. Olson said about observing the dignity of the tribe. And this custom or law—our people are all aware of this particular law.

Mr. MEEDS. OK. Thank you.

Now, all the people in your pueblo are subject to the same laws, are they not? In other words, you do not treat one person differently than another?

Governor LEWIS. No different.

Mr. MEEDS. If one person was charged with exactly the same thing that the another one was charged with, the punishment would be the same, assuming that all the circumstances were the same?

Governor LEWIS. That is right.

Mr. MEEDS. Would you, within your law, pass any kind of rule or regulation which made a thing a violation after it occurred? In other words—you know what *ex post facto* means. In other words, you punish a person or make a law that prevents something after it has occurred. Would you do that?

Governor LEWIS. No, sir.

Mr. MEEDS. Each person has a right to be heard in his trial by the eight people.

Governor LEWIS. That is right.

Mr. MEEDS. I cannot understand any problem you have with the Indian bill of rights, because that is all it does—all those things we have just mentioned. And you are already doing them. You are already

doing them. I cannot understand why you should have any problem with them.

The CHAIRMAN. If I may say to my colleague—this is not an argument. He has stated his position.

Mr. MEEDS. I understand, Mr. Chairman. If the Chair will let me continue—

The CHAIRMAN. I hope you hurry up and finish. I have two more Governors to hear from by 12:30.

Mr. MEEDS. What is your objection to all of those rights which you are presently giving your people to have those codified, made a part of the law, and made applicable to other Indian tribes who do not have some of the rights that your people have?

Governor LEWIS. The educational level of two-thirds of my people right at this period is the fifth grade. Talking in two languages, and plus the fact that I mentioned something about accomplishment, that our people can do by working together, is the main thing that I would like considered. We are doing these things, we are thinking about it. But then—and you admit that we are doing these things in our tribal governmental system. And so when the thing is crammed down anybody's throat, when they are trying to do something on their own, it sort of lets a feeling of—they sort of drop. And these problems that we see and foresee for the future, we want to do it on our own.

Mr. MEEDS. Don't you think that it would make no radical change in the law as you presently administer your own law, though, would it—the adoption of all these things we have talked about—it would not make any radical change, or perhaps any change in which you are administering your own law at the present time?

Governor LEWIS. The fact that say from 1957 back, our tribal leaders had any education, they could not communicate, and they would misunderstand language, or get things twisted around, and did not have anything documented. In order so that we would be starting a foundation of our own is the reason why we have to get into a constitution on other things. But we want to do it.

Mr. MEEDS. You realize that title II of this bill would allow you to and give you assistance in formulating that code that you are talking about?

Governor LEWIS. We understand that. But the time element is just out of the question. Like I said, some tribes can do it, and it will take longer for some. I would say the 12-year period of time, when we have the two languages set up, we have this problem which will stay with us that length of time. When I get home—I have four councilmen who never had any education. I will have to interpret everything to them, starting with them first, and then spread the news out.

Mr. MEEDS. The fact, is it not, sir, is that the adoption of these things would really not cause you any substantial problems in adopting your laws presently and the rights you presently give to people.

The CHAIRMAN. The witness has answered the question.

Governor LEWIS. We would have to explain to your people first. And this is the job. In the language, sir.

The CHAIRMAN. The gentleman from South Dakota is recognized for any questions.

Mr. BERRY. I have no questions. I just want to commend the witness. Governor, you have made an excellent statement. I just want to

say that I can understand why the Pueblo nation has gotten to the place where it has today, with this philosophy, because this is the philosophy that has made America great, too. Thank you.

The CHAIRMAN. Thank you very much.

Mr. MEEDS. My commendations, too, sir.

The CHAIRMAN. The next witness is Governor Juan Chavarria, of Santa Clara Pueblo, N. Mex.

Governor CHAVARRIA. I would like to have my lieutenant sit in with me also and two members of my tribal council, Mr. Gutierrez, and Mr. Naranjo.

The CHAIRMAN. They may either come up to the witness table, or stand up and be recognized.

You may proceed.

STATEMENT OF JUAN CHAVARRIA, GOVERNOR OF SANTA CLARA PUEBLO, ACCOMPANIED BY LAWRENCE P. SINGER, LIEUTENANT GOVERNOR, PATRICK GUTIERREZ, COUNCIL MEMBER, AND ALBERT NARANJO, COUNCIL MEMBER

Governor CHAVARRIA. Mr. Chairman, members of this committee, I think it is a great privilege to be here before your committee. We have journeyed a long way from New Mexico, and for the same reason that these other governors had presented themselves here this morning.

Santa Clara Pueblo is a community which consists of some 700 or more members. We are located 30 miles northwest of Santa Fe, N. Mex., along the Rio Grande River. We are descended of the people that once lived at this historic site of Hujez. Hujez, in our language, is interpreted "where the cottontails assemble."

Even at that date, way back, a thousand years or so ago, our people lived along the face of this cliff. On top of this cliff is a dwelling or community buildings, one time consisted of some 2,000 rooms. Part of this community has been excavated, and some part has been restored.

Now, going back to these ruins, we—our descendants, practiced self-government from time immemorial. Even when our ancestors lived up at these ruins, they carried on their self-government. And today, we still practice the same government they practiced at that time.

So today we come here before you, Mr. Chairman, and committee, that we have been notified that a bill known as S. 1843, which in part may take away some of our powers within our pueblo. As some of the members or Governors of the different pueblos have testified here today, we carry on the same government within our pueblos.

I might go on to say that we do not have very much income coming into our pueblos. We are limited to funds to make these trips like this one here today. But I think it is a great privilege and quite an education to be here today.

That is all the statement I have to make at this time.

The CHAIRMAN. Anyone else?

Have you understood the statements that have been made here this morning, and the questions that have been propounded by the members of the committee, especially by the gentleman from Washington, who has gone into this quite at length? Have you understood these questions?

Governor CHAVARRIA. Yes, sir.

The CHAIRMAN. Are your answers any different to these questions than those given by your fellow Governors?

Governor CHAVARRIA. Mr. Chairman, our answers are the same. We have the same type of government from time immemorial.

The CHAIRMAN. Do you carry with you the two canes which are symbolic of your allegiance to the Spanish, first, and then your allegiance to the American Government, given to you by the same people that gave the canes to Governor Calabaza?

Governor CHAVARRIA. Yes, Mr. Chairman. One of the canes that I have here was presented by the Spanish Government, and this black ebony cane was presented by Abraham Lincoln, which on the head of the cane is inscribed "A. Lincoln." I will get my glasses on to read the date.

The cane is inscribed "A. Lincoln, 1863."

The CHAIRMAN. How much education have you had, Governor?

Governor CHAVARRIA. Mr. Chairman, I completed through the seventh grade.

The CHAIRMAN. You beat my father by two grades, Governor.

Governor CHAVARRIA. Thank you.

The CHAIRMAN. The gentleman from Washington.

Mr. MEEDS. Thank you, Mr. Chairman. And also my father by two grades.

Governor CHAVARRIA. Thank you.

Mr. MEEDS. First of all let me commend you, sir. I notice when you stood and spoke, the people with you showed a very proper degree of reverence to your presence and the fact that you were speaking. I won't burden the record with a discourse on all the questions I have asked the other people.

Would it be your testimony that you presently give to the people, or the people presently have in your pueblo the same rights as the former witness testified to with respect to the Zuni?

Governor CHAVARRIA. Yes, we do.

Mr. MEEDS. All of these rights?

Governor CHAVARRIA. Yes, all the rights.

Mr. MEEDS. Well, sir, if there are some Indian people in the United States who do not have all those rights, wouldn't you feel better if they did?

Governor CHAVARRIA. Sir, I did not catch your question.

Mr. MEEDS. Would it make you feel better if all Indians everywhere had the same rights that the people in your pueblo have?

Governor CHAVARRIA. That is right, sir.

Mr. MEEDS. If they had those rights guaranteed to them by law?

Governor CHAVARRIA. Yes, sir.

Mr. MEEDS. That is all, thank you.

The CHAIRMAN. The gentleman from South Dakota.

Mr. BERRY. Thank you, Mr. Chairman. No questions. Just to commend you gentlemen on a very fine statement. We appreciate it very much.

Governor CHAVARRIA. Thank you, sir.

The CHAIRMAN. Do you have a written constitution, Governor, of your tribe?

Governor CHAVARRIA. Yes, we have, Mr. Chairman.

The CHAIRMAN. Would you be willing to send us a copy for our records?

Governor CHAVARRIA. Yes, we will, sir.

The CHAIRMAN. Governor Lewis, you stated that you had a written constitution also. Would you be willing to send that to us, a copy of it?

Governor LEWIS. It is in draft, sir. We are still working on it. But I will leave the draft.

The CHAIRMAN. Thank you very much.

Governor CHAVARRIA. Mr. Chairman, I would like to submit this written statement for the record. We will send a copy of the constitution for your records.

The CHAIRMAN. Thank you very much.

Governor CHAVARRIA. Thank you, sir.

The CHAIRMAN. Without objection, the statement which has been prepared for the Santa Clara Pueblo, and which is in the form of explanations of the tribe, will be made a part of the record.

Did you have personal supervision over the preparation of this statement?

Governor CHAVARRIA. Yes, with the assistance of my Lieutenant Governor.

The CHAIRMAN. Thank you very much.

(The document referred to for inclusion in the record follows:)

STATEMENT OF PUEBLO DE SANTA CLARA, NEW MEXICO

Tribal existence.—Since time immemorial, the Pueblo of Santa Clara is and has been a tribe of American Indians residing within the present territorial limits of the United States.

Tribal organization.—It has been recognized by the government of the United States as a tribe and as a body sovereign by three nations—the Spanish Government, Mexican Government and that of the United States Government at present. This recognition is evidenced by canes in the possession of the present governor of the Pueblo, granted by President Abraham Lincoln, the Spanish Crown, and the Mexican Government. The significance of these canes of the respective Pueblos have religious, political and are symbols of sovereignty. The good Franciscan Fathers owing to the Good Book of Moses impressed upon the Indians the lessons of leadership in Exodus Four, Numbers Seventeen "Thy Rod and Thy Staff Should Be Their Comfort and Strength, and Their Token Against All Enemies." Likewise, President Abraham Lincoln in 1863 bestowed upon the peaceful and peace-loving Pueblos an ebony cane symbolic of their new sovereignty extending continuing authority and commission for their popular form of government so long satisfactory in serving their administrative needs. President Abraham Lincoln followed after the lesson in Numbers Seventeen the Chapter of the Good Book also. It has a regularly-elected Governor and Council to represent it. It also has a written constitution approved by the Secretary of the Interior in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the act of June 15, 1935 (Pub. No. 147, 74th Cong.).

History.—On or about August 18, 1846, when General Kearny, after taking possession of New Mexico established a system of Civil Government in that territory, this assumption of sovereignty was subsequently ratified by the Treaty of Guadalupe Hildago of February 2, 1849 (9 Stat. 922) with the Republic of Mexico. Sect. 6 of this treaty bound the United States to recognize the full rights and property.

When it first come under the political jurisdiction and protection of the United States under the Treaty agreement executed by James S. Calhoun, acting as Commissioner on the part of the United States on July 7, 1850 and on the same day signing for the Pueblo of Santa Clara, Governor Jose Antonio Naranjo. Under No. 5 of this Treaty. "It is expressly understood and agreed by the contracting parties that the respective pueblos are to be governed by their own laws and

customs, and such authorities as they may prescribe, subject only to the controlling power of the Government of the United States." Number 4 of this Treaty "The Government of the United States will, at its earliest convenience afford to the contracting Pueblos its protecting power and influence will adjust and settle, in the most practicable manner, the boundaries of each Pueblo which shall never be diminished, but may be enlarged whenever the Government of the United States shall deem it advisable." In consideration of these and other promises on the part of the United States, the Pueblo of Santa Clara placed itself "under the exclusive jurisdiction and protection of the Government of the United States, surrendered the right to use force to protect its lands, its waters, and the interests of its inhabitants" and agreed that "all cases of aggression against the persons and interests of their respective pueblos shall be referred for adjustment and settlement to such tribunals as the government of the United States has provided or may provide." Neither the promises of the United States in aforesaid agreement nor those of the Pueblo of Santa Clara were made dependent upon any further action by the Senate or President of the United States, or by any other person or body. James S. Calhoun, in executing the aforesaid agreement, represented the United States by virtue of an appointment by the President made with the advice and consent of the Senate, and acted pursuant to instructions for the Commission of Indian Affairs, dated April 24, 1850. The Pueblo understood that it was bound by reciprocal promises which it had given, and thereafter faithfully adhered to those promises. The Pueblo does not know of any advice or notice ever issued by the United States to the effect that such agreement is invalid or has ever been revoked or rescinded, and if any such notice or advice has been issued and is known to the United States Government, the Pueblo of Santa Clara hereby petitions that such records be produced and presented to this committee.

Present state.—Like states, territories, and municipalities, we are an integral part of the national governmental structure, but our roots lie in international law and in treaties and decisions of the United States Supreme Court beginning with Chief Justice John Marshall who in *Worcester vs. Georgia* in 1832 recognized them as "distinct, independent, political communities" a doctrine reasserted by the court as recently as 1954.

We are in complete accord with Title III of the S-1843 in so far as it repeals Public Law 83-280 and support the Resolution of the 19 All-Pueblo Indian Council of New Mexico. To permit state jurisdiction, as the Public Law 280 would presently allow, would infringe on the rights of the Indians to govern themselves and would undermine the authority of tribal governments and courts over reservation affairs. For these reasons and those of the foregoing presentation, we pray and petition this committee to give great consideration and weigh them carefully. Surely, we do need state assistance through their Executive, Legislative, and Judicial Branches, but we do not wish to surrender our cherished self-determination, and self-government. Once the conditions of Title III are satisfied, there is no provision made for the retrocession of jurisdiction back to its true owner.

The Indians are better qualified as to the right of the democratic principle of the consent of the governed. By leaving this decision to the Indians, our Federal Government will demonstrate to the world that a wide diversity in forms of local self-government, cultures and customs is the strength and health of our kind of society, the very foundation of the democratic way of life. We like to live in dignity and peace as has been our way of life.

Thank you, Mr. Chairman, for giving us this opportunity to be heard.

I remain,

Respectfully yours,

JUAN CHAVARRIA,
Governor, Pueblo de Santa Clara.

The CHAIRMAN. Mr. Lieutenant Governor, how much education have you had?

Lieutenant Governor SINGER. Twelfth grade, sir.

The CHAIRMAN. At an Indian school?

Lieutenant Governor SINGER. No, at the public school. Espanola High School.

The CHAIRMAN. What is your present vocation outside of being lieutenant governor?

Lieutenant Governor SINGER. I am a fireman with the Los Alamos Fire Department.

The CHAIRMAN. Thank you very much.

Governor CHAVARRIA. Thank you, Mr. Chairman.

The CHAIRMAN. The next witness will be Governor Don Sanchez of the San Felipe Pueblo of New Mexico.

Governor, do you wish to make a statement?

Mr. EDWARD SANCHEZ. Mr. Chairman, the Governor would like to briefly make a comment before we proceed with our prepared statement, and Mr. Frank Tenoria will do the interpreting.

The CHAIRMAN. Thank you very much. We welcome you here. You may make your statement.

(At this point in the hearing Governor Sanchez spoke in his native language.)

The CHAIRMAN. You may proceed, sir.

Mr. TENORIO. Thank you, Mr. Chairman.

**STATEMENT OF GOV. DON SANCHEZ, SAN FELIPE PUEBLO, N. MEX.,
ACCOMPANIED BY FRANK TENORIO, COUNCIL MEMBER, AND
EDWARD SANCHEZ, TRIBAL SPOKESMAN, SAN FELIPE PUEBLO**

Mr. TENORIO. It is with great pleasure, honorable Chairman, and Congressmen, that I am here, that you give me the opportunity to appear before you. As directed by my council, you will find out that I have a staff of councilmen that direct me in my presentations that you will hear, and considering the importance of this testifying as the council directs, I am certainly honored to appear before you. And I bring with me these two gentlemen as spokesmen for the tribe. And you will understand that we have definite feelings about this bill. We will answer and we will justify our feelings if necessary. And when necessary. Thank you.

The CHAIRMAN. Thank you very much, Governor, for your statement.

Now we will listen to the reading of the statement prepared.

Mr. SANCHEZ. Thank you, Mr. Chairman.

Mr. Chairman, honorable Congressmen, my fellow delegates, ladies and gentlemen:

Indeed it is our pleasure to have this opportunity to present to you the attitudes and thinkings of our tribal officials, councilmen, and our people in general. It is with great respect for our tribal government that we are sent here to make our heritage known to you.

Mr. Chairman, the Governor with his officials and tribal council as elected representatives of the San Felipe Tribe have reviewed Senate bill 1843. Though it proposes to establish rights for individual Indians in their relationship with their Indian tribes and for other purposes, the tribal council finds titles I and II of the bill most intrusive on what was theirs before 1492. Mr. Chairman, the free sovereign exercise of self-government was ours, shaped and given to us intangibly by the Great Spirits long before the establishment of our own American democracy.

Specifically, the tribe considers those titles of Senate bill 1843 to be an encroachment on the sovereign exercise of our tribal government, and certainly that of the practices of our fellow tribesmen here present

today. Should Congress adopt the act in its present form, titles I and II will result in the alienation of the democratic tradition of the Indians to exercise its sovereign government now practiced by the Pueblo Indian Tribes within the region of Rio del Norte as the Spaniards had named the Rio Grande River. It is for this reason, Mr. Chairman, we as representatives, seated here before you were sent to Washington, D.C., to convey to your committee our position in reference to above-mentioned titles. This position, Mr. Chairman, is explained at length by the document titled "The History of San Felipe Pueblo People," which we now respectfully submit to this committee for the record.

The CHAIRMAN. It will be made a part of the record at the end of the statement.

Mr. SANCHEZ. With your permission, Mr. Chairman, I would like to refer to the first paragraph of page 9 of our statement here for testimony.

Mr. Chairman, and honorable members, at this point one may well ask, "Of what relevance is this buried legacy to the present and future?" First, there is still much that the Indian can contribute to America's culture and enrichment. Second, recognition by legislators, administrators, and the American public of the true nature of our Indian heritage has great importance in freeing the Indian from a haughtily and stupidly silly stereotype.

It also may diminish the persistent themes of pity, superiority, and the white man's burden, which have been twisted into vicious weapons of legislation against Indian culture.

Third, the respect for different cultures may bring about a reasoned and humane policy which will fulfill Indian desires to achieve a higher living standard and still maintain his ethnic identity.

Fourth, the Indian needs of stability and rights to their government should be left to the tribes to rectify through their unique aspect of the Indians' member in special political bodies, or tribes, which largely take the place that States and municipalities occupy for other American citizens.

We respectfully invite your careful consideration of the historical facts set forth in this paper. What has been said as to our pueblo is equally true of our fellow Pueblo Indians in New Mexico. I am sure when you recognize the significant spiritual and cultural basis for our system as we know and practice it today as we have for centuries, you will better understand and appreciate why we of the Pueblos prize our heritage so deeply and would travel this great distance to discuss our fears over S. 1843 with you here today.

We thank you for your time and patience, Mr. Chairman.

The CHAIRMAN. Thank you very much.

The Chair would like to know if you gentlemen and the Governor were all present when this statement was agreed upon?

Mr. SANCHEZ. Mr. Chairman, yes, sir. We called the tribal council in and said we think we need to prepare some sort of statement to advise our Congressmen, so they will have a better knowledge of our Indian heritage.

The CHAIRMAN. You have been present here this morning, and each of you heard the questioning of the former Governors, and those who attended them at the witness table.

Mr. SANCHEZ. Yes, sir, Mr. Chairman.

The CHAIRMAN. Have you understood those questions?

Mr. SANCHEZ. Yes, sir, Mr. Chairman.

The CHAIRMAN. Has the Governor himself understood those questions, or does he understand English to that extent?

Mr. SANCHEZ. Mr. Chairman, our Governor is deaf, and we have to interpret to him as best we can.

The CHAIRMAN. Are you in agreement with the answers that were given by the representatives of the other Pueblos?

Mr. SANCHEZ. Yes, sir.

The CHAIRMAN. To the questions that were propounded by the committee?

Mr. SANCHEZ. Yes, sir.

The CHAIRMAN. The gentleman from Washington.

Mr. MEEDS. Thank you, Mr. Chairman.

My compliments to you, sir, on your testimony.

Do I understand correctly—and I do not wish to be repetitious, but I want to make certain that I understand correctly—that the Indian people in your pueblos have all of the right which the former witnesses have testified about in relation to their own tribes?

Mr. SANCHEZ. Yes, sir.

Mr. MEEDS. Then I would ask you to enlighten me a little bit on this in your statement:

Should Congress adopt the act in the present form, titles I and II will result in the alienation of the democratic traditions of the Indians in exercising its sovereign government now practiced by the Pueblo Indian tribes within the region of the Río del Norte, and the Spaniards had named Río Grande River.

If your people have all these rights, and these rights are merely guaranteed by a written document, in what way will this result in the alienation of the democratic traditions?

Mr. SANCHEZ. Mr. Meeds, I would like to answer your question this way.

You as a Congressman have a great responsibility to making legislation that would equally well protect some of the historical values which our American democracy is based upon. And we, of the Pueblo Tribe, have equal responsibility to preserve what, as closely, as authentic as can be, what was here about 1492.

Mr. MEEDS. In what way do you feel, in what specific way do you feel that the guarantees of the Indian bill of rights—in what ways do you specifically feel that it alienates the democratic tradition of your Pueblos?

Mr. SANCHEZ. Mr. Meeds, the tribal council and our people feel this way. Since the Pueblo of San Felipe is one of the poorest tribes as far as economic standards and resources, that we will be opening the door to our tribal traditions here of welcoming trained attorneys and trained judges, and you realize yourself in our American democracies, and judicial court systems, that no attorney will serve or represent any of our people on a reservation without cost, which we subscribe to on our reservation.

Mr. MEEDS. Sir, I am sure you have read the bill. Do you see any place in the bill where it says there must be a trained attorney and a member of the bar or bench to represent or hear trials?

MR. SANCHEZ. Mr. Meeds, my tribal council feels specifically of titles I and II that of the language, that it directs the Secretary of the Interior to recommend a model code to the Congress. We feel that if the Secretary of the Interior comes out with a model code, it would be in jeopardy of some of our internal and spiritual beliefs of our council members. We feel that this would also—by this act of the Secretary of the Interior, it will alienate our true democratic traditions as far as the Pueblo Indians are concerned. At this point probably I would yield a further explanation to Mr. Frank Tenorio on your question.

MR. TENORIO. Your question is if there was anything in the act, or in S. 1843 that would—that we considered alienation from the way we practice our tribal governments?

MR. MEEDS. Yes.

MR. TENORIO. The freedom to exercise our prerogatives as far as the government as we know it, and the interpretation as far as the council is concerned, will be encroached upon by instituting certain directives as is contained within this bill.

MR. MEEDS. Which ones are those, sir?

MR. TENORIO. Like within a certain date, say, with 1 year when the act—when the bill becomes law, that a model code would be in effect.

We cannot reconcile—

MR. MEEDS. Are you aware that this model code would further have to be adopted by the Congress?

MR. TENORIO. Yes.

MR. MEEDS. So that the limitation is not upon you in making up a model code and having it applied immediately, but there is a time within which the Secretary is told that he must get together with you and draw up a model code, which he would then present to the Congress.

MR. TENORIO. Well, as far as the model code is concerned—as far as the interpretation of this particular bill is concerned, I cannot reconcile the fact that the people would understand this provision—the people as a whole within our reservation. Like it has been pointed out, throughout, by all the representatives from the tribes, as far as our educational deficiencies are concerned in regards to carrying on the provisions as you know it.

MR. MEEDS. Could you give me any other specific ways in which you feel it would be an alienation of your democratic traditions?

MR. TENORIO. Well, as far as our courts are concerned, there is a strict relationship between the spiritual and the cultural tradition—as far as the village is concerned—which perhaps in your courts this does not exist. And that particular method and way of doing things will certainly be minimized.

MR. MEEDS. Would any of these rights that we have talked about earlier be in any way jeopardized by these spiritual things?

MR. BERRY. Would the gentleman yield to me?

MR. MEEDS. Pardon me. If I may first get an answer.

MR. TENORIO. No.

MR. MEEDS. I yield.

MR. BERRY. In behalf of these people, I think it should be said now, before we adjourn, or recess, that the objection to Public Law 280 is primarily because it forces upon the Indian people laws which they do not approve of. That is all there is to it. That is the only reason

that they have fought. Everybody has fought Public Law 280 because it forces these laws upon them without their consent.

Now, all that this bill is doing to these people is forcing upon them laws without their consent.

Mr. MEEDS. I disagree with the gentleman.

Mr. BERRY. I know. That is all right.

Mr. MEEDS. It is giving them rights, and giving all people rights.

Mr. BERRY. Giving them a lot of rights without their—

Mr. MEEDS. I think the majority of American Indians are in favor of these provisions. And you and I are guided by principles of majority rule. I am just trying to bring out—

Mr. BERRY. Then Public Law should not be opposed by you.

Mr. MEEDS. The repeal of Public Law 280 certainly is not.

Mr. BERRY. The public law itself should not be opposed by you. Because a majority favor it. They passed it.

Mr. MEEDS. The Indians in my area did not.

The CHAIRMAN. Thank you very much. Let me ask you this last question. You have talked this over with the people of your pueblos. They stand together just as you members of the council do; is that correct?

Mr. SANCHEZ. Yes, sir, Mr. Chairman.

The CHAIRMAN. Thank you very much. We will include in the record at this point the history of San Felipe Pueblo people.

(The history referred to by Governor Sanchez follows:)

HISTORY OF SAN FELIPE PUEBLO PEOPLE

In response to the Ervin (Senate) Bill 1843, the Tribal Officials with the Tribal Council of San Felipe Pueblo wish to be recorded as having reviewed and considered the Ervin Bill. Though it proposes to establish rights for individual Indians in their relationship with their Indian tribes and for other purposes, the Council finds the Bill most intruding on what was theirs in the beginning. The free sovereign exercise of self-government was theirs, shaped and given to them intangibly by the Spirit. Specifically, said the Council, should Titles I and II of Bill 1843 become law the Federal Government will empower and arm the Secretary of the Interior with another lethal weapon to push the so-called "Model Code of Justice" down the Indians' throat. Wherein a final holocaust of Titles I and II of the Congressional Act will result in the alienation of the democratic tradition of the Indians to exercise its sovereign government now practiced by the Indian tribes everywhere. It is for this reason the Tribal Officials with its Council of the sovereign Pueblo of San Felipe, situated in the sovereign State of New Mexico, has decided to review the history of its people as a method of counterattacking the composite pending legislation herein specifically mentioned, and to share this review with its fellow tribesmen and with the United States Congress, hoping to clarify its reasons and desires to remain free from further inundation with premature legislations the Congress of the United States may think to pass for the benefit of the so-called "American Indians." It is the Council's earnest desire to retain the sovereignty of self-government for the sake of heritage, and to preserve other basic values of Indian heritage while making slow but continual adjustment, though sometimes superficial, to the economic and political demands of the Whiteman society.

Thus the Council solemnly began its recollection of the ancient ancestors, those of the great great grandfathers, great grandfathers, and grandfathers of long ago, first, as people of spiritual beliefs, and secondly, as people of material contributors to the new continent. For the Indians had in the beginning what the world has finally and irretrievably lost, and we have it yet as it is, "a way of life," The Council in telling the spiritual legend of the ancient people remember them telling of the fortunes of the spirit world, the egress or emergence into the world, and the ingress or returning to the hereafter, whence we came. They remember too, that the emergence into the world was a great act of the Spirit for it came

about with reverence and love for what was left behind in the spirit world, and of fear and respect for what was found above, on earth and in the sky. So it came to reality long ago that all life came forth from the womb of the earth, said the Council.

With them came the Spirit, and the Spirit guided the ancient people through all sorts of arduous tasks of everyday life. Age after age the Spirit, the guardian and leader of the Pueblo Indians, took the ancient people across this great continent southward, until they came to settle temporarily in the places of today's National Parks and National Monuments. Everything they planted was harvested and was eaten along the route. Maybe to preserve the human race from total annihilation of any attack which may befall them, the Spirit caused the people to migrate in groups in separate directions from these places of historic settlements. He continued to guide each group on their trek until he brought them to a region where they can readily be safe and begin their tribal settlement.

So said the Council. This was how it came about that the ancestral people of San Felipe Pueblo were guided into the region of the valley of Rio del Norte where they were eventually settled for sometime by the Spirit on the west bank of the Rio Grande River atop the black mesa north of the present San Felipe Pueblo. Their first settlement was in the proximity northeast of the present main bridge over the Rio Grande River and southwest of *te-me-teh*, a lonely hill standing on the northeast side of where the railroad track transverses the Tonque arroyo. Because of the imminent dangers of disasters they were gradually moved west across the Rio Grande River and to the top of the black mesa. Here as well as on the east side, and throughout the entire region of pueblo settlement, the Spirit began to give final instructions to the people. They were reminded of the past trials and dangers they had endured; the sorrows and joys they experienced together; the unity they showed each other at working and living together in a community, and the necessity of planting and farming crops for survival. The ancient people remembered these experiences well and began to show great concern. Now the Spirit was telling of another plan, he pointed out indigenous plants that grew wild and abundantly which the people can use as food; teaching the people to respect and obey the laws of nature and the orders of its chief, the Cacique. The Cacique, said the Spirit, will guide you henceforth, and as the head of the tribe he will be concerned with your spiritual lives as well as with your government when the need for it arises. With these revelations, the Spirit empowered the Cacique with spiritual properties and with jurisdictional powers by which to make laws and govern his people. Hitherto, said the Spirit, it is the only way you and your children can live and give protection to each other. Thus, the plan was revealed to the ancient people and it was truly a way of life and living.

However, the people were not without dangers. They were warned of the dangers to come as more people inhabit the new continent. Here again, the Spirit reminded her people of their past experiences of building dwelling places in fortress style. "This you must do," said the Spirit. Then before secluding, the Spirit promised the people protection from the dangers of war when the time was near. Perhaps then sometimes between the first and the second settlement in the region of Rio del Norte marks the beginning of the famous legend of the Pueblo people about the twin boys known to them as Masewi and Oyoyewi. They were the young gods of war who protected their people by killing their enemies, and when not at war, they attended to prayers asking the Great Spirit to grant them courage and valor with which to guide their people towards peaceful settlement. Some Councilmen remember the twins as more than gods of war, they were also more or less explorers of the nature, constantly seeking out better land for cultivation and for permanent settlement. This is true in the case of San Felipe people where they gave credit to the twin boys for having made the final move of the ancestral people from the top of the black mesa to the present location of the Pueblo down in the valley of Rio del Norte as the Spanish had named the Rio Grande River.

From the time the Spirit had secluded, the people have lived everafter under the guidance of the Cacique, and obeyed his orders for they all knew he was empowered by the Spirit. Everything went according to the prophesy of the Great Spirit. Wars were encountered courageously under the leadership of Masewi and Oyoyewi, and the preparation for better livelihood were made under the leadership of the Cacique. However, as the population increased and civilization took roots many problems begin to burden the Cacique. Naturally, more and more this took the attention of the Cacique away from his primary duties of devotion to prayers for spiritual livelihood of his people. Constant

prompting of the Spirit to exercise the power vested in him, the Cacique began on a plan to formulate a sovereign government by which his people can be governed. Calling upon the assistance of the Great Spirit, for he did no important act without the ritual, he began to work on a momentous plan for his people and his community. The work, said the Council, had to first meet with the criterion of the Spirit. This being done, the Cacique felt encouraged to call forth the first office, the War Chiefs. Having honorably guided their people through war and having had the blessings of the Spirit, the Cacique felt honored to assign this Office to the twin boys, Masewi and Oyoyewi, to handle the traditional ceremonial activities as well as assisting the Cacique in related matters of religious beliefs of the people of the community. Creating the first Office he then searched his mind solemnly for other offices, upon which he then called chronologically the second and third offices respectively.

Fortunately, for the people, about this time into our world entered a new breed of people from another world. These new people called themselves Spaniards. And in keeping with the forecast of the Great Spirit these new people also suggested and contributed to the newest positions in our hierarchy of government. The second office, ta-pooph, or the Governors, were assigned to a couple of honorable men of the community (to head the Office, and) to handle civic and temporal affairs of the people. The third Office, pe-scar-lee, or the Fiscales, were assigned the office in a similar manner to a couple of honorable men to coordinate Christian church activities, and to assist the Padres in achieving its assigned missions.

Having established each office chronologically for his people he blessed and empowered each office, and enjoined each Office to serve the people of the community henceforth honorably; and to exercise the power of authority judiciously on the problems and on the people of the community. Justice, in the mind of the Cacique, must at all times be attuned to the dictates of the Spirit. Then the Cacique, "those persons who shall serve in the Offices will become members of the tribal council for a lifetime, unless duly retired by the Cacique for reasons of acts contrary to the design of justice of the government. With these words he empowered the tribal council to function as advisory and approving body in the internal and civic affairs of the tribal government with some authority to make settlements when the Officers of the Government are reluctant to go at it alone. In a similar manner, with the judicial matters of the tribe the Tribal Council functions as a jury in the tribal courts, and has the authority to make a final decision on the case making it relative to the Governor and the rest of the head tribal officials. The power to convene the councilmen rested with the Governor of San Felipe Pueblo. Through the centuries then, prior to the discovery by the whiteman, the ancient people of San Felipe operated under this system of government, and all took part in the functionings of the tribal government. All this took place long ago said the Council, for they themselves do not know how long ago it was. There were no records kept by the ancestors and everything depended on the mind or the memory.

Today the setup of the tribal government of San Felipe Pueblo is still the same and its function, in nature, is similar to the olden times except with minor changes made by the people where feasible. Simply, then, this sparsely constitutes the history of the San Felipe Pueblo and its people, and most assuredly of the other Pueblos in general. One then can see at this point that the idea of sovereignty and self-government are deep rooted in the history of the Pueblo people.

Perhaps at this point it is appropriate to turn to some recorded histories of today which has depicted the noble side of the American Indian, and which the Congress of the United States and the American public may have sparse knowledge of the aborigines. When the European or the Spaniards, who called them savages, discovered the Pueblo people in the 16th century they were quite amazed to find a distinct and in some respects highly developed civilization. The simple human decency and the amenities of daily life, and the disciplines of its government were observed in them in the relationship between man and man, and between man and his God. As the Council had remembered in the opening paragraphs of this review, the ancient people were material contributors to this continent. The changes that these people worked into the lives of the "white pioneers" were far more impressive and less destructive than any changes the white teachers have yet brought to the Indian life. In the realm of the intangible the Indian gave more. The orderliness of the political ideas of young America owed much to the Indian democratic tradition. On many occasions Thomas Jefferson

recognized this debt by making numerous references to the freedom and democracy of the Indian society when he said: "had achieved the maximum degree of order with the minimum degree of coercion." Felix Cohen, the late noted scholar and Indian legal authority, remarked: "Those accustomed to the histories of the conqueror will hardly be convinced, though example be piled on example, that American democracy, freedom, and tolerance are more American than European, and have deep aboriginal roots in our land." The habit of treating chiefs as servants of the people instead of Masters, the insistence that the community must respect the diversity of men and their dreams, all these things were part of the Indian way of life before 1492.

The Council recalls at this point a recognition of credence given the Pueblo Indians, first, by the Spanish Government then next by the Mexican and the United States Governments respectively, "that the Indians' right to self-government is not a right derived from these Caucasian Governments, but a right which they held prior and maintained subsequent to the discovery of this continent. Since this discovery said the Council, the Indians did not ask for recognition, but it came forward spontaneously because of the respect and understanding the conqueror and the whiteman had for Indians' primacy of self-government. Upon this a covenant was made respectively by the Spanish, Mexican, and United States Governments to recognize the sovereignty of government of the Pueblo Indians by bringing the Canes of the Country's King or President to each Pueblo Government as a symbol of the solemn covenant and recognition. The Spanish kingdom in the 16th century and then the United States Government under the administration of President Abraham Lincoln in 1863 gave its recognition of the Pueblo Indian Governments. Today the Governor of San Felipe Pueblo uses these Canes as a symbol of authority of the office of the Governor. Now this covenant is about to be amissed by Titles I and II of the Senate Bill 1843.

At this point one may well ask: "Of what relevance is this buried legacy to the present and future?" First, there is still much that the Indian can contribute to America's cultural enrichment. Second, recognition by legislators, administrators, and the American public of the true nature of our Indian heritage has great importance in freeing the Indian from a haughty and stupidly silly stereotype. It also may diminish the persistent themes of pity, superiority and the whiteman's burden, which have been twisted into vicious weapons of legislations against Indian culture. Third, the respect for different cultures may bring about a reasoned and humane policy which will fulfill Indian desires to achieve a higher living standard and still maintain his ethnic identity. Fourth, the Indian needs of stability and rights to their government should be left to the tribes to rectify through their unique aspects of the Indians' membership in special political bodies, or tribes, which largely take the place that states and municipalities occupy for other American citizens.

What then does the American Indian want of the United States Congress? Certainly, their dependency on and control by, the Federal Government is much greater since 1848 because of the tacit and implicit trusteeship relationship between the United States Government and the Indian Tribes. Since then too, the Indian has sacrificed many of its youth in the whiteman's wars so as to have a free Nation of discriminating views, and today continues to sacrifice its youth in the commitments of the great "White Feather" to wars of foreign Nations. How is it then the American Indian is involved in these wars? Certainly it is not for want of war, nor for greed of wealth, nor for fear of disgrace, but of respect to fellowman and to its Nation under one God that the Indian took up the challenge so that we may all enjoy the freedom, liberty and justice for all together. With these point of views the American Indian wants to be given justice of being involved in making his own plan of change and be given greater voice on all and any legislation to be proposed in committee or the Congress affecting both his Reservation and his freedom of self-government. Perhaps then the type of Indians' needs of real liberal system of justice can best be summed up in the view of the 1958 congressional proposal establishing a technical assistance program modeled after the so-called Point Four Program of Foreign Aid. The pertinent section of that proposal reads: "It is declared to be the sense of Congress . . . that Indian culture and identity shall not be restricted or destroyed; that technical guidance and financial assistance shall be made available; that the request for such assistance shall come from the Indians, after each Indian group has studied itself in terms of its own needs. . . ." Unfortunately the proposal dies in committee. Such a legislation of this calibre is most urgently needed for the Indian Reservations,

and in the final analysis would achieve the liberal justice so much desired for the American Indian.

In summary then, the Ervin Senate Bill 1843 is well intended, but the Council of San Felipe Pueblo is not ready to implement such a proposal because it is premature in nature that no voice of the Indian tribes was involved to determine whether state criminal and civil laws should apply on their reservations. That rights of Indians to self-government are inherent in their backgrounds and should not be coerced to be alienated from the long history of democratic practice of their traditions. Finally, in view of the Indian history, it is self-evident that life, liberty and right to sovereign government was the forethought of the ancient people to which we give whole hearty support to earnestly ask for understanding of our desire to preserve our Indian heritage, in any shape or form, for here lies the true foundation of America's history. In conclusion the, we the Tribal Council of the Sovereign Pueblo of San Felipe solemnly decline to accept Titles I and II of the Senate Bill 1843 in its present form, and respectfully refuse to alienate our people, and ourselves, from the sovereign government, to wit, of San Felipe Pueblo.

The CHAIRMAN. Thank you, gentlemen, for your appearance.

This afternoon our order of business will be to listen first to Mr. Tims, second to Mr. Ryder, third to Mr. Acoya, and if we have any time left we will get to the attorneys.

The committee stands in recess until 1:30.

(Whereupon, at 12:35 p.m. the subcommittee was recessed, to reconvene at 1:30 p.m. on the same day.)

AFTERNOON SESSION

The CHAIRMAN. The Subcommittee on Indian Affairs will now be in session for the continuance of the hearing on S. 1843, H.R. 15419, and H.R. 15122. The Chair understands that Governor Zuni, representing the Isleta Pueblo, is in the room. Is Gov. John Zuni in the room? He wanted to be recognized just to show his presence and the record will show that he was here this morning.

Gov. Abel Sanchez, representing the San Ildefonso Pueblo. Is he in the room at this time? Will you please stand up so we can recognize your presence? Thank you very much.

And Gov. Joe Loretto, representing the Jemez Pueblo. We are glad to have you here and the record will show your presence and your interest in the legislation.

The Chair has received several telegrams and they will be made a part of the file and referred to as necessary if the report is prepared.

Now, this afternoon we have three representatives of different areas of Arizona and New Mexico appearing and the Chair is desirous of not taking over a half hour. He has no idea how long these presentations will take but unless there is an organization, the presentation together with the questioning of each one of these witnesses will not be over 30 minutes.

Hearing no objection, it is so ordered.

At this time the Chair will call to the witness table the Honorable B. L. Tims, mayor of Scottsdale, Ariz., who was to be presented by our colleague, a former member of this committee, the Honorable John Rhodes, representing Maricopa County. It is my understanding that Mr. Rhodes cannot be here. So the Chair, who has known Mr. Rhodes as long as he has been in Congress and known him favorably, I might say, will assume the responsibility of his colleague and brother, and welcome Mr. Tims accompanied by Mr. John de Bolske.

**STATEMENT OF HON. B. L. TIMS, MAYOR OF SCOTTSDALE, ARIZ.;
ACCOMPANIED BY JOHN DeBOLSKE, EXECUTIVE DIRECTOR,
LEAGUE OF ARIZONA CITIES AND TOWNS**

The CHAIRMAN. We are glad to have you before the committee. You may sit down and we shall listen to your presentation.

Mayor TIMS. Thank you, Mr. Chairman.

My statement will be fairly brief, approximately 12 minutes. I would like to be clear at the outset that I am not speaking against the so-called Indian civil rights bill. I think in relationship to your remarks this morning that no political realist would talk against the popular designation of civil rights.

The CHAIRMAN. Even though it did not have too much as far as offering values.

Go ahead.

Mr. TIMS. What I am strongly opposing is title III of that proposal. I am opposing it for myself and others in Arizona because it would wipe out the most enlightened legislation so far passed in Congress to set our Indian community free—Public Law 280. My colleagues and I are among those who want to free the Indian to give him at long last the opportunities we have opened to immigrants and minorities from every part of the world.

I titled these brief remarks, "Let America Help Its Indians," because I wanted to make a distinction between our opportunities of today and our awesome mistakes of the past. In the past, errors have been made by Americans. Now, at least in my part of the country, a substantial number of Indians are being surrounded more by the American way of life than by those who for generations have been killing them with kindness. These fine Indian people are being embraced by America. There is a natural course of events which follows such contact. Groups which encounter the mainstream of our country, regardless of their customs, their lack of education, their strangeness, have in the past, millions of them, embraced our life because they recognized the opportunity it provided.

Now, Indians are confronted with similar opportunities and opportunity created not by legislation but by abundance. Now, it is proposed by men, by legislation, to cut the Indian off from the personal participation essential to his development. The opportunity for the average Indian to profit from contact with growing America for the growing America would again be eliminated through a continuing policy of segregation which is a denial of everything most of us have been brought up to believe as America's. The privilege of leasing Indian lands in the path of oncoming urbanization of metropolitan Arizona offers one of the greatest opportunities for Americanization in the best sense of the word ever presented an emerging minority. It will teach them about ownership, management of property, about the relationship of maintenance cost to income, about the cost of a community and the costs of municipal life.

In short, if we give them the chance urbanization affords, these Indian neighbors of mine can learn in one generation what their forefathers have not been permitted to learn in five.

Here is the opportunity to learn to live and profit within the American economic and social framework, a reality which no government bureau or any other agency can permanently buffer.

All of us know that America severely tests those it would make strong. All of us know that the American way is not usually the easy way; it is not always even the right way. But, we also know that it has proved to be the way for America. Those of us who have encountered it are the great beneficiaries of our environment.

This month the administration sent a message which asked that an earlier act of Congress be amended so that Indian communities might select whether, and which, State laws they would choose to observe. It seems to me and many of my colleagues in Arizona, that such a recommendation is ill advised on the major considerations under which legislation should first be examined. Is it workable? Does it really harm or help the condition it is intended to benefit?

I can tell you from personal observation, that the proposed amendment is not practical in Arizona. Arizona is now, and the Census Bureau predicts it will likely be, the most rapidly growing State in the country, except Florida, at least until 1990. Much of this growth is taking place near Indian reservations. Some of it, as in my area, is engulfing reservations land with urbanization. In such cases, unless we want to wall them off as the Germans did with displaced persons 35 years ago, they must share the legal and social responsibility of their environment.

My city has a common boundary, for 9 miles, with a reservation. Homes of a density of five to an acre are built right to the reservation line. There will be more. Soon there will be homes across the reservations as their own development plan will be launched.

There will be hundreds and later thousands of similar homes and the supporting business and industry—on the reservation. The same people living 100 feet apart, one subject to State law, the other perhaps not. Gentleman, it seems to me that to create such a situation by legislation is folly.

Here are the problems, as I am sure you already know. Dissimilar health and sanitation laws are intolerable in urban areas. We have problems already with mosquito control, for instance. Police protection and criminal apprehension make serious problems. Our area with its annual influx of well-to-do visitors is a target for all the country's con men, gamblers, prostitutes, and those who prey on society. We keep them out pretty well. Suppose they had sanctuary on the reservation? Would you imagine a reservation in the middle of Miami which could be a hijacker's hangout? I apologize for the exaggeration. Sometimes in the face of disarming proposals such as are made in title III, exaggeration is a fair weapon.

I would remind you also of the problems of fire protection, of control of air and water pollution, of building codes.

A second test of legislation ought to be applied here, as I mentioned: Will it help or harm the Indian communities?

I am not a sociologist. I do not know what may result from raising tens of thousands of people in isolation. My guess is that if they never get let out, never get into a normal environment where they are assaulted by ordinary problems, they will remain forever dependent.

No State in the country has more tribal lands, more Indians or greater awareness of the natural forces on which the Indians can capitalize in developing as participants and contributors to a contemporary society. There is no reason to assume that Indians need any more basic protection to preserve their value than that which

is given such minority groups as Mormons, Menmonites, Seventh-day Adventists, or Jehovah's Witnesses.

Such minorities may feel their way of life and their progress in it is rigidly different from that of the vast majority of us. We guarantee their religious rights. We do not believe they would function more effectively if further isolated from contamination in our American crucible—our melting-pot way of life—by legislation which generally exempted them from law, except those they agreed to.

Instead these people have in varying degrees entered the mainstream of American life. Some of them are contributing in substantial measure to its success. We do not believe the administration's amendment will help Indians do likewise.

In my area 17 cities and towns together with Maricopa County, have formed the Maricopa Association of Governments. We were stimulated to organize by the commonsense of cooperatives action. We also were encouraged by Congress to do so, to earn return of some of our tax money. We study and plan solutions for serious and continuing problems ranging from transportation to pollution.

For years Congress has tried to encourage municipalities to get together to solve common problems. We are now learning rapidly from these hard lessons of working together. Let us for heaven's sake and in the name of commonsense, not deny our Indian neighbors the same opportunity.

Perhaps you gentlemen appreciate how ridiculous is this title III proposal. It would be intolerable in a metropolitan area, and in no case should be considered as sensible. But the implications all over Arizona fill me with dismay. We have 19 Indian reservations in the State. Shall each of these be granted "local option," so to speak? Shall each of them have its own local selection of State and local laws under which people living in that area shall be judged?

We see an inconsistency in the administration proposal. We ask Congress to save us from its effects. There are some of us in my group who feel that the tremendous pressure of a war abroad, of the gold crisis, or erupting cities, or rampant crime may tend to divert the attention of the administration from some of the niceties of Indian urbanization. It would be amazing if such critical affairs did not.

On the other hand, we live right next door to these Indian people. We deal with them daily. They are our close and respected neighbors and no matter what happens on the French gold exchange, it does not divert our attention from what happens to these Indian people. This, we think, may give us a little edge on the administration when it comes to awareness of what is right and what will work.

You know, in our country sort of way, we believe a symptom of the harassed man is his tendency to inconsistencies. We feel we recognize a large inconsistency in the recommendation of the administration, which divides the Indian community from its neighbors, and sets it up as a separate and apparently a privileged state, but really an unhealthy one. We can see inconsistency in this and the recent efforts of the Congress to unite the urbanizing areas to ease the joint solution of their common problems. We hope you will, too.

Our opposition to the repeal of Public Law 280 is based on the belief that it would in fact enslave them in a cocoon of privilege—that of helping to make laws for others from the jurisdiction of which they

could choose to be excluded. How can we have people who vote for representatives to make laws, who vote for judges, then determine whether or not those laws will apply to them, or have those judges hear their cases. Such a proposal is so downright destructive of American principles as to be indecent.

I realize the strong temptation in this case is to take the path of least risk. Nobody can complain in November if still another poultice is applied to the unhealing ills of the Indian for which we blame ourselves.

By upholding the act of a previous Congress, Public Law 280, this committee has an opportunity to sustain a healthful environment in which without being constantly poked and prodded and examined and patted by do-gooders, some of our Indians, at least, can ultimately demonstrate their capacity to do as well as the other minorities.

As I understand it, it has been the policy of the Congress to find ways to set the Indian free. You have wanted to get him out from under the pile of warm blankets—that layer on layer of good deeds under which he is slowly smothering. If I am right, then I ask, in the name of humanity, that you do not now add another burden to those which already stifle the pride, suffocate his initiative, and curb the will to progress which is the dominant characteristic of our people.

Do not do these things to our Indians and thus heap upon them the last in our history of injustices, permanent humiliation as men, as a people, too weak to live with our laws; too weak, in the final analysis, to become Americans.

The CHAIRMAN. Do you have a separate statement, Mr. DeBolske?

Mr. DeBOLSKE. No, Mr. Chairman.

The CHAIRMAN. Thank you very much. The statement has taken 13 minutes. That leaves 17 minutes under the unanimous consent request which was agreed to at the beginning of this session. That means you have five and a half minutes each for questioning.

As I understand it, Mr. Tims, the gist of your statement is to be found on page 3 when you refer to the proposal to repeal as a part of the Indian civil rights legislation, Public Law 280, is that correct?

Mayor TIMS. I do not have a copy of my speech with the page numbers on it.

The CHAIRMAN. You refer in that paragraph: "This month the administration sent a message which asked that an earlier act of Congress be amended"—

Mayor TIMS. Yes, sir.

The CHAIRMAN. And this is the gist of the presentation today and the reasons that you have set forth—

Mayor TIMS. Yes, sir.

The CHAIRMAN. Upholding this position.

Mayor TIMS. We are upholding Public Law 280.

The CHAIRMAN. The gentleman from Washington?

Mr. MEEDS. May I reserve my time, Mr. Chairman?

The CHAIRMAN. It is all right with me. Unless there is an objection, the time of the gentleman will be reserved for another witness.

The gentleman from South Dakota?

Mr. BERRY. Thank you, Mr. Chairman.

Thank you, Mr. Tims, for an interesting statement.

Did we not, here, 3 or 4 years ago—2 or 3 years ago—pass a piece of legislation that authorized your city to lease land on the reservation for housing purposes?

MAYOR TIMS. We do have a—they have a landfill which is jointly used by ourselves and Mesa on the Indian reservation but the Indians operate this.

MR. BERRY. That bill was not passed. It was the Rhodes bill, I think Johnny Rhodes bill.

MAYOR TIMS. There was a long-term leasing bill which authorized 99-year leases last year.

MR. BERRY. That would be what it was. But on this area, where housing projects go, and, as I recall, there was a golf course and this sort of thing out there—I think that it would be in Mesa—on those areas, what law prevails, State law or Federal law?

MAYOR TIMS. None of these are developed yet, Mr. Berry, and this is what we are concerned about. It is what law will prevail there—

MR. BERRY. When it has been—

MAYOR TIMS. When it takes place. We are concerned about the building codes and the zoning and this type of thing when the land, particularly the part of the bill as to when the land comes under development and there are people other than Indians living in the development.

MR. BERRY. I think that is all, Mr. Chairman. I share your concern on this situation because having been there and been over the area, I can appreciate your town has to grow in some direction and the only direction it can grow is on to the reservation area.

THE CHAIRMAN. What is the name of the tribe that is to the east of Scottsdale?

MAYOR TIMS. The Pima Indians; Salt River Indian Reservation that is there.

THE CHAIRMAN. Mr. Sigler, do you have any questions?

MR. SIGLER. No, sir; I do not.

THE CHAIRMAN. Mr. Leppert?

MR. LEPPERT. No, sir.

THE CHAIRMAN. Thank you very much for a fine presentation.

MAYOR TIMS. Thank you.

THE CHAIRMAN. The next witness will be Mr. Donald Rider, executive director, New Mexico Municipal League. Mr. Rider, please.

STATEMENT OF DONALD RIDER, EXECUTIVE DIRECTOR, NEW MEXICO MUNICIPAL LEAGUE

THE CHAIRMAN. We welcome you, Mr. Rider, to the committee and you may proceed with your statement which I understand is accompanied by a position paper on protecting the rights of Indians as well as a statement on behalf of the city of Albuquerque. Is this correct?

MR. RIDER. That is correct, Mr. Chairman.

THE CHAIRMAN. Do you want to read your full statement?

MR. RIDER. I was going to read—I have a brief 2½-page statement I was going to read.

THE CHAIRMAN. You may be permitted to do that and the other two documents will be made a part of the record at the end of your statement.

Mr. RIDER. Thank you, Mr. Chairman.

Mr. Chairman, gentlemen of the subcommittee, I appreciate the opportunity to appear before this subcommittee to state briefly on behalf of the New Mexico Municipal League, the league's understanding of certain language found in H.R. 15122 and to submit for the record the position paper of the New Mexico Municipal League and the views of the city of Albuquerque.

The New Mexico Municipal League is fully in accord with the hopes of most Americans that the Indian will receive every education and economic opportunity and will become an active participant in our American political structure. However, the language found in the title on jurisdiction over criminal and civil actions paints with a broad brush and removes an Indian residing on Indian land from the State's jurisdiction. Had the language been limited to the State's jurisdiction over the tribal government and its civil and criminal jurisdiction, I would probably not be here today.

Under New Mexico's constitution, an Indian may be elected Governor, a member of the State legislature, or a county commissioner and may enact laws governing non-Indians. Yet, if he lives on Indian land, he would not be subject to these laws if the language under consideration in H.R. 15122 becomes law. We would ask if this premise is equal protection of the law?

Approximately 110,000 Indians live in New Mexico, comprising about 10 percent of the State's population. Of these, almost 90,000 reside on the Navajo Reservation and another 16,000 Indians live in 19 different pueblos under the United Pueblo Agency. The largest pueblo is Laguna, with approximately 3,000 residents and the smallest pueblo, Pojoaque, has an estimated 40 persons.

The Santa Clara pueblo adjacent to the city of Espanola has between 500 and 600 residents. In the Albuquerque metropolitan area, the Isleta pueblo totals about 2,000 persons; the Sandia pueblo about 124 persons and the Canoncito Reservation between 600 and 700 persons. None of these pueblos meets the population criteria set by the Committee for Economic Development for effective local government. Yet, they are expected to carry on local government activities as well as develop and administer civil and criminal codes. To effectively meet the needs of their citizens, they must rely on the Bureau of Indian Affairs and the State of New Mexico.

The State of New Mexico does contribute to the well-being of the Indian in many ways, through education, public health programs, welfare aid, and other State activities. These time-tested programs help both the individual Indian and the State. What the State's responsibility or the status of its program will be if this proposal becomes effective appears unclear.

As this subcommittee reviews these proposed acts and investigates them further, we would ask the subcommittee to examine the governmental structure of the various Indian tribes and pueblos. The manner in which the tribal leaders are selected, either by election or appointment, may bear on the exercise of the tribe's governmental authority. In the absence of State law applicable to Indian lands, will the tribal government enact laws covering the many circumstances and situations in which an individual finds himself today. I wonder if a banker will lend money to an Indian residing on tribal land if he knows that the State's uniform commercial code is not enforceable on Indian land?

Progress is being made today under Public Law 83-280 and cooperation is being achieved between the State and its Indian tribes. We hope it will continue.

Thank you for your consideration and the opportunity to be here today.

The CHAIRMAN. Thank you very much, Mr. Rider. Under the unanimous-consent request that we have working, you have used about 4 minutes. That means that we have 26 minutes to divide if the members of the committee wish to use it. That is approximately 9 minutes apiece.

The Chairman would ask you two questions. Referring to your statement, the first sentence in the second paragraph, you state: "The New Mexico Municipal League is fully in accord with the hopes of most Americans that the Indians will receive every education and economic opportunity and will become an active participant in our American political structure."

By limiting this you do not mean to deny to any of the Indian citizens any of the civil rights that are guaranteed to them by the Constitution and its amendments and the statutes of the United States, am I correct?

MR. RIDER. That is correct, Mr. Chairman. I think our feeling is that the Bill of Rights and the Constitution of the United States and State of New Mexico should apply to the Indians.

The CHAIRMAN. Your statement goes largely to the change that is made in the current law by the repeal or amendment of Public Law 280 by the Indian rights, so-called Indian rights bill, is that correct?

MR. RIDER. That is correct.

The CHAIRMAN. Do you take any position at all on the first section of the bill to which reference was made by our friends from the pueblo groups this morning?

MR. RIDER. Mr. Chairman, I think we are in full accord with titles I and II of the bill.

The CHAIRMAN. With what?

MR. RIDER. With titles I and II of the bill. I believe we have no quarrel with them at all.

The CHAIRMAN. The gentleman from Washington?

MR. MEEDS. Thank you, Mr. Chairman. Could you tell me very quickly, Mr. Rider, because we are limited in time here, what is the status of jurisdiction in the State of New Mexico with regard to Indian tribes? Is it all uniform, under different arrangements, or what?

MR. RIDER. We have not amended our constitution to take jurisdiction as was proposed under Public Law 280. This is my understanding. However, under the Kake Indian village case in Alaska, it is my understanding that the state exercised concurrent jurisdiction without amending its constitution, that the constitution provision in New Mexico constitution relates to the Indians proprietary rights. I am not an attorney and I would rather not go any further than that.

MR. MEEDS. So, you have not assumed the jurisdiction that you are talking about at this time?

MR. RIDER. It is my understanding that by the recent enactment of our particular water pollution control law and air pollution control law that the State has attempted to assume jurisdiction.

MR. MEEDS. That the State what?

Mr. RIDER. The State has assumed jurisdiction under the Kake village case.

Mr. MEEDS. Concurrent jurisdiction?

Mr. RIDER. Yes, sir.

Mr. MEEDS. Do you find that Indians residing on tribal land are now able to get loans from bankers because of this?

Mr. RIDER. No, sir. I am somewhat unfamiliar with it, whether they are or not. I do understand that they do receive loans at times. Whether they are for homes or not I do not know.

Mr. MEEDS. Do you envision that that status will be changed any under this law?

Mr. RIDER. Again, it is my understanding that this bill would remove the State's, as an example, commercial code application.

Mr. MEEDS. Remove the State's commercial code application?

Mr. RIDER. The application of our State's uniform commercial code on civil dealings between the Indian and non-Indian if it occurs on Indian lands.

Mr. MEEDS. Assuming that the Indians did not wish to have the State have jurisdiction, you are aware that they could also confer jurisdiction on the State under this bill, are you not?

Mr. RIDER. Yes, sir, I am; and this is one of the questions that has puzzled me, will the 19 pueblos and the four of five reservations which we have to vote on each law as it is passed by the legislature? What about previous enactments, our 18 volumes of law? Are they going to have to go back and be selective in adopting these? This is, I think, some of the questions that this bill does not seem to answer.

Mr. MEEDS. Now, if you were to assume jurisdiction, criminal jurisdiction, would you assume jurisdiction in any way in which—I am just asking you your personal opinion here for the groups you represent—would you assume jurisdiction, criminal jurisdiction, in which the guarantees of the first 10 amendments of the U.S. Constitution were not also a part?

Mr. RIDER. No, sir.

Mr. MEEDS. So that the Indians that have testified here about fear of the State jurisdiction or the State assuming jurisdiction, they would get the same thing under your—if you did assume jurisdiction, would they not, as this bill provides?

Mr. RIDER. It is my understanding, yes, sir.

Mr. MEEDS. With regard to those 10 amendments?

Mr. RIDER. Yes, sir.

Mr. MEEDS. Thank you. That is all.

The CHAIRMAN. The gentleman from South Dakota?

Mr. BERRY. Well, under your joint jurisdiction, Mr. Rider, is it possible—are the banks making loans in New Mexico or are they not? Do you know?

Mr. RIDER. I cannot answer positively, sir. It is my understanding that on occasion the Indian has borrowed money from a bank for, may I say, cattle feeding, this type of thing, the same as any other rancher would be engaged in, but I do not have any personal knowledge of this.

Mr. BERRY. But the loan, the mortgage is not enforceable, is it? I mean it cannot be foreclosed?

Mr. RIDER. This, I cannot answer, sir.

Mr. BERRY. I think that is all, Mr. Chairman.

Mr. MEEDS. Mr. Chairman, could I take a minute of my time to ask the counsel a question?

The CHAIRMAN. You can ask a question through him.

Mr. MEEDS. I wanted to ask a question about this jurisdiction problem in civil matters. Assuming that the State of Arizona or New Mexico has concurrent jurisdiction on civil matters, and a contract is made between an Indian and a non-Indian, the Indian residing on the reservation, does not the non-Indian have recourse to all of the protections and all of the statutes which would be available to him as any other person in the State?

Mr. RIDER. This is—

Mr. MEEDS. I am asking counsel this, if I may.

Mr. SIGLER. Mr. Meeds, the answer is "No." The civil courts do not have jurisdiction ordinarily over affairs—actions that occur on the reservation if those actions are a part of tribal government activities. Now, if you ask me whether a bank can foreclose on a chattel mortgage on some cattle, I do not know. I would have to check it. I think not.

Mr. MEEDS. Personal property?

Mr. SIGLER. I said I do not know. I would have to check.

Mr. MEEDS. This bill would not affect in any way the real property questions of trust lands and things like that, would it?

Mr. SIGLER. No. I think your premise, however, is probably faulty. I do not believe that is concurrent jurisdiction in the sense that you are using it.

Mr. MEEDS. Where is my premise faulty?

Mr. SIGLER. I thought you stated assuming the States had concurrent jurisdiction with the tribes and what I am saying is, I do not think that is true.

Mr. MEEDS. Well, I am just using what he has said. I do not know either. It is your opinion that they do not have.

Mr. SIGLER. That is my judgment, yes.

Mr. MEEDS. So that if you do not have concurrent jurisdiction, the testimony which you have given with regard to that aspect of it would not apply?

Mr. SIGLER. That is right. At this time. However, if his statement is correct, then at the time New Mexico under the present Public Law 280 wished to amend its constitution, I assume it would have jurisdiction.

Mr. MEEDS. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

(The documents previously referred to follow:)

NEW MEXICO MUNICIPAL LEAGUE INFORMATION MEMORANDUM 68-2

Subject: Position Paper On Protecting the Rights of Indians: H.R. 15122, S. 1843 and Senate Amendment No. 430 to H.R. 2516.

From: Donald C. Rider, Executive Director.

Date: March 27, 1968.

The New Mexico Municipal League is an association of cities, towns and villages governed by incumbent elected or appointed municipal officials. It is concerned with urban affairs and municipal government in New Mexico and

those policies which affect the people and the orderly growth and development of these urban areas.

The New Mexico Municipal League wholeheartedly endorse those past Congressional policies which have encouraged the Indian to become a member of society and enable him to develop his educational and economic ability to the fullest extent.

It is our belief, however, that certain provisions of H.R. 15122 and S. 1843 and Senate Amendment No. 430 to H.R. 2516, reverse this Congressional policy—that Title III, Jurisdiction Over Criminal and Civil Actions, in these measures divorces the Indian tribe from the family of governments and, in fact, segregates the Indian on tribal land in the fear that once leaving such land he will be subject to state law with which he is unfamiliar and which is unknown to him. In essence, the language found under these Titles says to the Indian "you must live under one set of rules while residing on tribal land but another set of rules whenever you leave the tribal lands." If the Indian is to enjoy all the fruits and benefits of American society without confusion and without conforming to a double standard, then he must prepare himself from his very beginning.

In reviewing H.R. 15122 and S. 1843, the New Mexico Municipal League supports the intent of Titles I and II. However, it should be noted that there is no language which grants an Indian, either male or female, the right to select by popular election the governor or the members of a tribal governing body. Since their selection varies from pueblo to pueblo and tribe to tribe, we submit for referral a copy of *New Mexico Indians* by Dr. Anne M. Smith,¹ Museum of New Mexico, Research Records No. 1, 1966. This booklet details, by separate paragraphs, the governmental structure and method of selecting tribal officers on each of the pueblos and reservations. In numerous instances, the tribal leaders are selected by the religious leaders, the caciques.

The New Mexico Municipal League does take exception to the language found in Title III, Jurisdiction Over Criminal and Civil Actions, in these measures. This language effectively repeals Public Law 83-280, 28 U.S.C.A. 1360.

Indian pueblos abound throughout New Mexico. There are nineteen pueblos and five reservations which are wholly or partially within New Mexico. Santa Clara pueblo land extends into the heart of the City of Espanola and commercial development, serving the people of Espanola, has occurred on this land.

Two pueblos and one reservation are found in the Albuquerque metropolitan area; in fact, interposed between the Town of Bernalillo on the north and the Village of Los Lunas and the City of Belen on the south. The continuing urbanization of the Albuquerque metropolitan area and the development of Indian land will have an effect, either good or bad, on this area.

While it may be argued that the state of New Mexico has failed to assume jurisdiction over such tribal lands, this assumption is not entirely correct. The state of New Mexico has begun on a step by step basis to exercise jurisdiction in certain vital areas, namely water and air pollution control.

New Mexico Laws of 1967, Chapter 190, the Water Quality Act, defines water as "all water including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water"; and further directs that the water quality control commission "shall adopt, promulgate and publish regulations to prevent or abate water pollution in the state or in any specific geographic area or watershed of the state or in any part thereof, or for any class of waters."

New Mexico Laws of 1967, Chapter 277, the Air Quality Control Act, grants to the state board of public health similar jurisdiction over all areas of the state.

¹ Dr. Anne M. Smith received her Ph. D. in Anthropology from Yale University in 1940. She has served as Curator I and Assistant Curator at the Museum of New Mexico during the period from July, 1957 to June, 1965, with time out as a research associate for a Rural Health Research Project (U.S.P.H.S. RG-5615). In addition to lecturing at the University of New Mexico and the College of Santa Fe, Dr. Smith has published: *Tribal Distribution in the Great Basin*, *Am. Anth.* Vol. 40, No. 4, 1938; *Health and Disease in Northern New Mexico*, a Research Report, Institute of Behavioral Sciences, U. of Colo., Feb. 1962; *New Mexico Indians Today*, Museum of New Mexico Research Records, No. 1, 1966; *Analysis of Basin Mythology*, mss.; *Northern Ute Ethnography*, mss.; *The Concept, "Health" Among Spanish-Speaking Villagers of New Mexico and Colorado*, *Health and Human Behavior*, Winter, 1963, Vol. 4, pp. 226-234.

If Indian land in urban areas is not subject to such regulation, the health of many persons living adjacent to such land can be endangered without state government being able to take appropriate action. The ability of the state of New Mexico to assume such jurisdiction is clear under the doctrine set forth in *Organized Village of Kake v. Egan*, 360 U.S. 60.

While Public Law 83-280 was enacted under the assumption that states such as New Mexico would have to amend their constitutions to assume jurisdiction, the 1961 Supreme Court decision cited above seriously challenges this assumption.

The Alaska Statehood Act and the Alaska Constitution provided that the United States retained "absolute jurisdiction and control of Indian property (including fishing rights)." The State of Alaska had attempted to invoke state police power jurisdiction to regulate use of salmon traps by the Kake Village Indians. The Indians claimed they were outside state regulatory jurisdiction. The United States, on behalf of the Indians, argued that the legislation in the Alaska Constitution and Statehood Act prohibited the state from any regulation of Indian fishing rights. Justice Frankfurter, writing for the majority, held as follows:

"The principal dispute now concerns the meaning of Section 4 of the Statehood Act in which the State disclaimed all right and title to and United States retained 'absolute jurisdiction and control' over any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, Aleuts (hereinafter called natives) or is held by the United States in trust for such natives. 396 U.S. 60, al 69."

Justice Frankfurter then goes on to point out that the parties were proceeding on the assumption that if the Kake Indians had "fishing rights" within the meaning of Section 4 of the Statehood Act, then the State could not apply its law.

"The assumption is erroneous. Although the reference to fishing rights is unique, the retention of 'absolute' Federal jurisdiction over Indian lands adopts the formula of nine prior Statehood Acts. Indian land has always remained 'under the absolute jurisdiction and control of the United States.' 36 Stat. 557, 569; yet in *Williams v. Lee*, 358 U.S. 217, 220, 223, we declared that the test of whether a State law could be applied on Indian-reserved land was whether the application of that law could interfere with reservation self-government. The identical language appears in *Montana's Statehood Act*, 25 Stat. 676, 677. In *Draper v. United States*, 164 U.S. 240, the Court held that a non-Indian who was accused of murdering another non-Indian on the Montana reservation could be prosecuted only in the State courts. The Montana statute applies also to North Dakota, South Dakota, and Washington. *Identical provisions are found in the acts admitting New Mexico*, (36 Stat. 557, 558-559) and Utah (28 Stat. 107, 108) and in the Constitution of Idaho . . . and Wyoming . . . which were ratified by Congress. . . .

"*Draper* and *Williams* indicate that 'absolute' federal jurisdiction is not invariably exclusive jurisdiction. The momentum of substantially identical past admission legislation touching Indians carries the settled meaning governing the jurisdiction of states over Indian property to the Alaska Statehood Act in light of its legislative history.

"The disclaimer of right and title by the state was a disclaimer of proprietary rather than governmental interest. It was determined, after some debate, to be the best way of insuring that statehood would neither extinguish nor establish claims by Indians against the United States."

Mr. Justice Frankfurter proceeded to review the history of the legal relation of Indians to the various states and pointed out that the strong tendency of Congressional action was toward permitting the ever broader assumption of authority by the states over Indians within their boundaries. He quoted with approval the following language of *New York, ex rel Rays vs. Martin*, 324 U.S. 496, 499: "In the absence of a limiting treaty obligation or congressional enactment, each state had a right to exercise jurisdiction over Indian reservations within its boundaries."

Mr. Justice Frankfurter sums up his decision in these words:

"These decisions indicate that even on reservations, state laws may be applied to Indians unless such application would interfere with reservation self-government or impair a right granted or reserved by Federal law."

On the basis of this decision of the Supreme Court, it can be argued that contrary to the assumption of the drafters of Public Law 280 as it now stands, the

language in the New Mexico Constitution, referred to above, does not impose or create a constitutional impediment to the assumption of state jurisdiction.

It should be borne in mind that Public Law 280, as presently drawn, carefully protects the proprietary interests of the Indians in their lands and other species of property. So it can scarcely be argued that the proposed bill is necessary to prevent a state from despoiling the Indians of their property. The real purpose of the present Public Law 280 is to encourage that progressive trend toward uniform state jurisdiction over Indian and non-Indian citizens, which Justice Frankfurter approvingly refers to in his decision in the *Kake Village* case. In view of the anachronistic doctrines of Indian sovereignty, and immunity from suit, as well as the extreme difficulties arising out of the indispensibility of the United States in actions involving Indians and Indian tribes and all the forbidding problems of the United States' immunity arising out of that issue, it would be most undesirable to have an expression of Congressional intent at this date to retreat from the promising steps spelled out in the *Kake Village* case toward uniform state jurisdiction and take a long step backwards and thereby encourage the Indians in the belief that they can forever remain independent of state jurisdiction as so many enclaves of land and people enjoying numerous benefits from the state but resisting the uniform and non-discriminatory application of the police power of the state. In the long run, the solution of the many problem areas between the state and its Indian citizens, in the areas of taxation, development of natural resources, etc., will require at some future date the integration of Indian people and Indian country into the general framework of state law. A step backward at this time would very possibly result in a serious and unnecessary setback to the long-range solution of state-Indian problems.

The language contained in Title III of H.R. 15122 and S. 1843 raises more jurisdictional questions that are unanswered. In *New Mexico Indians*, Dr. Smith stated:

"The Indians have demonstrated their desire for education in many ways. Table IV shows the proposals made under the Economic Opportunity Act and the number of requests for Project Headstart programs. Preschooling, followed by good schooling, will develop a familiarity with aspects of the American economic system which at the present time have little meaning for Indians whose security in the past has been based on the group.

"Yet undoubtedly closer relations with non-Indians will involve clarifying many legal uncertainties. The question of dedication of land for State roads going through Indian reservations has already proved a thorny problem for the State Highway Department and Santa Clara. The location of interchanges which will markedly affect Acoma has been argued about for more than a year and is not yet settled. One basic problem is the maintenance of law and order on Indian land. With the exception of major crimes, which are handled in federal courts, law and order on reservation lands are maintained by tribal police and courts. A criminal incident which took place on the Navajo reservation points up certain legal problems when no Indian is involved. Apparently the State had no jurisdiction, since the alleged crime occurred on reservation land; and neither federal nor Indian authorities claimed jurisdiction, because no Indians were involved. A judge dismissed a case because, he said, State courts have no jurisdiction to try a case brought by an Indian against a non-Indian for damages resulting from an automobile accident occurring on a reservation. Still another kind of legal tangle was revealed when a pueblo man was tried by his tribal court and sentenced to serve time in the Santa Fe City jail. (The city has an agreement with several pueblos to house prisoners.) The individual concerned charged that his civil rights had been violated.

"Another legal problem arises from the fact that the State cannot enforce compulsory school attendance laws on a reservation without the consent of the tribal authorities. The State has sought authority to enforce regulations regarding air pollution against industry located on reservation land leased from Indians. There is also a problem concerning use of city or county fire-fighting facilities for fires on Indian land.

"Certain problems result from the Indians' special status. In 1924 Indians were declared full citizens of the United States. As such, they are subject to state and federal laws when off the reservation. They pay federal and state income taxes, gasoline, sales, and excise taxes. They are eligible to vote and

serve on juries; they must serve in the Armed Forces of their country just as do other citizens. It should be added that they have served with distinction in all branches of the Armed Forces. Since 1948 they have been eligible to vote in New Mexico, but only recently have they made much use of this privilege, because of the fear that, if they voted, their special status in regard to BIA and USPH services and the trust arrangements protecting their land might be endangered. The Senate Judiciary Subcommittee on Constitutional Rights in 1964 completed a two-year study on the rights of American Indians. Most of its recommendations concerned protection of the civil rights of Indians, but the Committee also recommended that the United States give its consent to any state to assume, in whole or in part, civil and/or criminal jurisdiction over Indian reservations, provided that the Indian tribes involved also give their consent. Indians have been jealous of a tribe's right to maintain its own code of law and order on a reservation, and the states have hesitated to take on the expense of enforcing law on Indian reservations. This question will undoubtedly be the subject of much consideration in the future on the part of the State, the Indians, and the BIA. All the legal problems mentioned above should be explored, and possible solutions should be sought, without delay, as relations between Indians and non-Indians become more frequent. Other states with large Indian populations, such as South Dakota, have already faced these problems."

The language found in H.R. 15122 and S. 1843 may answer her questions but raises other more basic questions; such as:

1. Will an Indian, residing on tribal land, be subject to state tax laws such as the income tax or the gross receipts and compensating tax if:

a. he is gainfully employed in an occupation off Indian land; or

b. he operates a business on tribal land that is adjacent to commercial development on non-Indian land? Santa Clara pueblo land extends into the commercial heart of the City of Espanola. A shopping center has been operating on this Indian land for a number of years. If any of these businesses is owned by a Santa Clara Indian, will this Indian owner be subject to a state income tax, or a gross receipts tax? If he is not, he places his non-Indian competitor who operates a similar business across the street at such a competitive disadvantage that the non-Indian operator who pays taxes will be forced out of business. In essence, an Indian engaged in a business on Indian land would enjoy "free port" status and not be subject to state tax laws.

2. What jurisdiction does a state possess if an enterprise is owned by an Indian or Indian tribe but its operations are leased to a non-Indian?

3. What court has jurisdiction over a traffic accident between an Indian and a non-Indian that occurs on a state highway crossing Indian land?

4. Will the state be able to enforce traffic regulations against an Indian who violates a regulation on a state highway which crosses Indian land?

5. May the state or one of its political subdivisions enforce health, housing and other sanitary codes on Indian land to be subdivided for leasing and use by non-Indians?

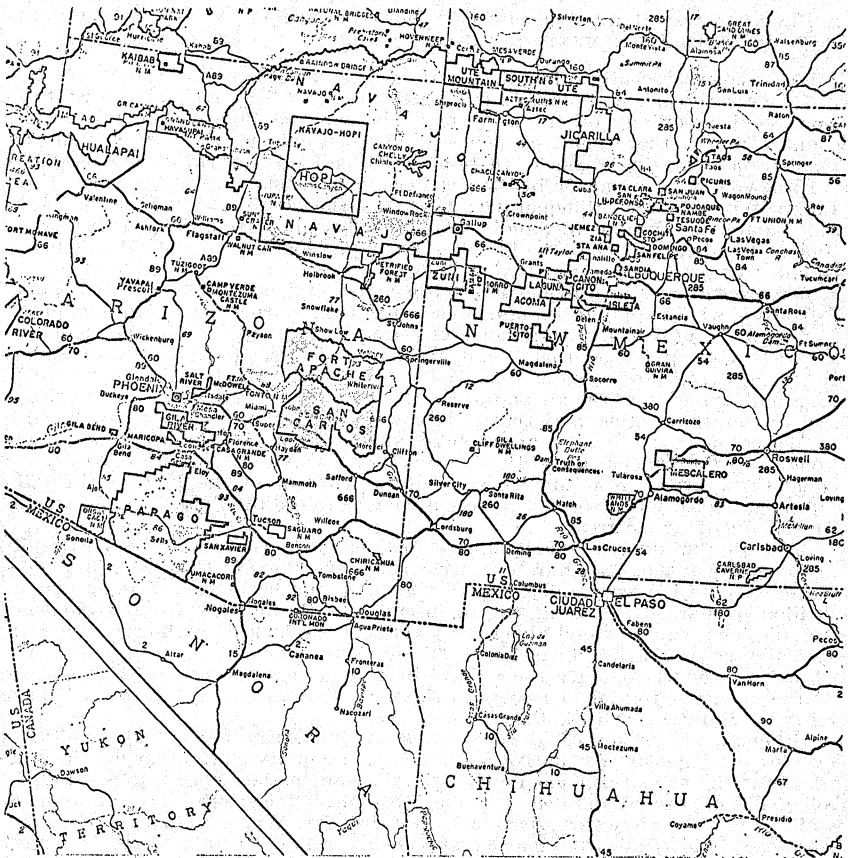
6. May the state legally spend money for educational or welfare purposes for Indians on Indian land if the Indian is not subject to such laws as aid to dependent children or aid to the blind?

7. Will the state be able to regulate the exploitation of natural resources, such as oil and gas conservation or uranium mining, on Indian land?

The New Mexico Municipal League recognizes and is appreciative of the many efforts made by the Indians to improve their education and economic opportunities as well as their efforts to preserve their culture and heritage. The state of New Mexico and the nation gain with each advancement made by the Indian; however, the language found in Title III of these two measures creates division rather than integration.

Some of the nineteen pueblos and five reservations may accept some state law and not others. Some state law may be applicable to some tribes and not others. The administrative morass in which state agencies will find themselves will be insurmountable.

Under the *dicta* set forth in *Organized Village of Kake v. Egan* and the provisions of Public Law 83-280, the state of New Mexico will be able to exercise its responsibilities as its resources permit. The New Mexico Municipal League urges that the state be allowed to continue to function under these laws and that Title III in H.R. 15122 and S. 1843 be deleted from these two measures.



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

1965
(exerpt)

CITY OF ALBUQUERQUE,
Albuquerque, N. Mex., March 27, 1968.

MR. DON RIDER,
Executive Director, New Mexico Municipal League,
Santa Fe, N. Mex.

DEAR MR. RIDER: There is enclosed a statement concerning legislation relating to jurisdiction of Indian tribes and matters on which you will be testifying for the New Mexico Municipal League Friday, March 29, 1968 in Washington, D.C.

Will you please deliver the attached statement from G. B. Robertson, City Manager of Albuquerque, relating to this city's particular position on this proposed legislation and explain to the committee that if further notice had been possible, members of the city governing body would have been present to testify in person.

Your courtesy in this matter will be appreciated.

Very truly yours,

FRANK L. HORAN,
City Attorney.

A STATEMENT ON BEHALF OF THE CITY OF ALBUQUERQUE, N. MEX., RELATIVE TO
PROPOSED AMENDMENTS TO PUBLIC LAW 83-280 RELATIVE TO INDIANS

We are very recently advised that there are several proposals now pending in Congress to amend Public Law 83-280 (67 Stat. 588) so that the State of New Mexico (or any other state) may not exercise jurisdiction over Indian country unless the Indian council or tribe consents to the jurisdiction. We understand a hearing on one of these bills will be Friday of this week, March 29.

I am viewing the matter in its relationship to Albuquerque. There are three Indian pueblos near Albuquerque: Isleta on the south, Laguna on the west, and Sandia on the north. Sandia Pueblo is 10 miles from the northern City limits; the Isleta Pueblos is 10 miles from the south City limits; Laguna is 35 miles away.

The proposal would provide that neither state legislation nor city and county legislation would apply to Indians unless they took affirmative action to approve. It may be helpful to illustrate some of the possible points of disagreement.

It has been proposed that a pulp mill be established on the Isleta Indian Reservation south of Albuquerque. The location in the Rio Grande Valley would assure distribution of the air pollutants throughout the Valley area of Bernalillo and Sandoval counties, and the well-known contaminants from the pulp mills would become part of the atmosphere in this area. If the proposals before Congress were enacted the City of Albuquerque could do nothing about it, nor could the State of New Mexico without the consent of the Isleta Tribe. The latter may hardly be expected to accept control where the financial inducements for tribal gain are so great.

Since the building of the Panama Canal, malaria control through mosquito abatement has been familiar to Americans. Along the Rio Grande Valley, mosquito breeding is a continuing hazard which has not been reduced in systematic fashion by unified efforts at control because of the overlapping governmental jurisdictions which extend along the river and the lack of authority in certain special service districts to utilize funds for such purpose. If the legislation is passed, the effort to unify the control over areas of this kind will be aborted by the power of the Isleta Pueblo in this area to refuse to accept the responsibility for doing their part in the tribal area.

Although discussion of the problems of industrialization in our Indian pueblos may appear speculative as of today, recent legislation enacted by Congress for the encouragement of industrialization in the hope of improving the lot of American Indians does provide economic inducements to manufacturers which will ultimately turn speculation into reality. When this occurs the other results of industrialization may be expected to follow. It is not hard to foresee that families working in or with such industries will have school children and that convenience will dictate the building of school facilities on tribal areas. We have already found in New Mexico that compulsory school attendance does not apply to the Indians; and one can easily foresee that this kind of differentiation will result in a denial to the Indian child of his right to an equal education, not because of the selfishness of the white man, but because of the existing restrictions on the enforcement of school attendance laws and the indifference of some tribal leaders to the need for education.

A food processing plant presently exists on one of the nearby Indian reservations. This plant, and others in the future, must depend on off-reservation sales. It is essential that any such food processing operation comply with all state and local laws relating to food sanitation, water supply, liquid and solid waste disposal, vermin control, labeling, weights and measures, etc.

The collection, transportation and disposal of solid wastes must be handled on an area-wide basis. Most governmental units are too small to economically handle this land pollution problem by themselves. The only solution lies in a co-operative, area-wide approach. The City of Albuquerque has just received a \$65,000 United States Public Health Service planning grant to plan for effective solid waste disposal for the Middle Rio Grande Area from Bernalillo to Belen. This area includes the densely populated areas of two Indian reservations.

This metropolitan area shares problems of surface and sub-surface water resources and problems of water pollution control with nearby Indian reservations. Pollution producing activities on an Indian reservation may adversely affect the quality of this precious natural resource for all nearby or downstream private, municipal or industrial water users.

The Welfare Department of the State regards the Indian tribes as perhaps the most serious social problem matrix with which they have to deal. That this is so for obvious reasons need not be argued. However, if the proposed legislation is to be enacted, the attempts of the State to require actions which will take care of the dependent children, the sick and the disadvantaged will run head-on into the prohibition contained in the proposed legislation against action taken without a consent of the tribe.

Recently, in the metropolitan area of Albuquerque an initial attempt has been made to establish regional planning, and all agencies of the Federal Government responsible for administering programs of the Demonstration Cities Act of 1966 have insisted that the region must include the Indian pueblos I have mentioned, together with some surrounding areas. A council of governments has been established and has determined to invite the Indian tribes to participate in its government and operation. The proposed legislation can and will give a veto power to the tribal leaders on proposals made by the Council of Governments and will effectively interfere with regional planning.

That the doubts here expressed are not academic is demonstrated by the result of an effort by the Village of Espanola to annex a small part of the Santa Clara Indian Pueblo to the village and to impose its village one-cent sales tax on sales made by the supermarket which leases land from the Indians there. The Supreme Court of New Mexico in 1961 ruled that the tribe is a political entity over which the village can exercise no jurisdiction. *Your Food Stores v. Village of Espanola*, 68 N.M. 327, 361 P. 2d 950. As a result, the merchants in the shopping center have an advantage over other merchants "across the street" and the village is supplying services to an area which is not contributing its fair share to the community.

A further illustration of the kinds of controversies which have already occurred is the case of *Batchelor v. Charley*, 74 N.M. 717, 398 P. 2d 49 (1965). There the creditor brought suit on a promissory note against an Indian who lived not on the reservation but on land leased from the United States under the Taylor Grazing Act. The Supreme Court of New Mexico followed the rule announced by the Supreme Court of the United States in *Organized Village of Kake v. Egan*, 369 U.S. 60, 82 S.Ct. 562, 7 L.Ed.2d 573 and ruled against the debtor.

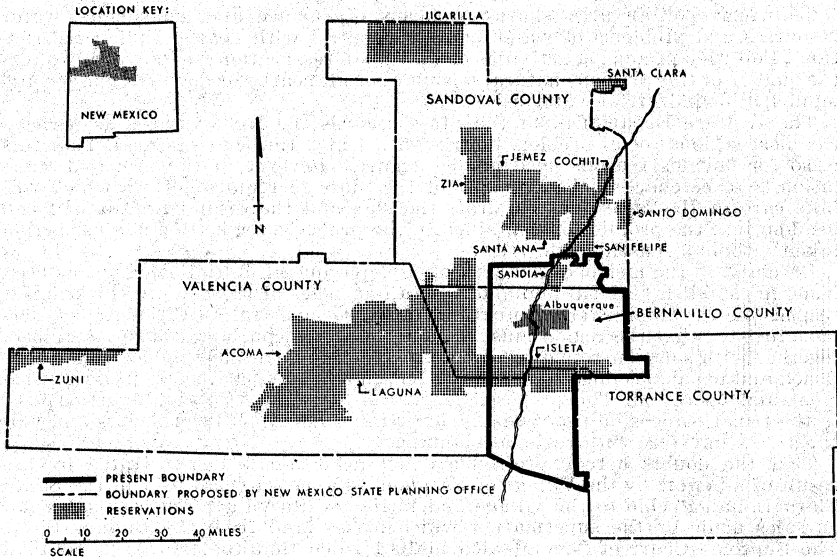
Again, in 1966, a native of New Mexico ran over an Indian on a highway running through an Indian reservation. The survivors sued for civil damages and the defendant asserted that the law of New Mexico does not apply to tortious conduct on an Indian reservation. The Supreme Court of New Mexico overruled the defense. *Paiz v. Hughes*, 76 N.M. 562, 417 P.2d 51.

These cases, and others not reviewed here, demonstrate how jurisdictional barriers are used to interfere with tax administration, contract performance, and tort liability sometimes with success and sometimes not. The proposed legislation will increase these barriers and build a wall around the Indian. What is intended to protect him will but isolate him. It is directly contrary to our present momentum by which the Indian and other minorities are taking their rightful place in the civilization of the Twentieth Century.

Although this statement has been formulated by the City Manager of Albuquerque and his professional staff, it embodies the conclusions on policy matters which have been reached by the governing body, that is, the City Commission of Albuquerque.

Respectfully submitted.

GARLAN B. ROBERTSON,
City Manager.



MIDDLE RIO GRANDE COUNCIL OF GOVERNMENTS

The CHAIRMAN. The next witness is Mr. Clarence Acoya, executive director, New Mexico Commission on Indian Affairs. Mr. Acoya, we are glad to have you before the committee. Do you have a written statement?

**STATEMENT OF CLARENCE ACOYA, EXECUTIVE DIRECTOR,
NEW MEXICO COMMISSION ON INDIAN AFFAIRS**

Mr. ACOYA. Yes, sir; I do. Honorable Chairman and members of the committee, I have a statement from the Governor of the State of New Mexico in behalf of the Indian pueblos. I wish to read the statement, sir.

The CHAIRMAN. You may proceed.

Mr. ACOYA. A statement in behalf of the 19 Pueblo Indians of New Mexico.

Mr. MEEDS. Do we have copies? You do not have a copy?

Mr. ACOYA. No, sir; I do not. I just got this this morning.

The CHAIRMAN. He can read it and we will pass it around.

Mr. ACOYA. Thank you.

I am asking Clarence Acoya, Executive Director for New Mexico Commission on Indian Affairs to convey my support in the direction expressed by the letter of transmittal and resolution adopted by the All-Indian Pueblo Council of New Mexico.

The resolution expresses concern for sections of Title I and II of S. 1843, where in the opinion of the All-Indian Pueblo Council, constitutes an invasion upon their inherent authority to administer justice within the scope of their governmental organizations and a threat to the total way of self-government justified as being sovereign.

It has been my understanding, through my contact and association with the Pueblo Indian entities in the State of New Mexico, that their people have always had the basic guarantees of freedoms parallel to those found in our own Bill of Rights.

I would appreciate your consideration for revision of those sections in the bill so that the Pueblo people are not threatened in the direction of undue hardship leading to a breakdown in their systems.

It is my sincere desire that the Indian citizenry of New Mexico work out a system conducive to continued good working relationships with all our citizens in order that we continue the harmony for the sake of a meaningful development in the direction of progress for all. Thank you for the opportunity to convey this message. David F. Cargo, Governor of the State of New Mexico.

The CHAIRMAN. We have a statement that was presented as a part of Mr. Montoya's statement; but it was not put in the record, because it did not show that it was signed. At least I could not see that my copy was signed.

Now, this is all very well and good but what position does the Governor take on this legislation at the present time? Is he for the Indian rights bill as it is presented in Senate bill 1843, House bill 15122, and House bill 15419, or is his position that he wants a closer consideration of titles I and II of the Senate bill 1843?

Mr. ACOYA. Yes, sir. This is it. He is in favor of supporting the Pueblo Indians in the revision or what they are asking under titles I and II, sir.

The CHAIRMAN. Thank you very much.

The gentleman from Washington?

Mr. MEEDS. Just a preliminary question. Are you representing the Governor here? Do you speak for him in all respects on this matter?

Mr. ACOYA. Yes, sir; on Indian matters.

Mr. MEEDS. Where is the State of New Mexico with regard to their constitutional revision or whatever is necessary to acquire jurisdiction under 280?

Mr. ACOYA. They have never entertained the matter, sir. As a matter of fact, under the Constitution, of course, a disclaimer is this, that the State will never assume jurisdiction over Indian lands unless it is either revised, the Constitution is revised through referendum or by a constitutional vote.

Mr. MEEDS. And is that being proposed at all at the present time?

Mr. ACOYA. No, sir; never has.

Mr. MEEDS. So that the positions taken by former witnesses that the prevalence arising from the lack of jurisdiction by communities and by States, there does not appear to be much relief in sight for them at the present time by the State taking jurisdiction, does there?

Mr. ACOYA. No, sir. That is true.

Mr. MEEDS. If you—and speaking for the Governor—if the State of New Mexico was to take jurisdiction, would it be your position that the first 10 amendments to the U.S. Constitution should not apply to Indians living on reservations?

Mr. ACOYA. If the State did take jurisdiction?

Mr. MEEDS. Right.

Mr. ACOYA. I think his position is that he supports that the Bill of Rights apply with the exception of titles I and II be worked out so that it would be conducive to continued good relationship with the Indian pueblos.

Mr. MEEDS. Are you aware that title I is, in effect, a granting of the first 10 amendments to Indians on reservations?

Mr. ACOYA. Sir, I did not get the question.

Mr. MEEDS. Are you aware that title I of this proposed bill is in effect granting of the first 10 amendments to the Indians on reservations?

Mr. ACOYA. Yes.

Mr. MEEDS. And that title II is establishment of model codes or a model code for criminal matters and civil matters on Indian reservations? Are you aware of that?

Mr. ACOYA. Yes.

Mr. MEEDS. How would you suggest that the first 10 amendments to the United States Constitution be made applicable to the Indians in any other way than by passage of law either by the State or by the Federal Government?

Mr. ACOYA. Well, I believe, sir, that the Indians themselves with their law-and-order codes and their constitutions, they have allowed this type of thing within their own jurisdiction. In other words, that their constitutions have allowed their people those rights or freedoms under the Bill of Rights.

Mr. MEEDS. You feel that they have, then, at this present time, Indian people have at the present time all of the rights of the first 10 amendments to the United States Constitution?

Mr. ACOYA. Yes, sir; I do.

Mr. MEEDS. Are you aware of any problems that have arisen with regard to alleged persecution of religious beliefs on Indian reservations in the State of New Mexico?

Mr. ACOYA. Not on those that were expressed this morning, sir, in the respect that the people that were in this position primarily those people that would not conform to the ways of their own pueblos, conforming to the customs and traditions of their respective pueblos.

Mr. MEEDS. Well, what if those customs and conditions were in effect a violation of religious freedom?

Mr. ACOYA. As I understand, sir, these customs and traditions are not in any way violations of any religious beliefs.

Mr. MEEDS. Well, I have information, and you may know more about it than I do, but about 6 months ago a tribal council of the pueblo at Isleta passed an ordinance prohibiting a certain Catholic priest from coming on the reservation to hold services. A group who supported the priest took the matter to the tribal court. The court declared the ordinance contrary to the pueblos' constitution. The council called the judges before it and purported to impeach them. When the tribal judges refused to accept their imprisonment and to surrender their offices, the power of their offices, they were incarcerated for several days by the order of the council. Are you aware of that?

Mr. ACOYA. Yes, sir; I am.

Mr. MEEDS. Did that actually take place?

Mr. ACOYA. Yes; it did.

Mr. MEEDS. Would you call that a practice of religious freedom in that pueblo?

Mr. ACOYA. As I understand, there is a—from the Governor's standpoint, if I may, sir, this is considered a local situation where the locality itself has the ability to work out its own problems. In this case, where we find this type of thing, it was the Isleta Pueblo's position to do as it saw fit within its own powers of the government to handle such a situation.

Mr. MEEDS. Well, do you think that the Indian people on reservations should be made that much different that they can work out situations locally such as that where religious freedom is threatened?

Mr. ACOYA. Well, I think the State's position is this, that the local people can work out their own problems, that the State really has no jurisdiction. So, I believe that the feeling is that the Indians have their freedoms, have their own government, they have a right to work out their own problems.

Mr. MEEDS. You said earlier that you thought the first 10 amendments to the U.S. Constitution presently apply to these Indians. Do you call that the application of the first 10 amendments, specifically the first amendment to the U.S. Constitution, where a person can be jailed and a Catholic priest can be prevented from conducting religious services? Is that application of the first 10 amendments?

Mr. ACOYA. Well, here again, sir, if I may, we believe that the Pueblo Indians within their own tribal governments in application of the—

Mr. MEEDS. You are not answering my question, sir. I am asking you simply, Do you believe that is an application of the first amendment to the U.S. Constitution where a Catholic priest can be prohibited from conducting services? Is that religious freedom?

Mr. ACOYA. I do not believe so.

Mr. MEEDS. I do not believe so, either.

Mr. ACOYA. If I may, sir—

Mr. MEEDS. So the only conclusion we can arrive at from that is that at least in that instance they did not have religious freedom, is that not correct?

Mr. ACOYA. I would say not.

Mr. MEEDS. And if this bill would provide religious freedom for these people, would not you think it would be a step in the right direction?

Mr. ACOYA. I believe so.

Mr. MEEDS. Thank you.

The CHAIRMAN. Are you speaking now for the Governor or for yourself in answer to the last question?

Mr. MEEDS. He said he was speaking for the Governor in all respects, Mr. Chairman.

The CHAIRMAN. I am asking the witness, Are you speaking for the Governor or for yourself in answer to that last question?

Mr. ACOYA. I speak for myself, sir.

The CHAIRMAN. You speak for yourself on the last question. I thought so.

Mr. MEEDS. Mr. Chairman—

The CHAIRMAN. The Chair is not going to stand to have any member of the committee start an argument at this place. If you want to ask the gentleman another question, the Chair will allow it. We are not going to argue here in the committee.

Mr. MEEDS. Mr. Chairman, I asked initially, my first question was whether he spoke for the Governor in all respects and he said he was.

The CHAIRMAN. And the gentleman got carried away with his own questioning and he went beyond the question that the witness had in mind. Now, if the gentleman wants to ask him again as the Chair asked

him, he can go ahead and do it but he can impeach his own witness if he wants to.

Mr. MEEDS. I do not seek to impeach him. Either the witness speaks for the Governor or he does not speak for the Governor.

The CHAIRMAN. The gentleman from South Dakota?

Mr. BERRY. Just one question, Mr. Acoya. Now, is it your position that you oppose this legislation? Is not that your position? You are opposed to the passage of this Senate bill?

Mr. ACOYA. As I understand from the Governor's message, sir, he opposes two titles that he mentioned, title I and title II, sir.

Mr. BERRY. What about 280, the repeal covered by 280? What is his position?

Mr. ACOYA. His position is he wants to see the repeal of Public Law 280.

Mr. BERRY. He does?

Mr. ACOYA. Yes.

Mr. BERRY. Thank you.

The CHAIRMAN. Does the gentleman from Idaho have any questions?

Mr. McCLURE. You say the Governor wants to seek the repeal of Public Law 280?

Mr. ACOYA. Yes, sir, that is right.

Mr. McCLURE. Can I ask you why he does? Why does he wish to see that repealed?

Mr. ACOYA. He believes this, sir, that the Indians should be consulted. The Indians should make it known that if they want jurisdiction, State jurisdiction, then, therefore, with the consent clause, this would allow them to do it. I mentioned before, sir, that there was never a case that was—the occasion never arose for Public Law 280 to be implemented either through the legislature or through a constitutional vote.

Mr. BERRY. And so it has been no problem in the past?

Mr. ACOYA. No problem at all, sir.

Mr. BERRY. Public Law 280 has posed no threat to the Indian people of New Mexico?

Mr. ACOYA. No.

Mr. BERRY. Because of State action?

Mr. ACOYA. Yes, sir.

Mr. BERRY. And its presence, the whole present trend poses no threat to the people of New Mexico as far as they are concerned?

Mr. ACOYA. No; not as far as we can see.

Mr. BERRY. Would it be a fair statement, trying to distill all of the questions and answers that have preceded, would it be a fair statement that it is the feeling of the State of New Mexico that the rights expressed in the first 10 amendments of the U.S. Constitution are adequately protected by type of constitutions and customs and that it is not necessary to have them applied directly? Is that a fair statement?

Mr. ACOYA. Yes, sir.

Mr. BERRY. And, would it be a correct further statement that it would be your feeling—please, if I am misstating it at all, disagree with me.

Mr. ACOYA. Surely.

Mr. BERRY. I want to understand you. Would it be a correct further statement of your feeling that the application of the first 10 amend-

ments of the Constitution of the United States directly would be more harmful than helpful?

Mr. ACOYA. Let me answer it this way, sir. I do not think it would be harmful at all. As a matter of fact, I think it has been expressed by the Pueblo Governors that they have had this same type of thing and the only thing they have not done yet is to codify those customs and traditions which express the freedoms that they have always had. So, therefore, it would not be harmful at all if it were today that we had a bill that passed that gave even an addition. This would be superfluous in a sense.

Mr. BERRY. Well, if it would not be harmful, why would you be in opposition to it?

Mr. ACOYA. In the Governor's statement—

Mr. BERRY. Yes.

Mr. ACOYA. Well, insofar as he is concerned, he is going along with the Pueblos in their understanding of title I and title II. He feels that if the Pueblos feel this way, then, therefore, it is his position also to feel that way.

Mr. BERRY. Although he does not see any harm in title I.

Mr. ACOYA. No, sir; I do not believe so.

Mr. BERRY. Thank you.

Mr. ACOYA. Yes, sir.

Mr. BERRY. I have no further questions.

The CHAIRMAN. Any further questions of the witness?

Mr. ACOYA. Mr. Chairman, I would like to read a statement with regard to Mr. Meeds' question on religion. I think he was referring specifically to the Isleta situation. I have a statement here that shows the purpose of the action that they took down at Isleta Pueblo.

The CHAIRMAN. This is a statement that you give in addition?

Mr. ACOYA. This is an addition, yes, sir.

Mr. MEEDS. Reserving the right to object, just a point of personal question, Mr. Chairman, is this your statement or is this someone else's or—

Mr. ACOYA. This is the Pueblo of Isleta's statement and I wish to have the gentleman from Isleta read this, Mr. Abeita.

Mr. MEEDS. This is the—

The CHAIRMAN. Lieutenant Governor of the Isleta Pueblo.

Mr. MEEDS. Pardon me, Mr. Chairman. This witness is not scheduled and if I may have the right to call a witness about this same matter, I will be perfectly willing to listen.

The CHAIRMAN. Who is your witness?

Mr. MEEDS. I may want to. I may not exercise that.

The CHAIRMAN. Is the witness—

Mr. MEEDS. I think we ought to hear both sides of it.

The CHAIRMAN. The Chair is trying to be fair. The only reason he asked Mr. Abeita if he was willing to testify is because the gentleman from the State of Washington has raised a question. If the gentleman will tell me the name of this—is he present in the room?

Mr. MEEDS. No. I do not know, Mr. Chairman. I just—there are two sides to this question and I would just like to have the right to get both of them in. I want to hear the gentleman. I just want to have the right to call someone—

The CHAIRMAN. We will give each witness 5 minutes. You may proceed, Mr. Abeita. Glad to have you come up.

STATEMENT OF JUAN B. ABEITA, LIEUTENANT GOVERNOR OF ISLETA PUEBLO

MR. ABEITA. Mr. Chairman, members of the committee, in anticipation that a question might be raised concerning religious freedom in the Pueblo of Isleta, we have prepared the following brief statement concerning the controversy of June 1956. Monsignor Stadtmueller, the Isleta parish priest was forcibly evicted from the Pueblo because of continued involvement in Pueblo civil affairs. It is a matter of record that he actively fostered causes within the Pueblo membership which sought to destroy the Pueblo government. This included denunciation and ridicule of our customs and traditions. It is well known that he stated that he would refuse the holy sacraments of the Church to members who participated in the traditional practices of the Pueblo. For this reason, the archbishop was requested on several occasions over a period of several years to transfer the monsignor. When he repeatedly failed to cooperate in this request, action forcing eviction was taken.

However, at no time did the Pueblo officials ever make any effort to close the doors of the church and the archbishop was advised that the church facilities would not be interfered with, but would be available for services by any church official other than Monsignor Stadtmueller. It was the archbishop, who in fact ordered the door of the church locked.

It should further be noted that at no time have our Pueblo officials denied any member of the Pueblo the right of freedom of choice of religion. We have never denied any member access to the Roman Catholic Church on the Pueblo lands or to any other church of his choice. This is further evidenced by the fact of the existence of other faiths within the Pueblo, some of whom also have church facilities located on Pueblo lands.

Thank you, Mr. Chairman.

The CHAIRMAN. I understand from your statement that the regular parishioners of the Roman Catholic Church were being denied the right of sacraments that goes along with worship in the church simply because of the fact that they still held to some of their original customs and beliefs; is that correct?

MR. ABEITA. Yes, sir, Mr. Chairman.

The CHAIRMAN. The gentleman from Washington?

MR. MEEDS. Thank you, Mr. Chairman. Did the judges actually uphold, the judges of the tribal, the legal system, actually uphold the right of the priest to be there?

MR. ABEITA. Now, if I may, I have a resolution prior to the eviction of the—I mean prior to the incarceration of the judges which was passed on by the Council of the Isleta Pueblo authorizing the Governor sole authority to negotiate with the Archbishop of Santa Fe to come to some solution of this religious problem, and be recognized that the Governor of Isleta Pueblo has the authority to enforce whatever agreements be reached with the Archbishop of Santa Fe. This

resolution was adopted by the council the sixth day of April before this incident which you are referring to, Mr. Meeds.

The CHAIRMAN. 1967?

Mr. ABEITA. 1967.

Mr. MEEDS. Were the judges actually incarcerated?

Mr. ABEITA. Yes, sir.

Mr. MEEDS. And, did they have any right to appeal from this or any right to get out of jail? On a habeas corpus proceeding or anything like that?

Mr. ABEITA. Yes, sir. They were notified at the time of the incarceration that they could post bond on several occasions which they refused themselves.

Mr. MEEDS. By whom would they be tried?

Mr. ABEITA. The trial was by the council. It was not a trial. They were brought before the council after the impeachment, turned over their records of the tribal court. When they refused to turn the tribal records over to the council, as the records were the property of the tribe, they were held in contempt of the council's order. So, under these conditions they were incarcerated.

Mr. MEEDS. And they were to be tried by the same group that incarcerated them; is that right?

Mr. ABEITA. Yes, sir.

Mr. MEEDS. That is all.

The CHAIRMAN. Do you have any questions?

Mr. McCLURE. I have no questions.

The CHAIRMAN. Thank you very much, Mr. Abeita and Mr. Acoya.

Mr. ABEITA. Thank you, Mr. Chairman.

Mr. ACOYA. Thank you, Mr. Chairman.

The CHAIRMAN. This means approximately 55 minutes—wait a minute. We have one more witness, Mr. Burnett. Where is Mr. Burnett?

STATEMENT OF ROBERT BURNETT, PRESIDENT, AMERICAN INDIAN TREATY & CIVIL RIGHTS COUNCIL

The CHAIRMAN. Give your name.

Mr. BURNETT. I am Robert Burnett, president of the American Indian Treaty & Civil Rights Council. I have several documents here involving civil rights that I would like to refer to before I turn them in. I would like to make a flat statement, Mr. Chairman, that Indians do not have civil rights or constitutional rights, and I say very emphatically because we have made a three-and-a-half-year research study of this fact.

We have tried to get into Federal court on—

Mr. MEEDS. Pardon me, Mr. Chairman. Do you have a prepared statement?

Mr. BURNETT. No, I do not. I was just notified of this hearing yesterday.

The CHAIRMAN. That is the reason why he is limited to 4 minutes.

Mr. BURNETT. We have researched this very thoroughly. We cannot get into the courts as an Indian. We have no protection of life, person, or property. We have no protection in the courts of our rights to hold office on reservations. We have no right to protect ourselves in voting

rights. And even though a tribe may say that they offer protection of sorts to its people, this does not offer the opportunity to protect that right in court, and that is why we are 100 percent for this legislation. And to prove that, we have affidavits here signed by election officials from the Rosebud Reservation and I would like to be able to submit other affidavits from the Cheyenne River-Sioux Reservation as soon as I get home, because, in this case, the people were deliberately denied their right to vote with no due process of law in any court—tribal, State, or Federal.

We have documented cases also at home which I would like to submit later to the committee where people have been killed very negligently, people have been assaulted and nothing can be done about this in tribal courts as far as recovery for a family that may be left behind after a death.

So we are very concerned that the committee's legislation does not reach far enough in the civil rights field of the Indian people. The right to vote is not fully covered, although in some ways probably this bill does cover it. But it should be specifically legislated so that we know where we stand. The Sioux people from the State of South Dakota are in a great uproar. I have a petition here to the Secretary of the Interior demanding a referendum to abolish the entire constitution of the Rosebud-Sioux Tribe. This will be submitted to the Secretary of the Interior.

We have also—I will submit to the committee—a copy of the Rosebud-Sioux Herald in which our tribal attorney recommends that non-residents not be allowed to vote, and this also concerns us because it is a charge that those people who are living off the reservation would not be given the right to vote even though they own property and are, in fact, owners of the tribal property and have relatives there on the reservation and have a vested interest.

This I would like to present to the committee, along with the documents that I have requested to submit later when I get home. If I knew this I would—

The CHAIRMAN. These documents will be received and they will be made a part of the record or the file, as determined by the chairman of the subcommittee, Mr. Haley, and the ranking member on the minority side, Mr. Berry.

Mr. MEEDS. Pardon me, Mr. Chairman. What is the criteria for whether they be part of the record or the file?

The CHAIRMAN. We don't have the documents at this time, so we will have to—it will have to be up to the chairman and the ranking member according to our custom and our procedure on this committee. This is precedent in this committee, Mr. Meeds.

Mr. BURNETT. I would also like to state for the information of the committee that the people out in our area are quite shocked at the fact that Indians do or should have, at least, civil rights, and civil rights were kind of shoved off and shunted aside because they were always identified with the Negro people, and now that they have found out that they do not have civil rights, they are on the move, and they are going to continue to move until they are fully covered by civil rights.

The CHAIRMAN. You have used up your time, Mr. Burnett.

Mr. BURNETT. Thank you very much for this time.

The CHAIRMAN. Thank you very much.

Mr. MEEDS. As far as my time—

The CHAIRMAN. If the gentleman wants to use some of his time, that is all right with me.

Mr. MEEDS. I would very much like to.

The CHAIRMAN. All I can say to my colleague is, we are going to adjourn here at 3:30. It doesn't make any difference what happens, and we have got the attorneys to take care of.

Mr. MEEDS. Thank you, Mr. Chairman.

Again, would you state what you represent?

Mr. BURNETT. I am the president of the American Indian Treaty and Civil Rights Council.

Mr. MEEDS. Treaty and Civil Rights Council. And what Indians do you represent; all tribes of Indians?

Mr. BURNETT. No. Presently we have membership in seven States—not membership, affiliates. We do not have membership.

Mr. MEEDS. Well, I am going to ask you for your opinion. Would it be your opinion, sir, in the position that you have, that the overwhelming majority of American Indians are for the passage of S. 1843 as it stands?

Mr. BURNETT. May I answer in this way. The overwhelming majority of the Indian people do not realize what civil rights are.

Mr. MEEDS. Would it be your opinion that if the majority, overwhelming majority, of the Indian people knew that the first 10 amendments of the U.S. Constitution were not applicable to them on reservations, that they would want those first 10 amendments applicable to them?

Mr. BENNETT. I think they would demand it.

Mr. MEEDS. And we have heard from people this morning representing approximately 30,000 Indians. If my calculations are correct, or anywhere near correct, there are about 350,000 American Indians living on reservations and we have heard from people representing 30,000 of them that do not wish these 10, these first 10 amendments, applied to them, evidently.

Now, can you—you are an attorney; are you not?

Mr. BURNETT. No; I am not.

Mr. MEEDS. You are not an attorney. In your position on this Civil Rights and Treaty Council, can you see any reason why a group of Indians living on a reservation or in a pueblo who have all the rights of the 10 amendments of the U.S. Constitution would be opposed to any other Indians having them?

Mr. BURNETT. No; I cannot. The only—I understand the Pueblo situation quite well. I was the representative of the National Congress of American Indians for 3 years and I know the U.S. Indian situation quite well. I understand their position and I have heard it stated time and time again this morning by the different witnesses that in practice they do have all of these 10 rights that are referred to here in this bill and I cannot see why it would not be well to have it stated in law so that somebody could go to court and protect that right if and when it is violated.

Mr. MEEDS. Thank you.

The CHAIRMAN. Any questions?

Mr. McCLURE. You say you are familiar with the pueblo situation. Do you have any disagreement with the statements that have been made by the witnesses that they do as a matter of practice have these rights?

Mr. BURNETT. Well, I think you brought up one here that opened the door pretty much. I think that when you have a practice, this does not mean that it is very solid. These people who are here may be great gentlemen, may enforce these things with every bit of their strength and their power and their knowledge, but tomorrow there might be someone else here who does not wish to do this and then your practicing situation goes into turmoil and the first thing you have is what we have in the Sioux country, graft and corruption that is taking place every day.

Mr. McCLURE. I think that my question was directed not toward the possibility but the actuality of the situation as it exists today in your knowledge.

Mr. BURNETT. Well, I have read of the situation concerning the Catholic priest and I think through diplomacy and working through the right channels of the church, this could have been and should have been avoided because this is a great danger. In fact, it can be said flatly that Indians do not have freedom of religion today.

Mr. McCLURE. Is this true of the Pueblos?

Mr. BURNETT. This is true of all Indians.

Mr. McCLURE. Is it true of the Pueblos?

Mr. BURNETT. Yes, it is.

Mr. McCLURE. And you say their rights of freedom of religion are being denied to the Pueblo Indians?

Mr. BURNETT. I don't think they are being denied today but I think there is a great possibility.

Mr. McCLURE. I am asking you whether it is a fact, not whether it is a possibility.

Mr. BURNETT. Well, it was a fact as far as the one incident was concerned, yes.

Mr. McCLURE. You have investigated that and satisfied yourself?

Mr. BURNETT. We have checked into it, yes.

Mr. McCLURE. I beg your pardon?

Mr. BURNETT. We have checked into it.

Mr. McCLURE. And you think there was a denial of religious freedom in that instance?

Mr. BURNETT. Yes.

Mr. McCLURE. Do you think this is true of other rights under the 10 amendments of the Constitution as practiced by the Pueblo Indians?

Mr. BURNETT. No. I don't say and I wouldn't say unless I could prove it.

Mr. McCLURE. Your knowledge is based on personal knowledge contained in another area of the country, is that correct, and other tribes of Indians?

Mr. BURNETT. Not necessarily. Our research was done in overall fashion by attorneys, not by myself, by attorneys who are in South Dakota who went through the entire United States Code including the Bureau of Indian Affairs Code.

Mr. McCLURE. Did they investigate the situation on the various reservations to see what was happening as a matter of practice?

Mr. BURNETT. In South Dakota, they have, yes.

Mr. McCLURE. Throughout the United States?

Mr. BURNETT. No, we have not. We haven't had the funds to do that.

Mr. McCLURE. All right. Then the factual basis, not the possibility, but the factual basis in practice behind your testimony is confined to the area of South Dakota.

Mr. BURNETT. South Dakota, North Dakota, yes, and Nebraska.

Mr. McCLURE. Thank you very much.

The CHAIRMAN. Thank you very much, Mr. Burnett.

I would like to call attention to the fact that I belong to the Methodist Church, which is a Protestant church and we believe in open communion, but some of my best friends belong to the Baptist Church and they believe in a closed communion. Now, is it your position that if I went over to the Baptist Church and demanded to take communion with them that they would have to let me take communion with them? Is that freedom of religion as far as you are concerned?

Mr. BURNETT. No. I think we are going a step too far, Mr. Chairman.

The CHAIRMAN. I think we are, too, and I won't ask you to answer the question. Thank you very much.

Mr. BURNETT. Thank you.

The CHAIRMAN. We have approximately 40 minutes for four attorneys. I would suggest that the four attorneys each use 5 minutes for presentation and we will divide up the questioning as of this time and then if we want you back, we will have you back later on. I hope that this is all right because unless there is an objection, this will be the procedure today.

Hearing no objection, so ordered.

The first one we will welcome is our friend and cocounsel and fellow Indian worker, Mr. Marvin Sonosky.

STATEMENT OF MARVIN J. SONOSKY, ATTORNEY AT LAW, WASHINGTON, D.C.

Mr. SONOSKY. Thank you, Mr. Chairman. I shall watch the clock. You stop me at the end of 5 minutes.

I should like to offer the—my name is Marvin J. Sonosky. I am an attorney in Washington, D.C., and I am testifying today on behalf of the Rosebud-Sioux Tribe of South Dakota, the Standing Rock Sioux Tribe of North and South Dakota, the Assiniboine and Sioux Tribes of Montana, and the Shoshone Tribe of Wyoming.

The CHAIRMAN. Your statement will be placed in the record as if read Mr. Sonosky, and you may talk to it.

Mr. SONOSKY. I should like for a moment to direct the committee's attention to one salient fact that we noted this morning in the testimony of the Pueblos. The Pueblos have objected to titles I and II.

Now, with respect to title II, which is a model code, S. 1843 specifically provides that the Secretary of the Interior is authorized and directed to recommend to this Congress on or before July 1, 1968, a model code to govern the administration of justice by courts of Indian offenses on Indian reservations. The phrase "courts of Indian offenses" is a word of art in Indian law. It is the Federal supported courts on the reservation. The pueblos do not have courts of Indian offenses. They have tribal courts. Therefore, title II cannot have any applica-

tion to them and I cannot understand why they should object to something that doesn't apply to them.

With respect to the remainder of S. 1843, I should like to confine myself to the heart of the matter which is modification of Public Law 280. Public Law 280 permits the State to impose its laws on Indian people living on Indian reservations without their consent, and of all the Indian legislation on the books, there is none better known to Indians or more generally despised than Public Law 280.

Public Law 280 and the provisions that I am talking about that permitted legislation by the State without the consent of the Indians to subject the Indians to jurisdiction was adopted by Congress without any hearings. No Indian tribes were heard with respect to that provision of the statute which relates to extending State jurisdiction without tribal consent. That was done in executive session.

When this bill came before the President, President Eisenhower, he was tempted to veto it and he characterized it as an unchristianlike approach at the time he signed it into law, and he urged Congress then in 1953 to change it. But since 1953, although repeated efforts have been made, including efforts with the administration, we have not been able to obtain any bill from either House, or with one exception, the Senate. One of the sessions of the Senate did pass a bill amending Public Law 20 to require tribal consent.

I think the committee should know that this requirement has been brought to bear at least with respect to the tribes I represent in the States of Montana, Wyoming, and South Dakota. In the State of South Dakota the Legislature imposed State jurisdiction over Indians in Indian country. This was done on short notice, with small opportunity give to the Indians to present their views. Livestock interests spearheaded by a majority leader of the State senate, formerly a State senator from Indian country, were behind the efforts to place Indians under State control and jurisdiction.

For the first time probably since the Battle of Little Big Horn, the nine tribes in South Dakota, all Sioux, united and pooled their resources and obtained a referendum under a State constitution to refer the issue to the people.

The South Dakota tribes purchased television and radio time, newspaper and magazine coverage, and they brought to the people of South Dakota Abraham Lincoln's message that no man is good enough to govern another man without that other man's consent. And the people of South Dakota responded and rejected by an overwhelming vote of almost four to one the statute passed by the State Legislature of South Dakota to impose jurisdiction, State jurisdiction on Indians without their consent.

That was a very costly procedure for the tribes. It cost them more perhaps than to run an entire campaign, but it was necessary.

The CHAIRMAN. Your time has expired for today. When the hearings were held on the Senate bill of the 89th Congress, the National Congress of American Indians were meeting here. They don't represent all of the Indians, do they, Mr. Sonosky?

Mr. SONOSKY. No. I don't think they represent all the Indians. They represent most Indian tribes.

The CHAIRMAN. But there were several Indian tribes, including the pueblos who had no particular notice at that time of what was going on when the hearings were held in the other body.

Mr. SONOSKY. That is not correct, Mr. Chairman. I attended those hearings.

The CHAIRMAN. That is what they said this morning.

Mr. SONOSKY. No. The record shows that Mr. Montoya, who testified here today, testified in detail before the committee, Senate subcommittee in June 1965; also that in Gallup, N. Mex., a number of Pueblo Indians appeared and testified and they told—some of these stories they told, they charged against their own council, as set out in that testimony.

The CHAIRMAN. Thank you very much. The time of the chairman has expired. The gentleman from Washington.

Mr. MEEDS. Mr. Chairman, I would just like to take my time to straighten out the record which was made this morning. As I recall the testimony, it was that the Indians had not, the Pueblo Indians had not had notice of hearings on that Senate bill, and I have before me the record of the Senate bill, both in 1961 and in 1965, in which the very gentleman, for instance, who said he had no notice testified here in Washington, D.C., on that very bill that is before us, and in 1961 where he and a number of other people, it looks like about seven members of the Pueblos, different Pueblo groups, testified in 1965 and about five or six in 1961 on this legislation.

I would like the record straightened out on that.

Thank you.

The CHAIRMAN. The gentleman from South Dakota.

Mr. BERRY. Will you—is it your impression that the resolution passed by the NCAI asked that these court amendments apply only to courts of Indian offenses?

Mr. SONOSKY. I heard that resolution this morning and I was shown a copy of it this morning. I had never heard of it, never seen it before. It is almost unintelligible to me because what it says is that it limits it to courts of Indian offenses which is contrary to what I know the National Congress has publicly said, that it supported S. 1843, and the only explanation I can think of is that it was done by an executor committee and not by the full council, and probably done at the instance of the Pueblos since it relates to them.

Mr. BERRY. It relates to all.

Mr. SONOSKY. Yes. The way it is framed it relates to all.

Mr. BERRY. So it wouldn't be at the instance of the Pueblos.

Mr. SONOSKY. I mean probably the reason for this particular resolution was at the request of the Pueblos.

Mr. BERRY. Just one more question because you spent so much time on South Dakota. It is—you were here when the people from Arizona testified. Do we have a similar problem of law enforcement in the other States, too, do you think, Marvin?

Mr. SONOSKY. I heard the mayor of Scottsdale. He is the only one I heard this morning. No, I don't think we have the same problem he was posing.

Mr. BERRY. What about State election laws? How can a State enforce their election laws on a State election which is held on an Indian reservation if there is not at least some concurrent jurisdiction?

Mr. SONOSKY. I think you have a point well taken with respect to enforcement by the State of State election laws where the precinct and voting ballots are on the reservation. Fortunately it is the history

of South Dakota and most States that the occasion doesn't arise very often for the State to have to take any action, but as I understand S. 1843, it would permit such a limited jurisdiction to be extended over the reservations with the consent of the tribes, and I don't believe you would have any difficulty getting the consent of the tribes in South Dakota, your State, for that purpose.

Mr. BERRY. That is all, Mr. Chairman.

The CHAIRMAN. The gentleman from Idaho.

Mr. McCLURE. Mr. Chairman, I have two questions. I understand you to say that title II will not apply to the tribal courts.

Mr. SONOSKY. As appears in S. 1843 passed by the Senate it does not apply to tribal courts.

Mr. McCLURE. And the model code submitted pursuant to title II could not be made to apply to tribal courts.

Mr. SONOSKY. Congress can do anything with respect to Indians, but this bill as framed now, all it says to the Secretary of the Interior is you prepare a model code for courts of Indian offenses and recommend it to Congress. Now, Congress could have told the Secretary, prepare a model code for tribal courts, but it didn't.

Mr. McCLURE. Now, you made a very strong plea for the right of people to determine whether or not the laws shall be applied to them with reference to the repeal of Public Law 280. At the same time you say that you think it is right that this Congress should impose upon the people of the Pueblo Indians the provisions of this law whether they want it or not. Now, are these two positions consistent?

Mr. SONOSKY. The provisions of title I?

Mr. McCLURE. No. Your position.

Mr. SONOSKY. Well, what I am saying about title I is that individual Indians need the protection of the Bill of Rights the same as individual non-Indians need it.

Mr. McCLURE. But they don't need the protection of the jurisdiction of State law.

Mr. SONOSKY. They don't need the protection of jurisdiction of State law because they have both Federal and their own tribal law.

Mr. McCLURE. Well—

Mr. SONOSKY. It is a substitution of the law of another sovereignty, so to speak.

Mr. McCLURE. To me, it strikes me as though my idea of what is good for them is good for them, and somebody else's ideal of what is good for them is not good. Perhaps that isn't a fair statement.

Mr. SONOSKY. Well, let me say this. Congress has with respect to the 11 or 12 major crimes act already said that the U.S. courts shall have exclusive jurisdiction over these 12 major crimes—murder, rape, et cetera—which took it away from the Indian tribes who had it before, and Congress has exercised that power and the Pueblos are subject to it the same as all other Indian tribes.

Mr. McCLURE. Is this right?

Mr. SONOSKY. I think that a compromise has to be made in a situation which, when it first arose historically, it arose in the South Dakota again.

Mr. McCLURE. Was that done with the consent of the tribes, of the Indian people?

Mr. SONOSKY. No. This was done without their consent. It was imposed by and that is a distinction I would like to make. Congress has plenary authority under our Constitution over Indians, under our Constitution.

Mr. McCLURE. Do you advocate that we repeal that change?

Mr. SONOSKY. No. I wouldn't advocate we change our Federal Constitution.

Mr. McCLURE. Would you advocate we repeal the major crimes?

Mr. SONOSKY. No. I wouldn't advocate that.

Mr. McCLURE. How do we make a distinction between that and Public Law 280?

Mr. SONOSKY. No; I wouldn't advocate—

Mr. McCLURE. How do you make a distinction between that and Public Law 280?

Mr. SONOSKY. First let me say that the jurisdiction exercised by Indian tribes is about the equivalent of jurisdiction of a justice of the Peace Court. We are dealing here with misdemeanors of everyday life. Ninety percent of all crimes committed on Indian reservations are disorderly conduct and possibly drunkenness. Those two cover 90 percent easily.

The CHAIRMAN. You can't answer that. You folks started back and forth, but I say that we might or might not be interested in this, but we don't have the time. Thank you very much.

Mr. SONOSKY. Thank you.

STATEMENT OF MARVIN J. SONOSKY, ATTORNEY

Mr. SONOSKY. My name is Marvin J. Sonosky. I am an attorney practicing mainly in Indian matters with offices at 1225 19th Street NW., Washington, D.C.

I thank the committee for this opportunity to appear on behalf of my tribal clients, the Rosebud Sioux Tribe of South Dakota, the Standing Rock Sioux Tribe of North and South Dakota, the Assiniboine and Sioux Tribes of Montana, and the Shoshone Indian Tribe of Wyoming.

The tribes support H.R. 15122 and S. 1843 which are identical. The tribes are opposed to Congressman Berry's bill, 15419, insofar as it eliminates the most important feature of the proposed legislation, namely, amendment of Public Law 280 to require the consent of the tribe before State jurisdiction may be extended over Indians on the reservation.

S. 1843 was passed by the Senate on December 7, 1967 and the text of S. 1843 was included in H.R. 2516, the civil rights bill which passed the Senate on March 11, 1968. But the history of S. 1843 goes back to 1961, when the Senate Subcommittee on Constitutional Rights commenced extensive investigations into the constitutional rights of the American Indian. These investigations were prompted by complaints from individual Indians. About 2,000 questionnaires were issued. In 1961 hearings were held in Washington, California, Arizona, and New Mexico. In June 1962, hearings were held in Colorado and North and South Dakota and concluded in Washington in March 1963. Based on the findings resulting from the subcommittee's investigations, bills,

predecessor to S. 1843, were introduced in 1964 in the 88th Congress (S. 3041-3048, and S.J. Res. 188).

The bills again were introduced in the 89th Congress (Feb. 2, 1965) (S. 961-S. 968, S.J. Res. 40). Extensive hearings were held on June 22, 23, 24, and 29, 1965. These hearings were arranged to correspond with the Washington meeting of the National Congress of American Indians so that there was a wide representation of American Indians. The Senate Subcommittee on Constitutional Rights received the testimony and statements of some 79 witnesses, including representatives from 36 tribes located in 14 States. These hearings disclosed the need for modifications in the bills. In the 90th Congress, S. 1843 through S. 1847, and Senate Joint Resolution 87 were introduced on May 23, 1967. The text of these five bills and the resolution was consolidated under separate headings in one bill, S. 1843, and was passed by the Senate on December 7, 1967. The text of S. 1843, as passed by the Senate, was included in House Resolution 2516, the civil rights bill which passed the Senate on March 11, 1968.

There is a need for legislation for the protection of the rights of individual American Indians on Indian reservations. The administration of justice for Indians on Indian reservations is a Federal function. The protection of the lives and property of Indians on Indian reservations, and the enforcement of their rights as Indians and as humans, is as much a Federal function as the protection of the health of Indians, or the education of Indians. The history of Interior's appropriations discloses that over the years the Department has consistently requested and received increased amounts to administer "trust property," including irrigation, reclamation, timber, and grazing. Those are the assets used as much by non-Indians as by Indians. But the administration of justice on Indian reservations has been lackluster. Less than 1 percent of the appropriations for the Bureau of Indian Affairs for the last 10 years has been dedicated to "law and order."

S. 1843 and House Resolution 15122 would provide remedial legislation that is long overdue. The bills would place legislative compulsion on the Department of the Interior to take an affirmative interest in providing reservation Indians with a more effective system of justice.

Title I of all three bills before the committee would provide individual Indians with the protection of a bill of rights modified to fit the situation on Indian reservations. An Indian held in detention under tribal law would have the privilege of the writ of habeas corpus, in a Federal court to test the legality of his detention. There is no such protection now.

Title II of S. 1843 and House Resolution 15122 calls on the Secretary of the Interior to recommend to Congress a model code to govern the administration of justice on Indian reservations. Such a model is needed. The tribes understand that they are free to accept or reject the model in whole or in part. Congressman Berry's bill omits this section.

Title III of S. 1843 and House Resolution 15122, the most important title, would modify Public Law 280 to permit State jurisdiction to be extended over Indians on Indian reservations, only with the consent

of the tribe. Congressman Berry's bill omits this amendment of Public Law 280. I should like to dispose of the remaining sections of the bills and return to the title III amendment of Public Law 280.

Title IV and title V of S. 1843 and H.R. 15122 are relatively minor. Title IV is omitted from Congressman Berry's bill. Title IV would amend the U.S. criminal code by adding "assault resulting in bodily injury" as one of the major crimes within the exclusive jurisdiction of the Federal courts. Title V concerns approval of contracts between attorneys and Indian tribes. As to these two titles, my clients have not expressed either support or objection.

Title VI of S. 1843 and H.R. 15122 directs the Secretary of the Interior to revise and extend Kappler's "Indian Affairs, Laws and Treaties" and keep it current, to update the handbook on "Federal Indian Law," and to prepare a compilation of the published and unpublished opinions of the Department relating to Indian affairs. Congress, the tribes, the bar, the courts, and the Department itself have great need for such a work.

Congressman Berry's bill authorizes the Secretary to publish and keep current on an annual basis, Kappler's work. The difficulty is that Kappler's volumes are not complete for the period they cover. Also, some items omitted from earlier volumes were added in later volumes and are not in chronological order. For that reason a revision is needed as provided in S. 1843 and H.R. 15122.

I should like to return to title III of S. 1843 and H.R. 15122, modifying Public Law 280. Title III would require tribal consent before State jurisdiction could be imposed on Indians residing in Indian country. It would apply to those tribes where State jurisdiction has not already been lawfully extended. It is the most significant feature of the bills and of the greatest importance to Indians.

Public Law 280* permits State sovereignty to be imposed on Indian people residing in Indian country without their consent. Of all Indian legislation on the books there is none better known to Indians, or more generally despised, than Public Law 280. The most objectionable provisions of Public Law 280 are those contained in sections 6 and 7. These provisions were inserted in committee without an opportunity for the tribes affected by those sections to be heard. When the legislation was sent to President Eisenhower for signature, the tribes bitterly protested the bill and urged veto. President Eisenhower recognized that the bill was contrary to principles of self-determination and standards of democracy that every American takes for granted. He characterized the bill as an "unchristianlike approach" at the time he signed it into law. President Eisenhower at the same time made clear that he expected the next Congress to rectify the wrong, at least by requiring "consultation." But although bills to amend Public Law 280 to require tribal consent have been introduced in almost every Congress since the 83d, the wrong has not been rectified.

Where States have tried to impose State jurisdiction under Public Law 280, the tribes I represent have resisted. In the last 9 years, a

*Act of Aug. 15, 1953, c. 505, 67 Stat. 588 (18 U.S.C. 1162, 28 U.S.C. 1360).

good deal of tribal effort and money have been expended in preventing States from extending State jurisdiction without tribal consent. In North Dakota, the legislature early extended State jurisdiction under Public Law 280. The Supreme Court of North Dakota held that the State statute violated the State constitution. The constitution was amended to permit the North Dakota Legislature to assume jurisdiction over Indians on reservations. Thereafter, the North Dakota legislative committees held extensive hearings at which the Indians of North Dakota were afforded a full opportunity to present their views. I am happy to say that the North Dakota Legislature did what Congress did not do in Public Law 280. North Dakota adopted legislation which extends State jurisdiction only with the consent of the Indians affected.

The Legislature of the State of Montana also held full hearings on legislation to extend State jurisdiction to Indians in Indian country. The Montana law, like the North Dakota law, requires tribal consent of the Indians affected.

In 1964, a former State senator from the county in which the only reservation in Wyoming is located, introduced a bill to amend the constitution of Wyoming so as to empower the Wyoming Legislature to extend State jurisdiction under Public Law 280. This action was taken without prior consultation, let alone consent, of the governing body of the tribes. I am happy to say that the people of Wyoming did not go along with this sort of approach. In a State referendum, they rejected the attempt even to amend the constitution to give the legislature the power to impose State jurisdiction. To me this points up the basic fairness of the American people. Given the opportunity to express themselves, the voters of a State will remind their legislators that the principles of consent and self-determination are not to be forgotten in dealing with citizens of Indian blood.

The Indians of South Dakota are fully satisfied that the people of South Dakota still hold the principles of consent and self-determination in high regard. In March 1963, the Legislature of the State of South Dakota still hold the principles of consent and self-determination in South Dakota. This was done on short notice and with small opportunity for the Indians to present their views. Livestock interests spearheaded by the majority leader of the State senate, formerly a State senator from Indian country, were behind the effort to place Indians under State control and jurisdiction.

For the first time, probably, since the battle of the Little Big Horn, the nine tribes in South Dakota, all Sioux, united, pooled their resources and obtained a referendum under the State constitution to refer the issue to the people. The tribes purchased television and radio time, and newspaper and magazine coverage for the purpose of bringing to the people of South Dakota, Abraham Lincoln's message that, "No man is good enough to govern another man without that other man's consent." The people of South Dakota responded and rejected by an overwhelming vote of almost 4 to 1, the statute adopted by the legislature of the State of South Dakota. This was a costly procedure for the tribes, but necessary. The people of South Dakota renewed Indian faith in the fairness of the American people.

Given the facts, Americans will not agree arbitrarily to impose their will on another people. This tenet is a fundamental precept of our

foreign policy. We think it should apply at home to our own American Indians. Indians are delighted with the action of the Senate in passing S. 1843 and incorporating its text in the civil rights bill. On behalf of my clients, I urge that S. 1843 be speedily approved and reported and that its text be supported in the civil rights bill.

The CHAIRMAN. Next is Mr. Lazarus. Without objection the statement of Mr. Lazarus will be made a part of the record as if read, and you may use your five minutes as you see fit.

**STATEMENT OF ARTHUR LAZARUS, JR., ATTORNEY AT LAW,
WASHINGTON, D.C.**

Mr. LAZARUS. Mr. Chairman, my name is Arthur Lazarus, Jr. I am a member of a New York and Washington law firm and I appear here today on behalf of six Indian tribes which we represent:

The Hualapai Tribe of Arizona, the Metlakatla Indian Community in Alaska, the Nez Perce Tribe of Idaho, the Oglala Sioux Tribe of South Dakota, the Salt River Pima-Maricopa community in Arizona, and the San Carlos Apache Tribe of Arizona.

I would like for the sake of shortening time to subscribe to the remarks of Mr. Sonosky with respect to title II and title III and to address myself to title I.

At the outset I would like to point out that title I deals with certain specific and enumerated rights which according to the bill an individual Indian would have with respect to the operations of his tribal government. Among these rights are such very basic things as freedom of speech and religion, freedom from unreasonable searches and seizures, and freedom from double jeopardy or the imposition of a cruel and unusual punishment. All of the rights that are enumerated are considered in this day and age basic to the maintenance of a free and democratic society.

These are basic rights. These are rights which I believe, and if I understand the testimony of the other witnesses today, we all believe follow living in the United States. These are things everybody is entitled to no matter what the jurisdiction, no matter what the area. As a matter of fact, the Supreme Court has held that these rights follow American citizens abroad and the American citizen in relation to his Government abroad enjoys these rights.

These are things without which we cannot exist and therefore we can say to everybody in the United States this is what you have, and that is where I would draw the distinction between the basic rights set out in title I and the whole panoply of the Bill of Rights or of Public Law 280.

Some things there is no debate about and that is what is in title I. Everybody has those rights. You can debate about a good number of the, what we call remedial rights under the Constitution. The Supreme Court has drawn the distinction between fundamental rights such as those set forth in S. 1843 and remedial rights about which there is constant interpretation and which do not necessarily follow the flag.

The territorial cases have held that remedial rights need not be granted in territories of the United States.

I would like, therefore, also to pin down what struck me as testimony this morning that went out a little too far in analyzing the

scope of title I. The testimony was that the Supreme Court has handed down a great number of decisions interpreting the Bill of Rights and title I of S. 1843 would make all those decisions automatically applicable to the operations of the tribal governments.

That is not what title I says. Title I says only that the enumerated rights in title I shall apply to the acts of Indian tribes and we do not have in the bill those phrases in the Constitution of the United States such as "due process" or "equal protection of the law" which have given the Supreme Court so much difficulty in interpretation.

With respect to habeas corpus, section 103 would make the great writ available in the U.S. district court to any person to test the legality of his detention by order of an Indian tribe.

Now, I personally believe that the Federal courts as exemplified by the decision of the Court of Appeals for the Ninth Circuit in *Colliflower v. Garland* which was mentioned this morning will probably adopt this rule even in the absence of legislation. I think the courts also will get to the point of saying there are certain rights that everybody living in the United States has and we will protect them with the great writ if there is no other way to do it.

That concludes my testimony with respect to title I.

The CHAIRMAN. Thank you very much. You are right on time.

The gentleman from Washington.

Mr. MEEDS. Thank you, Mr. Chairman.

Mr. LAZARUS, if the first 10 amendments were made to guarantee personal liberties of citizens as against government, if the State of New Mexico, for instance, were to conduct a search and seizure on an Indian reservation under the present situation would the fourth amendment apply to the Indian whose home was improperly searched?

Mr. LAZARUS. Yes. But the State of New Mexico has no jurisdiction on an Indian reservation with respect to the activities of Indians to begin with, but if you got past that hurdle where the State didn't have jurisdiction to start with, and you could suppress anything it did on the basis of lack of basic jurisdiction, the prohibition against searches and seizures then would come into operation.

Mr. MEEDS. But how might you get that matter heard if the fourth amendment does not apply to Indians?

Mr. LAZARUS. Well, if you are saying if a tribal government, not the State of New Mexico, but if we are talking about a tribal policeman—

Mr. MEEDS. Right.

Mr. LAZARUS. Coming in and invading the home of a member of the tribe and seizing evidence, and then attempted to use that evidence in a trial in the tribal court—

Mr. MEEDS. There is no protection. I understand.

Mr. LAZARUS. There is no protection that the individual now has if the judge allows that evidence into the record.

Mr. MEEDS. And it is the same situation, is it not, with regard to the Indian members who were incarcerated here, the judges who held in favor of the Catholic priest and who were incarcerated for it. How do you test the legality of their being held?

Mr. LAZARUS. Only through habeas corpus.

Mr. MEEDS. Now, it is your position that eventually the courts are going to get to, and we know that it has in the ninth circuit, but at

the Supreme Court level will get to extending this whether we pass this bill or not. But right now, how do—how would they ever have the legality of their detention tested?

Mr. LAZARUS. In New Mexico where I understand the courts have ruled that they do not have jurisdiction to entertain habeas corpus petitions, there is in fact no way of testing in a court if the tribal authorities deprive an individual of his constitutional rights.

The CHAIRMAN. The gentleman from Washington has used his time and the chairman's time.

Mr. MEEDS. How much time did I have?

The CHAIRMAN. 2 minutes and a quarter.

Mr. MEEDS. I had about 5 minutes extra.

The CHAIRMAN. We have two more attorneys yet to take care of.

The gentleman from South Dakota.

Mr. BERRY. Just a couple of questions. Is it your understanding, Mr. Lazarus, that at the present time an Indian does not, on the reservation, have the protection of the Bill of Rights? The constitutional provisions?

Mr. LAZARUS. He has the protection of the Federal Bill of Rights in relation to the Federal Government and in relation to the State governments but in relation to his tribal government there are a number of cases decided in the court of appeals which say that the Bill of Rights does not reach the acts of an Indian tribe in relation to its members, and these have covered such matters as taking of property without payment of just compensation, freedom of religion, due process.

There is one case, Colliflower against Garland, where Mrs. Colliflower was brought before the tribal court and pleaded not guilty and the judge said, "I know you are guilty. Five days." And that was her trial. And she petitioned for a writ of habeas corpus which was denied in district court but granted in the court of appeals.

That is a landmark case. In my opinion, that is the way the courts will go in the future, when they are faced with deprivations of constitutional rights.

The CHAIRMAN. Does the gentleman from Idaho wish to use his time or yield to his colleague?

Mr. McCLURE. I would like to ask a question.

The CHAIRMAN. All right.

Mr. McCLURE. Mr. Lazarus, on page 5 of your statement, at the bottom of the page, you say:

"One of the major objections to Public Law 280 is its 'all or nothing' approach."

I would assume from that if this were not clear or if this is to be modified, you would not have a major objection to Public Law 280.

Mr. LAZARUS. There are two major objections to Public Law 280. One is the lack of consent and the "all or nothing" approach is part of the lack of consent. A piecemeal approach implies negotiation back and forth between the Indians and the State authorities.

Mr. McCLURE. I hate to cut you off but if I want to ask another question, I am going to have to. And I would like to refer you to page 4 of the Department of Interior's statement, a letter of March 27, 1968. They stated the second change is a change of form and not a change of substance because the present law permits the States to as-

sume partial jurisdiction either by geographic area or by subject matter. Some of the States have in fact done so. For example, Nevada has assumed jurisdiction over limited areas. Idaho has assumed jurisdiction over limited subject matter.

Does this reach a portion of your objection?

Mr. LAZARUS. Yes, it does reach a portion of my objection but it doesn't reach every State because the Department of the Interior didn't mention all the States.

The CHAIRMAN. We will have you back. Your time has expired.

Mr. LAZARUS. May I just give for the record the citation of the *South Dakota* case which ruled exactly the other way, which said that you could not do it piecemeal. It is *Re Julia Hankins*, 125 Northwest 2d, 839, South Dakota, 1964.

The CHAIRMAN. Thank you very much.

STATEMENT OF ARTHUR LAZARUS, JR.

Mr. LAZARUS. My name is Arthur Lazarus, Jr. I am a member of the New York and Washington law firm of Strasser, Spiegelberg, Fried, Frank & Kampelman, and appear before this subcommittee today on behalf of six Indian tribes which we represent:

The Hualapai Tribe of Arizona;

The Metlakatla Indian Community in Alaska;

The Nez Perce Tribe of Idaho;

The Oglala Sioux Tribe, of South Dakota;

The Salt River Pima-Maricopa Community in Arizona;

The San Carlos Apache Tribe of Arizona.

Our clients wholeheartedly support S. 1843. In this regard, we note that the text of S. 1843 has been added as an amendment to the Senate version of the pending civil rights bill—H.R. 2516, and, in order to expedite enactment of the Indian rights legislation in which they are so vitally interested, our clients are urging that the House of Representatives pass H.R. 2516, as approved by the Senate, without change.

Our clients also endorse H.R. 15122, but, since the exact same proposal already has gone through the Senate, recommend that this subcommittee lay the measure aside in favor of H.R. 2516 and S. 1843, respectively.

Our clients oppose H.R. 15419 because this bill does not include the most important feature of the other bills—the proposed consent amendment to Public Law 280.

On behalf of the six named tribes which we here represent, we submit the following more detailed comments upon the provisions of S. 1843, H.R. 15122, and H.R. 15419:

CONSTITUTIONAL RIGHTS

Section 102 of the pending bills would prohibit any Indian tribe in exercising powers of local self-government from denying its members various rights which are recognized as fundamental under the laws and Constitution of the United States. Among the rights enumerated are freedom of speech and religion, freedom from unreasonable searches and seizures, and freedom from double jeopardy or the imposition of a cruel and unusual punishment. All of the rights enumerated

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-

stitute for that act a procedure, overwhelmingly supported by the Indians themselves, including our clients, whereby States could assume civil or criminal jurisdiction on Indian reservations only "with the consent of the tribe occupying the particular Indian country or part thereof which would be affected by such assumption. * * *". The proposed statute would not change the status quo in any State which already had taken over jurisdiction on Indian reservations pursuant to Public Law 280. If such a State subsequently decided that it had made a mistake in taking over law enforcement in Indian country, however, the bills would authorize the United States to accept a retrocession of that jurisdiction.

As in the case of Public Law 280, S. 1843 and H.R. 15122 provide that State jurisdiction shall not deprive the Indians concerned of any right "afforded under Federal treaty, agreement, or statute," or subject Indian trust property, including water rights, to taxation, encumbrance, or other forms of alienation. In case of an assumption of civil jurisdiction, the bills further provide that any "tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect. * * *"

One of the major objections to Public Law 280 is its "all or nothing" approach, requiring States to assume all jurisdiction on Indian reservations if any jurisdiction is desired. The proposed legislation, authorizing piecemeal transfers of jurisdiction, would permit negotiated agreements between the States and the tribes involved over the extent to which the former should assume responsibility for law enforcement in Indian country and thus should avoid some of the hardships which Public Law 280 has caused.

CRIMES

On the assumption that 6 months in jail, the maximum punishment which most tribal courts can impose, is an inadequate penalty for serious crimes of violence, section 401 would add "assault resulting in serious bodily injury" to the list of major crimes (now 11) committed by an Indian against an Indian in Indian country, which are punishable as Federal offenses in the U.S. District Court. Although our clients are not aware of any pressing need for this change in the law, they are prepared to support the legislation on the theory that its enactment could result only in better law enforcement on Indian reservations.

ATTORNEYS

Section 501 provides that, if the Secretary of the Interior fails to act upon a proposed tribal attorney contract within 90 days, the contract shall be deemed to be approved. In the past, delays in the approval of attorney contracts have deprived tribes of effective legal representation and we regret to report that this situation does not seem materially to have improved in those cases where the agreement is referred from the field to Washington. The creation of a 90-day statutory deadline for secretarial action hopefully will encourage administrators to make their decisions more quickly.

PUBLICATIONS

Section 601 would authorize and direct the Secretary of the Interior: (1) to bring down to date Kappler's "Indian Affairs, Laws and Treaties," which last was revised in 1938; (2) to republish "Federal Indian Law"; and (3) to prepare an accurate compilation of all opinions of the Interior Department Solicitor relating to Indian affairs. All these texts are badly needed and, therefore, our clients wholeheartedly endorse this proposal.

CONCLUSION

As noted at the beginning of this statement, our clients strongly support the provisions of S. 1843 and H.R. 15122. We further submit, however, that this legislation has been the subject of repeated hearings by the Senate Subcommittee on Constitutional Rights since 1961, that the overwhelming majority of Indians throughout the country have shown their support for the measure, and that further debate is unnecessary. In short, our clients urge that the bills before this subcommittee be tabled and that the House pass without change the Senate-approved version of the civil rights bill, H.R. 2516, which contains the same provisions.

The CHAIRMAN. The next witness is Mrs. Frances L. Horn.

**STATEMENT OF MRS. FRANCES L. HORN, ATTORNEY AT LAW,
WASHINGTON, D.C.**

Mrs. HORN. I am Frances L. Horn of the law firm of Wilkinson, Cragun & Barker, and I will take a very short time.

I appear on behalf of our tribal clients, the Flathead Tribes, Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana, the three affiliated tribes of the Fort Berthold Reservation in Montana, the Quinault Tribe of Washington, and the Arapahoe Tribe of Wyoming.

I have with me today Mr. Johnson Wilkinson of the three affiliated tribes but he doesn't wish to speak.

I have a telegram from the Flathead Tribes referring only to the amendment of Public Law 280. Our other clients also are very much in favor of the amendment of Public Law 280 and haven't commented pro or con on the other provisions of the bill, and so I don't feel that I should at this time.

The CHAIRMAN. Is that your statement?

Mrs. HORN. Yes.

The CHAIRMAN. Thank you very much.

Off the record.

(Discussion off the record.)

The CHAIRMAN. The gentleman from Washington.

Mr. MEEDS. Thank you, Mr. Chairman. May I use my time just to ask all of the attorneys who are representing people here to submit for the record the number of people they are representing. In other words—

The CHAIRMAN. They have the statements through their representatives. You want the names of the tribes.

Mr. MEEDS. I would like to have the number and the tribes. If they know them now, fine. If they don't—

The CHAIRMAN. I think we will have to dig that out.

Mr. MEEDS. Can't we have the counsel do that and have it inserted in the record at this place?

The CHAIRMAN. All right. Without objection, so ordered.

(The material referred to follows:)

The approximate number of Indians represented by the attorney witnesses is: Mr. Sonosky, 25,016; Mr. Lazarus, 24,062; Mrs. Horn, 9,697; and Mr. Boyden, 7,045.

The CHAIRMAN. The gentleman from South Dakota.

Mr. BERRY. Do I understand that you and your firm take no position on this legislation at all other than—

Mrs. HORN. Our clients have taken a position only on section 3 and that is—

Mr. BERRY. You mean all of section 3 or just the 280?

Mrs. HORN. The 280, provision 280, and I came only to represent—

Mr. BERRY. What is your position on title II?

Mrs. HORN. Our position on title II is that we personally do not oppose it but I didn't feel that I was authorized to come in and speak for these people who have not said one way or the other that they did or didn't.

Mr. BERRY. Is it your thought that it applies to anything—only the Courts of Indian Offenses?

Mrs. HORN. Frankly, I hadn't analyzed it. Mr. Sonosky's analysis seems proper.

Mr. BERRY. That is all, Mr. Chairman.

Mr. McCLURE. I have no questions.

The CHAIRMAN. Thank you very much, Mrs. Horn.

The next witness is Mr. John Belindo, executive director, National Congress of American Indians. Is Mr. Belindo here?

STATEMENT OF JUANITA NECONI, SECRETARY TO JOHN BELINDO, EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS

Miss NECONI. Mr. Chairman, my name is Juanita Neconi and I am secretary to Mr. John Belindo, who is executive director of the National Congress of American Indians.

Mr. Belindo had this trip previously scheduled before he heard of the hearing dates as set by the subcommittee. However, upon his arrival, he has asked permission to submit a statement which is in support of S. 1843 and asking consideration for the rights of the Pueblo Tribes.

As part of the record for today, because it is a little controversial here, due to the misunderstanding and all, I would like to submit copies of Resolution No. 2 adopted March 4, 1968, during the NCAI Executive Council meeting here in Washington. Also a telegram received from Chairman Frank Ducheneaux of the Cheyenne River Sioux Tribe.

Commissioner Ducheneaux I believe was the originator of Resolution No. 2 and I believe what he states in his telegram will shed better understanding on Resolution No 2.

The CHAIRMAN. Would you read his telegram?

Miss NEONI. Yes. [Reading:]

Re Senate 1843 the Cheyenne River Tribe goes on record favoring the enactment of Senate Bill 1843 Title I rights of Indians. Definitions (3) of Section 101 states 'Indian Court' means any tribal court or court of Indian offense that as written in Title II Model Code governing courts of Indian Offense Section 201 applies only to the Court of Indian Offense as set out in (3) of Section 101 with this understanding we favor the enactment of Senate Bill Number 1843.

The CHAIRMAN. Thank you very much, and the statement will be made a part of the record when it is received.

(The resolution referred to follows:)

RESOLUTION No. 2.

AMERICAN INDIAN CIVIL RIGHTS BILL—S. 1843

Whereas the National Congress of American Indians, in Executive Council, representing 87 American Indian Tribes, assembled at a duly called and convened session, at the Willard Hotel, on March 4-5, 1968, in Washington, D.C., goes on record as supporting S. 1843, with the understanding that the wording of the definitions of subsection (3) of Section 101, and as written and stated in Section 201, apply only to the Court of Indian Offense: Now, therefore, be it

Resolved on this 5th day of March, 1968, That the Executive Council of the National Congress of American Indians goes on record as being in support of S. 1843 with the above understanding.

Rev. WENDELL CHINO,

President, National Congress of American Indians.

Mr. NORMAN HOLLOW,

Chairman, Resolutions Committee, NCAI.

Dated: March 4-5, 1968.

Place: Washington, D.C.

(Statement above referred to follows:)

STATEMENT OF THE NATIONAL CONGRESS OF AMERICAN INDIANS

I am John Belindo, Kiowa-Navajo, and Executive Director of the National Congress of American Indians. The National Congress of American Indians is the only private national organization of the Indian people themselves where the voting and programing is limited to legally recognized Indians and Indian tribes. We are responsible for speaking up for the Indian people on a national scale. Close to 87 Indian tribes including Alaska native villages are represented in our organization. We are in close contact with these various tribes and Alaska Native groups which represents a major cross-section of the Native population of our nation. I am honored to appear here today before this Committee to make a statement indicating the position of the National Congress of American Indians with respect to the Senate approved Bill S. 1843 and related legislative proposals.

Our membership requirements entitle us to assert that we represent a point of view which is veritably Indian. The size and diversity of our membership drawn from the larger Indian Community also entitles us to feel confident that we represent the collective sentiment of that Community more so than any other organization purporting to serve the same interests. It also commits us to serve the collective interests of our membership and pursue policies which are oriented to answer the wants of the majority on those occasions where such wants may be at cross purposes with the desire of individual segments within the membership. We are governed by democratic parliamentary procedure as much as the Honorable body to which this statement is addressed.

We of NCAI have had considerable history of concern with the precursor conditions which have led up to and prompted the items of legislation which is the

subject of this hearings. This concern has been consistent and the policy statements of NCAI reflecting this concern have been equally consistent.

The Tribes support S. 1843 and H.R. 15122 which are identical. The Tribes are opposed to H.R. 15419 by Congressman Berry since it deletes the most important feature of the proposed legislation, mainly amendment to P.L. 280, whereby, States would assume Civil or Criminal jurisdiction over Indian Reservations, but only with the consent of the Tribes concerned. The "consent" provision is the most significant feature of the bills and presents the only real chance Indians have for obtaining amendment to P.L. 280 in the foreseeable future.

In our National Convention of 1953, our membership passed Resolution 3, which reads as follows:

"Whereas, there was adopted in the 83rd Congress Public Law 280, an Act to Transfer Civil and Criminal Jurisdiction to any State in which an Indian reservation is located, without the prior knowledge and consent of the Indian Tribe or tribes, and

"Whereas the National Congress of American Indians is opposed in principle to the adoption of legislation affecting the lives and welfare of the Indian without consultation and consent of the Indians, a principle which the Founders of this Nation so strongly voiced in their relations with the British Parliament, and

"Whereas the President of the United States, on the occasion of signing Public Law 280, on August 15, 1953, called attention to Sections 6 and 7 of that law, which had been included without prior consultation with the Indians who might be affected, and recommended that "at the earliest possible time in the next session of Congress, the Act be amended to require such consultation. Now, therefore, be it

Resolved by the National Congress of American Indians, in convention assembled in Phoenix, Arizona, December 9, 1953, That this organization record its opposition to P.L. 280 in its present form; urge the recommendation of President Eisenhower be acted upon; request that Indian tribes be given full opportunity to be heard in connection with the proposal to transfer to the states civil and criminal jurisdiction over Indian land; and request that Public Law 280 be amended to provide for the consent of Indian tribes affected by the legislation.

"BE IT FURTHER RESOLVED that copies of this resolution be transmitted to the President of the United States, the Secretary of the Interior, the Commissioner of Indian Affairs, and to the Indian Committees of the House of Representatives and the Senate of the United States."

In 1966, in Oklahoma City at our 23rd Annual Convention the membership's continuing concern in this area prompted the passage of Resolution No. 7, which reads as follows:

"Whereas the National Congress of American Indians has since the enactment of Public Law 280 requested that the Act be amended to provide that the consent of the tribal governing body be obtained before a state could assume civil and criminal jurisdiction on the reservation, and

"Whereas legislation in the past Congresses has been introduced to carry out the foregoing: Now, therefore, be it

"Resolved by the National Congress of American Indians assembled this 13th day of November, 1966, That it again respectfully request and urges the 90th Congress to amend Public Law 280 to provide that assumption of states of jurisdiction in civil and criminal acts on Indian reservation shall only be after negotiations between the Indian tribe concerned and the State and consent given, and only to the extent, from time to time, as agreed upon by the Indian tribe and the State; be it further

"Resolved, That the copies of this Resolution be forwarded to the Congressional Committees concerned and other interested parties."

In 1967, at our national Convention in Portland, Oregon, the increasing concern of a simultaneously increasing membership prompted the passage of two resolutions No. 4 and No. 7. Resolution No. 4 reads:

"Whereas the National Congress of American Indians has since the enactment of Public Law 280 requested that the Act be amended to provide that the consent of the tribal governing body be obtained before a state could assume civil and criminal jurisdiction on the reservation, and

"Whereas legislation in the past Congresses has been introduced to carry out the foregoing: Now, therefore, be it

"Resolved, That NCAI, the convention assembled at Portland, Oregon, October 2-6, 1967 that it respectfully requests and urges the 90th Congress to amend

Public Law 280 to provide that assumption of states of Jurisdiction in civil and criminal acts on Indian reservations shall only be after negotiations between the Indian tribe concerned and the State and consent given, and only to the extent, from time to time, as agreed upon by the Indian Tribe and the State; be it further

"Resolved, That copies of this resolution be forwarded to the Congressional Committees concerned and other interested parties."

Resolution No. 7 reads:

"Whereas there is a pressing need for re-definition and clarification of the jurisdiction and procedure of the several courts concerned with Indian affairs and Indian persons and,

"Whereas Law and Order Codes of many organized and unorganized Indian Tribes are under revision and reconsideration or require such revision and consideration in the light of changing socio-economic and security needs of said tribes; and

"Whereas desirable uniformity and diversity of civil and criminal legal procedure and substantive law affecting Indian Tribes and persons can be derived by and through the united consideration and deliberation of all persons and agencies concerned: Now, therefore, be it

"Resolved, That NCAI, in convention assembled at Portland, Oregon, October 2-6, 1967 that the Secretary of the Interior is hereby requested to draft a model law and order code; also to consult with all appropriate Indian legal and tribal courts, members of Congress which he deems necessary to effectuate as far as practicable, a workable and equitable uniform law and order code for Indian reservations that would assist Indian, State and Federal courts, and Indian and non-Indian law enforcement agencies in the proper administration of law and order affecting both reservation and non-reservation Indians; be it further

"Resolved, That before the code becomes effective on any reservation, the tribe involved shall consent to and approve the same."

More recently, at our annual Executive Council meeting in Washington, D.C., on March 4-5, 1968, the membership sustained its concern by passing Resolution 2 which reads as follows:

"Whereas the National Congress of American Indians, in Executive Council, representing 87 American Indian Tribes, assembled at a duly called and convened session, at the Willard Hotel, on March 4-5, 1968, in Washington, D.C., goes on record as supporting S. 1843, with the understanding that the wording of the definitions of subsection (3) of Section 101, and as written and stated in Section 201, apply only to the Court of Indian Offense: Now, therefore be it

Resolved on this 5th day of March 1968, That the Executive Council of the National Congress of American Indians goes on record as being in support of S. 1843 with the above understanding."

We of NCAI, speaking for the majority of our membership feel that the Senate approved bills, S. 1843 and H.R. 15122, both possess long awaited answers and solutions of the concerns reflected in these resolutions which have accumulated over the years. Our position has been most succinctly, accurately, and emphatically delineated by a letter written by Mr. Wendell Chino, Mescalero Apache, President of NCAI to President Lyndon Johnson on December 27, 1967. The portion of the subject letter pertinent to S. 1843 reads as follows:

"Shortly before the first session of the 90th Congress was adjourned, the U.S. Senate passed S. 1843, referred to as the Indian Rights Bill. This action by the eSenate is lauded by many Tribal leaders as marking a very important milestone in Federal and Indian relations in this country.

"In my opinion, there is no other omnibus Indian legislation pending before the Congress that will erase the apprehensions of our Indian people than to see an enactment of Indian rights measures as proposed in S. 1843. Passage of Indian Rights legislation would do more for Indian Tribes in assisting them to initiate and engage with greater efforts, ways to improve social and economic conditions in our Indian communities.

"In view of the fact that Senate approved S. 1843 needs the support of the U.S. House of Representatives, I respectfully request, Mr. President, that you encourage the second session of the 90th Congress to enact Indian rights legislation. The recent Civil Rights legislations have never been explicit in including a comprehensive Indian rights legislation. The opportunity to pass such a legislation is now at hand with S. 1843. I trust that the House will pass Indian rights legislation that is needed and long over due. This is important to the first citizens of this country."

We would like to reiterate a point lightly touched upon earlier in this statement. The size and diversity of the membership of NCAI, its rapid growth over the past decade and its comparatively unique requirement that its membership be Indian, all attest to its capability in providing a genuine comprehensive and synoptic representation of the concerns of the larger Indian community. Its success in achieving this end arises out of the membership present and growing size and the organizational commitment to seek policies which will *collectively* benefit the membership. To maintain this capability NCAI seeks to encourage legislation which has a collective effect. To pursue legislation in a manner which is selectively oriented to accommodate the desire of specific Indian groups could entail a proliferation of small fragmented efforts whose multiplicity would clutter the legislative calendar to an extent which would protract the execution of legislation which benefits only a few Indian groups with the capability and privileges to get on the legislative agenda first. Should this happen, the Indians of this country would be right back where they started in achieving their rights as citizens with their relative impotency as small segmented groups each seeking what is in effect an individual treaty.

We Indians have been this route before and it has certainly not gotten us very much or we wouldn't be at this hearing today nor would there be a need for the legislation presently being considered. Moreover, we feel such fragmentation of efforts by its very nature would generally serve to impede the programs and processes with which we seek to better integrate this disadvantaged Indian into potential advantages of the American Society. It would establish a precedent which could lead to policies in application of any general governmental program in the areas of economic opportunity, health, education, welfare, et. al., where it could be required that these programs submit to individual legislation and negotiation to meet the tailored desires of every particular Tribal group. This conjecture may be excessively negative but it reflects an alerted concern on the part of NCAI about legislative procedures and philosophies which appear to lean in this direction. As an organization, NCAI feels that it honestly represents the interests of its membership and that its membership, in turn, honestly represents the interest of the larger American Indian community. We also feel that our capability in this dimension is the most legitimate and comprehensive of any organization in this nation.

Speaking from this position NCAI strongly recommends that the Honorable members of this Committee endorse S. 1843 and/or H.R. 15122, for subsequent passage to the House of Representatives.

[Telegrams]

Hon. E. Y. BERRY,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN BERRY: I want to thank you for sending a report on S. 1843, which I understand passed the Senate on December 7, 1967, and for the opportunity to give the views of the Cheyenne River Sioux Tribe.

The Cheyenne River Sioux Tribe were opposed to S. 1843 for the reason it took away authority granted to them under the Act of June 18, 1934 and violated the Constitution and By-Law and the Law and Order Code of the Cheyenne River Sioux Tribe.

At the meeting of the Executive Council of the National Congress of American Indians at Washington, D.C., on March 5, 1968, I drafted a Resolution for the consideration by the Council and it was unanimously passed going on record of approving of S. 1843 with the understanding that as the wording in Section 201 only applied to the court of Indian office and not to the Indian tribal court. In writing the Resolution, or the copying of it, a mistake was made, as the Resolution shows Section 102 instead of Section 201. I am enclosing the Resolution for your information. I am also sending a copy of this letter to Mr. John Belindo, Executive Director of the National Congress of American Indians. As to the mistake made in line 6 of Resolution No. 2, after the word Section, 102 should be changed to 201. Also enclosed for your information is the Constitution and By-Laws of the Cheyenne River Sioux Tribe. See page 5, Subsection (k) under Article IV—Powers of Self Government, Section 1. Also see page 16 of the By-Laws, Article V—Tribal Courts (Judicial Code).

Thanks again for giving the Tribe this opportunity to voice their views.

Sincerely,

FRANK DUCHENEAUX,
Chairman-CRSTC.

BELLINGHAM, WASH.

JOHN BELINDO,
Executive Director, National Congress of American Indians,
 Washington, D.C.:

Following wire sent to Lloyd Meeds: The Lummi Indian Business Council is strongly in favor of Indian amendment to civil rights bill. Your support on our behalf is needed.

VERNON LANE,
Chairman, Lummi Indian Council,
 Marietta, Wash.

SCOTTSDALE, ARIZ.

JOHNNY BELINDO,
Executive Director, National Congress of American Indians,
 Washington, D.C.:

Appreciate your wire. Have sent wires to Congressmen Aspinall, Haley, Udall, Rhodes, and Steiger 2 days ago. Endorsing S. 2516 as it came out of the House. Quiets the fears of Public Law 280.

FILMORE CARLOS,
President, Salt River Indian Community.

ROOSEVELT, UTAH.

JOHNNY BELINDO,
Executive Director, National Congress of American Indians,
 Washington, D.C.:

Your T. T. received. We believe S. 1843 needs amendment and special consideration. We oppose amendment in housing bill. We are preparing our own amendments for hearing.

UTE INDIAN TRIBE,
 FRANCIS WYASKER,
Chairman, Tribal Business Committee.

MISSOULA, MONT.

JOHNNY BELINDO,
Executive Director, National Congress of American Indians,
 Washington, D.C.:

The Confederated, Salish, and Kootenai Tribe of Flathead Reservation, Mont. urge favorable action on provision of S. 1843 and H.R. 15122 which would modify Public Law 280 and thereby secure to tribes the right to govern themselves, and if that right has been taken from them to permit the State to return it to them.

TRIBAL COUNCIL,
Confederated Salish and Kootenai Tribes.

EUREKA, CALIF.

JOHNNY BELINDO,
Executive Director, National Congress of American Indians,
 Washington, D.C.:

The Hoopa Tribal Business Council, representing over 1,200 Indian members urges immediate passage of Amendment No. 430 to American Indians civil rights bill.

CHAS. J. MOON,
Chairman.
 ELSIE RICKLEF,
Legislative Committee.

HAVRE, MONT.

JOHN BELINDO,
Executive Director, National Congress of American Indians,
 Washington, D.C.:

Requesting your support civil rights bill for the American Indians, Amendment No. 430.

JOE DEMONTINEY, *Chairman, Chippewa-Cree Tribe.*

METLAKATLA, ALASKA.

CONGRESS OF AMERICAN INDIANS,
Washington, D.C.:

Metlakatla Indian committee fully supports Amendment 430 to civil rights bill to clarify constitutional rights of American Indians. We urge your support on this amendment at this time.

Mayor HENRY S. LITTLEFIELD.

PINE RIDGE, S. DAK.

JOHN BELINDO,
Executive Director, National Congress of American Indians,
Washington, D.C.:

Oglala Sioux Tribe supports Indian amendment to civil rights bill. Urge favorable passage.

JOHNSON HOLY ROCK,
President, Oglala Sioux Tribe.

ONEIDA, WIS.

JOHN BELINDO,
Executive Director, National Congress of American Indians,
Washington, D.C.:

Copy of following message sent Congressman James Haley: The Oneida Tribe of Indians, Wisconsin, Inc. are aware of the House opposition to Amendment No. 430 of the civil rights bill. Please support this amendment which clarifies the constitutional rights of American Indians.

LORETTA V. ELLIS,
Oneida Tribal Secretary.

[Telegrams]

FORT YATES, N. DAK., March 26, 1968.

Hon. E. Y. BERRY,
House of Representatives, Washington, D.C.:

In response to your letter of March 21, 1968, concerning S. 1843, we had full hearings on S. 1843 and all other bills to amend PL 280. The Standing Rock Tribe is very pleased with S. 1843 and urges that you keep it in the main civil rights bill. We see no reason for treating Indians different from other citizens so far as civil rights are concerned. The features in S. 1843 will be very helpful.

A. J. AGARD,
Tribal Chairman, Standing Rock Sioux Tribe.

FORT YATES, N. DAK., March 26, 1968.

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

The United Tribes of North Dakota strongly supports including the provisions of S. 1843 in the general civil rights bill as passed by the Senate. We do not want the Indian civil rights knocked out of the main civil rights bill. We are satisfied with the provisions as now written. We have had at least two hearings before the Senate Judiciary Committee in Washington and hearings were held in North Dakota. We see no reason for further hearings.

LEWIS GOODHOUSE,
Chairman, United Tribes of North Dakota.

WINNEBAGO GLOBAL COUNCIL,
Winnebago, Nebr., March 29, 1968.

CHAIRMAN, INTERIOR AND INSULAR AFFAIRS,
U.S. House of Representatives,
Washington, D.C.:

Winnebago Tribe of Nebraska urges passage of Amendment 430 to Civil Rights Bill to protect Constitutional Rights of American Indians.

GORDON BEAVER,
Chairman.

APRIL 3, 1968.

Representative JAMES A. HALEY; Senator ROMAN L. HRUSKA; Senator CARL T. CURTIS; Representative ED EDMONDSON; REPRESENTATIVE ROBERT V. DENNEY; Representative JOHN P. SAYLOR; Representative GLENN CUNNINGHAM
WASHINGTON, D.C.:

We understand congressional opposition to Indian amendment to civil rights bill is mounting. Amendment 430 and S. 1843 contain identical provisions which clarify constitutional rights of American Indians. Request your full support of these provisions.

ALFRED W. GILPIN,
Chairman, Omaha Tribal Council.

HUALAPAI TRIBAL COUNCIL,
Palm Springs, Ariz., March 27, 1968.

ROYAL D. MARKS,
Phoenix, Ariz.

DEAR MR. MARKS: This is what I have sent to the following: Wayne Aspinall, James Haley, Morris Udall, John Rhodes, and Sam Steiger.

The Hualapai Tribe through its governing body the Hualapai Tribal Council endorses and prefers that the Civil Rights Bill be passed as it came out of the Senate. Indian Tribes have been trying for fifteen years to get P.L. 280 amended to provide for Indian consent.

Sincerely,

RUPERT PARKER,
Chairman.

NATIONAL CONGRESS OF AMERICAN INDIANS,
Washington, D.C., December 27, 1967.

THE PRESIDENT,
*The White House,
Washington, D.C.*

MR. PRESIDENT: Shortly before the first session of the 90th Congress was adjourned, the U.S. Senate passed S. 1843 referred to as the Indian Rights Bill. This action by the Senate is lauded by many tribal leaders as marking a very important milestone in Federal and Indian relationship of this country.

In my opinion, there is no other omnibus Indian legislation pending before the Congress that will erase the apprehensions of our Indian people than to see an enactment of Indian rights legislation such as S. 1843. An Indian rights legislation would do more for Indian tribes in assisting them to initiate and engage with greater efforts to improve social and economic conditions in our Indian communities.

In view of the fact that the Senate approved S. 1843, it needs the support of the U.S. House of Representatives. I respectfully request, Mr. President, that you encourage the second session of the 90th Congress to enact a Indian rights legislation. The recent civil rights legislations have never been explicit in including a comprehensive Indian rights legislation. The opportunity to pass such a legislation is now at hand with S. 1843. I trust that the House will pass Indian rights legislation that is needed and long overdue. This is important to the first citizens of this country.

The Congress of the United States also needs to repudiate the present policy of terminating Indian tribes and declare a new policy of termination affecting Indian tribes. A new policy statement will remove all psychological impediments that stifle development of Indian tribes. Indian tribes fear full development or progress because their progress might be interpreted that a certain tribe is ready for withdrawal of Federal and tribal relationship without their consent. It is my hope that the forthcoming session of Congress will declare a new policy and usher in a new era of beneficial Indian legislation.

Yours respectfully,

WENDELL CHINO,
President.

COUNCIL ANNETTE ISLANDS RESERVE,
Metlakatla, Alaska, November 13, 1967.

NATIONAL CONGRESS OF AMERICAN INDIANS,
Washington, D.C.:

This is to follow up on our telegram supporting Ervin Amendment HR 2516. Our Violators (liquor, Misdemeanor, Vehicle traffic violations, Crime) answer to the State Police and Magistrate. We are not happy with this because:

1. We have to fly in a State Trooper from Ketchikan and sometimes also a Magistrate. Ketchikan is 16 miles from here and by water.

2. They cannot answer our call sometimes because they have other areas to cover. Sometimes weather does not permit them to come in even when they are drastically needed.

3. This way a lot of things lag. Witnesses sometimes don't show up or change their minds about a given case after some time has elapsed.

4. We used to pick up \$1500.00 to over \$2000.00 on fines here when we had our own Magistrate. Our Constitution provides that our Magistrate can fine violators up to \$360.00 and/or sentence them to so many days free labor. This has become ineffective since the advent of Public Law 280.

5. We cannot jail sentence anyone. We can hold them in confinement until the State Police arrives.

6. Misdemeanor—breaking windows, marking up posters, stealing bicycles, ignoring curfew, breakins and pilfering, shoplifting, and the like has been hard to curtail and more or less rampant since Public Law 280. The State Police and Magistrate at Ketchikan do not want to, or do not have time for these cases.

7. Violations of all our Ordinances and disrespect of special rules on Good Conduct has been at a high peak.

8. A steady flow of liquor is in progress now, and bootleggers are plentiful. Our local Police according to State Officers are not empowered to make arrests; in fact our local Policemen are not as effective as they once were.

Respectfully yours,

HENRY S. LITTLEFIELD, Sr.,
Mayor.

NOVEMBER 8, 1967.

Mr. JOHN BELINDO,
Executive Director, NCIA,
Washington, D.C.:

Your attention is respectfully called to the amendments to H.R. 2516, the Civil Rights Bill, proposed by Senator Ervin.

The Indian rights amendment would repeal the provisions of Public Law 280 which allow states to assert civil and criminal jurisdiction over Indian country without the consent of the Indians. The Quinault Tribe has repeatedly objected to this aspect of P.L. 280 on the grounds that it is both impractical and unjust. In my report to Robert Bennett, Commissioner of Indian Affairs on October 17, 1966, I made the following statement, which is the official stand of the Quinault Tribe on this problem:

"Because of the special status of Indian Reservations and the provisions of the treaties with Indians, state governments, have neither the political capacity nor the legal structure to administer jurisdiction over them in a manner which satisfies treaty rights. Neither do the state and local law enforcement agencies have the funds, the personnel, nor the facilities to do the job, by their own admission."

I am submitting herewith documentary evidence of the truth of the above statement in the form of recent newspaper articles. These illustrate the inability of Grays Harbor County government to meet its present obligations to the non-Indians of this area. Grays Harbor County is being criticized for its level of taxation, while, at the same time the County sheriff's force is threatened with disruption due to their inability to provide adequate salaries for officers. At the same time, Westport, at the south end of the county apparently suffers from inadequate law enforcement, with alcoholism a greater problem in Grays Harbor County than elsewhere in the state, and with inadequate financing to maintain their present program, it is quite evident that Grays Harbor County is not ready to provide even normal protection to the Quinault Indian Reservation.

The Quinault Reservation is now policed by four full time officers. If this protection were removed through state assumption of full jurisdiction it is very clear that we would be left without any protection at all.

Even if these problems did not exist we are sure that the State cannot do a competent job on the Quinault Indian Reservation. Their officers neither understand nor recognize the fact that the Quinault Tribe must have a jurisdiction which is capable of protection hunting, fishing, and land use rights guaranteed to Indians by their treaty.

It is at this point that we feel that the Congress acted in an irresponsible manner in giving states the rights to assume jurisdiction without safeguards to avoid hopeless complications.

Senator Irwin's amendment, if passed, would provide long needed relief from an extremely distressing problem.

Your support is earnestly solicited.

Yours very truly,

QUINULT TRIBAL COUNCIL,

JAMES JACKSON, *Chairman.*

The CHAIRMAN. Unless there is an objection, the statement of Mr. Boyden under date of March 27—John S. Boyden—relative to this legislation will be made a part of the record and the findings of fact and conclusions of law will be made a part of the file.

Hearing no objection, so ordered.

(The statement referred to follows:)

BOYDEN, TIBBALS & STATEN,

Salt Lake City, Utah, March 27, 1968.

Hon. JAMES A. HALEY,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. HALEY: Supplementing the conference held in your office a short time ago when you generously made your time available to the Ute and Hopi delegations, we desire to specifically point out our objections to S. 1843. We will make reference to Report 841 as reported by Senator Ervin, with amendments, on December 6, 1967, in connection with the proposed legislation which has now passed the Senate and is also the subject of the Dirksen amendment to S. 2464.

SECTION 102 (3), PAGE 8

[See discussion under Section 102 (4)]

SECTION 102 (4), PAGE 8

The defendants' standard of integrity in many Indian courts is much higher than in the State and Federal Courts of the United States. When requested to enter a plea to a charge the Indian defendant, standing before respected tribal judicial leaders, with complete candor usually discloses the facts. With mutual honesty and through the dictates of experience, the Indian judge often takes a statement of innocence at face value, discharging the defendant who has indeed, according to tribal custom, been placed in jeopardy. The same Indian defendants in off-reservation courts soon learn to play the game of "white man's justice", guilty persons entering pleas of not guilty merely to throw the burden of proof upon the prosecution. From their viewpoint it is not an elevating experience. We are indeed fearful that the decisions of Federal and State Courts, in the light of non-Indian experience, interpreting "testifying against oneself" would stultify an honorable Indian practice while the constructions of the same courts as to what is "double jeopardy" would open an inverted loophole to in fact try a defendant twice.

SECTION 102 (6), PAGE 8

An Indian Judge without legal training may nevertheless possess sound judgment and be fully capable of presiding over an Indian Court with dignity and fairness. An ordinance of the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah provides that any person shall have the right to the assistance of a lawyer in tribal courts when the judge is a lawyer and on appeal when one of the judges is a lawyer. At all other times he shall have the right to the assistance of a member of the tribe in representing him. That tribe has learned that the presence of a lawyer in a tribal court representing a person before a judge who is not a lawyer generates confusion and thwarts justice. Yet the beneficial function of the Indian judge in operating with sympathy and under-

standing for tribal traditions and customs and at greatly reduced costs to the tribe and to the litigants cannot be denied.

The right to "assistance of counsel" under the decisions of State and Federal Courts is the right to the assistance of a lawyer.

SECTION 102 (7), PAGE 8

The limitation of six months imprisonment or a fine of \$500, or both, has long been in effect in Courts of Indian Offenses by the Code of Federal Regulations, (25 C.F.R., Chapter I) but Tribal Courts operating under their own inherent powers have not been so delimited.

The tribes I represent are in the process of seeking agreements with the State and Federal Governments for the use of their institutions of hospitalization, rehabilitation and correction for Indians convicted of tribal offenses. These same tribal governments are ahead of their non-Indian counterparts in abandoning the concept of punishment for crimes, replacing it with more scientific methods of diagnosis, treatment and rehabilitation. Public protection is not abandoned in the process. It is regarded as of equal importance.

The limitation proposed in this section is not justified in its application to Tribal Courts. The tribal governing bodies of the Ute and Hopi Tribes have commenced comprehensive programs worthy of note by all those interested in judicial reform.

SECTION 102 (10), PAGE 9

The right of trial by jury, upon request, is a recognized but seldom used privilege with many tribes. Many accused Indian people feel they do not need a jury of peers to determine the facts already within the knowledge of the accused. The defendant enlightens a credulous court. This unfeigned procedure may seem unnatural and even odd to current concepts of jurisprudence, but what moral law prompts its abandonment? The Ute Tribe affords trial by jury at the choice of those charged, but the Pueblo Indians have informed us that close family relationships in small tribes prevents the use of the jury system in those tribes.

CONCLUSIONS ON TITLE I, SECTION 102

1. Void of guile, the Indian inquires, do we not have inalienable rights to be protected as our customs and traditions require? Or must we relinquish our right of self-government and submit to an alien code born of the reasoning that someone else knows better than we the safeguards of our sacred rights? If the final result of our own effort is oppressive to the individual Indian or offends human dignity, Congress should not tolerate our tyranny, but where is the case for such a general assumption? The Ute Indian Tribe has its own Bill of Rights guaranteeing the right to vote, equal opportunity to participate in the economic resources and activities of the reservation, freedom of speech, worship, conscience, press, assembly and association and further the right to a prompt and public trial with other attendant rights for the accused. Jury trial is assured. Excessive bail may not be required and cruel punishment shall not be imposed. The Hopi Bill of Rights is not as extensive, but it has met their needs. When it does not, I am confident they will change it. Spare us the misery and indignity of being forced to acquire your vices to give efficacy to your cures.

2. Indian Tribes have been encouraged to exercise their own initiative in seeking a better life both socially and economically. Nothing is more discouraging to the Indian people than to have their extraordinary efforts summarily rebuffed by well-meaning but inconsiderate and incompatible Congressional legislation.

3. While the objections outlined above may be met with individual amendments, such a procedure would undoubtedly have negative implications. We are sure Congress would not want such amendments to be subject to the interpretation that certain violations of the Bill of Rights are desirable. We acknowledge the laudable intentions of Congress and at the same time implore a recognition of the equally laudable intentions of the tribes that are in good faith attempting to provide a maximum of individual freedom, but are finding grave difficulty in the application of the terminology of non-Indian law and the interpretations of United States Courts to an entirely different set of circumstances, including Indian traditions and customs. It seems highly desirable that there be a frank recognition, in the quest for protection of inalienable rights for everyone, that some virtue and some vice can be found in both the Indian and the non-Indian

effort. As a suggested alternative to the language employed in Section 102, we offer the following:

Insert after word "government" on line 20 page 7 the phrase ", except as herein otherwise provided."

Insert as a new paragraph at the end of Section 102 on page 9 the following:

This section shall not apply to any Indian tribe operating its government subject to its own duly adopted Bill of Rights and having tribal courts, as distinguished from courts of Indian offenses, such courts being possessed of the powers necessary to enforce the tribal Bill of Rights. In the event the Secretary of the Interior, or his duly authorized representative, has reason to believe that the judicial system of any tribe is not operating in a manner reasonably calculated to protect the individual members of such tribe against arbitrary oppression and conduct offensive to human dignity, he may issue an order requiring the tribal executive officer or officers to show cause why such tribe should not become subject to the Bill of Rights as provided in this section. If after a hearing, to be held in accordance with rules promulgated by the Secretary of the Interior, it is determined by the Secretary of the Interior, it is determined by the Secretary of the Interior, or his duly authorized representative, that the judicial system of said tribe is in fact not operating in a manner to reasonably protect the individual members thereof against arbitrary oppression and conduct offensive to human dignity, he may declare such tribe subject to the Bill of Rights as set out in this section and that tribe shall become subject thereto upon publication of such declaration in the Federal Register. The determination by the Secretary of the Interior, or his duly authorized representative, shall take into consideration the traditions and customs of such tribe. Any tribe desiring to voluntarily subject itself to the Bill of Rights set forth herein may do so by so declaring after approval of the tribal members in a manner required for the adoption of a constitution for said tribe and the tribe shall become subject thereto upon publication of such declaration in the Federal Register.

SECTION 201, PAGE 9

Since it is not a matter of common knowledge that there is a distinction between Courts of Indian Offenses on Indian reservations and Tribal courts on Indian reservations, in the interest of clarity it is suggested that the period in line 19, page 9, be deleted and a comma inserted in lieu thereof, to be followed by the following language: "where no tribal courts have been established and maintained."

SECTION 301(A), PAGE 11 AND SECTION 302, PAGE 12

An ambiguity would be removed by inserting at the end of line 3, page 11, the word "applicable". The same word should be inserted after the word "those" on line 7, page 12, for the same reason.

SECTION 303(A), PAGE 13

Retrocession of jurisdiction conferred by this Act should also be possible. It is suggested that the words "pursuant to this act or" be inserted at the end of Line 7, page 13.

SECTION 401, PAGE 15

This section should be amended to allow concurrent jurisdiction of the major offenses in Indian Courts where federal prosecution has been declined or dismissed without placing the defendant in jeopardy. A reasonable limitation on the sentence by Indian Courts in these cases would not be objectionable.

There has been a rather general assumption that cases placed within the jurisdiction of the federal courts solves the Indian problem in such cases. This naive supposition has been a great detriment to law and order programs on Indian reservations. During the years commencing with 1960 to and including 1967, only 15 cases presented to federal authorities in Utah were prosecuted while 55 were declined for reasons that greatly disturbed the tribal law enforcement officials. We understand this situation is not unique to Utah. When Indian cases are tried in federal courts, prosecutors are often less than enthusiastic for their cause, while jurors tend to be overly sympathetic with Indian defendants. The insurmountable difficulty seems to be the lack of interest or under-

standing in the reservation problems. The proposed amendment would clear a legal question and offer at least a measure of relief.

QUALITY OF TRIBAL COURTS

After a variety of experiences with both Federal and State courts, some tribes have reached the conclusion that if they are to have effective law enforcement upon the reservations they must assume the responsibility themselves. It is probable that Indian tribes have not been astute in their public relations in the field of law and order. We take the liberty of briefly outlining the program now under way on the Uintah and Ouray Reservation in Utah.

The Tribal Juvenile Ordinance adopted May 6, 1965, is a twenty-one page document patterned after the National Juvenile Court Act adopted by the State of Utah and others. The tribe does not have a member adequately trained in this field to serve as judge and, therefore, it has reached into the Utah State judicial system to employ juvenile judges of outstanding merit to serve on its court. An example of the quality and reasoning of a court enlightened upon the Indians' real problems is found in the enclosed exhibit, being the Findings of Fact and Conclusions of Law and Judgment in the case of The Ute Indian Tribe In The Interest of Eddie C. Perank, a Minor, decided by the Tribal court on February 29, 1968.

The law and order code of the tribe, only a portion of which has been adopted by ordinance, is a progressive and far-reaching experiment in human relations. It is being drafted in conjunction with the State Council on Criminal Justice Administration in the State of Utah, a body created by the State Legislature.

There are no degrees of crimes in the code nor are there classifications, such as misdemeanors and felonies. The word "sentence" could well be eliminated, employing instead the term "treatment"; for as heretofore mentioned, punishment can only be incidental to the paramount object of protecting society while diagnosing the cause and treating and rehabilitating the defendant. It is contemplated that Indian judges will continue to try the cases. They will function independently as the triers of the facts, but the diagnosis and treatment will be determined by a board consisting of the trial judge, a psychiatrist, a medical doctor, a criminologist and a lawyer. Accurate controls of the records are being established to determine the results of this experiment that has long been needed in other fields of justice.

The Hopi Tribe of Arizona is amending its constitution to fit its modern day needs, and is closely following with keen interest the Utah experiment in tribal judicial reform.

From the foregoing we hope we have illustrated that a general indictment of all Indian tribal courts is not justified. There are many other Indian courts that have handled legal matters for tribal members with complete satisfaction for years. Little is said of their accomplishments, while any miscarriage of justice is publicized considerably out of proportion to its relative importance.

I appreciate that if I am given the opportunity to testify before Congress I must meet its convenience. An irrevocable appointment at a stockholders meeting in the State of Washington prevents my presence at the hearing on March 29, although both the Hopi and Ute tribes have requested me to appear. In the event any further hearings are anticipated on this bill I would appreciate being informed, as I would welcome the opportunity to elaborate on the matters set forth in this letter. I would hope to impress upon the committee the sincerity of purpose of the tribes I represent, illustrating the need for the amendments requested.

Very truly yours,

JOHN S. BOYDEN.

The CHAIRMAN. Any thing else to come before the committee?

May the chairman thank all of those who have been here today. This is perhaps the best decorum that we have had in this committee for a long, long time, and we try to have good decorum. You have been an attentive and a helpful audience and we appreciate it very much.

The record is being kept open because we have to hear yet from the Department witnesses. At that time the attorneys who appeared here today, Mr. Sonosky, Mr. Ladarus, Mrs. Horn, and Mrs. Belindo, will be notified and we would like to have them present if it is possible for them, or somebody from their offices to be present.

The committee stands adjourned.

(Thereupon, at 3:20 p.m., the hearing in the above matter was concluded.)

(The statement of Senator Ervin received following the hearing will be placed in the record at this place with permission granted on p. 35.)

STATEMENT OF THE HONORABLE SAM J. ERVIN, JR., U.S. SENATOR FROM THE
STATE OF NORTH CAROLINA

Mr. Chairman, thank you for the opportunity to present testimony on S. 1843, a bill to grant the American Indians rights which are secured to other Americans. As you know, on December 7, the Senate unanimously passed S. 1843, and by this action declared that the American Indian should no longer be a second-class citizen. I should like to point out that the President of the United States, on March 6, 1968, sent to the Congress a message relating specifically to the problems of the American Indian. In his unique and persuasive message the President made the following statement in urging passage of the provisions embodied in S. 1843:

"In 1934, Congress passed the Indian Reorganization Act, which laid the groundwork for democratic self-government on Indian reservations. This Act was the forerunner of the tribal constitutions—the charters of democratic practice among the Indians.

"Yet few tribal constitutions include a bill of rights for individual Indians. The basic individual rights which most Americans enjoy in relation to their government—enshrined in the Bill of Rights of the Constitution of the United States—are not safeguarded for Indians in relation to their tribes.

"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.

"In addition to providing new protection for members of tribes, this bill would remedy another matter of grave concern to the American Indian.

"Fifteen years ago, the Congress gave the States authority to extend their criminal and civil jurisdictions to include Indian reservations—where jurisdiction previously was in the hands of the Indians themselves.

"Fairness and basic democratic principles require that Indians on the affected lands have a voice in deciding whether a State will assume legal jurisdiction on their land.

"I urge the Congress to enact legislation that would provide for tribal consent before such extensions of jurisdiction take place."

In requesting favorable action on the Indian rights measure, the President has affirmed the Federal Government's belief that the American Indians should share in the American dream of equality and justice under law.

These Indian rights measures have had careful and meticulous study by the Senate of the United States. In fact, I know of no bill which has been as thoroughly studied as the one pending before this Subcommittee. Beginning in 1961, the Subcommittee on Constitutional Rights initiated a study of the legal status of the Indian and the problems he encounters when asserting constitutional rights in his relations with State, Federal, and tribal governments. This effort represented the first study that the Congress had ever undertaken in this field, and the results were startling indeed. Subcommittee investigations showed that the American Indian lived in a legal no-man's land—without full protection from either tribal, State, or Federal governmental organizations.

Since the initiation of this study seven years ago, the Subcommittee has conducted hearings in California, Arizona, New Mexico, Colorado, North and South Dakota, and Washington, D.C. We have heard from individual Indians, tribal units, national associations representing Indians, tribal attorneys, Members of Congress, State officials, and representatives of the Department of the Interior. These hearings, and the voluminous record compiled by the Subcommittee staff, furnish clear evidence of the necessity for congressional action in an area too often overlooked by Congress.

This omnibus measure is a consolidation of five individual bills—S. 1843, S. 1844, S. 1845, S. 1846, S. 1847—and one joint resolution—Senate Joint Resolu-

tion 87—which I introduced on May 23, 1967. As originally introduced, these measures covered the six major areas in which the rights of Indians have been neglected for years. As amended, S. 1843 was the vehicle for combining the provisions of the six original measures.

At this point, I should like to give a brief analysis of the six titles of the bill and then discuss some specific problems that have arisen in connection with certain titles.

TITLE I

The first title makes the Bill of Rights applicable to an Indian when he is charged with a crime by a tribal court, thus assuring the Indian citizen the basic rights and privileges in his relationship with his tribal government that every other American citizen now has in his relationship with his State, local and Federal Governments.

Tribal governments have been considered by the courts as quasi-sovereign entities to whose actions the Bill of Rights, along with other constitutional provisions, do not apply. The Subcommittee's hearings established that in many instances tribal governments have deprived Indians of the right to be represented by counsel, the right to be free from illegal search and seizure, the right to freedom of religion—rights that others take for granted. Title I seeks to secure these basic rights. The Title prohibits Indian tribes exercising powers of self-government from:

First, making or enforcing any law prohibiting the free exercise of religion, or abridging the freedom of speech, press or assembly, or the right of the people peaceably to assemble and to petition governmental units for a redress of grievances;

Second, violating the right of individual Indians to be secure in their persons, homes, and possessions against unreasonable searches and seizures;

Third, subjecting any person for the same offense to be twice put in jeopardy;

Fourth, compelling any person in any criminal case to be a witness against himself;

Fifth, taking any private property for a public use without just compensation;

Sixth, denying to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense at his own expense;

Seventh, requiring excessive bail, imposing excessive fines, or inflicting cruel and unusual punishments. The penalty of a \$500 fine or imprisonment for a term of 6 months or both would remain the maximum punishment for any one offense;

Eighth, denying to any person equal protection of the laws or depriving any person of liberty or property without due process of law;

Ninth, passing any bill of attainder or *ex post facto* law; or

Tenth, denying to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

Title I also provides that any Indian detained by order of a tribal court is entitled to the writ of habeas corpus in a court of the United States to test the legality of his detention.

In order to give Indian tribes an opportunity to adjust to this new system of jurisprudence, the provisions of title I would become effective 1 year after the date of enactment.

TITLE II

Title II is designed to complement the provisions of title I. It directs the Secretary of the Interior to recommend to Congress a model code governing the administration of justice by courts of Indian offenses on Indian reservations. The present code, found in title 25 of the Code of Federal Regulations, part II, is outmoded, impractical, and fails to provide for adequate administration of justice. For example, under the existing code, the total number of challenges for cause and peremptory challenges permitted in selecting a jury is three, and the fee for jury duty remains 50 cents a day.

In carrying out the provisions of title II, the Secretary of the Interior is directed to consult with Indians, Indian tribes, and interested agencies of the United States.

TITLE III

Title III repeals Public Law 83-280, which permits States to assume criminal and civil jurisdiction over Indian tribes regardless of the wishes of the tribe. Tribes have been critical of Public Law 83-280 because it authorizes the unilateral application of State law to all tribes without their consent and regardless of their needs or special circumstances. Moreover, it appears that tribal laws were unnecessarily preempted and, as a consequence, tribal communities could not be governed effectively.

The Subcommittee on Constitutional Rights in its "Summary Report of Hearings and Investigations of the Constitutional Rights of the American Indian" arrived at the following conclusion concerning legislation to remedy Public Law 83-280:

"Indian governments do not, of course, bear full responsibility for those denials of rights which have occurred or which in the future may occur. It appears, paradoxically, that the States have also erred, both by failing to prosecute offenses and by assuming civil and criminal jurisdiction when that assumption was clearly against the wishes of the Indian peoples affected. Concurrent jurisdiction by the United States in the first instance and a repeal of Public Law 280 or at least its modification to include tribal consent as a precondition of the State's assumption of jurisdiction, would seem to provide a suitable remedy."

Title III would require a State desiring to assume civil and criminal jurisdiction over an Indian tribe to first obtain the consent of the affected tribe.

TITLE IV

The purpose of title IV is to add to the Major Crimes Act the offense of "assault resulting in serious bodily injury." This new crime would amend section 1153 of title 18 of the United States Code.

In 1885, Congress enacted the Major Crimes Act, which presently provides Federal Courts with jurisdiction over the crimes of murder, manslaughter, rape, incest, assault with intent to kill, assault with a dangerous weapon, assault with intent to commit rape, carnal knowledge, arson, burglary, robbery, embezzlement, and larceny committed by an Indian against another Indian or other person. The Federal courts have jurisdiction over these crimes where the States have not assumed criminal jurisdiction over Indian offenses. This title adds "assault resulting in serious bodily injury" to the list of crimes covered by the Act. Since Indian courts cannot impose more than a 6-month sentence, the crime of aggravated assault should be prosecuted in a Federal court, where the punishment will be in proportion to the gravity of the offense.

TITLE V

The purpose of title V is to expedite the approval of contracts between Indian tribes or other groups of Indians and their legal counsel when such approval by the Secretary of the Interior or the Commissioner of Indian Affairs is required by law.

As a result of his guardianship powers, the Secretary of the Interior has been provided authority to approve contracts between Indian tribes and their attorneys. Despite efforts of the Department of the Interior in 1960 and 1962 to expedite approvals of tribal attorney contracts, administrative delay in approving such contracts is a continuing problem. Frequently these delays extend for over a year and consequently impose so severe a hardship upon tribes in need of counsel that they constitute a denial of due process of law.

This proposal provides that applications related to the employment of legal counsel made by Indian tribes and other Indian groups to the Secretary of the Interior or the Commissioner of Indian Affairs are deemed approved if neither approved nor denied within 90 days from the date of filing.

TITLE VI

Title VI authorizes and directs the Secretary of the Interior to revise and republish Senate document 319, 58th Congress, and the treatise entitled "Federal Indian Law." This section also directs that an accurate compilation of the official opinions of the Solicitor of the Department of the Interior be compiled

and maintained on an annual basis, and that Senate document 319, containing treaties, laws, Executive orders, and regulations relating to Indian affairs be kept current on an annual basis. The section authorizes the necessary funds for carrying out the purposes of title VI.

The need for adequate and up-to-date research tools in the area of Indian affairs is pronounced. If our Indian citizens are to receive benefits in full measure from their own efforts, as well as from the activities of their attorneys and of scholars working on their behalf, full and easy access must be had to relevant documentary sources. Instances of out-of-print, out-of-date and out-of-circulation materials must be corrected.

I should now like to discuss recent objections to certain titles of S. 1843.

The charge has been made that Title I would impose unreasonable burdens upon tribal governments and would destroy traditional forms of Indian tribal government. I do not believe that these objections are valid. All Indians are citizens of the United States and in my view, should be entitled to the basic constitutional rights which are secured for other citizens by the Bill of Rights. I cannot understand why anyone would object to giving them such basic rights. For instance, I fail to see why any tribal government would want to try any Indian for the same offense twice, or compel any Indian to be a witness against himself or impose excessive fines, or inflict cruel or unusual punishments, or deny to any Indian the privilege of the writ of habeas corpus or any of the other rights enumerated in Title I of S. 1843. Hundreds of Indians and numerous tribal leaders have told the Subcommittee that they have no fear of the provisions of Title I since their tribal courts already adhere to the basic principles of fairness and justice embodied in those provisions. To insure that these rights will always be secured to individual American Indians against possible infringement by any tribal government, we must have an organic written law which places limits upon the whims of man and provides for the rule of law rather than the rule of man. Obviously, no piece of legislation will please all men at all times. In our form of majority rule in America, democracy assumes that individual objections may not always be accommodated by the legislative process.

I realize that the All Indian Pueblo Council of New Mexico has voiced serious objections to the provisions of Title I and has asked to be exempt from that Title. In all sincerity, I do not believe that the fears of this fine group of Indian citizens can be justified. The Pueblo Indians have a rich, colorful form of government founded on tradition and wise experience. In no conceivable way is it my intention, through the provisions of Title I of S. 1843, to hamper, weaken or destroy the Pueblo tribal tradition or any Indian tribal governments in this Nation. In fact, I believe that the provisions of S. 1843 would strengthen tribal governments and grant dignity to every tribal court in our Indian nations. Most importantly, however, Title I would grant to the individual Indian safeguards against tribal misunderstandings, capriciousness and well-intentioned miscarriages of justice.

Several members of Pueblo tribes in New Mexico, both in the 1961 and 1965 hearings expressed a desire that all Indians be given rights under the Constitution which would be free from the whims of a temporary majority. Some Pueblo individuals and groups have written to the Subcommittee in recent weeks to reiterate that desire.

Quoted below are excerpts from letters received from individual Pueblo Indians urging adoption of S. 1843 in its entirety.

ISLETA, PUEBLO, ISLETA, N. MEX., March 25, 1968.

HON. SAM J. ERVIN,
U.S. Senator, Chairman, Subcommittee on Constitutional Rights,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR ERVIN: We read the material in the Congressional record of March 14, 1968 in regard to the Constitutional Rights of the Indians of the United States.

This journal of the proceedings was read and discussed in the House of Representatives (H.R. 2516). It is registered as Title II through Title VII, Rights of Indians. We are fully aware of what rights and protections we are entitled to under the U.S. Constitution as citizens of the United States.

We as a Committee in behalf of our Community who previously signed the letters favoring the Constitutional Rights, hoping, waiting and praying that this will come to pass.

Not only our Pueblo is concerned over our God given rights and freedom but there are other tribes throughout the entire U.S. who are so concerned, and in favor of this bill to pass and become a law, so justice may overrule tyranny.

We have in our Pueblo a small portion of a homemade Constitution which was worked and adopted by the U. S. Indian Service in year 1947. So by this document we are self-governing body, but not all the tribes have this sort of government. The contents of this document are good if and when it is used by the governing body.

When the inexperienced people take over the administration they push the Pueblo Constitution aside and exercise their authority to their individual needs.

Therefore, our civil government weakens and becomes partial toward their people; they do not execute civil matters on a legal basis. When justice is not done we cannot appeal the cases to outside legal courts, due to not having any Constitutional Rights as citizens of the U.S. Only under this Constitutional Rights when it becomes a law the self-governing people of our Pueblo will live in freedom and protection.

As a Committee in behalf of our people we read and studied the Bill Titled II through VII Rights of Indians. We unanimously give our approval as a majority against a minority on our Pueblo.

With God's speed and Blessings, we, as a Committee in behalf of our people, pray and await for the day when justice will come.

Sincerely yours,

Isidor Aberto, Acting Chairman; Bob Jaramillo, Bernardine Jajola, Alvin Lucu, Seferino Lente, Jal F. Salezor, Jose L. Montoya, Lorenzo R. Jajola, Lawrence Jaramillo, Gus Jaramillo, Remijo C. Abeeta.

ISLETA, PUEBLO, ISLETA, N. MEX., March 25, 1968.

Senator SAM J. ERVIN, Jr.,
Chairman, Subcommittee on Constitutional Rights,
Washington, D.C.

DEAR SENATOR ERVIN: This letter is to show our appreciation concerning S. 1843 discussed on March 14, 1968, the Bill on Indian Constitutional Rights was discussed, and we are hoping that it will be acted on soon. It is a fact, without a doubt, in the mind of any red blooded American Citizen regardless of Color, Creed, or Race, that the American Indians by God's given rights are entitled to the United States Constitutional rights as citizens, of our own country not as immigrants to this Country, but as people by natural rights and birth. . . .

Our young men and women have served in the First World War, Second World War, Korean Conflict, and to date many more are in service in Vietnam. Many of them returned home to enjoy the freedom they won for their Country, so by not having any Constitutional rights, they have no freedom. The freedom is for the other race of American citizens. We are never known to object to the Constitution States, we are never known to burn our draft cards and never known to riot as we have seen and heard of within the States.

The time has come for the American Indian to stand up with the rest of the citizens and be counted. We must be given our Constitutional rights, and live abreast in this modern world, with the rest of the privileged citizens.

As World War veterans and in behalf of the rest who are in agreement we ask Congress to pass the Rights of Indians from Title I through Title VI. . . .

Only by freedom and by democratic government we can be privileged to participate in this great land of ours.

It is right and just.

Sincerely

JOSE L. MONTOYA,
Second World War Veteran.

Mr. Chairman, there has also been objection to Title II of S. 1843, which directs the Secretary of the Interior to recommend to Congress a model code to govern the administration of justice by courts of Indian offenses on Indian reservations. Concern has been voiced, again by leaders of the Pueblo tribes, that this model code would be imposed unilaterally upon Indian communities. This is a mistaken reading of the title. It merely directs the Secretary to *recommend* a model code and contains no language providing or even implying that this code shall become applicable to any tribe. It would be a model and nothing more and

would have to be acted upon by the Congress before it could become applicable to any tribe. Of course, any tribe would be free to adopt the model code and our hope is that many would do so.

Title II would be directed only toward Courts of Indian Offenses, which are to be carefully distinguished from tribal courts. At the present time there are no more than five courts of Indian Offenses in existence. Therefore, even if Congress were to enact the model code to be recommended by the Secretary of the Interior, it would apply only to five presently existing courts, none of which has been or will be established in the Pueblo nation.

Consequently, no tribe should fear Title II, for its only purpose is to provide a model code after which Indian tribal governments might wish to pattern their own. It should be also noted that the Secretary of the Interior is directed to consult with Indians and Indian tribes in drawing up the code, and cannot, therefore, act capriciously upon his own notions.

Finally, there has been some objection by non-Indians to the provisions of Title III, which would repeal section VII of Public Law 280 (1953). Public Law 280 has been a blight on the American Indian since the date of its enactment, for it provides that any state may assume criminal and civil jurisdiction over an Indian tribe without its consent. This precarious legal situation has kept many Indian tribes in a state of apprehension and confusion. The Subcommittee, after years of detailed study, has not discovered any individual Indian or Indian tribe who opposes the repeal of section VII of Public Law 280.

Subjecting a reservation to state, criminal or civil jurisdiction without its consent runs counter to that basic tenet of our democracy that governmental power is derived from the consent of the governed. When President Eisenhower signed Public Law 280 he noted that he entertained grave doubts about the wisdom of the Act, and expressed the hope that Congress, at its earliest convenience, would amend the Act to require a state to consult with the Indian tribes before subjecting them to its jurisdiction.

Certain representatives of municipalities have charged that the repeal of Public Law 280 would hamper air and water pollution controls and provide a haven for undesirable, unrestricted business establishments within tribal land borders. Not only does this assertion show the lack of faith that certain cities have in the ability and desire of Indian tribes to better themselves and their environment, but, most importantly, it is irrelevant, since Public Law 280 relates primarily to the application of state civil and criminal law in court proceedings, and has no bearing on programs set up by the States to assist economic and environmental development in Indian territory.

The passage of this bill into law will not provide the final solution to the legal dilemma in which the American Indian finds himself. But it is a long step toward granting him his share in the American dream. The Congress and the States have long neglected the rights of an American who has not been able to amass powerful lobby groups, large sums of money, and vast numbers of political crusaders. For most of us, the basic constitutional protections are taken for granted.

However, for the American Indian, the words we prize so highly have had a hollow ring. He needs action, not silent sympathy or lengthy pronouncements of good intentions or pompous promises of assistance.

This important legislation has been endorsed by numerous interested individuals and groups, and has been opposed by virtually no one. The Pueblo tribe, as indicated above, has opposed certain aspects of the legislation, although on mistaken premises, I believe. Among the supporters of the Bill of Rights for the American Indian have been the National Congress of American Indians, the American Civil Liberties Union, the American Indians Committee of the Daughters of the American Revolution, tribal attorneys and Indian tribes from every part of the Nation. Endorsements have been numerous and stated in the strongest possible terms.

Not only has the legislation been endorsed by private groups and individuals, but it has received the wholehearted support of the Department of Justice and the Department of the Interior, not to mention the personal support of the President of the United States. In a Report addressed to the Chairman of the Interior and Insular Affairs Committee, the Honorable Wayne N. Aspinall, on March 27 of this year, the Department of the Interior said: "We recommend the enactment of S. 1843." Citing the decades of neglect suffered by the First American, the Department noted that "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." It continued: "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. . . . Since 1924 Indian citizenship and tribal freedom from constitutional restraint have been incompatible." After analyzing the bill section by section, the Report stated flatly that "We believe these proposals to be desirable and are prepared to carry them out."

In its comments on the bill, the Department of Justice said: "This Department joins the President, of course, in urging that the Congress complete action on this bill."

Most importantly, President Johnson has urged action on these measures. In eloquent words he outlined the dilemma of the Indian and the disgrace of the Nation:

"Mississippi and Utah—the Potomac and the Chattahoochee—Appalachia and Shenandoah . . . The words of the Indian have become our words—the names of our states and streams and landmarks.

"His myths and his heroes enrich our literature.

"His lore colors our art and our language.

"For two centuries, the American Indian has been a symbol of the drama and excitement of the earliest America.

"But for two centuries, he has been an alien in his own land."

Mr. Chairman, may I join with these eminent attorneys, these sincere Indian citizens, these Administration officials, and with the President of the United States in urging that your Committee take favorable action on these essential measures, thereby clearing the way for this Nation to unburden its guilt in its behavior toward the first inhabitants of this continent.



