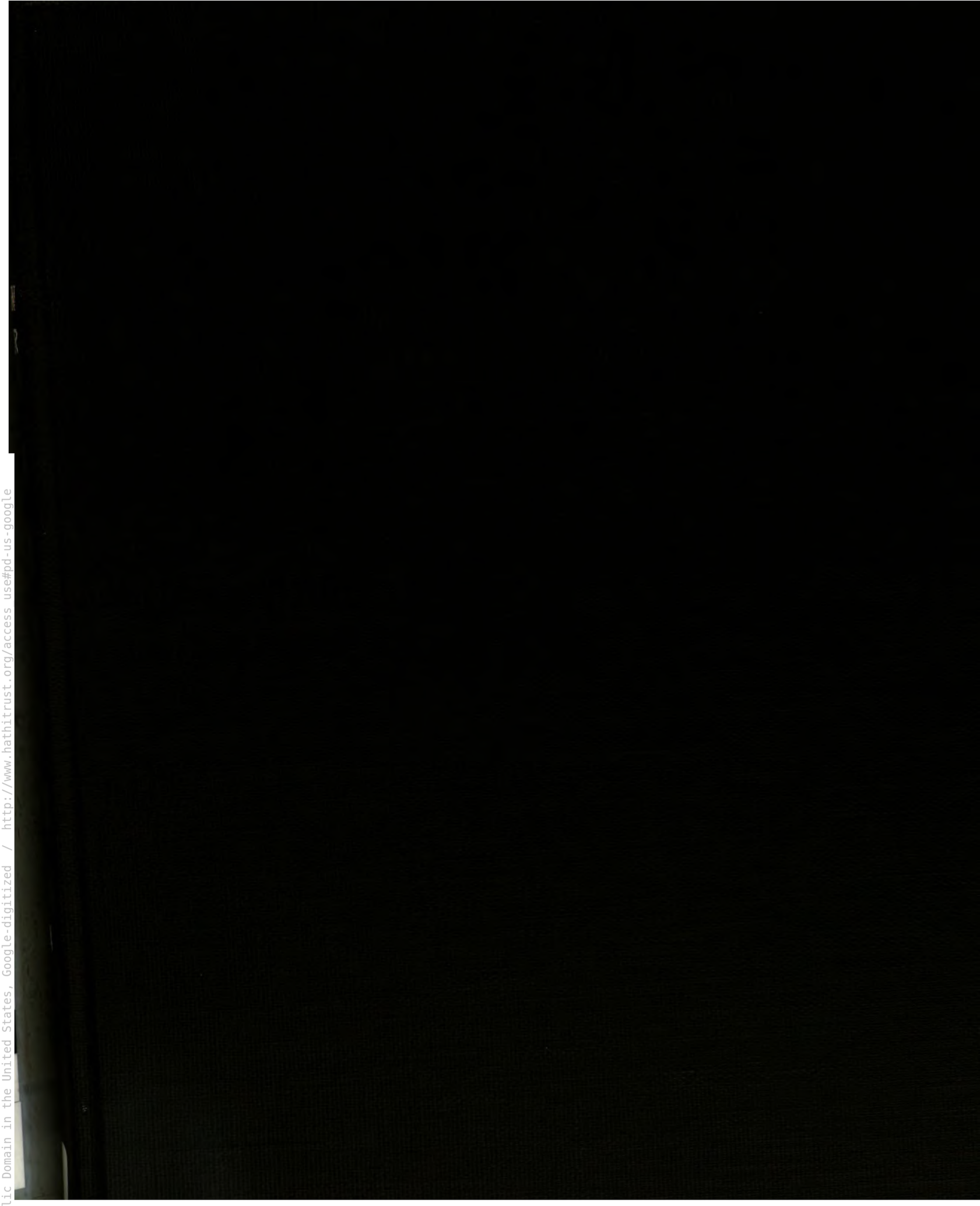

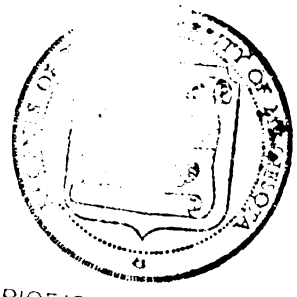

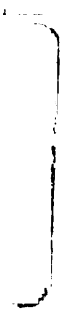

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SCHOOL OF LAW

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This issue covers the Congressional Record, Volume 119, No. 1 through No. 11, January 3-22, 1973; and the Federal Register, Volume 37, No. 240 through No. 251, December 13-29, 1972.

A PUBLICATION OF THE UNIVERSITY OF NEW MEXICO SCHOOL OF LAW, AMERICAN INDIAN LAW CENTER

CONGRESSIONAL ACTIVITY

BILLS INTRODUCED

HOUSE

Introduced by Representative Julia B. Hansen (D., Washington)

Additional Assistant Secretary of Interior

H.R. 620. A bill to establish within the Department of Interior an additional Assistant Secretary of the Interior for Indian Affairs, and for other purposes; to the Committee on Interior and Insular Affairs.

January 6, 1973; 119 C.R. 3, H76

Introduced by Representative Jerry L. Pettis (R., California)

Mission Indians, California

H.R. 893. A bill to provide for the division of assets between the Twentynine Palms Band and the Cabazon Band of Mission Indians, California, including certain funds in the U.S. Treasury, and for other purposes; to the Committee on Interior and Insular Affairs.

January 6, 1973; 119 C.R. 3, H82

Introduced by Representative Al Ullman (D., Oregon)

Klamath

H.R. 1251. A bill to authorize the enrollment of qualified Klamath minors in Bureau of Indian Affairs residential schools, and for other purposes; to the Committee on Interior and Insular Affairs.

January 6, 1973; 119 C.R. 3, H91

Klamath

H.R. 2185. A bill to provide for the conveyance of certain public lands in Klamath Falls, Oreg., to the occupants thereof, and for other purposes; to the Committee on Interior and Insular Affairs.

January 15, 1973; 119 C.R. 7, H273

Hualapai

Introduced by Representative Sam Steiger (R., Arizona)

H.R. 2240. A bill to declare that certain federally owned lands shall be held by the United States in trust for the Hualapai Indian Tribe, of the Hualapai Reservation, Ariz., and for other purposes; to the Committee on Interior and Insular Affairs.

January 18, 1973 119 C.R. 9, H364

SENATE

Iowa Tribes

Introduced by Senator Robert Dole (R., Kansas)

S. 42. A bill to provide for the disposition of funds appropriated to pay certain judgments in favor of the Iowa Tribes of Oklahoma and of Kansas and Nebraska. Referred to the Committee on Interior and Insular Affairs.

January 4, 1973; 119 C.R. 2, S29

Art Center

Introduced by Senator Clifford Hansen (R., Wyoming)

S. 256. A bill to construct an Indian Art and Cultural Center in Riverton, Wyo., and for other purposes. Referred to the Committee on Interior and Insular Affairs.

January 9, 1973; 119 C.R. 4, S356

Navajo-Hopi

Introduced by Senator Henry Jackson (D., Washington)

S. 267. A bill to abolish the Joint Committee on Navajo-Hopi Indian Administration. Referred to the Committee on Interior and Insular Affairs.

January 9, 1973; 119 C.R. 4, S357

Bridgeport

Introduced by Senator Alan Cranston (D., California)

S. 233. A bill to declare that the United States holds in trust for the Bridgeport Indian Colony certain lands in Mono County, Calif. Referred to the Committee on Interior and Insular Affairs.

January 9, 1973; 119 C.R. 4, S357

DECISIONS OF THE BUREAU OF INDIAN AFFAIRS

Delaware Tribe — The BIA announced that it has adopted procedures for the disposition of judgment funds awarded to the Delaware Tribe of Indians and the Absentee Delaware Tribe of Western Oklahoma.

December 27, 1972; 37 F.R. 249, pp. 28505

COMMENTARY

By Mr. CRANSTON (for himself and Mr. TUNNEY):

S. 283. A bill to declare that the United States holds in trust for the Bridgeport Indian Colony certain lands in Mono County, Calif. Referred to the Committee on Interior and Insular Affairs.

Mr. CRANSTON. Mr. President, I am pleased to introduce today a bill that will declare that the United States holds in trust approximately 40 acres of land in Mono County, Calif., for members of the Bridgeport Indian Colony.

I am delighted to be joined in sponsoring this bill by my friend and distinguished colleague from California, Senator JOHN V. TUNNEY.

The land described in the bill is an unoccupied 40-acre tract of federally owned property adjacent to the town of Bridgeport in Mono County, Calif. It is being set aside for the Bridgeport Indian Colony as a substitute for a tract of land wrongfully taken from them in 1914.

This bill is similar to a measure, S. 3113, which I introduced in the Senate in the 2d session of the 92d Congress. In that Senate, my bill was favorably reported by the executive session of the Interior and Insular Affairs Committee on October 15 of last year. Four days later, on October 19, it passed the Senate.

The basic difference in the bill I am now introducing is that the present measure increased the grant of land to the Indians from 20 acres to 40 acres. I believe this change was necessary since the

originally proposed tract did not provide an adequate amount of useable acreage. At least 6 acres of that tract is unfeasible for development because a gully runs through the land. The inclusion of the adjacent 20-acres will insure an adequate amount of land will be provided for the Indians to develop as their home and reservation.

I believe that we are in all conscience obligated to set aside this land for the Bridgeport Indians. The land on which the Indians presently reside, and which has been their home since, at least, before the coming of the white man, was wrongfully patented to a non-Indian. This patent was issued in 1914 under the Desert Land Act. This land is now owned by several non-Indian heirs to the original patentee. The Indians continued to occupy the site.

But early in 1968 one of the owners demanded that they vacate. Eviction proceedings were instituted against them.

Legal intervention kept the eviction proceedings in abeyance for some time. Later when the owner learned that an attempt to solve the difficulty was pending in the Congress, he agreed to cease the eviction proceedings so long as Congress works toward a solution for the Indian Colony. I commend the owner's understanding and patience.

It thus is clear that a permanent solution must be found very soon. In my opinion the best solution for all concerned is my proposal to provide the Indians with a new land base. Since their land base was wrongfully taken from them, it seems only fair to provide them with a new one. Furthermore, with a secure trust land base, the Bridgeport Indian Colony will be in a better position to improve their living conditions.

Presently, 12 of the 19 Indian families in the Bridgeport area live in totally substandard housing. Eleven of the families, including all of the families that now reside on the disputed land, have no sanitation facilities and no inside running water. Five of the homes are heated solely by wood-burning stoves, and three have no refrigerator. Only three of the 19 families can claim a member with full-time employment. All the rest are unemployed. A secure trust land base will enable these Indian people to overcome the severe obstacles of unemployment and chronic poverty and to utilize Federal resources to improve their standard of living.

Further, it is my understanding that the townspeople of nearby Bridgeport are in full support of this legislative proposal. Last year I received a unanimously approved resolution from the Mono County Board of Supervisors that stated its full support of the Bridgeport Indian Colony's efforts to obtain the grant of the federally owned land. I have recently been in contact with the chairman of the Mono County Board of Supervisors, Walter Cain, and he expressed his support for the Indian Colony's attempts to obtain

the 40 acres of land for a reservation. He also stated that at the board's next meeting he expects that they will issue a resolution supporting the Bridgeport Indian Colony's efforts, including the new proposal for a grant of 40 acres. I am hopeful that Congress will support this measure to correct this one of so many injustices that have been inflicted upon the Indian people of California.

Mr. President, I ask unanimous consent that the text of the bill be printed at this point in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 283

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all of the right, title, and interest of the United States in the following described public domain land located in Mono County, California, are hereby declared to be held by the United States in trust for the Bridgeport Indian Colony:

The Southeast quarter of the northeast quarter of section 28, township 5 north, range 25 east, Mount Diablo base and meridian, Mono County, California, containing forty acres more or less.

Provided further, That said parcel shall be subject to the easement to the Bridgeport Public Utility District for a sewer main.

119 C.R. 4, S396

By Mr. DOLE (for himself and Mr. PEARSON):

S. 42. A bill to provide for the disposition of funds appropriated to pay certain judgments in favor of the Iowa Tribes of Oklahoma and of Kansas and Nebraska. Referred to the Committee on Interior and Insular Affairs.

AUTHORIZATION OF JUDGMENT FUNDS TO THE IOWA TRIBES OF OKLAHOMA AND KANSAS AND NEBRASKA

Mr. DOLE. Mr. President, on May 7, 1965, the Indian Claims Commission made an award to the Iowa Indian Tribe of Kansas and Nebraska and the Iowa Tribe of Oklahoma. The award was made as payment for certain land which was excluded from the Iowa Reservation

established in southeast Nebraska and northeast Kansas by an 1854 treaty and as additional payment for other land sold under the same treaty.

Funds to pay this award were appropriated by Congress on March 21, 1972, and the tribes have since agreed on the division of the funds. Whereas authorization legislation was not acted upon by the Committee on Interior and Insular Affairs due to time limitations in the second session of the 92d Congress, I, therefore, reintroduce this legislation authorizing payment of the appropriated sum to the Iowa Tribes in hope that it will receive prompt attention.

Mr. President, it is unreasonable that a just claim arising from a formal U.S. treaty adopted nearly 120 years ago should still remain unsatisfied. It would be even more unjust for the Senate to delay any longer the satisfaction of this claim. The Claims Commission has awarded the claim, Congress has appropriated the money, a tribal agreement on distribution of the funds has been reached, and Congress must now pass the authorizing legislation to enable settlement of this claim. I, therefore, encourage my colleagues to act promptly in their consideration of this bill, and bring about prompt payment of this 120-year-old obligation.

The Iowa Tribe of Oklahoma and of Kansas and Nebraska have a membership of approximately 1,740 individuals. The Iowa Reservation of the Kansas and Nebraska Tribe is located in Brown County, Kans., and in Richardson County, Nebr. It covers approximately 1,378 acres, most of which is farmland. Approximately 83 percent of the land is used by Indians and the remainder by non-Indians under lease arrangements.

The tribe is governed by a general council composed of all enrolled members of legal age, and by an executive committee which has broad delegated powers for carrying on the daily business of the tribe.

The primary functions of the tribal government are in matters pertaining to the preparation of claims, prosecution and distribution of claims, preparation of membership rolls, and supervision of the tribal lands.

The tribal government has proposed distribution of the judgment funds now in question on a per capita basis to currently enrolled members, in accordance with the tribal constitution. They have voted to hold payments distributed to minors in trust for them, and are in the process of establishing a trust fund in a local bank for this purpose. Once completed, the trust proposal will be submitted to the Secretary of the Interior for final approval. I urge the Senate to respect the wishes of the tribe and permit retention of the trust funds in the local Indian community.

There is no controversy surrounding the award. The claims commission has adjudged it, the Iowa tribal government has agreed

on the distribution scheme, and Congress has appropriated $633,193.77 to satisfy claim docket No. 135. I am hopeful that this authorization bill can be acted upon promptly so that this obligation owed by the United States to the people of the Iowa Tribes may be met.

119 C.R. 2, S121

See Also the remarks of Senator Robert Dole (R., Kansas) on S. 42 to pay judgment funds in favor of the Iowa Tribes of Oklahoma, Kansas, and Nebraska.

JOINT COMMITTEE ON NAVAJO-HOPI INDIAN ADMINISTRATION

Mr. MANSFIELD. Mr. President, on a separate but related subject, I wish to advise the Senate today that the distinguished chairman of the Committee on Interior and Insular Affairs (Mr. JACKSON), along with the distinguished minority member of the committee (Mr. FANNIN), have recommended that the Joint Committee on Navajo-Hopi Indian Administration be abolished. I understand that Congressman HALEY and other leaders of the House Committee on Interior and Insular Affairs concur in this recommendation.

I wish to congratulate Senator JACKSON and Senator FANNIN for their initiative in this matter and express the appreciation of the leadership for their proposing to disestablish a committee which is no longer necessary in the Congress.

I ask unanimous consent that a letter from the distinguished chairman of the Committee on Interior and Insular Affairs be printed in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE, COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
Washington, D.C., January 5, 1973

Hon. MIKE MANSFIELD,
Majority Leader, U.S. Senate,
Washington, D.C.

Dear Mike: I have consulted with Senator Paul Fannin, who apparently will become the Ranking Minority Member of the Committee on Interior and Insular Affairs, and it is our recommendation that the Joint Committee on Navajo-Hopi Indian Administration be abolished. Because of problems peculiar to those two tribes, this Joint Committee was created in the 81st Congress under the authority of Public Law 474, an act to promote the rehabilitation of the Navajo and Hopi Tribes of Indians and better utilization of the resources of the Navajo and Hopi Reservations and for other purposes.

As a matter of fact, the Joint Committee has seldom met and has conducted no business to speak of in the past 20 years. Even though it is a paper organization only, it is our suggestion that it be eliminated since any legislative business pertaining to these tribes as well as other Indian groups would have to be conducted by the standing legislative committees of the House and Senate.

I have consulted also with Congressman Haley and other leaders of the House Committee on Interior and Insular Affairs and have been advised that they concur in our recommendation that this Committee be disestablished.

We urge, therefore, that this Joint Committee be abolished.

Sincerely yours,
HENRY M. JACKSON,
Chairman.

119 C.R. 3, S270

INDIAN NEWS ARTICLES

NEW BOOK ON THE RELATIONSHIP BETWEEN STATE GOVERNMENTS AND THEIR INDIAN CITIZENS

The Indians--with their traditional independence, resourcefulness, and close ties to nature--provide the United States with its unique character, some authorities say. Now their relationship to the land, their neighbor, states, and local governments, is the subject of a book, "The States and Their Indian Citizens,' just published by the Bureau of Indian Affairs, U.S. Department of the Interior.

'This study comes at a time of critical review of the relationship between the various governments in our Federal system and makes a significant contribution to our understanding,' Secretary of the Interior Rogers C.B. Morton says in the foreword of this book.

The author is Dr. Theodore W. Taylor, former Deputy Commissioner of the Bureau of Indian Affairs. He did most of the research and writing on the book while a Federal Executive Fellow at the Brookings Institution, Washington, D.C.

The Secretary continues: 'The conflict in the Indian community as to the desirability of special Federal services to urban Indians is explored. Indeed, the general policies and philosophies discussed in this study may significantly contribute to a greater understanding of the relationship between ethnic minorities and the general

population as well as to options available for future growth of our Federal system in general.

"Taylor discusses the nature of self-determination in relationship to trust responsibility, whether the non-Indian society has a perpetual obligation to the original Americans, the impact of subsidies, and the responsibilities residing with Indian, State, and Federal Governments."

The appendix contains an analysis of the special messages on Indians to the Congress by both President Johnson and President Nixon and a table that shows by State the acres of Indian land, population, and whether Indian children are educated by public or Federal schools.

Governor Robert Lewis of the Zuni Pueblo writes in his introduction to the book that "This book will help those (Indians) who want to help themselves think through what they want to do. It presents insights into some of the complex history and problems we Indians face along with our non-Indian neighbors which I think will be helpful to Indians and non-Indians alike."

The book is illustrated and has a 26" x 36" map in color that shows the Federal and state reservations.

The book may be purchased for $2.25 in paper cover from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Order by catalog number 120.2:ST2/3.

Review copies available on request from the Office of Communications, Bureau of Indian Affairs, 1951 Constitution Avenue, N.W., Washington, D.C. 20242.

U.S. Department of Interior Release, January 12, 1973.

COURT RULES ON PREFERENCE POLICY

The stage has been set for the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS) to become predominantly Indian-run agencies under a new court ruling.

U.S. District Court Judge Howard Corcoran ordered on Dec. 21:

"All initial hirings, promotions, lateral transfers and reassignments in the Bureau of Indian Affairs as well as any other personnel movement therein intended to fill vacancies in that agency, however created, be declared governed by 25 U.S.C. Sec. 472 which requires that preference be afforded qualified Indian candidates."

The decision was the culmination of years of efforts by Indians to have the 'Indian preference' provision of the Indian Reorganization Act of 1934 fully implemented in the employment practices of the BIA. The decision arose out of a class action suit brought against the Interior Secretary and the Indian Commissioner by Indian employees of the BIA.

Arguments in the case revolved around the definition of the word "vacancy" and whether or not the Secretary and Commissioner could use 'administrative discretion' when implementing the preference rule beyond the stage of initial hiring. In a strongly worded opinion, Judge Corcoran said:

'As to the (government's) assertion that 'vacancy' applies only to initial hiring there is nothing in either the statute or its legislative history to support such a claim. A 'vacancy' is a 'vacancy' no matter how created.'

Concerning administrative discretion, the court held that the statute does not state "Indians may have preference" but rather that 'qualified Indians shall hereafter have preference...and this court so holds." In the case of reassignment or lateral transfer, the court held that two vacancies would be created and that the preference rule would apply to both.

An important by-product of the decision was the agreement of the government and the court with the Indians' concept of preference. 'Preference' means "that a minimally qualified Indian must be hired even though there may be available a more capable, better qualified non-Indian applicant for the position," according to the Corcoran opinion.

Other language in the opinion reads: "The legislative history of the (statute) reveals that the congressional intent was that the BIA became an agency staffed with Indians performing services for Indians."

Concerning non-Indian BIA employees, the court said that while they cannot be dismissed from their jobs, the court's strict interpretation of the statute would leave them in a 'relatively frozen position and will undoubtedly dim their promotional prospects.' However, wrote Corcoran, 'the court cannot say that such a result lies outside the intent of Congress."

Corcoran said the government would have to turn to Congress for any changes because "the mandate of the legislature cannot be construed away for the sake of convenience." The court would not support the Indians' argument that preference extended to BIA training opportunities, however, because provision had been made in another section of the 1934 act for Indian training opportunities.

American Indian Press Association Release, January 4, 1973.

REVENUE SHARING PAYMENTS TO TRIBES

By Karen Ducheneaux

Revenue sharing payments to Indian governing units under the 1972 revenue sharing act are beginning in January from the U.S. Treasury Department.

Indian tribes were excluded from the Dec. 3 payments to other units of government because of 'data, definitional and procedural problems,' according to Treasury's Revenue Sharing Office.

The Indian share in the five-year program is determined as follows:

--Each state government is entitled to retain one-third of the total amount of revenue sharing monies allocated to that state, with the remaining two-thirds to be divided among the units of local government;

--Indian tribes and Alaska Native villages which have recognized governing bodies performing substantial governmental functions will receive an allocation that is a part of the total monies being paid to the county or counties within which the tribe or village is located;

--The special Indian allocation is based on the population of the tribe or village in relation to the overall population of the county area. If, for example, the tribal population equals ten percent of the county population, the tribe will receive ten percent of the funds allocated to that county.

The five-year revenue sharing program will pay out $5.3 billion for 1972 and $6.35 billion by fiscal year 1976 to state and local governments.

Payments will be made directly from the U.S. Treasury to the tribal governing bodies. Regulations governing use of the funds have been drawn up and tribes will be subject to them. The only special mention of Indians in the Treasury regulations states:

'Indian tribes and Alaska Native villages...are required to expend entitlement funds only for the benefit of members of the tribe or village residing in the county area from which the allocation of entitlement funds was originally made.'

Pertinent rules governing the use of Indian revenue sharing funds are:

--The funds must be placed in trust funds and separate accounts must be kept for them,

--The funds may not be used as matching funds for any federal program;

--Revenue sharing monies can be used only for 'priority expenditures.'

Priority expenditures are defined as ordinary and necessary maintenance and operating expenses for public safety, environmental protection, public transportation, health, recreation, libraries, social services and financial administration, together with ordinary and necessary capital expenditures as authorized by law.

Problems encountered by the Revenue Sharing Office which held up the tribal payments included gathering of correct statistics on Indian populations in the counties, the preparation of a definition of what constitutes a 'substantial governmental function,' and finding the names of the tribal officers to whom the revenue sharing checks would be mailed, said a Treasury Department spokesman.

The manner in which Indian tribes have been included in the revenue sharing act was decided in a joint Senate-House conference committee and in a House of Representatives amendment in September.

American Indian Press Association Release, January 3, 1973

WEINBERGER NAMED AS WHITE HOUSE COORDINATOR FOR INDIAN AFFAIRS

Casper W. Weinberger has been named the White House interagency coordinator for Indian affairs on the White House Domestic Council.

Weinberger, secretary-designate for the Department of Health, Education and Welfare (HEW), will be wearing a second hat as counselor to the President on human resources, including Indian affairs, according to new super-assignments announced by the White House here Jan. 6.

Weinberger will chair a committee on the White House Domestic Council, President Nixon's coordinating office for domestic matters. The Domestic Council is the top internal affairs office under the Nixon administration. Its foreign affairs counterpart is the National Security Council chaired by Dr. Henry Kissinger.

The Domestic Council was created in 1969 to identify domestic issues, form task forces for remedies to specific domestic problems, and to prepare option papers for the President.

The broad interdepartmental coordinating role to be undertaken by Weinberger complements the position and functions held by Leonard Garment, special consultant to the President on minority and cultural

affairs. A White House spokesman indicated that Garment and Bradley F. Patterson Jr., Garment's minority affairs assistant, would be working together with Weinberger on Indian issues.

No single Cabinet member has on his own the commanding position to issue orders to other Cabinet members. With his White House hat, Weinberger can now pull together Cabinet officials and heads of agencies for specific issues and tasks, including Interior Secretary Rogers C.B. Morton.

A White House source said the day-to-day administration of the Bureau of Indian Affairs (BIA) would remain under the authority of Morton, as would day-to-day operational responsibilities.

Weinberger will be involved in broad interdepartmental 'issue areas and problem areas' affecting Indians in the second term of the Nixon administration, said the White House source.

Such broad interdepartmental issues expected to cross Weinberger's desk are question of eligibility of all Indians for federal services regardless of residence, a federal plan to regionalize and dismantle agencies serving the Indian populace, and budget cutbacks affecting most Indian programs.

American Indian Press Association Release, January 9, 1973

SUPREME COURT HEARS INDIAN LAND TAX CASE

The continuing struggle of Indian people to protect the tax-exempt status of trust land and income derived from trust land is now before the U.S. Supreme Court.

Three cases were heard there Dec. 13:

--The Tonasket tax case involves an attempt by the state of Washington to levy an excise tax on cigarettes sold by an Indian merchant on the Colville Reservation;

--The Mescalero tax case involves an attempt by the state of New Mexico to impose a gross receipts tax on tribal income derived from a tribal enterprise located partially off the Mescalero Apache Reservation,

--The McClanahan tax case involves an attempt by the state of Arizona to impose and collect state income tax from an Indian living on the Navajo Reservation whose income was derived from a non-trust source.

It is not expected that the high court will render decisions on the three cases before March of 1973.

In the Tonasket and McClanahan cases, the Indians argue lack of state jurisdiction to impose or collect the taxes. In the Mescalero case, the tribe bases its arguments against state taxation on the 'federal instrumentality doctrine.'

The federal instrumentality doctrine states that any attempt by a unit of state or local government to tax an operation of the federal government constitutes an interference in the purposes of the federal government, in effect taxing the federal government itself, and therefore is prohibited.

Legal observers here believe Indians have their best chance of winning with the McClanahan case.

The National Congress of American Indians (NCAI) filed supporting briefs in the Tonasket and McClanahan cases. NCAI felt those cases represented 'a chance for the Supreme Court to reaffirm or drastically alter the status of Indians in relation to state taxation.'

The state of Washington argued that the Colville merchant, Leonard Tonasket, would destroy his competitors if exempted from the cigarette tax.

The Justice Department, which also filed a supporting brief in the Tonasket case, argued that the state had no authority to tax sales of cigarettes by Indians to Indians, but said the question of sales to non-Indians "was less clear."

American Indian Press Assocation Release, December 22, 1972

COMMISSIONER LOUIS BRUCE ANNOUNCES HIS PLANS

"The whole country knows he's been fired but they don't have the decency to tell him face to face," lamented Ernest Stevens, one of Louis R. Bruce's most trusted aides, the night before the Indian Commissioner was finally told he must go.

It was an irony that Bruce fell victim in the wake of the Trail of Broken Treaties Caravan Dec. 8, which demanded that he be restored to full authority and responsibility over his troubled agency.

Gone with him were Assistant Interior Secretary Harrison Loesch and BIA Deputy Commissioner John O. Crow. Members of Bruce's 'new team' were expected to make eventual exits as well. All had been involved in a political and philosophical struggle over what the Bureau should be in serving the Indian people of America.

What are Bruce's future plans?

"I plan to become involved in the foundation business," said Bruce. "I've been an Indian all my life, and in all my work I've visited many reservations. And (in the BIA) I've seen all the red tape involved in getting money where it's needed. Working with a number of foundations, I can move to meet the needs of Indian people without all that usual red tape."

Bruce is meeting January 5 with 18 foundations located in New York City.

"I'm flexible," he reflected, "and I do want to get a little sleep. But I'm going to be very active in Indian organizations." He said he intended to be in and around the Capitol in the coming years to work closely with national Indian groups.

Doubleday Publishing Co. has asked him to hurry into print a book explaining his role in the protracted struggles since he joined the BIA in August of 1969. He is considering that offer, and is also planning to co-author another book together with Ernest Stevens on the Trail of Broken Treaties takeover of his headquarters. During that takeover the Interior Department had ordered him to remain silent, stripped him of all authority and ordered his staff away from the occupied facility.

According to White House sources, during the BIA occupation Interior Secretary Rogers C.B. Morton had said of Bruce: "Right now he couldn't even sell a hotdog in that building."

Loesch was also active in ordering Bruce's silence. Loesch told Navajo Area Director Anthony Lincoln and Engineering Director Alexander McNabb by telephone in the early stages of the occupation:

"Of course the Commissioner has blown it. He is over there in bed with them and we don't like it from Air Force One on down." Loesch was referring to the President who was en route by air to the Western White House in California.

Following the departure of the Broken Treaties Caravan from the Capitol on Nov. 8, hearings into the BIA affair were called by Rep. Wayne Aspinall, D-Colo., lameduck chairman of the House Sub-committee on Indian Affairs.

Morton, Loesch, Bruce and the Interior Department's lawyer were witnesses on the first day of hearings Dec. 4. Bruce was mostly silent through the day's testimony, while the weight of evidence laid blame for the destruction squarely at his feet and the feet of the White House.

Was he uncomfortable during those hearings? "I'm used to that," he said.

Bruce, 66, a Mohawk-Sioux, was the third Indian to head the BIA in its long and controversial history. He had been selected in 1969 by the President and that choice was affirmed by the U.S. Congress.

He moved swiftly to bring into the top levels of the Bureau many new Indian faces, called his 'new team." He moved to turn the BIA from a paternalistic management agency into a service agency for the people. He moved to expand contracting with interested tribes for portions of BIA services.

In most of his efforts he ran afoul of his bosses at Interior, and on occasion with members of the House Subcommittee on Indian Affairs.

Deep conflicts surfaced when John O. Crow was named deputy commissioner in July of 1971. A polarization among about 16,000 BIA occurred between those who supported Bruce and those who supported Crow.

In August of 1972 Bruce attempted to fire Crow, but was checked by Interior. During the takeover of the BIA by Indian activists in the first week of November, Crow established a "command post' to run the BIA and claimed the action was done with the knowledge and consent of Morton. Bruce was locked outside the lines of power.

His critics scored him repeatedly for not using the machinery of bureaucracy to accomplish his aims. They criticized him repeatedly for 'weak administration."

A year ago Bruce said publicly:

"I don't know how long I'm going to last, but while I'm here we've got to run fast. ...Unless a person can be constantly and consistently optimistic, he wouldn't last a day on this job. I will make a prediction: things are going to be different and better in the Bureau.'

American Indian Press Association Release, December 10, 1972.

SOUTHWEST WATER DIVERSION UNDERWAY

The controversial Central Arizona Project Water Compact, which had threatened to deprive five Indian tribes' rights to water in the Colorado River, was signed Dec. 15 by Interior Secretary Rogers Morton. The $1.2 billion project, which will divert river water into Phoenix and Tucson, has been supported by some tribes and loudly opposed by others. The original contract between Interior and the Central Arizona Water Conservation District was changed to remove all references to Indian water allocations and priorities in that contract. According to the Interior Department, "In the allocation of project irrigation water Indian land shall receive a relative advantage over non-Indian land."

American Indian Press Association Release, December 23, 1972.

WASSAJA--NEW NATIONAL INDIAN NEWSPAPER

Beginning Jan. 1, the American Indian Historical Society is publishing a national monthly Indian newspaper with an initial free run of 50,000 copies. The new tabloid, named "Wassaja," will carry tribal news, nationwide news and Canadian coverage. The 24-page tabloid can be ordered "by donation only' by sending a full address and donation to American Indian Historical Society, 1451 Masonic Ave., San Francisco, Cal. 94117. The society is editor and publisher of the newest Indian news journal.

American Indian Press Association Release, December 23, 1972

SIGLER WILL STAY AT HOUSE POST

Lewis Sigler, legal counsel on the staff of the House Indian Affairs Subcommittee, dropped his announced plans to retire in January and instead will stay there "indefinitely." A key factor in Sigler's decision was the death of his wife in December. Attempts by some Indian organizations in the capitol to push for an Indian attorney as Sigler's successor failed to be decisive, and it appeared that Robert Bruce, legislative specialist at the Bureau of Indian Affairs (BIA), was in line for the job. Sigler's decision to remain on the staff for a number of months may clear the way for the placing of an Indian attorney on the House staff.

American Indian Press Association Release, January 6, 1973

NAVAJO WINS DRAFT STRUGGLE

Clarence David Toledo, Navajo, 23, was cleared Jan. 3 of draft evasion charges after arguing that his heritage prevented him from serving in the military or fighting in a war unless the Navajo Nation were directly threatened. Toledo, a native of Gallup, N.M., failed to report for induction in 1969 as a conscientious objector. During his trial in Newark, N.J., Toledo told the court his great-grandfather was killed in a battle with U.S. cavalry troopers and that this had affected his attitudes toward the U.S. military. A court ruling last summer in a related case stated that tribal regulations must be treated on a par with the Christian denominational religions as a basis for conscientious objection to military service.

American Indian Press Association Release, January 6, 1973

BIBLIOGRAPHY OF MATERIAL ON INDIAN LAW

The American Indian Law Center is about to publish a bibliography of material on Indian law, compiled by former Newsletter editor, Joe Sabatini.

The bibliography contains over 500 citations to books, law review articles, and current Indian periodicals.

Please send your orders c/o American Indian Law Newsletter, 1117 Stanford Dr., N.E., Albuquerque, New Mexico 87106. Ask for "American Indian Law: A Bibliography" by Joe Sabatini. The price is $1.25 per copy.

Checks should be made payable to the American Indian Law Center.

SUBSCRIPTION ORDER FORM

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The American Indian Law Newsletter is published by the University of New Mexico School of Law on a bi-monthly basis, with special issues on important developments. The Newsletter's primary purpose is to keep those interested abreast of latest developments in Federal Indian law, legislation, and administration.

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SCHOOL OF LAW

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This issue covers the Congressional Record, Volume 119, No. 12 through No. 20, January 23-February 5, 1973; and the Federal Register, Volume 38, No. 1 through No. 19, January 3-30, 1973.

CONGRESSIONAL ACTIVITY

BILLS PASSED

SENATE

Navajo-Hopi

Senate took from calendar, passed without amendment, and cleared for the House S. 267, to abolish the Joint Committee on Navajo-Hopi Indian Administration.

February 5, 1973; 119 C.R. 20, D75

BILLS INTRODUCED

HOUSE

Keeweenaw Bay

Introduced by Representative Philip E. Ruppe (R., Michigan)
H.R. 2730. A bill to declare that certain federally owned land is held by the United States in trust for the Keeweenaw Bay Indian Community and to make such lands parts of the reservation involved; to the Committee on Interior and Insular Affairs.

January 23, 1973; 119 C.R. 12, H439

Sac and Fox

Introduced by Representative William R. Roy (D., Kansas)
H.R. 2378. A bill to provide for the disposition of funds appropriated to pay judgments in favor of the Sac and Fox Indians, and for other purposes; to the Committee on Interior and Insular Affairs.

Iowa Tribes

H.R. 2379. A bill to provide for the disposition of funds appropriated to pay certain judgments in favor of the Iowa Tribes of Oklahoma and of Kansas and Nebraska; to the Committee on Interior and Insular Affairs.

January 24, 1973; 119 C.R. 13, H486

Introduced by Representative Robert Mathias (R., California)

Bridgeport — H.R. 3458. A bill to declare that the United States holds in trust for the Bridgeport Indian Colony certain lands in Mono County, Calif.; to the Committee on Interior and Insular Affairs.

January 31, 1973; 119 C.R. 17, H664

Introduced by Representative Glenn Anderson (D., California)

Bridgeport Colony — H.R. 3579. A bill to declare that the United States holds in trust for the Bridgeport Indian Colony certain lands in Mono County, Calif.; to the Committee on Interior and Insular Affairs.

February 5, 1973; 119 C.R. 20, H718

Introduced by Representative John N. Happy Camp (R., Oklahoma)

Cheyenne-Arapaho — H.R. 3605. A bill to declare that certain land of the United States is held in trust for the Cheyenne-Arapaho Tribes of Oklahoma; to the Committee on Interior and Insular Affairs.

Ponca — H.R. 3606. A bill to provide for the disposition of funds appropriated to pay judgments in favor of the Ponca Indians of Oklahoma and Nebraska in Indian Claims Commission dockets numbered 322 and 324, and for other purposes; to the Committee on Interior and Insular Affairs.

February 5, 1973; 119 C.R. 20, H718

SENATE

Introduced by Senator Mike Mansfield (D., Montana)

Chippewa Cree Tribe — S. 481. A bill to declare that certain mineral interests are held by the United States in trust for the Chippewa Cree Tribe of the Rocky Boy's Reservation, Montana. Referred to the Committee on Interior and Insular Affairs.

January 23, 1973; 119 C.R. 12, S1068

Introduced by Senator Philip Hart
(D., Michigan)

Grand River Band of Ottawa Indians

S. 558. A bill to provide for the disposition of funds appropriated to pay a judgment in favor of the Grand River Band of Ottawa Indians in Indian Claims Commission docket numbered 40-K, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

January 26, 1973; 119 C.R. 14, S1283

Introduced by Senator Quentin Burdick
(D., North Dakota)

Devils Lake Sioux

S. 593. A bill to donate to the Devils Lake Sioux Tribe, Fort Totten Reservation, some submarginal lands of the United States, and to make such lands part of the reservation involved. Referred to the Committee on Interior and Insular Affairs.

Standing Rock Sioux

S. 599. A bill to provide that certain lands shall be held in trust for the Standing Rock Sioux Tribe of North Dakota and South Dakota. Referred to the Committee on Interior and Insular Affairs.

January 29, 1973; 119 C.R. 15, S1429

Introduced by Senator Clifford Hansen
(R., Wyoming)

Wind River

S. 623. A bill to authorize the Secretary of the Interior to reimburse the Shoshone and Arapahoe Tribes of the Wind River Reservation in Wyoming for tribal funds that have been used for the construction, operation, and maintenance of the Wind River irrigation project, Wyoming. Referred to the Committee on Interior and Insular Affairs.

January 31, 1973; 119 C.R. 17, S1531

Introduced by Senator Frank Church
(D., Idaho)

Kootenai

S. 634. A bill to declare that certain federally owned lands shall be held in trust for the Kootenai Tribe of Idaho by the United States, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

January 31, 1973; 119 C.R. 17, S1531

Introduced by Senator Henry Jackson (D., Washington)

Indian Claims Commission

S. 721. A bill to authorize appropriations for the Indian Claims Commission for fiscal year 1974, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

February 1, 1973; 119 C.R. 18. S1749

Introduced by Senator Mark Hatfield (R., Oregon)

Klamath

S. 761. A bill to amend the Act terminating Federal supervison over the Klamath Indian Tribe by providing for Federal acquisition of that part of the tribal lands described herein, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

February 5, 1973; 119 C.R. 20, S1991

DECISIONS OF THE BUREAU OF INDIAN AFFAIRS.

San Carlos Irrigation Project

The B.I.A. announced that it has adopted a rule for the San Carlos Irrigation Project in Arizona that customers of the Project furnish their own electricity meter loop.

January 4, 1973; 38 F.R. 2, pp. 758

COURT DECISIONS

State v. Tinno

497 P2d 1386
Supreme Court of Idaho
June 8, 1972

Defendant Gerald Tinno, a member of the Shoshone-Bannock Tribes, was charged with violation of Idaho fishing regulations. Tinno admitted spear fishing but raised as a defense a superior federal right exempting him from state fishing regulations based on the Treaty with the Eastern Band Shoshone and Bannock of 1868. The trial before a justice of the peace resulted in a conviction, and defendant appealed to the state district court for a trial de novo. The district court found defendant not guilty and the State appealed to the State Supreme Court. The main issue on appeal was whether the 1868 treaty provided for the retention of fishing rights by the Indians. The treaty mentioned the words "to hunt" and "hunting districts," but no words relating specifically to fishing. Evidence was introduced in the lower court by an anthropologist who testified that the Indians had long used the verb to hunt to include fishing.

A subsequent treaty in 1898, mentioned Indian fishing rights in relation to the Fort Hall Reservation. From the testimony, as to the language usage and the later treaty, the court on appeal held that fishing rights were included in the treaty and that the appeal should be dismissed.

OPPORTUNITIES FOR INDIANS

This is a new service of the Newsletter. We will publish job descriptions, and titles; and educational or grant opportunities either for organizations seeking Indian participants, or Indian organizations seeking persons to fill vacancies. We are limited as to space, so please make your submissions as brief as possible.

Indian Education Specialist

The Kansas State Department of Education is soliciting qualified Indian applicants for an Education Program Specialist Position. Duties include the coordination of Indian education program development activities within the state.

Applicants must possess a Master's degree in Education and four years of educational or related experience.

Current starting salaries are $900 monthly for a Master's degree and $992 for a doctorate. A 5% salary increase is automatic after six months.

Interested applicants should contact:

Dr. Joseph A. Sarthory
Kansas State Department of Education
120 East Tenth Street
Topeka, Kansas 66612
(913) 296-3739

Michigan Scholarships — The University of Michigan wishes to recruit American Indian students. Scholarships and special considerations are available. If interested write:

The University of Michigan
Native American Admissions Counselor
1220 Student Activities Building
Ann Arbor, Michigan 43104

INDIAN NEWS ARTICLES

COURT DECIDES PREFERENCE CASE

The United States District Court of Washington, D.C. has ordered sweeping, far-reaching employment changes throughout the Bureau of Indian Affairs as a result of a lawsuit initiated by the United States Scholarship Service, Denver, Colorado.

Tillie Walker, Executive Director of the United Scholarship Service, and Attorney Harris D. Sherman of Denver declared that the decision represented a landmark victory for Indian people. U.S. District Court Judge Corcoran has ordered the Bureau of Indian Affairs to grant preferences to Indian employees in promotions, initial hiring, reinstatement, reassignments, and that qualified Indians be given preference "in any other personnel movement therein intended to fill vacancies in that agency, however created." Miss Walker predicted that the Bureau would become predominantly an Indian agency for the first time in its history.

Judge Corcoran also ruled that the Indian preference statutes cannot be applied in a discretionary manner. The Court decision stated: (The preference statutes) don't say the 'Indian may' have preference; it says 'Qualified Indians shall hereafter have preference', and this Court so holds. If such a mandate makes the administrative position of Defendant difficult, it is to Congress that the Defendant must turn for relief, not to the Courts." The Judge ruled that while it is obvious that strict interpretation of the Indian preference law will leave non-Indian employees of the BIA in a 'relatively frozen position and will undoubtedly dim their promotional prospects within the agency, the Court can't say that such a result lies outside the intent of Congress." He further ruled that an Indian employee applying for a promotion has to be only minimally qualified and should be promoted even over a non-Indian who may be better qualified.

There are an estimated 17,000 employees of the Bureau of Indian Affairs and about 57% are Indian. Only about 20% of the Indian employees are in the higher level positions.

The decision will affect over 10,000 employees of the Indian Health Service of USPHS, which is also governed by the Indian Reorganization Act.

United Scholarship Service Release, January 15, 1973

SMITHSONIAN INSTITUTION SEEKS NAMES FOR INDIAN BIOGRAPHICAL DICTIONARY

The Smithsonian Institution is seeking the assistance of Indian, Eskimo and Aleut people in the preparation of a biographical dictionary to accompany a new Handbook of North American Indians.

The Smithsonian is presently preparing the Handbook, which is intended to be an encyclopedic reference work of 20 volumes summarizing what is known of the cultures and history of Indians, Eskimos, and Aleuts of the whole continent from central Mexico to the Arctic Ocean. The chapters for these volumes are being written by scholars at many different institutions around the world.

A Biographic Dictionary in two volumes of 750 pages each will be included as a separate part of the encyclopedia and will be devoted to biographies of important Indians, Eskimos, and Aleuts who are no longer living. Thus far, a list of about 1600 names of candidates for biographies has been compiled. This list includes all those individuals for whom biographies were published in 1907-1910 in the first Handbook of American Indians North of Mexico, as well as numerous suggestions received in answer to a questionnaire which was distributed in 1971.

"The Smithsonian Institution urgently needs the help of Indian Eskimo, and Aleut people for this project, because (1) the Institut does not want to publish anything important about American Indians Eskimos, and Aleuts without their suggestions and participation, and (2) individuals should be included in the Biographical Dictionary who were known by their friends and relatives but whose names may not have appeared previously in the published record.

In addition to the historically prominent and the already famous figures who obviously should be included, the Smithsonian is seeking an assortment of personalities including Indian, Eskimo, and Aleut people who engaged in a variety of activities (artists, warriors, craftsmen, statesmen, politicians, actors, priests, curers, writers, sportsmen, prophets, etc.); people who were infamous as well as those who were held in esteem by their tribesmen; and both men and women from as many tribes as possible--in short, the names of anyone from the recent or distant past who is likely to be looked up in the future.

Suggested names of deceased American Indians, Eskimos, and Aleuts who might be included in the Biographical Dictionary, along with a few words explaining why they should be included, when they lived, and to what tribe they belonged, should be sent to: Biographical Dictionary, Handbook of North American Indians, Smithsonian Institution, Washington, D.C. 20560. A copy of the list of names received thus far is available and will be sent to anyone who asks for it.

Those who prefer not to write, may telephone Mr. Merrill collect at the Smithsonian Institution in Washington, D.C. The telephone number is (Area Code 202) 381-6203.

The final decisions on who is to be included, and who will write the short biographies, will be made in June. Comments and suggestions should be submitted before then so that they can be indexed and analyzed.

Smithsonian Institution Release, January 19, 1973

MARVIN L. FRANKLIN NAMED ASSISTANT TO THE SECRETARY FOR INDIAN AFFAIRS

Secretary of the Interior Rogers C.B. Morton today announced the appointment of Marvin L. Franklin, 56, an Oklahoma City business executive and member of the Iowa Indian Tribe, as Assistant to the Secretary for Indian Affairs, a new position in the Interior Department.

Franklin will be the senior official for Indian affairs within Interior, and will immediately assume direct responsibility for all Department programs concerning Indian and Alaska Native people on an interim basis, Secretary Morton said. He will report directly to the

Secretary. After a Commissioner of Indian Affairs is named, Franklin will continue to advise Secretary Morton on ways to improve Indian programs and their relationships with other Federal agencies.

The appointment marks the completion of a two-month effort by Richard S. Bodman, Assistant Secretary for Management and Budget, to administer programs and provide services for Indians following the occupation of the Bureau of Indian Affairs headquarters last fall.

Franklin has been employed by Phillips Petroleum Company since 1947, and since 1965, has been its Director of Cooperative Projects. A major part of his assignment has been to work with government to develop industry in disadvantaged areas, especially those where Indians are in need of job opportunities.

In this capacity, Franklin has worked closely with the Bureau of Indian Affairs in its industrial development program for reservations, as well as with the Department of Commerce, the Economic Development Administration and the Small Business Administration.

Having an Indian heritage, Franklin has been a Councilman with the Iowa Tribe, Chairman of the General Tribal Council and presently is Vice Chairman of the Tribal Executive Committee. The Iowa Tribe once controlled the land area between the Missouri and Mississippi Rivers, but the Westward Movement resulted in the tribe being located on a 400-square-mile reservation in northeast Kansas and southeast Nebraska.

Franklin's efforts on behalf of Indians were recognized by the Department of the Interior on June 7, 1971, when Secretary Morton presented him with the Public Service Award for Conservation of Human Resources for results achieved in creating economic betterment for Indian reservations.

His affiliations also include being president of Indian Enterprises, Inc., founded by the four Indian tribes of northeastern Kansas to assist in bringing job opportunities to tribal members. He also is President of the Phillips Industrial Finance Corporation, Vice-President of Provesta Company, member of an advisory committee to the American Petroleum Institute; President, First Americans Corporation; and a director of the Navajo Forest Products Industries, the Navajo Chemicals Company, Papago Explosives Company, Oklahoma Vocational-Technical Foundation, and the American Indian National Bank.

While in Oklahoma City, Franklin has had an opportunity to engage in business outside of his required services to Phillips Petroleum. He has been an organizer and active officer in a life insurance company, an investment company and partner in a law firm.

Franklin was born July 18, 1916 in Ponca City, Oklahoma. He was graduated from Northern Oklahoma College in 1940, and received a law degree from Oklahoma City University in 1955. From 1940 to 1947 he was a commercial pilot and trained pilots during World War II. He also was Director of Page Aviation Flight School under contract to Oklahoma University. His home is in Bartlesville, Oklahoma.

U.S. Dept. of the Interior Release, February 7, 1973

SUIT CHALLENGES EXCLUSION OF INDIANS FROM JURIES

Oklahoma City, Okla.--A challenge to the alleged state practice of excluding Indians from jury duty, resulting in the jailing and imprisonment of large numbers of Oklahoma Indians, is now before the U.S. District Court here.

The suit, filed Jan. 15 by the National Indian Youth Council (NIYC), is a class action complaint suit against the supreme court justices of Oklahoma. Oklahoma has the largest Indian population of any state in the Union.

The suit charges that state law provides for the arrests of Indians and assurances of their conviction by having them judged exclusively by non-Indian jurors.

According to NIYC, three factors prompted the suit:

--Indians are denied participation on juries in their own view;

--Although jurors are drawn from property tax rolls, Indians who do not live on Indian tax-exempt land have never been called for jury duty;

--"An enormous number of Indians" are arrested and convicted in Oklahoma yearly.

NIYC also made two additional requests while the suit is pending:

--That all Indian prisoners currently incarcerated by "improperly impaneled juries" be given new trials immediately or released and returned to their families;

--That "appropriate relief and compensation" be given to Indian people for past jury selection practices.

American Indian Press Association Release, January 15, 1973

TRIBAL SOVEREIGNTY

Washington, D.C.--At stage front in Indian affairs today is a tribal sovereignty question which could sink self-governing functions of all tribes.

Northern Plains tribes are being judicially bludgeoned by application of the "equal protection of the laws" provision of the Indian Civil Rights Act of 1968 to tribal political processes. This act, passed by the 90th Congress, was intended to protect the constitutional rights of tribal members in criminal prosecutions and in civil cases in tribal courts.

Federal district courts in South Dakota are instead using it to usurp tribal jurisdiction and force tribes to re-apportion their voting districts. In most cases, tribal members who have resorted to the federal courts have not first availed themselves of remedies provided in their tribal constitutions and laws.

Suits currently are pending in the 8th Circuit Court of Appeals and in district courts in South Dakota against the Cheyenne River Sioux, Rosebud Sioux, Crow Creek Sioux and Standing Rock Sioux tribes.

According to one Indian attorney, the short-range effect of resorting to federal courts is to destroy the tribes' ability to function and to endanger the assets and property. The long-range effect is that this type of action amounts to backdoor termination, says the attorney, through judicial decree.

Rufus Edmisten, now chief counsel on the Separation of Powers Subcommittee on the Senate Judiciary Committee, worked on Sen. Sam Ervin's Constitutional Rights Subcommittee when the Indian Civil Rights Act was being considered in Congress. Said Edmisten:

"We are disappointed in the manner in which the bill has been used and the way it is being applied and interpreted by the courts. We wanted to give the Indian tribes more sovereignty, not less. Instead, the bill is being used to harass the tribes, and some tribal members are using it to settle animosity between them and their leaders. The Pueblos have been sued time and time again and it is taxing their resources. The Senator would like to amend the act to say that it should in no way be used to interfere with tribal sovereignty."

According to Edmisten, Ervin introduced a bill in the 91st Congress which would amend the act in this fashion. The bill passed the Senate but never got out of the House Interior Committee. There is some likelihood that the bill will be reintroduced by Ervin in the new 93rd Congress.

Lewis Sigler, chief counsel on the House Indian Affairs Subcommittee, stated that no action was taken by the subcommittee on the Ervin bill because the committee had a heavy schedule and because there was "no demand for action" on this bill.

The act has been used in other ways to infringe upon tribal sovereignty. In 1969, the "due process of law" provision of the law was used to deny the Navajo Tribe's sovereign right to summarily exclude an unauthorized non-Indian from their reservation.

American Indian Press Association Release, January 12, 1973.

WHITE HOUSE ANSWERS CARAVAN PAPER

Washington, D.C.--Below is a condensation of the White House response to the 20-point position paper formulated by the Trail of Broken Treaties Caravan. The White House response, signed by Leonard Garment and Frank Carlucci, principal White House negotiators Jan. 9, was delivered to the TBT group the same day.

Original demands appear in the bold type and the responses in lower case:

1-2-5-6. RESTORATION OF TREATY-MAKING, CREATION OF TREATY COMMISSION, RESUBMISSION OF UNRATIFIED TREATIES TO SENATE, AND ALL INDIANS GOVERNED BY TREATY: Indians have been citizens since 1924, and a government does not make treaties with its citizens. Indians already have or the administration is attempting to create mechanisms through which Indians can "represent their own interests" and to demand new treaties "is to raise false issues, misleading to the Indian people and diversionary from the real problems."

3-9. ADDRESS TO THE AMERICAN PEOPLE IN JOINT SESSION OF CONGRESS AND A NEW CONGRESSIONAL COMMITTEE STRUCTURE: These demands should be addressed to Congress.

4. COMMISSION TO REVIEW TREATY COMMITMENTS AND VIOLATIONS: This is the responsibility of the Indian Claims Commission. President Richard M. Nixon has already proposed legislation to protect Indian rights--the Indian Trust Counsel Authority.

7-8. MANDATORY JUDICIAL RELIEF AGAINST TREATY RIGHTS VIOLATIONS, JUDICIAL RECOGNITION OF INDIAN RIGHT TO INTERPRET TREATIES: These demands are either based on a misunderstanding of the judicial process or are already attainable in the courts or give Indians highly preferential positions in controversies about their treaty rights, or present constitutional problems.

10-10A. LAND REFORM AND RESTORATION OF 110-MILLION ACRES, AND PRIORITIES IN RESTORATION: Indians either already own most of their land, or are litigating for money compensation before the Indian Claims Commission. The demand for perpetual non-Taxability and non-alienability is in part repetitive of existing rights, would deprive Indians of their right to deal with their own lands, and would be legally impossible. Priorities on the return of land would meet with "considerable difference of opinion" among Indian people.

10B. CONSOLIDATION OF INDIAN LAND, WATER, NATURAL AND ECONOMIC RESOURCES: The government will give careful study to the separate essay promised by TBT members.

10C. TERMINATION OF LEASES AND CONDEMNATION OF NON-INDIAN LAND TITLES: The TBT people should take this demand to their Indian colleagues since they determine how they will use their land. Condemnation of non-Indian land titles by Indians is legally impossible and/or impractical.

10D. REPEAL OF MENOMINEE, KLAMATH AND OTHER TERMINATION ACTS: Whether the federal government should now attempt this will have to be studied at greater length.

11. RESTORATION OF RIGHTS TO INDIANS TERMINATED BY ENROLLMENT AND REVOCATION OF PROHIBITIONS AGAINST "DUAL BENEFITS": Except in a few instances, tribes decide what are the criteria for membership.

12. REPEAL OF STATE LAWS ENACTED UNDER PUBLIC LAW 280): A state matter. States can return jurisdiction over Indians to the U.S. but are not required to do so at a tribe's request. Congress does have the power to take back jurisdiction. It is not true that P.L. 280 deprives any tribe of civil or criminal jurisdiction.

13. RESUME FEDERAL PROTECTIVE JURISDICTION FOR OFFENSES AGAINST INDIANS: Congress could not, constitutionally, comply with this demand.

13A. CREATION OF A NATIONAL FEDERAL INDIAN GRAND JURY: It would be a misguided choice indeed to subdivide our American system of justice into ethnic slices, each skewed to give special attention on a racial basis.

13B. TRIBAL JURISDICTION OVER NON-INDIANS WITHIN THE INDIAN RESERVATIONS: Such a proposal would adversely affect the citizenship rights on non-Indians both as citizens of their state and as citizens of the U.S. Non-Indians should, then, also be allowed to participate in tribal government.

13C. REHABILITATION AND RELEASE PROGRAM FOR STATE AND FEDERAL INDIAN PRISONERS: A program has been in effect between Interior and Justiee for the last two years which assists in doing precisely this.

14. ABOLITION OF INDIAN BUREAU BY 1976: Tribes are taking over management and operation of federal program, and BIA is becoming an Indian trust and technical assistance agency, with pace of change at Indians' option. Where BIA will be placed eventually will be decided after close consultation with Indian leaders.

15-16. CREATION OF "OFFICE OF FEDERAL-INDIAN RELATIONS AND COMMUNITY RECONSTRUCTION" AND PRIORITIES AND PURPOSE OF NEW OFFICE: Indian people, no less than President and Congress, would and could be defrauded by new institution as proposed specifically. Neither President nor Congress would permit its creation. Second part of new proposal should be addressed to Congress.

17. INDIAN COMMERCE AND TAX IMMUNITIES: As state citizens, Indians should not be set apart from fellow citizens in matters not related to trust, even if Congress had ability to grant special tax exemptions. For tribes to be treated as sovereign nations in relation to foreign nations is inconsistent with the status of their members as American citizens and could lead to erosion of their special relationship with the federal government.

18. PROTECTION OF INDIAN RELIGIOUS AND CULTURAL INTEGRITY: Indians are protected in these rights by the First Amendment to the U.S. Constitution.

19. NATIONAL REFERENDUMS, LOCAL OPTIONS AND FORMS OF INDIAN ORGANIZATIONS: Elected tribal governments are the principal spokesmen for their members. The government does listen to other individuals and groups.

20. HEALTH, HOUSING, EMPLOYMENT, ECONOMIC DEVELOPMENT AND EDUCATION: The question is not whether Indians have acute needs but whether pumping more money in the same old way is the best method of meeting them. Congress does not accredit school. Private accrediting systems accredit schools.

American Indian Press Association Release, January 10, 1973

REORGANIZATION OF THE BIA

Washington, D.C.--A restructuring and slimming of the central headquarters of the Bureau of Indian Affairs (BIA) and an enhancement of powers for the Indian Commissioner are highlights of changes in the making at the Interior Department.

Major features of the new BIA changes are:

--The responsibility for Indian affairs will now be entirely in the hands of the Indian Commissioner who reports directly to the Interior Secretary rather than through any intermediaries;

--Thirteen previous BIA central office divisions will be consolidated into seven;

--A six-man task force of Interior and BIA officials will review staffing and appointments in the new administrative structure;

--About 285 central office employees will be trimmed from the central office staff over the next 90 days, leaving a permanent staff of 715;

--The positions of deputy commissioner and assistants to the commissioner will be retained;

--Several BIA area directors will be moved, probably by mid-March, with one or more being named to posts in Washington, D.C.;

--Richard S. Bodman, assistant Interior secretary for management and budget who was empowered with authority for Indian affairs in December, will be leaving that post within a few weeks.

A White House spokesman stated that the BIA will remain within the structure of the Interior Department "until the majority of Indian people tell us they want it elsewhere."

It was also learned that Bodman told a select group of tribal chairmen that the new BIA structure had been "in the making for over a year under my personal supervision," and was "totally unrelated" to the November BIA takeover by the Trail of Broken Treaties Caravans.

The new organizational chart of the BIA includes the following offices:

OFFICE OF MANAGEMENT AND BUDGET: This office will administer contracting, personnel, program evaluation, safety, procurement, property management, budget formulation, statistics, accounting and audits, data processing, and mail and files.

OFFICE OF LEGISLATION: This office will handle all matters relating to pending legislation with the Congress, and supervise the office of communications.

OFFICE OF NATURAL RESOURCE RIGHTS: Replacing the Indian Water Rights Office, this division will administer Indian water issues, Alaska Native affairs under the 1971 Alaska Native Land Claims Act, and monitor the Hopi-Navajo dispute over about two million acres of jointly used land.

OFFICE OF TRUST RESPONSIBILITIES: Real estate services, land operations, forestry, irrigation, together with tribal trust funds and tribal accounting services will be the primary operations of this office.

OFFICE OF ECONOMIC DEVELOPMENT: Essential administrative tasks will include manpower programs, Indian business enterprises, Indian technical assistance programs, transportation, plant design and construction, and development of tribal governments.

OFFICE OF EDUCATION: This office will oversee secondary, post-graduate and adult education, educational assistance, school facilities, program development and review, and all internal services in the education division.

OFFICE OF TRIBAL SERVICES: Essential services of this office will be welfare, housing, law and order, tribal operations and plant management.

A six-man task force will select the heads of the seven newly consolidated offices within 12 weeks. Task force members are William L. Rogers, Robert Patterson, William Spillers, John McKune, Frederick Murray and John Sykes. The review got underway Jan. 24.

By mid-April 285 employees will be trimmed from the overall staff on the grounds that "central office personnel are too remote from the Indian people and not able to respond quickly enough to changing conditions." According to a public Interior Department statement, "the funding for the positions abolished in the headquarters will remain available for the Bureau and will be used for direct services to the Indian people."

The newly enhanced policy of Indian preference in relation to hiring and promotion of BIA Indian personnel will apply in the work reductions. Negotiations with employee unions are now underway.

American Indian Press Association Release, January 19, 1973

APPLICATION OF ENVIRONMENTAL PROTECTION ACT TO INDIAN LANDS

In a sweeping decision handed down on November 24, 1972, the United States Court of Appeals for the Tenth Circuit has ruled: (1) that the National Environmental Protection Act (NEPA) applies to Indian trust and restricted lands; and (2) that approval of a tribal lease by the Secretary of the Interior is "major federal action" which cannot be taken in the absence of an environmental impact statement. The case, entitled Abel Davis v. Morton, 469 F. 2d 593 (1972). arose out of a challenge by several non-Indian conservationist organizations to a lease by the Pueblo of Tesuque which called for the establishment of a huge real estate development within the reservation.

We believe the Abel Davis ruling to be wrong as a matter of law and also as a matter of policy.

Specifically, on the legal issues involved, the key to the Court's decision is its conclusion that "[t]he fact Indian lands are held in trust does not take [them] out of NEPA's jurisdiction," since public lands are covered under the statute and "[a]ll public lands of the United States are held by it in trust for the people of the United States." For the Court of Appeals to say in discussing NEPA that the Government's trust responsibilities towards Indians are the same as its trust responsibilities to every American is, in our opinion, unprecedented and highly disturbing. If carried over into other fields of law, such a doctrine could result in the loss of many benefits and protections which Indian lands now enjoy.

With respect to practical considerations, the Abel Davis ruling, if allowed to stand, will make it substantially more difficult for Indians to develop their lands through leasing. In the first place, reservation lands subject to NEPA will be placed at a competitive disadvantage in comparison with State and private lands not subject to comparable environmental restrictions. Secondly, the time required for preparation of an environmental impact statement will discourage many Indians or potential lessees from going forward with a planned development.

Association on American Indian Affairs Release, January 3, 1973

NEW INDIAN PUBLICATION

We would like to welcome a new publication, The Native People. It is a weekly newspaper, published in Canada, which contains news articles concerning all native peoples. If interested in subscribing write:

The Native People
% Alberta Native Communications Society
111427 Jasper Avenue
Edmonton 11, Alberta CANADA

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American Indian Law NEWSLETTER

VOLUME 6, NUMBER 3 February 22, 1973

Toby F. Grossman
Editor

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SCHOOL OF LAW

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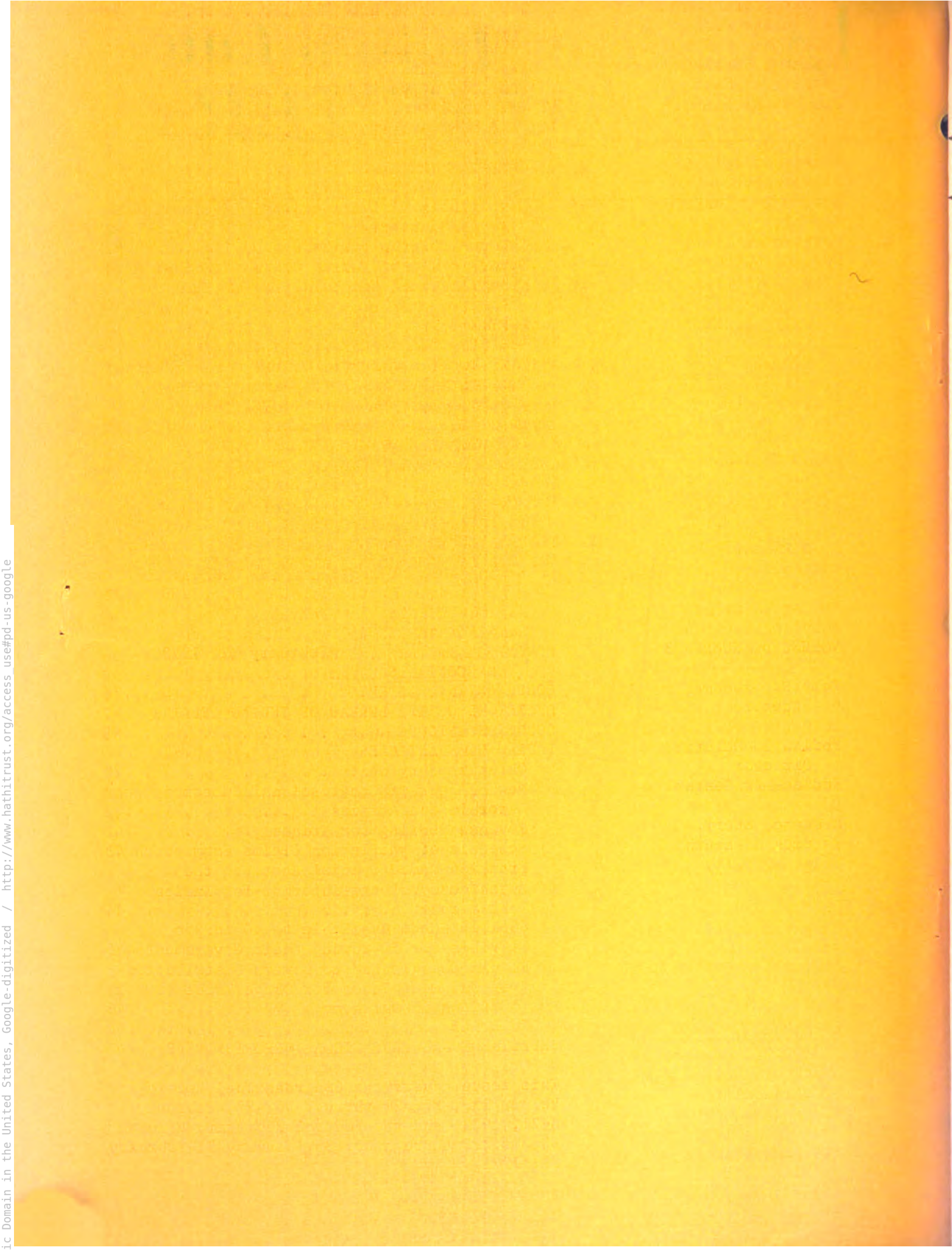

BILLS INTRODUCED

HOUSE

Klamath — H.R. 3867. A bill to amend the act terminating Federal supervision over the Klamath Indian Tribe by providing for Federal acquisition of that part of the tribal lands described herein, and for other purposes; to the Committee on Interior and Insular Affairs.

February 6, 1973; 119 C.R. 21, H797

Policy — H. Con. Res. 115. Concurrent resolution relating to a national Indian policy; to the Committee on Interior and Insular Affairs.

February 8, 1973; 119 C.R. 23, H935

Navajo-Hopi — H.R. 4412. A bill to abolish the Joint Committee on Navajo-Hopi Indian Administration; to the Committee on Interior and Insular Affairs.

February 20, 1973; 119 C.R. 26, H1012

Iowa Tribe — H.R. 4508. A bill to provide for the disposition of funds appropriated to pay a judgment in favor of the Iowa Tribe of Oklahoma and the Iowa Tribe of Kansas and Nebraska and in Indian Claims Commission docket No. 135 and for other purposes; to the Committee on Interior and Insular Affairs.

February 21, 1973; 119 C.R. 27, H1059

SENATE

Alaska — S. 828. A bill to reduce the indebtedness of certain native villages in Alaska to the United States, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

February 8, 1973; 119 C.R. 23, S2353

Iowa Tribe

S. 944. A bill to provide for the disposition of funds appropriated to pay a judgment in favor of the Iowa Tribe of Oklahoma and the Iowa Tribe of Kansas and Nebraska and in Indian Claims Commission docket numbered 135, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

February 21, 1973; 119 C.R. 27, S2961

COMMITTEE MEETINGS

SENATE

Indian Claims Commission

Committee on Interior and Insular Affairs: On Friday, February 16, Subcommittee on Indian Affairs approved for full committee consideration with an amendment S. 721, authorizing appropriations for the Indian Claims Commission for fiscal year 1974.

February 19, 1973; 119 C.R. 25, D110

DECISIONS OF THE BUREAU OF INDIAN AFFAIRS

White Mountain

The B.I.A. announced that the tribal council of the White Mountain Apache Reservation in Arizona has passed a liquor code.

February 7, 1973; 38 F.R. 25, pp. 3529

Osage

The B.I.A. announced the proposed regulations governing the distribution of judgment funds to the Osage Tribe of Indians in Oklahoma.

February 14, 1973; 38 F.R. 30, pp. 4402

Superintendents

The B.I.A. announced that it has delegated certain powers to the Portland Area superintendents to approve mortgages and deeds of trusts under certain circumstances.

February 15, 1973; 38 F.R. 31, pp. 4525

Rosebud — The B.I.A. announced that the tribal council of the Rosebud Sioux has passed an ordinance legalizing the sale, introduction and possession of intoxicants on the Rosebud Indian Reservation, South Dakota.

February 21, 1973; 38 F.R. 34, pp. 4719

Flathead — The B.I.A. announced that it has given the Superintendent of the Flathead Indian Agency the authority to approve timber sales without advertisement to members of the Confederated Salish and Kootenai Tribes for stumpage value not exceeding $5,000 and for contract term no longer than 2 years.

February 22, 1973; 38 F.R. 35, pp. 4791

COURT DECISONS

State of Washington v. Chambers

506 P2d 311
Supreme Court of Washington
February 15, 1973

Defendant Michael Chambers appealed from a conviction of hunting deer without a valid Washington State hunting license. Appellant Chambers had been arrested while on privately owned land in Washington State. Chambers claimed that, as an enrolled member of the Confederated Tribes and Bands of the Yakima Indian Reservation, he was entitled to hunt under the terms of the 1855 treaty between the Yakima Tribe and the United States.

Chambers claimed that the trial judge erred by not allowing the jury to have a copy of the minutes of the treaty proceedings during their deliberation. The Supreme Court held that this was not error, since interpretation of the treaty was a matter of law, not fact, and thus within the province of judicial determination.

The Supreme Court also found no error in the trial court's refusal to give six instructions to the jury. The six instructions had been aids to the jury. in interpreting the treaty, which interpretation was held to be the judge's duty alone.

The Treaty of 1855, Article 3, gave the Yakima rights to hunt and fish in the Territory on "open and unclaimed land." The main dispute in the case revolved around the definition of the phrase "open and unclaimed land". Appellant assigned as error the trial judge's giving an instruction to the jury that open and unclaimed meant lands not in private ownership. The instruction read further that if Chambers was found to have been hunting on land which a reasonable man would see was privately owned, he must be convicted of hunting without a license. The Supreme Court, after reviewing the minutes of the Treaty proceedings of 1855, agreed with the trial court as to its definition of "open and unclaimed land" and affirmed Chamber's conviction.

De Funis v. Odegaard

507 P2d 1169
Supreme Court of the State of Washington
March 8, 1973

Plaintiff Marco DeFunis, Jr. had applied for admission to the University of Washington School of Law. After his application was denied, DeFunis filed suit against the Board of Regents, the President of the University, and the Dean of the Law School, alleging that the defendants had wrongfully denied admission to DeFunis while admitting minority students with poorer grades and test scores than DeFunis. DeFunis won a judgment in his favor, ordering defendants to admit DeFunis to the law school. Defendants appealed to the Supreme Court of Washington from the judgment.

The evidence showed that the admissions committee used different standards for the consideration of minority students (Blacks, Chicanoes and Indians) than for the Anglo students. Less weight was given to the grades and test scores of minority applicants. Other factors such as writing ability, employment history, and general background were given greater emphasis as to minority applicants rather than non-minority applicants. The minority students qualifications were compared to each other but were not compared to the other applicants. From the minority group of applicants, the committee selected those applicants which it felt were most likely to succeed in law school.

DeFunis contended that the school's policy of admissions violated the 14th Amendment of the Constitution of the United States, in that the policy denied him equal protection of the law. The Supreme Court held that racial discrimination in a positive sense, that is in recruiting minority students for law school is not per se unconstitutional and that schools have a duty to desegregate in this manner. The judgment of the trial court was reversed.

OKLAHOMA JURY SUIT

The National Indian Youth Council (NIYC) announces that a suit was filed this morning in the U.S. District Court in Oklahoma City attacking the age old practice of the state in excluding Indian people from juries.

The suit was organized by the NIYC and involves 10 plaintiffs from 7 counties. These couties are Adair, Blaine, Cherokee, Custer, Okmulgee, Roger Mills, and Sequoyah, but this class action complaint encompasses the entire state. The defendants are the Supreme Court Justices of Oklahoma.

There are three points:

One, that Indian people are denied participation on juries is beyond question to the Indian people who have been arrested and imprisoned.

By law (38 OSA S. 18) grand and petit jurors are drawn from the property tax roll maintained in each county. Many of the defendants live on Indian tax exempt land. Even though they pay state and federal taxes and liable for arrest, they are thus excluded from being a juror.

The intent of this statute is clear: to arrest Indian people and insure their conviction by having them judged exclusively by non-Indian jurors. This is a blatant denial of the right of a citizen to be tried by his peers under the 14th Amendment.

Two, some of the plaintiffs do not live on Indian tax exempt land, yet they have never been called to serve on a jury nor have they any knowledge of any other Indian being called to serve in their counties. Only naked discrimination by the county treasurer, the county assessor, the county sheriff, and the county clerk can account for this situation.

According to the U.S. Census many counties have large Indian populations: Adair 27.19%, Blaine 6.8%, Cherokee 18.6%, Custer 3.5%, Okmulgee 6.0%, Roger Mills 6.6% and Sequoyah 8.66% for example. Throughout years of work in these and other counties, NIYC has never run into any Indian resident who has been asked to serve on a jury.

Recently in Louisiana a Black man was acquitted because in his county over a years period only 5% of the jurors were Black while the Black population of the county was 24%. In Adair County we have a ratio of 0% to 27.19%.

By this suit we are attempting to extend the blessings of the 14th Amendment to Oklahoma.

Three, an enormous number of Indians are arrested and convicted in Oklahoma each year. According to the U.S. Department of Justice a Black has 5 times more chance of being arrested than a White. An Indian has 25 times more chance of being arrested than a White. It is not because we are more criminal than anyone else but because we are more discriminated against than anyone else.

A great number of Indian people are currently encarcerated in Oklahoma prisons. For example: McAllister has 242 Indians, El Reno has 39, the State Reformatory has 49, and the State Training Schools have 150, not to mention the hundreds now serving time in City and County jails.

None of these prisoners NIYC has talked to or who are members of the organization were convicted by a jury with an Indian on it. Many are innocent, others were given a stiffer sentence than a non-Indian would get.

Therefore, in the name of fairness, NIYC asks that all Indian prisoners currently encarcerated being convicted by a jury having been improperly enpaneled be immediately given a new trial with a proper jury if they so request. Or, that they be released and returned to their families.

The plaintiffs ask that a three judge panel be immediately convened, an injunction be delivered to cease current jury practices, that the Oklahoma jury statute be declared unconstitutional, and that appropriate relief and compensation be given to Indian people for past jury selection practices.

NIYC believes that many Oklahomans want the state laws to be applied impartially to all. Unless laws are so applied the emerging hatred and mistrust between Indians and non-Indians in Oklahoma will continue to grow.

NIYC is prepared to take this case all the way to the Supreme Court.

National Indian Youth Council, Inc. News Release, January 15, 1973

NEW MEMBERS ON CONGRESSIONAL INDIAN AFFAIRS SUBCOMMITTEES

Washington, D.C.--The Senate and House Indian Affairs Subcommittees of the U.S. Congress will be led by two new chairmen, Sen. James Abourezk, D-S.D., and Rep. Lloyd Meeds, D-Wash.

Abourezk replaces Sen. George McGovern, D-S.D., who gave up his seat on the Interior Committee for the more prestigious Foreign Relations Committee. Meeds replaces Rep. James Haley, D-Fla., as chairman.

Other members of the two subcommittees are:

In the Senate, Henry Jackson, D-Wash.; Lee Metcalf, D-Mont.; Floyd Haskel, D-Colo.; Dewey Bartlett, R-Okla.; Paul Fannin, R-Ariz.; and James McClure, R-Idaho.

In the House, Robert Stevens, D-Ga.; John Melcher, D-Mont.; Yvonne Burke, D-Calif.; Ron DeLugo, D-Virgin Islands; James Jones, D-Okla.; Manuel Lujan Jr., R-N.M.; Sam Steiger, R-Ariz.; John Happy Camp, R-Okla.; Joseph Mariziti, R-N.J.; and David Towell, R-Nev.

American Indian Press Association Release, February 15, 1973

REVENUE SHARING FOR TRIBES

Washington, D.C.--A total of $6,217,713 has been sent to Indian self-governing communities and tribes by the Revenue Sharing Office of the U.S. Treasury Department.

The single largest revenue sharing check was received by the Navajo Tribe in the amount of $1,773,574, and the smallest check was received by the Alaska village of Kasaan in the amount of $28.

Checks were received by Indians living in only 30 of the fifty states. On a state-by-state basis, the state totals were:

Alaska, $146,778; Arizona, $1,505,836; California, $115,119; Colorado, $34,064; Florida, $17,172; Idaho, $75,214; Iowa, $11,460; Kansas, $6,857; Louisiana, $5,812; Maine, $42,286; Michigan, $25,305; Minnesota, $205,865; Mississippi, $50,305; Montana, $465,517;

Nebraska, $50,765; Nevada, $60,089; New Mexico, $1,364,184; New York, $136,962; North Carolina, $101,139; North Dakota, $304,119; Oklahoma, $309,786; Oregon, $58,018; Pennsylvania, $100; South Dakota, $548,953; Texas, $16,824; Utah, $150,762; Virginia, $1,315; Washington, $186,966; Wisconsin, $126,663; and Wyoming, $93,478.

Priority expenditures include ordinary and necessary maintenance and operating expenses for public safety, protection of the environment, public transportation, health, recreation, libraries, social services and financial administration, together with ordinary and necessary capital expenditures as authorized by law.

American Indian Press Association Release, February 19, 1973

SCHEDULE OF INDIAN CLAIMS COMMISSION

Washington, D.C.--The following is the calendar schedule for the hearing of tribal claims against the U.S. government before the Indian Claims Commission:

APRIL

Apr. 16 Seneca-Cayuga Tribe: determination of value of ceded lands.

JUNE

Jun. 25 Tlingit and Haida Indians of Alaska: hearing on liability and damages to the village of Angoon in the 1800s inflicted by the shelling of the U.S. Navy.

SEPTEMBER

Sep. 11 Klamath and Modoc Tribes: hearing on liability and damages to Oregon lands by federal government.

OCTOBER

Oct. 9-10 Gila River Pima-Maricopa Indian Community: determination of value of lands ceded by the tribe. Rehearing of case on order of the U.S. Court of Claims.

NOVEMBER

Nov. 16 Gila River Pima-Maricopa Indian Community: water rights case.

American Indian Press Association Release, February 22, 1973

FRANKLIN NAMED SPECIAL ASSISTANT TO SECRETARY OF THE INTERIOR FOR INDIAN AFFAIRS

Washington, D.C.--"I can't run an organization to save my soul." said Marvin L, Franklin in a special interview, "but I can work with people."

Franklin, 56, was recently named special assistant to the Interior Secretary for Indian Affairs, a role he anticipates with both relish and caution.

Franklin stressed the theme of "economic development as Indian salvation" and his past role in helping many Indian tribes begin businesses and enterprises which have become successful.

Franklin does not anticipate that he will hold his present position through the entire year of 1973.

"We now have a good chance to get an Assistant Secretary for Indian Affairs," said Franklin. "There is no Commissioner, Congress is in session, the Indians want it, and the administration is in agreement. So I'm on interim status, holding the boat steady while we try to get an Assistant Secretary. I have no desire to be Commissioner. However, I am the boss with full line control over Indian affairs.

"I think the (Nixon) legislation as written abolishes the position of Commissioner. A director of the Bureau of Indian Affairs would be named who would have only administrative responsibility."

"There will be no more reorganizations. However, the central office under my scheme of things will have only policy-making authority, the Area Office only technical assistance functions which they would provide to the agencies. The agencies and tribes would run the programs."

Franklin did not believe either the U.S. Congress or the American public had a satisfactory understanding of the unique problems and pressures faced by Indians.

"My objective in this job is to reach 200 million people so they understand the Indian situation," he stated. "We presently have no voice. So I am proposing a national Indian commission which would listen to various groups, then go to Congress and the President with Indian views.

Franklin said he was convinced no national political Indian group "should b e supported by the federal government. Rather, federal government should support tribal governments in ways not presently existing." This procedure, said Franklin, would enable tribes to support their own organizations free from governmental control.

On two currently controversial issues in the BIA, that of Indian preference in hiring and promotions and the eligibility of off-reservation Indians for BIA assistance, Franklin stated:

"I believe in Indian preference, but not beyond initial hiring. I don't have any quarrel with minimally qualified Indians getting over better qualified whites.

"Non-federally recognized Indians and urban Indians are a question the federal government has to deal with. It is not a question for the BIA. We can supply information to Congress that can help the urban Indians."

Throughout the interview, Franklin repeatedly referred to economic solutions as the key solutions to Indian problems. He said he was proud of his past accomplishments in the enhancement of minority businesses, and that it would be the leading theme of his tenure at Interior.

American Indian Press Association Release, February 23, 1973

$881,160 MADE AVAILABLE TO 60 INDIAN TRIBES FOR IMPROVING THEIR GOVERNMENTS

Sixty tribal groups recognized by the Bureau of Indian Affairs in the U.S. Department of the Interior have qualified to participate in a $881,160 Tribal Government Development Program, Marvin L. Franklin, Assistant to the Secretary for Indian Affairs, announced today.

Participating tribes are in the States of Alaska, Arizona, California, Kansas, Michigan, Minnesota, Montana, Nevada, New Mexico, New York, North Dakota, Oklahoma, Oregon, South Dakota, Washington and Wisconsin.

Some of the projects to be funded by the program are: Training in parliamentary procedure for tribal council members at the school decided upon by the tribe; development of ordinances for the Indian reservation governed by the tribal council; development of a constitution for a tribe; development of budgetary processes by the tribal government; and studies started of factors in tribal government with an eye to high-lighting troublespots.

B.I.A. Release, March 1, 1973

REGULATIONS ISSUED TO GOVERN DISTRIBUTION OF JUDGMENT FUNDS FOR OSAGE TRIBE OF INDIANS IN OKLAHOMA

Regulations have been published in the Federal Register to govern distribution of $13.2 million awarded the Osage Indian Tribe of Oklahoma by the Indian Claims Commission, largely for fair payment for tribal lands taken many years ago, the Interior Department's Bureau of Indian Affairs announced today.

The new regulations specify procedures to be followed by eligible persons in order for them to share in the distribution of judgment funds.

All claims for per capita shares by heirs of Osage Indian blood must be filed with the Superintendent of the Osage Agency, Bureau of Indian Affairs, Pawhuska, Okla. 74056 not later than April 27, 1974. The claimant must identify, by name and allotment number, each allottee in whose share the individual claims an interest, in order that the Superintendent may notify the individual when the Order of Distribution for such allottee is made. If a claim is not filed, an individual may not receive the notice of distribution.

B.I.A. Release, February 16, 1973

IN BRIEF

INDIAN EDITOR ARRESTED

Robert Covington, editor of the TRIBAL TRIBUNE in Washington State on the Colville Reservation, was arrested Feb. 14 while covering a confrontation between Indians and state fish and game officers at Franks Landing, Wash. Covington, who is also a photographer and cartoonist, had his camera smashed before he was taken into custody. He was freed several hours after his arrest for "illegal fishing."

OEO-FUNDED NEWSPAPERS IN PERIL?

A number of Indian newspapers around the country, both tribal and intertribal publications, may now be in jeopardy as a result of President Nixon's order to dismantle the Office of Economic Opportunity. Some papers have been funded through community action agencies. For these papers, there is no guarantee of continued monies as OEO functions are being transferred to HEW.

AKWESASNE NOTES HOME FREE

Pressures against Rarihokwats (Jerry Gambill), editor-in-chief of Akwesasne Notes, have eased with a failure to deport him to Canada. Attempts to deport him by unknown persons on the St. Regis Mohawk Reserve and New York state failed when he won a stay against deportation in January. Another problem--that of postal permits obtained through Wesleyan University in Connecticut--arose when the university notified the Notes that henceforth such arrangements were cancelled. The Notes staff was left with about 50,000 copies at the post office and no assurance of mailing. Wesleyan later had a change of heart.

PUEBLO COMMUNICATIONS CENTER MAKES HEADWAY

The All-Indian Pueblo Council (AIPC) communications project has moved ahead following a recent meeting with Southwest media people held in Albuquerque, New Mexico, at the end of January. The project is beginning to receive certain radio, TV and newspaper spots for dissemination of various Indian matters, events and information to Indian communities.

The Pueblo communications center, which will probably be part of the new AIPC facility now under construction just adjacent to the Albuquerque Indian School, will eventually involve the production of television shows, radio braadcasts, and a weekly newspaper for the Indian people of the northern half of the state.

AIPC communications director is Ernest L. Levato, telephone (505) 247-0489. Lovato says the BIA employment assistance division is making available funds for tie-ins with the AIPC budget for training Indians in radio, TV and newspaper publishing. The BIA funds are now pending, in the amount of $20,000.

The AIPC project has already started with a first-year budget of $34,600--$19,600 from the Four Corners Regional Commission with the help of New Mexico Gov. Bruce King, and $15,000 from the Akbar Fund of Chicago.

American Indian Press Association Release, February, 1973

BIBLIOGRAPHY OF MATERIAL ON INDIAN LAW

The American Indian Law Center has recently published a bibliography of material on Indian law, compiled by former Newsletter editor, Joe Sabatini.

The bibliography contains over 500 citations to books, law review articles, and current Indian periodicals.

Please send your orders c/o American Indian Law Newsletter, U.N.M. School of Law, 1117 Stanford Dr., N.E., Albuquerque, New Mexico 87131. Ask for "American Indian Law: A Bibliography" by Joe Sabatini. The price is $1.25 per copy.

Checks should be made payable to the American Indian Law Center.

EMPLOYMENT AND EDUCATIONAL OPPORTUNITIES

JOB VACANCY ANNOUNCEMENT

Position:

Associate Attorney for the Judicial Branch
The Navajo Tribe
Window Rock, Arizona 86515

Duties:

This is professional legal work in providing advisory assistance to the judges and other personnel of the Courts of the Navajo Nation.

Work of this class includes both formal and informal instruction of Court Personnel. Work requires, in addition to knowledge of statutes, Navajo Resolutions, and principles of common law, a thorough understanding of Navajo customs and usage. Policy guidance is received from the General Counsel of the Judicial Branch and the Chief Justice of the Navajo Nation.

Qualifications:

(1) Considerable knowledge of the Common Law, Constitutional Law, State and Federal Laws, with particular reference to the law of the United States relating to Indians.

(2) Considerable knowledge of the methods and practices of legal research and of established precedents and sources of legal reference.

(3) Ability to plan, organize, and conduct courses of instruction on law, and procedures and to express ideas clearly and concisely.

(4) Ability to interpret and apply legal principles to complex legal problems.

(5) Ability to draft a wide variety of legal documents and instruments.

(6) Graduation from a recognized school of law; and considerable experience in the professional practice of law, or experience as a judge or any equivalent combination of training and experience.

(7) Admission to the bar and license to practice law. Experience in teaching law. Experience in practice of law and Court work.

Salary:

Grade 12-4, $10,095 per annum for basic qualifications. Submit applications to Virgil L. Kirk, Sr., Chief Justice of the Navajo Nation, Post Office Box 447, Window Rock, Arizona 86515

INDIAN VOICE MAGAZINE SEEKS WRITERS

"Indian Voice", P.O. Box 2033, Santa Clara, Calif. 95051, is seeking material from Indian writers and journalists for publication in their monthly magazine. The magazine soon will be able to pay individual contributors well. Fiction and poetry should be submitted to Richard Greene, articles and thought pieces to Dean Chavers, and woman-oriented material to Fern Williams. Indian Voice is the only multi-feature monthly Indian magazine in North America.

American Indian Press Association Release, February, 1973

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American Indian Law NEWSLETTER

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April 13, 1973

Toby F. Grossman
Editor

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Director
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Research Dept.

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SCHOOL OF LAW

This issue covers the Congressional Record, Volume 119, No. 28 through No. 59, February 22-April 13, 1973.

A PUBLICATION OF THE UNIVERSITY OF NEW MEXICO SCHOOL OF LAW, AMERICAN INDIAN LAW CENTER

CONGRESSIONAL ACTIVITY

BILLS PASSED

SENATE

Indian Claims Commission — Senate took up and, by voice vote, passed with committee amendment S. 721, authorizing $1.2 million for the Indian Claims Commission for fiscal year 1974.

March 6, 1973; 119 C.R. 35, D177

Indian Claims Commission — Senate agreed to the House amendment to S. 721, authorizing funds for the Indian Claims Commission for fiscal year 1974, thus clearing the measure for the White House.

May 10, 1973; 119 C.R. 71, D506

BILLS INTRODUCED

HOUSE

Cheyenne River Sioux — H.R. 4593. A bill to provide for the distribution of funds appropriated to pay a judgment in favor of the Cheyenne River Sioux Tribe in Indian Claims Commission docket No. 114, and for other purposes; to the Committee on Interior and Insular Affairs.

February 22, 1973; 119 C.R. 28, H1115

Cherokee — H.R. 4644. A bill to appropriate funds to compensate the Cherokee Nation, a tribe of Indians in Oklahoma, for the loss of 545,175.14 acres of land; to the Committee on Interior and Insular Affairs.

February 22, 1973; 119 C.R. 28, H1117

Indian Claims Commission — H.R. 4967. A bill to authorize appropriations for the Indian Claims Commission for fiscal year 1974, and for other purposes; to the Committee on Interior and Insular Affairs.

February 28, 1973; 119 C.R. 31, H1265

Spokane	H.R. 5035. A bill to amend Public Law 90-335 (82 Stat. 174) relating to the purchase, sale, and exchange of certain lands on the Spokane Indian Reservation; to the Committee on Interior and Insular Affairs.
Choctaw, Chickasaw and Cherokee	H.R. 5089. A bill to determine the rights and interests of the Choctaw Nation, the Chickasaw Nation, and the Cherokee Nation in and to the bed of the Arkansas River below the Canadian fork and to the eastern boundary of Oklahoma; to the Committee on Interior and Insular Affairs.
Miami, Oklahoma	H.R. 5057. A bill to convey certain land of the United States to the Inter-tribal Council, Inc., Miami, Oklahoma; to the Committee on Interior and Insular Affairs.
Indian Claims Commission	H.R. 5078. A bill to authorize appropriations for the Indian Claims Commission for fiscal year 1974, and for other purposes; to the Committee on Interior and Insular Affairs. March 1, 1973; 119 C.R. 32, H1335, H1336
Navajo, Paiute, Hopi	H.R. 5647. A bill to authorize the partition of the surface rights in the joint use area of the 1882 Executive order: Hopi Reservation and the surface and subsurface rights in the 1934 Navajo Reservation between the Hopi and Navajo Tribes, to provide for allotments to certain Paiute Indians, and for other purposes; to the Committee on Interior and Insular Affairs. March 14, 1973; 119 C.R. 40, H1767
Nambe	H.R. 5143. A bill to declare that certain federally-owned land is held by the United States in trust for the pueblo of Nambe, N. Mex.; to the Committee on Interior and Insular Affairs.
Santa Ana	H.R. 5144. A bill to declare that the United States holds in trust for the Pueblo of Santa Ana certain public domain lands; to the Committee on Interior and Insular Affairs.

Santa Ana	H.R. 5145. A bill to declare that the United States holds in trust for the Pueblo of Santa Ana certain public domain lands; to the Committee on Interior and Insular Affairs.
Santa Ana	H.R. 5146. A bill to declare that the United States holds in trust for the Pueblo of Santa Ana certain public domain lands; to the Committee on Interior and Insular Affairs.
	March 5, 1973; 119 C.R. 34, H1382
Knife River	H.R. 5199. A bill to authorize the establishment of the Knife River Indian Villages National Historic Site; to the Committee on Interior and Insular Affairs.
Shoshone & Arapahoe	H.R. 5252. A bill to reimburse the Shoshone and Arapahoe Tribes of the Wind River Reservation, Wyo., for tribal funds that were expended to benefit only individuals in the constructinn, operation, and maintenance of the Wind River irrigation project; to the Committee on Interior and Insular Affairs.
	March 6, 1973; 119 C.R. 35, H1422, H1424
Sac & Fox	H.R. 5809. A bill to provide for the disposition of funds appropriated to pay judgments in favor of the Sac and Fox Indians, and for other purposes; to the Committee on Interior and Insular Affairs.
Sac & Fox	H.R. 5810. A bill to provide for the disposition of funds appropriated to pay judgments in favor of the Sac and Fox Indians, and for other purposes; to the Committee on Interior and Insular Affairs.
	March 19, 1973; 119 C.R. 42, H1916
Keweenaw Bay	H.R. 6070. A bill to declare that certain federally owned land is held by the United States in trust for the Keweenaw Bay Indian Community and to make such lands parts of the reservation involved; to the Committee on Interior and Insular Affairs.
	March 22, 1973; 119 C.R. 45, H2118
Minnesota Chippewa	H.R. 6124. A bill to declare that the United States holds certain lands in trust for the Minnesota Chippewa Tribe, Minn.; to the Committee on Interior and Insular Affairs.
	March 27, 1973; 119 C.R. 47, H2186

SENATE

Sac & Fox	S. 990. A bill to provide for the disposition of funds appropriated to pay judgments in favor of the Sac and Fox Indians, and for other purposes. Referred to the Committee on Interior and Insular Affairs.
Interior	S. 1011. A bill to establish within the Department of the Interior the position of an additional Assistant Secretary of the Interior, and for other purposes;
Indian Trust Counsel Authority	S. 1012. A bill to provide for the creation of the Indian Trust Counsel Authority, and for other purposes;
Economic Development	S. 1013. A bill to provide for financing the economic development of Indians and Indian organizations, and for other purposes;
Amendment of Laws	S. 1014. A bill to amend certain laws relating to Indians;
	and
Employment	S. 1015. A bill to establish within the Department of the Interior the Indian business development program to stimulate Indian entrepreneurship and employment, and for other purposes. Referred to the Committee on Interior and Insular Affairs.
Judgment Funds	S. 1016. A bill to provide for a more democratic and effective method for the distribution of funds appropriated by the Congress to pay certain judgments of the Indian Claims Commission and the Court of Claims, and for other purposes. Referred to the Committee on Interior and Insular Affairs.
Education	S. 1017. A bill to promote maximum Indian participation in the government and education of the Indian people; to provide for the full participation of Indian tribes in certain programs and services conducted by the Federal Government for Indians and to encourage the development of the human resources of the Indian people; to establish and carry out a national Indian education program; to encourage

the establishment of local Indian school control; to train professionals in Indian education; to establish an Indian youth intern program; and for other purposes. Referred to the Committee on Interior and Insular Affairs.

February 26, 1973; 119 C.R. 29, S3212, S3213

Keweenaw — S. 1102. A bill to declare that certain federally owned land is held by the United States in trust for the Keweenaw Bay Indian Community and to make such lands parts of the reservation involved. Referred to the Committee on Interior and Insular Affairs.

March 6, 1973; 119 C.R. 35, S3844

Northern Paiute — S. 1211. A bill to provide for the disposition of funds appropriated to pay judgments in favor of the Northern Paiute Nation by the Indian Claims Commission in docket numbered 87, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

Paiute Shoshone — S. 1222. A bill to declare that all rights, title, and interest of the United States in 2,640 acres, more or less, are hereby held by the United States in trust for the Paiute Shoshone Tribe of the Fallon Indian Reservation, Nevada. Referred to the Committee on Interior and Insular Affairs.

March 14, 1973; 119 C.R. 40, S. 4545

Fort Berthold — S. 1334. A bill to authorize the mortgaging of tribal lands on the Fort Berthold Reservation for certain purposes;

and

Fort Berthold — S. 1335. A bill to provide for the disposition of funds appropriated to pay a judgment entered by the Indian Claims Commission in favor of the Three Affiliated Tribes of Fort Berthold Reservation in dockets No. 350-A,E, and H, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

Indian Trust Counsel Authority — S. 1339. A bill to provide for the creation of the Indian Trust Counsel Authority, and for other purposes;

Workmen's Compensation	S. 1340. A bill to retain coverage under the laws providing employee benefits, such as compensation for injury, retirement, life insurance, and health benefits, for employees of the Government of the United States who transfer to Indian tribal organizations to perform services in connection with governmental or other activities which are or have been performed by Government employees in or for Indian communities, and for other purposes;
Economic Development	S. 1341. A bill to provide for financing the economic development of Indians and Indian organizations, and for other purposes;
Medical Care	S. 1342. A bill to amend acts entitled "An act authorizing the Secretary of the Interior to arrange with States or territories for the education, medical attention, relief of distress, and social welfare of Indians, and for other purposes", and "To transfer the maintenance and operation of hospital and health facilities for Indians to the Public Health Service, and for other purposes" and for other purposes;
Self-Government	S. 1343. A bill to provide for the assumption of the control and operation by Indian tribes and communities of certain programs and services provided for them by the Federal Government, and for other purposes;
Self-Government	S. 1344. A bill to amend certain laws relating to Indians;
	and
Self-Government	S. 1345. A bill to establish within the Department of the Interior the position of an additional Assistant Secretary of the Interior, and for other purposes. Referred to the Committee on Interior and Insular Affairs.
	March 22, 1973; 119 C.R. 45, S5364
Sisseton & Wahpeton Sioux	S. 1411. A bill to authorize the Sisseton and Wahpeton Sioux Tribe of the Lake Traverse Reservation to consolidate its landholdings in North Dakota and South Dakota, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

Sisseton & Wahpeton Sioux

S. 1412. A bill to declare that certain federally owned lands are held by the United States in trust for the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Indian Reservation in North and South Dakota. Referred to the Committee on Interior and Insular Affairs.

March 28, 1973; 119 C.R. 48, S5922

BILLS REPORTED

SENATE

Indian Claims Commission

In accordance with order of the Senate of March 1 Report was made after adjournment of the Senate, as follows:

S. 721, authorizing $1.2 million for the Indian Claims Commission for fiscal year 1974, with amendment (S. Rept. 93-53).

March 2, 1973; 119 C.R. 33, D169

COMMITTEE MEETINGS

HOUSE

Committee on Interior and Insular Affairs: Subcommittee on Indian Affairs met for mark up and approved for full committee action the following bills:

Indian Claims Commission

S. 721 amended, authorizing appropriations for Indian Claims Commission for fiscal year 1974;

and

Klamath

H.R. 3867 amended, to amend the act terminating Federal supervision over the Klamath Indian Tribe by providing for Federal acquisition of that part of the tribal lands described herein.

March 14, 1973; 119 C.R. 40, D235

Navajo-Hopi

Committee on Interior and Insular Affairs: Subcommittee on Indian Affairs concluded hearings on H.R. 1193 and 5647, to authorize the partition of the surface rights in the joint use area of the 1882 Executive Order Hopi Reservation and the surface and subsurface rights in the 1934 Navajo Reservation between the Hopi and Navajo Tribes, and to provide for allotments to certain Paiute Indians. Testimony was heard from public witnesses.

May 15, 1973; 119 C.R. 73, D531

SENATE

Indian Claims Commission

Committee on Interior and Insular Affairs: Committee held an open meeting to consider executive business, and ordered favorably reported, with an amendment, S. 721, authorizing funds for the Indian Claims Commission for fiscal year 1974; and the nomination of Jack O. Horton, of Wyoming, to be an Assistant Secretary of the Interior.

February 28, 1973; 119 C.R. 31, D154

Navajo-Hopi

Committee on Interior and Insular Affairs: Subcommittee on Indian Affairs met in an open business meeting to consider the matter of the Navajo-Hopi boundary dispute in Arizona, and received a report on the results of the recent field hearings held in Winslow. Subcommittee will meet again to further consider this matter, at a date not yet announced.

March 20, 1973; 119 C.R. 43, D271

Judgment Funds

Committee on Interior and Insular Affairs: Subcommittee on Indian Affairs in an open mark-up session approved for full committee consideration, with amendments, S. 1016, to provide alternate methods for the disposition of certain Indian judgment funds.

Prior to this action, subcommittee received testimony on this bill from John H. Kyl, Assistant Secretary of the Interior for Congressional and Public Affairs, and Jerry C. Strauss, attorney, Washington, D.C., representing the National Congress of American

Indians, Arapahoe Tribe, Confederated Salish and Kootenai Tribes, Hoopa Valley Tribe, Quinault Tribe, and the Three Affiliated Tribes.

April 13, 1973; 119 C.R. 59, D409

INDIAN NEWS ARTICLES

EDUCATION FUNDS

Washington, D.C.--New Indian education monies amounting to $18 million previously withheld from expenditure by President Richard M. Nixon have now been freed for spending by HEW's Office of Indian Affairs.

The President in his proposed budget for the coming fiscal year on Jan. 29 had asked the Congress to rescind the appropriation of these funds "because of duplication of program efforts" through other programs in HEW.

HEW's Office of Indian Affairs was informed by Frank B. McGettrick, acting deputy commissioner of Indian education, that the $18 million apprppriated under the Indian Education Act of 1972 was now available.

The formal notice came one day after a court order was handed down in federal court of the District of Columbia ordering the release of the $18 million. The order represented a major victory for the Native American Rights Fund (NARF) and the Institute for Development of Indian Law (IDIL) which had filed suits in behalf of various Indian organizations and groups to force release of the funds.

The Office of Indian Affairs at HEW is now under the gun to obligate the $18 million before June 30, the end of the current fiscal year. That office has launched a massive informational effort to advise Indian country that there is only a short period of time in which to submit and process proposals.

The three prinicipal sections of the Indian Education Act are Part A, revision of impacted areas program as it related to Indian children; Part B, special programs and projects to improve educational opportunities for Indian children; and Part C, special programs relating to adult education for Indians.

McGettrick urges every Indian group which has not received information on the new funding to contact Wayne Hafer (202) 962-3183 for Part A funding, and Pernell Swett (202) 962-3113 for Parts B and C.

Both the Coalition of Indian Controlled School Boards in Denver, Colo., and the National Indian Education Association in Minneapolis, Minn., have offered to assist any Indian group requiring technical assistance in putting together their proposals.

Completed proposals should be submitted to: Frank B. McGettrick, Acting Deputy Commissioner of Indian Education, Room 4068, USOE, 400 Maryland Ave. S.W., Washington, D.C. 20202.

In addition to providing funds for Indian education projects, the new act sets up a National Advisory Council on Indian Education under Part D. Funding is set at $150,000 for operation and $400,000 for a national study and technical assistance effort.

Mrs. Scheirbeck said her staff was actively soliciting Indian candidates for positions in her office new made possible by the release of this money. Positions range from secretaries to top program staff.

American Indian Press Association Release, May 17, 1973

NIXON'S INDIAN BILLS

THE INDIAN TRUST COUNSEL AUTHORITY--WHAT IT IS

BY KAREN DUCHENEAUX

Washington, D.C.--President Richard M. Nixon's proposed Indian Trust Counsel Authority, again before the U.S. Congress, is the most debated bill in his "Indian package."

The Trust Counsel bill is one of seven pieces of legislation originally proposed by Nixon in July 1970 to attack some of the basic problems of Indian people. Following are the key issues surrounding the Trust Counsel in a question-and-answer format;

Q. What situation gave rise to the proposed Trust Counsel?

A. The United States of America, the trustee, holds some of the property or natural resources of federally recognized Indian tribes, groups, bands or some individual Indians in trust. As agents of the federal trustee, the Interior Department and the Justice Department have a solemn duty to protect and preserve this property against all other interests.

At the same time, these two agencies have equally solemn obligations in four other areas that sometimes conflict with their obligations to Indians. These duties are: to preserve, protect, manage and utilize the public lands and water of the U.S.; to manage and assist states in the development of their resources; to assist the general public in its

private attempts to develop its resources; and to protect the rights of all tribes and individual members when two or more tribes or individuals have a dispute over their natural resources.

Q. What Indian problems arise from the many responsibilities these two agencies have?

A. It is inevitable that the two agencies will find instances when their duty to preserve and protect Indian trust property will clash with their other duties. Further, in these clashes, the two agencies act as mediator, decision-maker and attorney for all of these competing groups. These two agencies are thus left in a dilemma which has been described as a "conflict of interest."

Q. What happens to Indian rights to natural resources in these situations?

A. Many Indian people believe, with ample proof, that these two agencies sacrifice the Indian interest when faced with these conflicts. Indians feel they have a right to expect the trustee not to have to weigh competing interests when pursuing the rights of Indians.

Q. How would the Trust Counsel resolve this conflict of interest for the trustee?

A. By establishing the Trust Counsel as a separate, independent agency free from control by any other executive office. This independent trustee agency would protect Indian rights to their natural resources. In all court actions, before all commissions and in any administrative proceeding affecting Indian rights, the Trust Counsel would speak on behalf of the U.S. in protecting those rights.

The Trust Counsel would have all the privileges of other agents of the federal trustee such as Interior and Justice in its Indian counsel in these proceedings. For example, the Trust Counsel would not be prohibited from suing the United States on behalf of Indians because of the traditional U.S. sovereign immunity from being sued, and the Trust Counsel would also not be restricted from acting by the statute of limitations.

Q. Will the Trust Counsel perform any other kind of duties?

A. Yes. It will also provide legal services to Indians concerning their natural resources. For instance, it will investigate and inventory Indian land, water, timber, mineral, hunting and fishing rights, and provide information and technical assistance-type services to the tribes on these matters.

Q. What is the proposed organizational structure for the Trust Counsel?

A. It will be governed by a three-person board of directors, two of whom must be Indian; all will be appointed by the President with the

advice and consent of the Senate. The President will name one of the three as chairman. The board of directors will then hire a chief legal officer to be known as the Indian Trust Counsel. The Board will also hire a Deputy Indian Trust Counsel and other staff attorneys and experts on natural resources.

Q. How much money will the Trust Counsel have to act on?

A. This is one of the most important questions concerning the Trust Counsel, and an odd thing has happened regarding this question. The Trust Counsel must be adequately funded to enable it to challenge the power of the Justice Department and Interior Department, as well as the wealth of the states and rich private interests.

However, there has been no indication from the Nixon administration on the level at which they expect to fund the new agency. This is the case despite the fact that Congress requires by law that the Executive Branch include in its reports on proposed legislation a statement of projected costs. The fact that the Nixon administration has failed to do so raises some interesting questions about its concept of just how effective the Trust Counsel will be able to be in protecting Indian resources.

Q. Does the Trust Counsel assume responsibility for only Indian natural resources?

A. Yes. Interior and Justice retain their responsibility over other aspects of the trust relationship such as the federal responsibility to oversee tribal governments, probate wills, protect tribal and individual monies and the like.

Q. Has there been any support by Indian people for the Trust Counsel?

A. Yes. Hearings were conducted by the Senate Indian Affairs Subcommittee in the last Congress and many Indian tribes and organizations supported the concept behind the Trust Counsel. However, they had many objections to the bill as written by the Nixon administration. They submitted to the Congress many recommendations that would clarify, change or limit the Nixon bill.

Q. Is there opposition to the Trust Counsel bill or concept from any quarter?

A. Yes, predominantly from non-Indians. A spokesman for the State of New Mexico opposed the concept of the bill, and a non-Indian group with interests in public lands opposed some of the provisions of the Nixon bill which favors the Indians.

Q. What is the possibility that the Trust Counsel will be enacted in this Congress?

A. Slim. This bill has been in two previous Congresses and has not yet been enacted. Although most people support the concept of the Trust Counsel, none of the groups--the Nixon administration, the Congress, the Indians and non-Indians--can agree on the structure and powers of the Trust Counsel.

American Indian Press Association Release, May 1, 1973

WHITAKER EXPLAINS CURRENT BILLS

Statement of the Honorable John C. Whitaker, Under Secretary of the Interior, Press Conference regarding Indian Affairs, Washington, D.C., March 16, 1973

We share the belief of America's elected Indian leaders that many Indian needs must be met with legislation, with funding, and assistance--and not through negotiation at gunpoint.

The Administration has today retransmitted seven key Indian affairs bills to the Congress. Each of these bills was submitted to the 92nd Congress. All of them were originally set forth in the President's Message to the Congress on Indian Affairs on July 8, 1970.

The seven bills that we are again sending to the Congress can provide America's Indians with the full support they need to achieve new dignity and prosperity without the benign paternalism of the past. They include bills that will:

--Upgrade the Commissioner of Indian Affairs to the level of Assistant Secretary. This is critical to insuring that human needs receive the same priority that is assigned to resource needs.

--Create a Trust Counsel Authority to provide a totally independent source of legal counsel to assist the tribes in protecting and preserving their resources, especially land, water and mineral rights.

--A Contracting Bill which, with its companion Civil Service Bill, enable the tribes to assume much control of services now provided by the BIA. This is absolutely essential to providing the tribes as self-governing units the authorization to operate and manage Interior and HEW programs at the reservation level.

--An Indian Financing Act to provide needed capital for economic development on the reservations. This will boost revolving loan funds from $25 to $75 million and would enable up to $200 million worth of private loans to be guaranteed.

--And an amendment to the Johnson-O'Malley Act to allow us to direct Johnson-O'Malley funds currently limited to the school districts to Indian tribes themselves.

While the Federal Government has dramatically increased funding for Indian programs in the last four years we have exhausted the limits of existing authority to provide America's Indians the full opportunity to achieve self-determination. We need Congressional action--not inconclusive hearings or an expression of sentiment at a press conference.

I believe most members of the Congress want to act--but unless they act now, the Nation, and our people--and the American Indian--will be forced to live with the past.

Thank you.

Department of the Interior Press Release, March, 1973

PREFERENCE POLICY

Washington, D.C.--The Interior Department has determined "not to modify" its Indian preference policy in the hiring and promotion of Indians following a recent court decision but instead to seek an overturning of that decision, according to a confidential realignment plan of that agency.

The confidential plan, dated April 10, 1973 and signed by Marvin L. Franklin, assistant to the Interior Secretary on Indian Affairs, reads in full:

"Current departmental and Bureau (of Indian Affairs) policy provides that:

--"In hiring, if a qualified Indian candidate is available, he must be hired even though a better qualified non-Indian is available;

--"In promotions, if a qualified Indian candidate is available, he must be promoted in preference to a better qualified non-Indian. The Commissioner..., however, is authorized to make an exception if the best interests of Indian affairs require it;

--"In reassignments, no preference is given to Indians;

--"In reduction-in-force, employees are ranked by their types of appointment. Within this, veterans are placed in a group at the top.

Within the veteran and non-veteran groups, Indians are placed at the top. After such placement, employees are ranked in descending order by length of service.

"In December 1972, the Federal District Court for the District of Columbia ruled that certain portions of this policy were not in accordance with law. The court ruled that no exceptions could be granted in promotions, that Indian preference did apply in reassignments, that, in fact, Indian preference had to be applied whenever a vacancy was filled by whatever means.

"In January 1973, the (Interior) Department determined that existing preference policy would not be modified and that the court decision would be appealed. In March 1973, a representative of the (Interior) Solicitor's Office advised (its office of) Indian Affairs that the plaintiff's attorney in the case was considering filing suit for contempt of court, because the Bureau had not implemented the court decision.

"The Solicitor's representative seemed to be concerned that Indian Affairs might have taken actions after December 21, 1972, which were contrary to the court's order. We presume that such contrary actions have taken place. A group of Bureau employees filed suit in Albuquerque Federal Court last year. This suit challenged the constitutionality of Indian preference. The case was heard in November. The three-judge court has not yet given a decision.

"It would appear that rulings on Indian preference will have an effect upon our actions in realigning (BIA) headquarters. But no matter what we do, we may be damned.

"A relaxed Indian preference policy allows management greater choice in making selections (of personnel); it will at least maintain, if not increase, non-Indian employment in the Bureau. A tight Indian preference policy will restrict management in making selections. It will, however, increase Indian employment."

American Indian Press Association Release, April 21, 1973

American Indian Law NEWSLETTER

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May 17, 1973

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SCHOOL OF LAW

NOTICE

TO OUR SUBSCRIBERS: The bi-weekly publication policy of the Newsletter has not been followed recently. We felt it necessary to combine a number of issues to bring the Newsletter up to date. The revised publication dates are: Volume 6, Number 4--February 22-April 13, Number 5--April 16-May 17, Number 6--May 17-June 15. The bi-weekly publication policy will be resumed with Volume 6, Number 7 (June 16-30) and be followed until further notice.

Thank you for your cooperation.

The Editor

BILLS INTRODUCED

HOUSE

Economic Development	H.R. 6371. A bill to provide for financing and economic development of Indians and Indian organizations, and for other purposes; to the Committee on Interior and Insular Affairs.
Self-Government	H.R. 6372. A bill to provide for the assumption of the control and operation by Indian tribes and communities of certain programs and services provided for them by the Federal Government, and for other purposes; to the Committee on Interior and Insular Affairs.
Asst. Secretary of Interior	H.R. 6373. A bill to establish within the Department of the Interior the position of an additional Assistant Secretary of the Interior, and for other purposes; to the Committee on Interior and Insular Affairs.
Indian Trust Counsel Authority	H.R. 6374. A bill to provide for the creation of the Indian Trust Counsel Authority, and for other purposes; to the Committee on Interior and Insular Affairs.
Amendments to Indian Laws	H.R. 6375. A bill to amend certain laws relating to Indians; to the Committee on Interior and Insular Affairs.
	H.R. 6376. A bill to amend acts entitled "an Act authorizing the Secretary of the Interior to arrange with States or Territories for the education, medical attention, relief of distress, and social welfare of Indians, and for other purposes" and "To transfer the maintenance and operation of hospital and health facilities for Indians to the Public Health Service, and for other purposes"

and for other purposes; to the Committee on Interior and Insular Affairs.

March 29, 1973; 119 C.R. 49, H2300

Acoma — H.R. 6925. A bill to authorize the exchange of certain lands between the Pueblo of Acoma and the Forest Service; to the Committee on Interior and Insular Affairs.

April 12, 1973; 119 C.R. 58, H2724

Fort Berthold — H.R. 7368. A bill to provide for the disposition of funds appropriated to pay a judgment entered by the Indian Claims Commission in favor of the Three Affiliated Tribes of Fort Berthold Reservation in dockets numbered 350-A, E, and H, and for other purposes; to the Committee on Interior and Insular Affairs.

May 1, 1973; 119 C.R. 65, H3252

Navajo — H.R. 7391. A bill to provide for the disposition of funds appropriated to pay a judgment in favor of the Navajo Tribe of Indians in court of claims case No. 49692, and for other purposes; to the Committee on Interior and Insular Affairs.

May 1, 1973; 119 C.R. 65, H3253

Navajo-Hopi — H.R. 7679. A bill to provide for the mediation and arbitration of the conflicting interests of the Navajo and Hopi Indian tribes in and to lands lying within the joint use area of the Hopi Reservation established by the Executive Order of December 16, 1882, and to lands lying within the Navajo Reservation created by the act of June 14, 1934, and for other purposes; to the Committee on Interior and Insular Affairs.

May 9, 1973; 119 C.R. 70, H3542

Navajo-Hopi — H.R. 7716. A bill to authorize the separation of the interests of the Hopi and Navajo Tribes in certain lands set aside by the Executive Order of December 16, 1882, and to confirm to the Hopi Tribe exclusive rights

in certain lands located within the exterior boundaries of the Navajo Reservation in Arizona as defined by Congress in 1934 and for other purposes; to the Committee on Interior and Insular Affairs.

May 10, 1973; 119 C.R. 71, H3623

SENATE

Historical Site

S. 1468. A bill to authorize the establishment of the Knife River Indian Villages National Historic Site. Referred to the Committee on Interior and Insular Affairs.

April 4, 1973; 119 C.R. 52, S6585

Chippewa

S. 1650. A bill to declare that certain Federally owned land is held by the United States of America in trust for the Turtle Mountain Band of Chippewa Indians of the Turtle Mountain Chippewa Indian Reservation. Referred to the Committee on Interior and Insular Affairs.

April 18, 1973; 119 C.R. 62, S7730

Menominee

S. 1687. A bill to repeal the act terminating Federal supervision over the property and members of the Menominee Indian Tribe of Wisconsin as a federally recognized, sovereign Indian Tribe; and to restore to the Menominee Tribe of Wisconsin those Federal services furnished to American Indians because of their status as American Indians; and for other purposes. Referred to the Committee on Interior and Insular Affairs.

May 2, 1973; 119 C.R. 66, S8158

New Programs

S. 1786. A bill to require an annual authorization for appropriations for Federal programs for the benefit of American Indian people; establish specific annual goals to measure the effectiveness of these programs; improve the delivery of serviees and assistance; insure effective and continuing congressional oversight; and for other purposes Referred to the Committee on Interior and Insular Affairs.

Ely Colony

S. 1799. A bill to convey to the Ely Indian Colony the beneficial interest in certain Federal land. Referred to the Committee on Interior and Insular Affairs.

Duck Valley

S. 1800. A bill to authorize the use of facilities at the Owyhee Indian Hospital of the Duck Valley Indian Reservation to provide certain medical care to non-Indians Referred to the Committee on Interior and Insular Affairs.

S. 1801. A bill to authorize certain Indian hospital facilities to be made available to non-Indians under certain conditions. Referred to the Committee on Interior and Insular Affairs.

May 14, 1973; 119 C.R. 72, S8890

BILLS REPORTED

HOUSE

Klamath

H.R. 3867, to amend the act terminating Federal supervision over the Klamath Indian Tribe by providing for Federal acquisition of that part of the tribal lands described herein, amended (H. Rept. 93-111);

Indian Claims Commission

H.R. 4967, to authorize appropriations for the Indian Claims Commission for fiscal year 1974, amended (H. Rept. 93-112).

April 9, 1973; 119 C.R. 55, D375

COMMITTEE MEETINGS

SENATE

Indian Trust Counsel Authority

Committee on Interior and Insular Affairs: Subcommittee on Indian Affairs concluded hearings on S. 1012 and S. 1339, bills proposing creation of an Indian Trust Counsel Authority, after receiving testimony from Philip Sam Deloria, American Indian Law Center, Albuquerque;

Thomas Fredericks, Native American Rights Fund, Boulder; Frederick Ragsdale, University of California, Los Angeles; Charles Trimble, National Congress of American Indians, Washington, D.C.; George Crossland, Indian Legal Information Development Service, Washington, D.C.; Robert Jim, who was accompanied by Louis Cloud, Johnson Meninck, and James B. Hovis, all representing the Yakima Nation; and Robert Dellwo, representing the Spokane Calispel and Coeur d'Alene Tribes.

May 8, 1973; 119 C.R. 69, D488

APPOINTMENTS FOR NATIONAL ADVISORY COUNCIL FOR S.E.

Washington, D.C.--Presidential appointment of the new 15-member National Advisory Council for Indian Education, created under the Indian Education Act of 1973, was announced here May 7 by the White House.

Seven Indian women and eight Indian men who comprise the new council were:

Sue Lallmang (Seneca), Alexandria, Va.; Fred Smith (Seminole), Hollywood, Fla.; Amelia Ann Coleman (Choctaw), Talihina, Okla.; Boyce D. Timmons (Cherokee), Norman, Okla.; Ellen A. Allen (Kickapoo), Powhatton, Kan.; Clarence W. Skye (Sioux) Pierre, S.D.; Will D. Antell (Chippewa), Stillwater, Minn.; Karma W. Torklep (Lumbee), Ramah, N.M.; Geraldine Bobelu Simplicio (Zuni), Zuni, N.M.; Daniel Peaches (Navajo), Window Rock, Ariz.; Patricia Ann McGee (Yavapai-Prescott), Prescott, Ariz.; David Risling (Hoopa), Davis, Calif.; Theodore D. George (Clallam), Paulsbo, Wash.; Genevieve D. Hooper (Yakima) Toppenish, Wash.; and Joseph Upicksoun (Eskimo), Barrow, Alaska.

The White House announcement triggered immediate controversy throughout the Indian education world because only five of the selected names had come from a list of 30 Indian nominees submitted to the White House by HEW's Office of Indian Education, which will administer the new education act and its monies.

The Office of Indian Education's list derived from a large-scale effort by that agency to gather a representative selection nominated, chosen and supported by Indian groups and organizations. In August 1972 about 400 letters were mailed to Indian tribes and organizations across the country inviting their recommendations for council membership. A total of 150 nominations were received by OIE.

Following the development of major criteria for nominations drawn up by a small working committee of Indian professionals here, headed by Helen Scheirbeck, directors of HEW's office of American Indian Affairs, an internal recommendations group met in October to select nominees according to the major criteria. Other members of that committee were William Demmert Jr., Pernell Swett and Cletis Satepauhoodle of HEW and James Bearghost, assistant executive director for education at the National Council on Indian Opportunity (NCIO). Throughout their work on nominations, the working committee kept BIA Education Director James Hawkins informed of developments.

Final names of 15 principal nominees and 15 alternate nominees which met 10 major selection categories were forwarded from HEW to the White House early this spring. Those categories included geographical area, states with large numbers of Indian children in public schools, organizational support, tribal support, sex and age.

Discouraged by the White House selections, Helen Scheirbeck said: "If the White House did not like the selection, they should have come back to us and asked us to review the nominations and come up with other names. We were never consulted by the White House after they got the list.

"This clearly violates the whole concept of self-determination. Indian people are relying heavily on the council to support Indian educational efforts, and it is up to this council to make serious efforts to articulate Indian education needs. We are every disappointed that the White House did not take seriously the selection that was extended."

Among Indian groups and organizations consulted in selecting nominees for the new board were tribal councils, National Congress of American Indians (NCAI), National Tribal Chairmen's Association (NTCA), National Indian Education Association (NIEA), Coalition of Indian-Controlled School Boards (CICSB), Coalition of Eastern Native Americans (CENA), Northwest Affiliated Tribes (NAT), California Indian Education Association (CIEA), Alaska Federation of Natives (AFN), United Southeastern Tribes, Inc., (USET) and Navajo Education Association.

American Indian Press Association Release, May 17, 1973.

PHYSICAL DAMAGE TO WOUNDED KNEE

Wounded Knee, S.D.--The 70 day occupation of this tiny Oglala Sioux village will continue to have far-reaching repercussions in the months ahead both for the militant occupiers and for those long-time residents whose way of life was disturbed during the prolonged occupation.

For the occupiers, their supporters and leaders, a tangled maze of legal procedures awaited them as they evacuated the village May 8. There had been more than 300 arrests made in relation to the takeover by the time they finally abandoned this historic Sioux Village haunted by many tragic memories.

Much of the top leadership of the American Indian Movement (AIM), also faced criminal indictments both during and following the takeover.

Russell C. Means, 33, AIM director of the local Porcupine chapter, already faced 11 criminal counts during the takeover, as did

AIM Minneapolis Director Clyde Bellecourt. AIM Oklahoma Coordinator Carter Camp and AIM Spiritual Leader Leonard Crow Dog surrendered to federal authorities in nearby Rapid City the night before the final evacuation, where Camp also faced 11 criminal charged. Establishment of a legal defense fund for those charged was underway before the occupation ended.

Eleven-count secret indictments against a total of 69 persons were prepared during the convening of two federal grand juries in eastern South Dakota while the occupation ended.

Two counts of burglary, three separate counts for assaults on federal officers, two separate counts of obstructing federal officers during a civil disorder, two separate counts of arson, one count of larceny and one count of conspiracy.

Means and four others also faced another federal indictment stemming from charges that they conspired to transport arms illegally into Wounded Knee across state lines. Charged were Means; Stanley R. Holder, 23 Lawton, Oklahoma; Eugene C. Heavy Runner Jr., 23, Browning, Montana; Ronald D. Petite, 37, Minneapolis, Minn, and Herbert G. Powless, 35, Milwaukee, Wisconsin.

For residents of Wounded Knee also, difficult times appeared to lie ahead. Official tribal records indicated that a total of 52 Indian households were located within the limits of Wounded Knee village. Many of these homes reportedly suffered internal and external damages, and some few were set afire. Damages and losses to personal property were reported to be widespread.

And the only trading post in the village, which had served as a credit and trade center for most of the area residents, mysteriously went up in flames during the last several days of the occupation. The trading post and some of its alleged customer practices had become the focus of controversy in recent years.

Electrical, water and sewer systems also required repairs. But the most longlived problem promised to be the repairing of human relationships following a split among the villagers themselves toward the occupation and its meaning. It is a controversy which will continue here, and elsewhere, for a number of months ahead.

American Indian Press Association Release, May 9, 1973.

REALIGNMENT OF CENTRAL OFFICE FUNCTIONS OF BIA ANNOUNCED

Secretary of the Interior Robers C.B. Morton today announced a realignment of the central office functions and responsibilities of the Bureau of Indian Affairs.

"The order being announced today provides for the first stage of organizational changes in the Bureau and authorizes immediate staffing of key positions in order to implement the President's directive, reduce non-essential Central Office support staff and increase the effectiveness of the delivery system of services to Indians," Secretary Morton said.

To assist in fulfilling the President's directive, Secretary Morton has designated an assistant secretarial steering committee composed of the Assistant Secretary for Management, the Assistant Secretary for Program Development and Budget, the Assistant to the Secretary for Indian Affairs and the Solicitor together with a working group to review and make recommendations to him on a complete reorganization of the entire Bureau of Indian Affairs.

Under the realignment, the Bureau will be headed by a Commissioner of Indian Affairs, reporting directly to the Secretary, and a Deputy Commissioner. Until these positions are filled, their duties will be performed by the Assistant to the Secretary for Indian Affairs Marvin Franklin and the Deputy Assistant Secretary of the Interior (Indian Affairs) William Rogers.

Included in the Central Office organization will be six major offices: Indian Education Programs; Tribal Resource Development; Trust Responsibilities; Indian Services; Public Affairs; and the Administration. A Hopi-Navajo joint use field office and a Committee on Field and Internal Operations will report directly to the Commissioner.

The realignment is expected to bring about reductions in the staff of the Central Office in all its locations, principally Washington, Albuquerque and Denver. At the present time the three central offices have a staff of 1,050. This is expected to be reduced to 715.

Department of the Interior Press Release, May 15, 1973.

INDIAN OBJECTIONS TO NIXON LEGISLATION

Washington, D.C.--Indian tribes and organizations restated their support of an Indian Trust Counsel Authority but maintained their opposition to specific provisions of White House-sponsored legislation in testimony before the Senate Indian Affairs Subcommittee here May 7-8.

Indian witnesses were P. Samuel Deloria and Thomas Fredericks for the American Indian Law Center, George Crossland for Indian Legal Information Development Service, Charles E. Trimble for the National Congress of American Indians, and Robert F. Jim for the Yakima Tribe of Washington State.

Indian opposition centered around three major concerns:

--Establishing the Trust Counsel as the sole means of resolving the "conflict of interest" situation which exists in the executive branch of government;

--The ability of a small, independent Trust Counsel to wage battle effectively against powerful federal agencies, states and private interests;

--Language in the bill which would permit dissident tribal members to use the Trust Counsel to bring their tribal government into court.

Issues of lesser concern to the Indian witnesses were:

--The number and nature of the proposed board of directors which would govern the new agency and the means of selecting its chairman;

--Whether the new agency should seek out threats to Indian natural resources or wait for Indians to bring issues to it;

--Should the Trust Counsel be permitted to act on behalf of Indians not only when they are suing but also when they are being sued?

--The Trust Counsel should not be excluded from assisting or representing Indians in treaty violation and accounting claims cases arising after 1946 in a forum other than the Indian Claims Commission;

The proposed Trust Counsel legislation attempts to rid the executive branch of an "inherent conflict of interest" in protecting Indian rights to their natural resources which stems from its dual role as Indian trustee and public trustee. The Trust Counsel legislation would accomplish this by creating an agency which would exist for the sole reason of protecting Indian resources but one which would speak with the voice of the United States. It is this power to act on behalf of the U.S. that would give the Trust Counsel its unique and powerful characteristic.

Indian witnesses strongly objected to the legislation because it gives the Trust Counsel only a judicial means with which to protect Indian rights to their recources.

They requested amendments to the bill which would empower the Counsel to take such preventive type actions as testifying before Congress and being included in administrative decision-making processes. This would in many instances make expensive, time-consuming legal suits unnecessary.

The issue of expensive and time-consuming court suits directly relates to the Indian's second major concern about the proposed legislation--the ability of a small agency with such vast responsibilities to protect Indian resources.

The strongest Indian objection to the legislation on this issue was the provision in the bill which would relieve the Justice Department of its trust responsibility to protect Indian resources once the Trust Counsel was created.

Witnesses gave the following reasons for not wanting Justice relieved of those duties:

It would become a too-powerful adversary against the Trust Counsel; it could continue to handle the tremendous, expensive and time-consuming nuts and bolts duties of legal affairs such as calendar calls, presentations and arguments and the like; it could represent one side of an intertribal dispute, thus relieving the Trust Counsel of its own potential "conflict of interest"; and its staff, with long expertise in trust affairs, could then be subject to assignment to the Trust Counsel as resource personnel.

Also related to the time-money issue was an intra-Indian debate over just what kind of cases the Trust Counsel should take once it was established. One group said criteria should be written into the legislation or in the rules and regulations governing the Trust Counsel. Four suggested criteria were:

--The nature of the issue; for example those broad general legal issues suits in which all tribes or Indians have a stake in the outcome;

--The expense and time involved in taking the case to court; for example, water rights cases are of this kind and no single tribe can afford them;

--Cases when the statute of limitations prohibits all but the U.S. from bringing suit;

--Cases where a tribe is so poor, or the money recoverable so small, that a private attorney will not take the case;

--Cases where there is no money recovered from which a private attorney can collect his fee.

Many Indians feared that if limitations were not put on the Trust Counsel, it would be overwhelmed with cases and become ineffective. Others opposed this type of thinking and believed the Trust Counsel should become as big and bureaucratic as necessary to do the job. They would even support establishing regional offices of the Trust Counsel.

The issues of relieving Justice and limitations on the Trust Counsel's activities became even more apparent when the matter of its funding was considered.

The Interior Department declined to comment on the budget level for the proposed Trust Counsel however. They said they believed the budget level should be left for the board of directors to determine once the Counsel was established. They did suggest, however, a start-up budget of $3 million which would support one supergrade employee, one GS15 and GS13, 10 administrators and 10 clerical staff as sufficient.

Indian witnesses strongly objected to these figures because the Justice Department is reported to have 225 cases which it would turn over to the Trust Counsel when and if it is established. Further, the Trust Counsel must represent 270 federally recognized tribes.

Indian witnesses especially objected to these figures if language in the bill which permits the Trust Counsel to "request" assistance from other agencies were not changed to "demand" assistance. The Trust Counsel will have to hire expensive natural resource experts such as geologists, hydrologists, agronomist and surveyors together with attorneys, they pointed out.

The third major concern of Indian witnesses over the proposed legislation was language which would permit dissident tribal groups to use the Trust Counsel to "harass" tribal governments when these groups disagreed with the way the tribal government was managing the natural resources of the tribe.

Indian witnesses maintained that the trust responsibility of the U.S. pertains to the tribe and not to the individual members, except where members hold individual allotments in trust, and that as a consequence those members must use either the elective process or such free legal aid as the Office of Economic Opportunity (OEO) Legal Services agency to iron out their differences with tribal governments.

The proposed Trust Counsel legislation is the same sent to Congress by President Richard M. Nixon in his famous Indian message to Congress in July 1970. Despite the above objections to the bill raised by Indian witnesses in testimony before the Indian Affairs Subcommittees last year, the Nixon administration did not change its bill one iota to conform to the recommendations of Indians.

American Indian Press Association Release, May 10, 1973

CONTRIBUTIONS FOR WOUNDED KNEE

Rapid City, S.D.--Contribution of funds for legal defense and bail bonds for persons charged in connection with the Wounded Knee takeover Feb. 27-May 8 should be made to the following address, according to legal defense attorneys:

Wounded Knee Legal Defense/Offense Committee
c/o Attorney Ramon Roubideaux
P.O. Box 147
Rapid City, S.D. 57701

In addition, a separate fund for the redevelopment and reconstruction of the village of Wounded Knee has been announced by the interdenominational Joint Strategy and Action Committee (JSAC) of the Protestant Churches of America as follows:

Wawokike Fund
Margaret Hawk, Acting Administrator
Pine Ridge, S.D. 57770

Checks and other contributions to the latter fund will be employed to assist all persons in need in connection with the events of the takeover, according to a JSAC spokesman.

American Indian Press Association Release, May 15, 1973.

THE PRESIDENT'S TAKEOVER BILL AND THE JACKSON ALTERNATIVE

Washington, D.C.--Two contrasting approaches to end the paternalism of the federal government over Indians and to substitute a policy of self-determination are encompassed in legislation now pending on Capitol Hill.

Those two options for Indians are the "takeover" approach as proposed by President Richard M. Nixon, and the "expanded contract" approach as proposed by Sen. Henry M. Jackson, D-Washington.

Because of the outright rejection by Indians to the Nixon approach during previous congressional hearings, there is a scarcity of information of the specific objections of Indians to the bill. Therefore, analysis will be accomplished by comparing and contrasting the Nixon approach to the Jackson approach. Two fundamental differences distinguish the two approaches:

--Under the Nixon approach, there is an outright takeover of a federal operation by an Indian group. Under the Jackson approach, a Tribe merely contracts to perform a federal operation in much the same way they have been doing up to the present time;

--Under Nixon, the tribe makes the final decision as to whether or not it will take over an operation. Under Jackson, the Secretary of Interior or of Health Education and Welfare (HEW) would make this final decision.

From these two basic differences stem any other differences in the approaches which will be outlined below.

Both approaches would necessitate a legal document which would effect the transfer of an operation to Indian control. Under Nixon, the document would be in the form of an agreement which would permit the Indians to control the operation until and unless certain circumstances arose subsequent to the takeover. Under Jackson, the document would be a regular contract subject to periodic renewal.

Because there is no time limit on how long Indians could control an operation under Nixon, his bill states that if the HEW or Interior Secretary determines that the Indians which assumed the operation are violating the rights or endangering the health, safety or welfare of individuals served by the operation, or that gross negligence or mismanagement in the use of federal funds is occurring, the Secretary may under prescribed regulations reassume control of the operation. The Secretary is, however, permitted to return control to Indians when violations are corrected or cease.

Under Nixon, the Secretary also exercises some control by a provision which permits him to monitor assumed operations which he feels Indians are incapable of handling, and by a provision which obligates the Indians to submit to the Secretary an annual accounting and conduct report.

Neither the re-assumption, reporting or monitoring provisions in Nixon are contained in the Jackson approach because the Secretary could simply refuse to renew a contract with Indian groups if he felt those Indians were not performing the operation properly.

Under Nixon, the Indians assuming control of an operation are required to carry liability motor vehicle insurance and other insurance in connection with the operation. To the extent that it is so covered, the Indians waive the customary sovereign immunity of the tribe from being sued. The extra financial burden created here will be absorbed by the federal agency.

Although this same provision is not contained in Jackson, it has been learned that the Bureau of Indian Affairs (BIA) has been requiring insurance in contracts it is presently making with Indian groups and will recommend that it be included in the Jackson approach when the BIA reports on that legislation.

Both Nixon and Jackson define the terms "Indian tribe", "Indian community" and "tribal organization" substantially the same way. The net result is to limit "takeover" or "contracting" to federally recognized tribes or their authorized subsidiary organizations. This assures tribal governmental control over all assumed operations. In defining "programs and services" Nixon states specifically that these mean local activities and undertakings of the BIA or Indian Health Services (IHS) Jackson makes no such specific definition.

Nixon has a "retrocession" provision which permits the Indians to return control of an operation to the Secretary if they feel they cannot maintain the operation. This is unnecessary under Jackson because of the periodic renewal of a contract.

Nixon provides that any takeover of an operation affecting more than one tribe, group, or community has the approval of all. Jackson lacks such a provision.

Nixon provides that all assistance short of financial be rendered to the Indian group assuming control. Jackson goes much further. He provides for grants to the contracting group for planning, training, evaluation and other activities which make it possible for the Indian group to run the operation.

Both Nixon and Jackson provide that the tribal group assuming control may utilize existing facilities, buildings, equipment, supplies and materials which were used in the operation while under the control of the federal government.

Nixon provides that in the BIA budgeting process, Indian groups assuming control of an operation will not receive any less funds than a particular operation would have received had it remained under federal control. Jackson has no similar provision. However, groups assuming control under contract procedures in the past have always had to get additional monies for administrative overhead.

Both Nixon and Jackson provide for the assignment of federal employees to the Indian group assuming control of an operation during the transition period.

However, in a separate piece of legislation, Nixon permits a federal employee to stay with a group and to be paid by the group with funds from the assumed operation for five years before the employee would lose all his fringe benefits and rights as a federal employee. Jackson has no such comparable provision because the longest a federal employee could remain with an Indian group would be nine months. And under Jackson, the cost of assigning the personnel is included in the Contract.

Both Nixon and Jackson state:

"Nothing in this Act shall be construed as authorizing or requiring the termination of any existing trust responsibility of the U.S. with respect to Indian people."

Under Jackson, the Secretaries are authorized to contract with tribe to perform functions previously performed by the federal government under the Johnson-O'Malley Act and the Indian Health Service Transfer Act. In a separate piece of legislation, Nixon also provides for contracting of these functions if the tribe does not want to use

the takeover approach. Thus, under the Nixon approach, a tribe could take over or contract for a function. Under Jackson, the tribe has only the contract option.

American Indian Press Association Release, May 16, 1973.

U.S. CIVIL RIGHTS COMMISSION REPORT ON AMERICAN INDIANS

Albuquerque, New Mexico--The U.S. Commission on Civil Rights painted what it called "a grim picture of living conditions for American Indians in New Mexico and Arizona."

In a report based on hearings held in Albuquerque and Phoenix last November and released here today, the Commission spelled out its findings and recommendations on Indian education, employment, health care, water rights and the administration of justice.

All five members of the Commission were in Albuquerque to release the report. The Commissioners were Vice Chairman Stephen Horn, Pres., California State University, Long Beach; Frankie M. Freeman, St. Louis attorney; Maurice B. Mitchell, Chancellor of the University of Denver; Robert S. Rankin, Professor Emeritus of Political Science, Duke University, Durham, North Carolina; and Manuel Ruiz, Jr., Los Angeles attorney. John A. Buggs is Staff Director. The Commission is independent, bipartisan factfinding agency concerned with the rights of minorities and women.

EMPLOYMENT

The record of Indian employment by Federal, State and local governments and private employers is described by the Commission as "deplorable." The report recommends that the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS) the largest employers of Indians, "eliminate discriminatory barriers to job advancement and to undo existing patterns of underutilization of Indian employees brought about by past discrimination".

Indians are not represented in middle and upper grade positions in the BIA and IHS to the extent they are concentrated in lower grade levels, according to the Commission.

The Commission also recommends that steps be taken "to ensure that private employers with BIA and IHS contracts offer effective preferential employment opportunities to Indians," as permitted by law. Private employers, the report notes, frequently hire non-Indians for projects on reservations where many Indians are unemployed.

Another recommendation calls on the U.S. Civil Service Commission to monitor all Federal agencies in the two states to insure that each agency has specific plans to hire Indian personnel.

EDUCATION

Testimony and other information received by the Commission documents low achievement levels for Indian students in public and BIA schools. More direct participation by the parents of Indian students is one way in which the Commission believes this situation can be improved. At present, the recommendations of parents of Indian students can be ignored by BIA school superintendents.

In addition, the Commission recommends that the number of Indian personnel at all levels should be increased in BIA schools. The majority of BIA teachers and administrators are non-Indians, according to the Commission.

HEALTH CARE SERVICES

The Commission found that, "Indians in both New Mexico and Arizona receive less adequate health care and treatment than is received by the non-Indian population in those states. Most, if not all, of this responsibility rests with the Federal Government."

To meet this problem the Commission recommends that the President and Congress make available substantially increased funding for facilities, treatment, and expanded services adequate to meet the needs of Indians.

The Commission also calls upon HEW's Office of Civil Rights, to investigate reports that county hospitals do not admit or treat Indians on an equal basis with non-Indians.

ADMINISTRATION OF JUSTICE

The Commission heard allegations of the exclusive use of Indian prisoners for public labor, police brutality, double standards in sentencing, and poor jail conditions.

The Commission report recommends that the U.S. Department of Justice investigate law enforcement agencies in the State of Arizona to determine if Indian prisoners are used for public labor in violation of Federal peonage laws or are otherwise denied their civil rights.

According to the Commission, "Under Federal law, felony jurisdiction for crimes committed on a reservation is the responsibility of the Federal Government." Testimony received by the Commission indicated a widespread belief among Indians that the Federal Government does not provide adequate law enforcement services to reservation residents.

A recommendation in the report calls upon the Department of Justice to "increase the staff assigned to investigate and prosecute violations of Federal crimes on reservations."

WATER RIGHTS

Adequately protected water rights are crucial to the development of reservation lands, the upgrading of life, and in some cases the preservation of an Indian or tribal life style, the Commission said. "It is the responsibility of the Federal Government as trustee for Indian lands to protect these rights. This the Federal Government has failed to do," the report asserted.

To fulfill this responsibility the Commission recommended that the Congress immediately order and fund an inventory of Indian water needs for present and future economic development. In addition, the Commission said, Congress should take appropriate action to restore Indian water rights where they have been derogated by individual or governmental action.

The Commission also called for the establishment of an independent Indian Trust Counsel Authority with the sole duty of protecting Indian property and water rights. Presently, the Bureau of Indian Affairs within the Department of Interior and the Department of Justice are responsible for protecting these rights. The Department of Justice and Interior have a variety of other responsibilities which conflict with the rights of Indians. "The conflict of interest is fundamental and usually operates to the derogation of Indian interests'

In the letter of transmital by which the Commission sent this report to the President and the Congress the Commission said, "The problems encountered by American Indians are both severe and complex, and the recommendations therefore require action from all levels of Government, as well as from the private sector."

The Commission also said, "It is hoped that the report will stimulate increased public interest in the problems of American Indians, that it will help local, State, and Federal agencies improve their programs dealing with Indians, and that it may assist Indians in determining courses of action to make more secure their rights as the first Americans."

U.S. Commission on Civil Rights, May 14, 1973.

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SCHOOL OF LAW

This issue covers the Congressional Record, Volume 119, No. 76 through No. 98, May 21-June 22, 1973; and the Federal Register, Volume 38, No. 36 through No. 125, February 23-June 29, 1973.

A PUBLICATION OF THE UNIVERSITY OF NEW MEXICO SCHOOL OF LAW, AMERICAN INDIAN LAW CENTER

BILLS SIGNED BY THE PRESIDENT

Indian Claims Commission Appropriations

S. 721, authorizing funds for the Indian Claims Commission for fiscal year 1974. Signed May 24, 1973 (P.L. 93-37).

May 29, 1973; 119 C.R. 80, D590

BILLS INTRODUCED

HOUSE

Creek

H.R. 7959. A bill to provide for the disposition of funds appropriated to pay a judgment in favor of the Creek Indians in Indian Claims docket No. 275, and for other purposes; to the Committee on Interior and Insular Affairs.

Creek

H.R. 7960. A bill to provide for the disposition of funds appropriated to pay judgments to the Creek Nation of Oklahoma in Indian Claims Commission docket Nos. 167 and 273, and for other purposes; to the Committee on Interior and Insular Affairs.

United Sioux Tribes

H.R. 7936. A bill to declare that certain federally owned land is held by the United States in trust for the United Sioux Tribes of South Dakota Development Corporation; to the Committee on Interior and Insular Affairs.

May 21, 1973; 119 C.R. 76, H3820

Northern Paiute

H.R. 7979. A bill to provide for the disposition of funds appropriated to pay judgments in favor of the Northern Paiute Nation by the Indian Claims Commission in docket No. 87, and for other purposes; to the Committee on Interior and Insular Affairs.

Hualapai

H.R. 7978. A bill to declare that certain federally owned lands shall be held by the United States in trust for the Hualapai Indian Tribe, of the Hualapai Reservation, Ariz., and for other purposes; to the Committee on Interior and Insular Affairs.

May 21, 1973; 119 C.R. 76, H3821

Judgment Funds

H.R. 8029. A bill to provide for the disposition of funds appropriated in satisfaction of certain judgments of the Indian Claims Commission and the court of claims, and for other purposes; to the Committee on Interior and Insular Affairs.

May 22, 1973; 119 C.R. 77, H3907

Sisseton-Wahpeton Sioux

H.R. 8229. A bill to declare that certain federally owned land is held by the United States in trust for the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Indian Reservation in North and South Dakota; to the Committee on Interior and Insular Affairs.

Sisseton-Wahpeton Sioux

H.R. 8230. A bill to authorize the Sisseton and Wahpeton Sioux Tribe of the Lake Traverse Reservation to consolidate its landholdings in North Dakota and South Dakota, and for other purposes; to the Committee on Interior and Insular Affairs.

May 30, 1973; 119 C.R. 81, H4136

Criminal Justice

H.R. 8347. A bill to amend section 1326 of the Civil Rights Act of April 11, 1968 (82 Stat. 80; Public Law 90-284) relating to State civil jurisdiction in actions to which Indians are parties, and State jurisdiction over offenses committed by or against Indians in Indian country; to the Committee on Interior and Insular Affairs.

June 4, 1973; 119 C.R. 84, H4264

Choctaw, Chickasaw, Cherokee

S. 1856. A bill to determine the rights and interests of the Choctaw Nation, the Chickasaw Nation, and the Cherokee Nation in and to the bed of the Arkansas River below the Canadian fork and to the eastern boundary of Oklahoma. Referred to the Committee on Interior and Insular Affairs.

Cherokee

S. 1854. A bill to authorize funds to compensate the Cherokee Nation, a tribe of Indians of Oklahoma, for the loss of 545,175.14 acres of land. Referred to the Committee on Interior and Insular Affairs.

May 21, 1973; 119 C.R. 76, S9386

Ponca

S. 1909. A bill to provide for the disposition of funds appropriated to pay judgments in favor of the Ponca Indians of Oklahoma and Nebraska in Indian Claims Commission dockets numbered 322 and 324, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

May 30, 1973; 119 C.R. 81, S9866

Creek Nation

S. 1974. A bill to provide for the disposition of funds appropriated to pay judgments to the Creek Nation of Oklahoma in Indian Claims Commission docket Nos. 167 and 273, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

Creek Nation

S. 1975. A bill to provide for the disposition of funds appropriated to pay a judgment in favor of the Creek Indians in Indian Claims Commission docket No. 275, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

June 11, 1973; 119 C.R. 89, S10809

Indian Employment

S. 2024. A bill to provide emergency public service employment for unemployed Indian Americans living on reservations, to assist in providing needed public services to preserve Indian customs and identity and for other purposes. Referred to the Committee on Interior and Insular Affairs.

June 19, 1973; 119 C.R. 95, S11409

Tribal Grants

S. 2038. A bill to authorize grants for Indian tribal governments, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

June 20, 1973; 119 C.R. 96, S11567

COMMITTEE MEETINGS

HOUSE

Indian Claims Commission

Subcommittee on Indian Affairs concluded hearings on H.R. 8029, to provide for the distribution of funds appropriated in satisfaction of certain judgments of the Indian Claims Commission and the court of claims. Testimony was heard from Assistant Secretary of Interior John Kyl and Jerry Straus, National Congress of American Indians.

May 29, 1973; 119 C.R. 80, D590

Additional Interior Post

Subcommittee on Indian Affairs held hearings on H.R. 620 and related bills, to establish within the Department of the Interior an additional Assistant Secretary of the Interior for Indian Affairs; and H.R. 6104 and 6375, to amend certain laws relating to Indians. Testimony was heard from Representative Hansen of Washington, and Department witnesses. A statement for the record was submitted by Representative Zwach.

Following the hearing, the subcommittee approved for full committee action H.R. 620 amended (title above.)

May 31, 1973; 119 C.R. 82, D609

Various Tribes

Subcommittee on Indian Affairs held hearings on H.R. 2440, to declare that certain federally owned lands shall be held by the United States in trust for the Hualapai Tribe, Arizona; H.R. 3458 and 3579, to declare that the United States holds in trust for the Bridgeport Colony certain lands in Mono County, Calif.; H.R. 5069, to determine the rights and interests of the Choctaw Nation, the Chickasaw Nation,

and the Cherokee Nation in and to the bed of the Arkansas River below the Canadian Fork and to the eastern boundary of Oklahoma; and H.R. 6925, to authorize the exchange of certain lands between the Pueblo of Acoma and the Forest Service. Testimony was heard from Representatives Mathias and Steed; Interior Department; and Hualapai Tribe witnesses and George Crossland, Indian Legal Information Development Service.

June 1, 1973; 119 C.R. 83, D610

Subcommittee on Indian Affairs met in open session and approved for full committee action the following bills:

Choctaw, Chickasaw, & Cherokee

H.R. 5089, amended, to determine the rights and interests of the Choctaw Nation, the Chickasaw Nation, and the Cherokee Nation in and to the bed of the Arkansas River below the Canadian fork and to the eastern boundary of Oklahoma;

Acoma

H.R. 6925, to authorize the exchange of certain lands between the Pueblo of Acoma and the Forest Service;

and

Judgment Funds

H.R. 8029, amended, to provide for the distribution of funds appropriated in satisfaction of certain judgments fof the Indian Claims Commission and the Court of Claims.

June 21, 1973; 119 C.R. 97, D731

SENATE

Economic Development

Sub committee on Indian Affairs concluded hearings on S. 1013, 1015, and 1341, bills proposing new approaches for Indian tribal groups to obtain credit and to provide assistance in economic development, after receiving testimony from John H. Kyl, Assistant Secretary for Congressional and Public Affairs, who was accompanied by Dennis Drabelle, Staff Attorney, Office of Legislation; and Robert Bruce,

Coordinator for Legislation, Bureau of Indian Affairs, all of the Department of the Interior.

May 31, 1973; 119 C.R. 82, D604

Self-Determination

Subcommittee on Indian Affairs began hearings on S. 1017, 1340, 1342, and 1343, bills proposing more self-determination incentives, tribal control of Federal programs and improved education for Indians, receiving testimony from John H. Kyl, Assistant Secretary of the Interior for Congressional and Public Affairs; Frank C. Carlucci, Under Secretary; Frank E. Samuel, Jr., Deputy Assistant Secretary for Congressional Liaison; Charles Cook, Director, Office of Special Concerns; Dr. Emery A. Johnson, Director, Indian Health Services; and Sidney Edelman, Assistant General Counsel for Public Health, all of the Department of Health, Education, and Welfare; Valentino Cordova, representing the All Indian Pueblo Council, Albuquerque; Virgil Kills Straight, Abe Plummer and William T. Roberts, all representing the Coalition of Indian Controlled School Boards, Denver; Joe Upicksoun, National Tribal Chairmen's Association, Washington, D.C.; and Lester Gemmill, Michigan State Board of Education, Lansing.

June 1, 1973; 113 C.R. 83, D610

Self-Determination

Subcommittee on Indian Affairs concluded hearings on S. 1017, 1340, 1342, and 1343, bills proposing more self-determination incentives, tribal control of Federal programs and improved education for Indians, after receiving testimony from Catherine Barrett, who was accompanied by Jean Flanagan, both of the National Education Association; Charles Trimble, National Congress of American Indians, Washington, D.C.; Emmett Oliver, Supervisor of Indian Education, Department of Public Instruction, Olympia, Wash.; and Lucy Covington, who was accompanied by Lorraine Misiaszek, both representing the Northwest Affiliated Tribes.

June 4, 1973; 119 C.R. 84, D619

BILLS REPORTED

SENATE

Judgment Funds — S. 1016, to provide alternative methods for the disposition of certain Indian judgment funds, with amendments (S. Rept. 93-167).

May 21, 1973; 119 C.R. 76, D553

Klamath — H.R. 3867, terminating Federal supervision over the Klamath Indian Tribe by providing for Federal acquisition of certain tribal lands, with amendments (S. Rept. 93-216).

June 13, 1973; 119 C.R. 91, D677

BILLS PASSED

SENATE

Judgment Funds — S. 1016, to provide alternative methods for the disposition of certain Indian judgment funds.

May 22, 1973; 119 C.R. 77, D562

Klamath — Senate took from calendar, passed with committee amendments, and returned to the House H.R. 3867, terminating Federal supervision over the Klamath Indian Tribe by providing for Federal acquisition of certain tribal lands.

June 15, 1973; 119 C.R. 93, D696

The Newsletter will publish all tribal case reports of importance if such reports are sent to us.

The following case was decided by the Court of Appeals of the Navajo Tribe and is of interest because of the long-continuing controversy about jurisdiction.

THE NAVAJO TRIBE OF INDIANS

Plaintiff,

v.

ORLANDO HELICOPTER AIRWAYS, INC.
AND INDIAN AIRWAYS, INC.

Defendants.

Decided January 12, 1972

Headnotes

(1) The Navajo courts have jurisdiction over actions in forcible entry and detainer against non-Indians for recovery of Navajo lands.
(2) Forcible entry and detainer actions come under Title 7 NTC §133(e) which does not limit the Navajo courts' jurisdiction to Indians.
(3) The Navajo courts have jurisdiction of this case by virtue of the original sovereignty of the Navajo Nation.
(4) By answering to the merits the defendants waived their objections to the jurisdiction of the court.

OPINION

KIRK, Chief Justice.

This is an original application for a writ of prohibition directed by this Court to the Tribal Court for the Window Rock District to bar the prosecution of an action for forcible entry and detainer there in which the petitioners here, Orlando Helicopter Airways, Inc. and Indian Airways, Inc., are defendants and the Navajo Tribe of Indians is plaintiff. In this opinion we will call them plaintiff and defendants as used in the Trial Court.

The ground for the application is that the Navajo Courts have no jurisdiction over the defendants because they are not Indians.

The provisions of the Navajo Tribal Code relating to jurisdiction of courts are found in Title 7, Navajo Tribal Code, Section 133. Of this the defendants claim that the present action is governed by Title 7, Navajo Tribal Code, Section 133(b): Civil Causes of Action, which gives jurisdiction in: "All civil actions in which the defendant is an Indian and is found within its territorial jurisdiction."

The plaintiff insists that the governing rule is found in Title 7, Navajo Tribal Code, Section 133(e): Miscellaneous, which extends jurisdiction to: "All other matters *** which may hereafter be placed within the jurisdiction of the Trial Court by resolution of the Navajo Tribal Counsil."

If it had been the intention of the Trial Court in enacting Title 7, Navajo Tribal Code, Section 133 to limit jurisdiction in all civil cases to Indian defendants within the territorial jurisdiction of the Court, Subsections (c), (d), and (e) would have been unnecessary.

The provisions in Title 7, Navajo Tribal Code, Section 133 were enacted in 1958 but the forcible entry and detainer resolution (16 NTC, §§ 751-760) was not adopted until 1969 when special difficulties arose because tenants of the Navajo Housing Authority were failing to pay their rent: See Footnote of 16 NTC Section 751. Since Navajo Housing Authority houses and apartments are available to non-Indians as well as Indians, the statutory history would indicate that there was no intention on the part of the Tribal Council to limit the forcible entry and detainer laws to Title 7, Navajo Tribal Code, Section 133 (b).

Also, a forcible entry and detainer action is not at all clearly a "civil action." At common law, it was a criminal

or partly criminal proceeding: 35 Am Jur 2nd 891, Forcible Entry and Detainer, Section 2. Present forcible entry and detainer laws are all statutory but the provisions for short notice, quick hearings, and limitations as to subject matter mark it as a special type of action not to be included under "all civil actions" in Title 7, Navajo Tribal Code, Section 133 (b).

This Court is not required to seek Federal Statutory authority for its assumption of jurisdiction within the territorial jurisdiction of the Navajo Tribe. Its powers rest upon the original tribal sovereignty rather than any Federal grant of power: William V. Lee (1959), 358 U.S. 217, 3 L. Ed. 2nd, 251 at 253, 79 S.Ct. 269; Cohen, Federal Indian Law (1958 ed.) 396, 444. The only authority to the contrary cited by the defendants is 25 CFR, 11.22 which defines the jurisdiction of the Courts of Indian Offenses. These courts are no longer in existence here and rules relating to them are superseded by rules adopted by the Navajo Tribal Council such as Title 7, Navajo Tribal Code, Section 133 which we have discussed here.

From early times special consideration has been given to the needs of the Indian nations to protect their lands from trespass by outsiders. Early treaties expressly gave them the right to proceed against trespassers "in accordance with their own laws and customs": Cohen, Federal Indian Law (1958 ed.) 632 and 633. When a non-Indian enters Indian land for the purpose of doing business thereon, he may very well be considered to have submitted himself to the jurisdiction of the Indian courts. In Williams v. Lee, supra., in holding that a non-Indian who had been operating a trading post on Navajo lands could not maintain an action against an Indian in an Arizona State Court but must sue in the Navajo Courts, the United States Supreme Court emphasized that the non-Indian plaintiff was voluntarily doing business on Indian lands. By the same reasoning, we hold that the non-Indian may be sued in the Navajo Courts.

The answer filed by the defendants in the trial court is marked "(Special Appearance)" but contains general denials of matters relating to the merits of the action and two affirmative defenses bearing upon their right to possession of the premises described in the complaint. It is a general rule of procedure, to which this Court subscribes, that an objection to the jurisdiction of the Court over a party will be waived when the party submits himself to the jurisdiction of the Court: 20 Am Jur 2nd 455 and 456, Courts § 95; Jardine v. Superior Court (1931), 213 Cal. 301, 2 p 2nd 756, 79 ALR 291. By answering to the merits defendants have waived their objections to the jurisdiction of the Court to hear the case.

The writ of prohibition is quashed and denied and the trial court is directed to proceed promptly with the trial of said cause.

BENALLY, Judge and WILSON, Judge, concur.

DECISIONS OF THE BUREAU OF INDIAN AFFAIRS

Traders on Navajo, Zuni, and Hopi Reservations	The B.I.A. announced that Federal employees are allowed to trade with residents of the Navajo, Zuni, and Hopi Reservations on the same basis and subject to the same restrictions as they would be on other reservations in a proposed rule. March 20, 1973; 38 Fed. Reg. 53, pp. 7334
Mdewakanton and Wahpakoota Tribe of Sioux Indians and Sisseton and Wahpeton Mississippi Sioux Tribe	The B.I.A. gave notice that it would establish requirements for enrollment in these tribes. March 22, 1973; 38 Fed. Reg. 55, pp. 7465
Osage Tribe in Oklahoma	The B.I.A. issued regulations concerning the distribution of judgment funds to the Osage Tribe. April 11, 1973; 38 Fed. Reg. 69, pp. 9163
Enrollment of the Confederated Tribes of Weas, Piankashaws, Peorias, and Kaskaskias	The B.I.A. adopted new regulations concerning the enrollment of the Confederated Tribes. April 18, 1973; 38 Fed. Reg. 74, pp. 9588

Forest Regulations	The B.I.A. proposed amendments to increase stumpage value limitations, and to govern timber sales from allotted and unallotted lands. April 20, 1973; 38 Fed. Reg. 76, pp. 9828
Enrollment of Eastern Band of Cherokee Indians, North Carolina	The B.I.A. adopted regulations governing the enrollment of the Eastern Band of Cherokees. April 23, 1973; 38 Fed. Reg. 77, pp. 9998
18 to 21 Tribal Voting	The B.I.A. adopted regulations reflecting the lowering of voting age to 18 in tribal votes. April 23, 1973; 38 Fed. Reg. 77, pp. 9999
B.I.A. Road Projects Hearings	The B.I.A. adopted regulations governing public hearings on proposed road projects. May 18, 1973; 38 Fed. Reg. 96, pp. 13014

COURT DECISIONS

KEEBLE VS. U.S.

41 LW 4722
(May 29, 1973)

Petitioner, an Indian, was convicted of assault with intent to inflict great bodily injury and sentenced to five years imprisonment. He had beaten his brother-in-law during an argument, while drinking, and gone to bed. The man's lifeless body was found a short distance from the Petitioner's house the next morning. He had died from exposure to excessive cold, although the beating did contribute to his death.

The United States District Court refused to instruct the jury, as requested, on simple assault, reasoning that simple assault is not an enumerated offense, in the Act and is exclusively a tribal matter.

ISSUE Whether an Indian prosecuted under the Major Crimes Act of 1885, Act of March 3, 1885, c. 341 § 9, 23 Stat. 385, 18 U.S.C. §§ 1153, 3242, is entitled to a jury instruction on a lesser included offense where that lesser offense is not one of the crimes enumerated in the Act?

The court held that Petitioner was entitled to such an instruction which would not jeopardize any interest of the Tribes'.

The Act expressly provides that Indians "shall be tried in the same courts and in the same manner, as are all other persons committing any of the above crimes within the exclusive jurisdiction of the United States." 18 U.S.C. § 3242 (emphasis added). Non-Indians are entitled to instructions on lesser included offenses, and the Court concluded that Congress did not intend to treat Indians any differently, especially in view of the phrase emphasized.. The court considered the Due Process Clause of the Fifth Amendment and the constitutional issues it raised, but did not rule on the constitutional issues since the decision was rendered on other grounds.

The court reasoned that this decision would not infringe on Tribal jurisdiction because the Government could not bring charges in federal court which are not authorized by statute. Only in those cases brought under the Act and in which the evidence warrants, may instructions on the lesser included offenses be given.

OPPORTUNITIES FOR INDIANS

This is a new service of the Newsletter. We will publish job descriptions, and titles; and educational or grant opportunities either for organizations seeking Indian participants, or Indian organizations seeking persons to fill vacancies. We are limited as to space, so please make your submissions as brief as possible.

Student Scholarship Available

The American Indian Society of Washington, D.C. is making available two scholarships of $500 to American Indian students desiring to pursue a field of higher education of their choice in a college or university. Available in August, the grants are available to a student of at least one-fourth Indian blood. Apply to: Pres. Mitchell Bush, American Indian Society 519 5th St. S.E., Washington, D.C.

Student Affairs Trainee
Fresno State College

Salary Range: $700-$734-$772. Within the division of Student Affairs, and under the immediate supervison of the Director of the Educational Opportunity Program, the Assistant Director will participant in all supportive services offered EOP students. Duties will include providing tutorial and academic referral, personal and academic counseling, placement, housing and financial aid information. The assistant director will share responsibility (with the Director and two other Assistant Directors) for recruitment of EOP students with special attention to recruitment and retention of Native American students. The Assistant Director will participate in the Summer Readiness Program for new students and in student staff meetings, professional staff meetings and other related activities including policy development, planning and community relations. The position will serve as a liason with the area's Native American community and local Native American organizations.

Background required: Degree from an accredited college or university. Thorough knowledge of the Native Americans. Experience in social service programs, community action projects or

government-sponsored minority assistance programs desirable but not required. (This is a Public Employment Program funded position. As such, applicants must be recent veterans; un- or under-employed; and live outside the Fresno City limits within the County of Fresno at the time of hire.) Filing Deadlines: Extended. Contact: Fresno State College, Personnel Office, New Administration Building, Room 164, Fresno, Califronia 93726 (209) 487-2032.

Assistant Professor of Native American Studies

California State University, Fresno is seeking applicants for the following position: Assistant Professor of Native American Studies, to begin work September 15, 1973, Salary up to $12,828 (9 months) depending on degree and experience. Professor would teach courses on the comtemporary life of the Native American, Topics in Indian Education, Indians of California, and other catalogued Native American courses.

Send applications to: Dr. Charles F. Denton, Dean School of Social Sciences, California State University, Fresno, Fresno, California 93710.

INDIAN NEWS ARTICLES

WHITE HOUSE RESPONDS TO WOUNDED KNEE

Washington, D.C. White House Presidential Counsel Leonard Garment, in a nine-page letter to the traditional chiefs and headmen of the Oglala Sioux, warned against "other Wounded Knee" and left open the likelihood of future talks following the 70-day occupation of the tiny village of Wounded Knee.

Garment's letter, dated May 29, answered point by point a seven-item series of resolutions and proposals submitted by the Oglala Sioux traditional leaders and headmen to a special White House team during conversations in Kyle, S.D., May 17-18 following the evacuation of Wounded Knee by militant occupiers.

The Garment letter met with stiff resistance when it was received by the traditional leaders and their attorneys in Kyle, S.D. Said Mr. Frank Fools Crow, a principal traditional spokesman-figure during the occupation, through an interpreter after the Garment letter was discussed:

"We believe we are still a sovereign nation, and the government has no right to change that and tell us what we can and can't do in the way of governing ourselves. We will answer the letter, but the sentiment now is to just send it back and say it says nothing.

"We will still demand another meeting, and if we don't get some satisfaction we are willing to call on Indian people all over the country for a march on Washington to press our demands in person."

Garment had argued in his letter that only the U.S. Congress, not the White House, had the power to make basic changes in federal relations with Indians.

American Indian Press Association Release, May 31, 1973

INDIANS SPEAK OUT ON WATERGATE

Washington, D.C. The mushrooming Watergate scandal is having an effect on the administration of Indian affairs, according to an informal pool of leading Indian organization presidents and executive directors conducted by AIPA.

Polled by person and by telephone were the National Tribal Chairmen's Association (NTCA), National Congress of American Indians (NCAI), Americans for Indian Opportunity (AIO), Indian Legal Information Development Service (ILIDS), Institute for the Development of Indian Law (IDIL) and Native Americans for McGovern-Shriver Committee of the Democratic Party.

Individuals were polled concerning their views on the issues of the Watergage scandal, whether or not they believed President Richard M. Nixon was involved, what the general effects of the scandal may be on the workings of government, and whether there would be any specific effects on the field of Indian administration under Nixon.

"After Watergate and some other happenings like Wounded Knee, some Indian people are less sure about White House leadership. The White House team has not been effective. There are now doubts about the sincerity of the White House staff. The feeling of Indian people is, what good can the White House staff do? They question whether they have much trust in White House leadership. Indian people are not going to confide in them." NTCA President Webster Two Hawk

"Sadly enough, too much attention is being paid to Watergate as tampering with the democratic process of elections, and not enough on the sinister operations of bureaucracy itself.

"Nixon meant to slow down the while bureaucratic process and programs in domestic affairs. We had in inkling of this in the November takeover of the BIA and its slowdown. Nixon meant to slow it down beforehand. And the backlash to the arrogance of his administration (at the White House level) hasn't reached down to the lower levels

of bureaucracy where Indian affairs certainly are located. The same secrecy (shown in White House involvement in Watergate) still permeates the bureaucratic system now, especially in OEO and the BIA. Things are going on at all levels and areas of government, and Indian people aren't realizing it." NCAI Executive Director Charles Trimble

American Indian Press Association Release, May 29, 1973

JUDGMENT AWARDS SPEEDED UP

Washington, D.C. The outlook in Congress is favorable for passage of an omnibus judgment bill which would speed up distribution of judgment awards made to Indian tribes by the Indian Claims Commission or the U.S. Court of Claims.

The proposed legislation would delegate back to the Secretary of the Interior authority he once had to approve judgment distribution plans. The Secretary, along with a tribe, would draw up a plan and submit it to Congress. If Congress did not disapprove the plan within 60 days, the award would be distributed according to the plan. If Congress did disapprove, the Secretary and tribe would then have to submit the plan to Congress in the form of legislation.

Since the early 1960s, the way in which a tribe planned to distribute its award has required the approval of Congress in the form of legislation, and Congress seldom disapproved the tribal plan.

This meant that all the time and effort expended by the Congress, the executive branch and the tribe to secure passage of a judgment bill was unnecessary. A judgment bill requires the same amount of staff work by congressional committees as major Indian legislation requires.

During the last Congress, 24 judgment distribution bills were introduced in the House of Representatives, and 23 were enacted as written by the tribe.

Hearings were held May 29 on a bill introduced by Rep. Lloyd Meeds, D-Washington, to speed up the process, and testimony given by government and private witnesses supported the legislation. The Senate earlier had already passed its version of the legislation introduced by Sen. Henry M. Jackson, D-Wash., and Sen. James Abouresk, D-S.D.

The legislation would permit Congress to continue to exercise some oversight over the distribution of judgment awards, but would speed up the process for Indian tribes. The legislation would also free the time and resources of the Senate and House Indian subcommittees to deal with major legislation.

Until the early 1960s, legislation was not needed to effect distribution of judgment awards. But during the era of termination, however,

Congress decided it needed to review all the awards to determine which tribes are ready for termination.

This also gave the Congress some leverage over tribes in that it could tell a tribe to agree to termination or it would not get its judgment bill out of the Congress. One notable instance of this was the termination of the Wisconsin Menominees.

American Indian Press Association Release, May 30, 1973.

INDIAN WATER RIGHTS

Washington, D.C. The National Water Commission in its long-awaited final report to the President and Congress on national water resources problems has agreed to some Indian demands concerning Indian water rights as they relate to national water issues but rejected other Indian demands.

The National Water Commission, which submitted its final report to the President and the Congress on June 19, was created by Congress in 1968 to "review water resource development problems and opportunities for the nation as a whole." A number of Indian tribes and organizations testified against a draft report and its recommendations prepared by the Commission early this spring at a public meeting held here in the capitol.

Ten pages of the 579 page report are devoted to a discussion of Indian water rights. This includes six recommendations for actions to be undertaken by the three branches of the federal government, as well as state governments and Indian tribes.

The National Water Commission concluded that "there is increasing danger of conflict between Indian and non-Indian uses of water. The problem arises from the fact that many non-Indian water resources projects rely on supplies in which Indians have water rights with earlier priorities."

To avert these continuing conflicts, the Commission made six recommendations:

First, "at the request of any Indian tribe the Secretary of the Interior or such other federal officer as the Congress may designate should conduct studies in cooperation with the Indian tribe of the water resources, and the human resources available to its Reservation. An object of the studies should be to define and quantify Indian water rights in order to develop a general plan for the use of these rights in conjunction with other tribal resources. When warranted by the results of such studies, litigation should be instituted by the United States in behalf of the Indian tribe to adjudicate its water rights. Congress should appropriate funds to support the studies and the litigation."

Second, "prior to the authorization of any federally assisted non-Indian water resource project, a final adjudication should be made of all Indian water rights which then exercised could substantially affect the water supply for the project."

Third, "existing water uses on Indian Reservations, whether or not they have yet been adjudicated, should be quantified and recorded in state water rights records for the purpose of providing notice of such use. All adjudications or other binding determinations of Indian water rights whether heretofore or hereafter rendered similarly should be recorded. When requested to do so by a tribe, the Secretary of the Interior should also file notice of the existence of unquantified Indian water rights with the appropriate state official."

Fourth, "jurisdiction of all actions affecting Indian water rights should be in the U.S. District Court for the district or districts in which lie the Indian Reservation and the water body to be adjudicated. Indian tribes may initiate such actions and the United States and affected Indian tribes may be joined as parties in any such action. The jurisdiction of the federal district court in such actions should be exclusive except where Article III of the Constitution grants jurisdiction to the U.S. Supreme Court. In such actions, the United States should represent the Indian tribes whose water rights are in issue, unless the tribe itself becomes a party to the action and requests permission to represent itself. Any state in which the Reservation lies and any state having water users that might be affected by an Indian water rights adjudication may initiate an adjudication and may intervene in an adjudication commenced by others, including adjudications initiated by the United States and by Indian tribes. Upon such appearance by the state, the state may move to represent its non-Indian water users parens patriae, and the motion should be granted except as to non-Indian water users as to whom the state has a conflict of interest."

Fifth, "Congress should make available financial assistance to Indian tribes which lack the funds to make economic use of their water to permit them to make economic use of it. In addition, Congress should enact legislation providing that on fully appropriated streams the United States shall make a standing offer of indefinite duration to Indian tribes to lease for periods not to exceed 50 years any water or water rights tendered by the Indian owners at the fair market value of the interest tendered."

Sixth, "Congress should enact legislation providing that whenever the construction and operation of a water resource project on an Indian Reservation shall take, destroy, or impair any water right valid under state law to the diversion, storage, or use of water off the Reservation which right was initiated prior to the date of the decision in Arizona v. California (June 3, 1963), the United States shall provide a substitute water supply or pay just compensation to the owner of such right; provided, however, that:

"a. such owner shall not be entitled to a substitute supply or to compensation if prior to development of his right he had actual notice of conflicting Indian water rights claims that would render the water supply inadequate to serve the diversion requirements of himself and the Indian Reservation, and

"b. compensation shall not include values created by subsides granted by the United States to such owner.

"The cost of such compensation shall be recognized as a prior national obligation and shall not be reimbursable by the beneficiaries of water resource projects on Indian reservations."

In its final report, the National Water Commission states that it based its recommendations on the following seven "accepted premises" related to Indian water rights:

First, "The cases of Winters v. United States and Arizona v. California establish beyond dispute that water rights may attach to Indian Reservations upon creation of the Reservations by any lawful means (treaties, acts of Congress, executive orders, etc.)"

Second, "The priority and quantity of these Indian water rights present questions of law which involve, at least in part, an interpretation of the documents creating each Reservation and may involve for some Reservation the question of aboriginal rights. These questions are judicial questions and legislation cannot determine them or adversely affect such rights without just compensation. The Indians, acting on their own behalf or in conjuction with the United States, may initiate litigation to determine their water rights."

Third, "Indian water rights are different from federal reserved rights for such lands as national parks and national forests, in that the United States is not the owner of the Indian rights but is a trustee for the benefit of the Indians. While the United States may sell, lease, quit claim, release, or otherwise convey its own federal reserved water rights, its power and duties regarding Indian water rights are constrained by its fiduciary duty to the Indian tribes who are beneficiaries of the trust."

Fourth, "The volume of water to which Indians have rights may be large, for it may be measured by irrigable acreage within a Reservation (i.e., land which is practicably susceptible of being irrigated) and not by Indian population, present use, or projected future use. It may also be measured by other standards such as flows necessary to sustain a valuable species of fish relied upon by the tribe for sustenance."

Fifth, "Development of supplies subject to Indian water rights was not illegal. Ordinarily, therefore, neither Indian tribes nor the United States as the trustee of their property can enjoin the use of water by others outside the Reservation prior to the time the Indians themselves need the water."

Sixth, "The future utilization of early Indian rights on fully appropriated streams will divest prior uses initiated under both state and federal law (and often financed with federal funds) and will impose economic hardship, conceivably amounting in some cases to disaster for users with large investments made over long periods of time. The existence of unquantified Indian claims on streams not yet fully appropriated makes determination of legally available supply difficult and thus prevents satisfactory future planning and development."

Seventh, "The Monetary value of unused Indian water rights is difficult but not impossible to determine. It should be possible on a case-by-case basis to establish a fair market value for unused Indian water rights. The problem of valuation is no more difficult than with other species of property that are not the subject of everyday commerce."

Charles F. Luce is chairman of the national Water Commission. Six Commissioners are: Howell Appling Jr.; James R. Ellis; Roger C. Ernst; Ray K. Linsley; James E. Murphy; and Josiah Wheat.

American Indian Press Association Release, June 21, 1973

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SCHOOL OF LAW

This issue covers the Congressional Record, Volume 119, No. 99 through No. 105, June 25-July 9, 1973; and the Federal Register, Volume 38, No. 126 through No. 130, July 2, 1973 through July 9, 1973.

A PUBLICATION OF THE UNIVERSITY OF NEW MEXICO SCHOOL OF LAW, AMERICAN INDIAN LAW CENTER

CONGRESSIONAL ACTIVITY

BILLS INTRODUCED

HOUSE

Govt. Surplus Property

H.R. 8958. A bill to amend the Federal Property and Administrative Services Act of 1949 to provide for the disposal of certain excess and surplus Federal property to the Secretary of the Interior for the benefit of any group, band, or tribe of Indians, to the Committee on Government Operations.

June 25, 1973; 119 Cong. Rec. 99, H. 5349

Tribal Grants

H.R. 9011. A Bill to authorize grants for Indian tribal governments, and for other purposes; to the Committee on Interior and Insular Affairs.

June 27, 1973; 119 C.R. 101, H 5571.

Menominee

H.R. 9078. A bill to repeal the act terminating Federal supervision over the property and members of the Menominee Indian Tribe of Wisconsin as a federally recognized, sovereign Indian tribe; and to restore to the Menominee Tribe of Wisconsin those Federal services furnished to American Indians; and for other purposes; to the Committee on Interior and Insular Affairs.

June 29, 1973; 119 C. R. 103, H 5756.

Kootenai

H.R. 9105. A bill to declare that certain federally owned lands shall be held by the United States in trust for the Kootenai Tribe of Idaho, and for other purposes; to the Committee on Interior and Insular Affairs.

June 29, 1973; 119 C.R. 103, H 5757.

SENATE

Spokane

S. 2105. A bill to amend Public Law 90-335 (82 Stat. 174) relating to the purchase, sale, and exchange of certain lands on the Spokane Indian Reservation.. Referred to the Committee on Interior and Insular Affairs.

June 28, 1973; 119 C.R. 102, S 12308

Reservation

S. 2121. A bill to authorize the Secretary of the Interior to carry out a program to provide road systems within Indian reservations or provide access to an Indian reservation or Indian trust lands or restricted trust lands, for health, education, and the development of industry. Referred to the Committee on Interior and Insular Affairs.

June 30, 1973; 119 C.R. 104, S 12649

BILLS REPORTED

SENATE

Constitutional Rights of Indians

S. 969, authorizing funds for the printing of items relating to the Constitutional rights of American Indians (S. Rept. 93-252)

June 26, 1973; 119 C.R. 100, D 752.

BILLS PASSED

SENATE

Constitutional Rights

S. 969, authorizing funds for the printing of items relating to the Constitutional rights of American Indians.

June 27, 1973; 119 C.R. 101, D 763.

COMMITTEE MEETINGS

HOUSE

Secretary of Interior

Committee on Interior and Insular Affairs: Met in open session and ordered reported favorably to the House the following bills:

H.R. 620 amended, to establish within the Department of Interior an additional Assistant Secretary of the Interior for Indian Affairs;

San Carlos

H.R. 7730 amended, to authorize the Secretary of Interior to purchase property located within the San Carlos Mineral Strip;

Acoma	H.R. 6925, to authorize the exchange of certain lands between the Pueblo of Acoma and the Forest Service;
Choctaw-Chickasaw Cherokee	H.R. 5098 amended, Choctaw-Chickasaw-Cherokee Boundary Dispute Act; and
Judgement Funds	H.R. 8029 amended to provide for the distribution of funds appropriated in satisfaction of certain judgements of the Indian Claims Commission and the Court of Claims.
	June 27, 1973; 119 C.R. 101, D 767
Menominee Reinstatement	Committee on Interior and Insular Affairs; Subcommittee on Indian Affairs concluded hearings on H.R. 7421, to repeal the act terminating Federal supervision over the property and members of the Menominee Indian Tribe of Wisconsin as a federally recognized sovereign Indian tribe; and to restore to the Menominee Tribe of Wisconsin those Federal services furnished to American Indians because of their status as American Indians. Testimony was heard from Representatives Froehlich and Obey; Wisconsin Governor Lucey and other Wisconsin State officials; Marvin Franklin, Department of Interior, John Ottina, Commissioner-Designate, Office of Education, HEW; and public witnesses.
	June 28, 1973; 119 Con. Rec. 102, D 778.

National Business Development Organization

DIRECTOR, NBDO-will direct program headquartered at Sarasota, Florida with branch office at Cherokee North Carolina. Must have advanced degree in Business Administration, Accounting, or Law or equivalent practical experience. Salary up to $17,000 per annum.

BUSINESS DEVELOPMENT OFFICER to head up business development activities of United Southeastern Tribes, at Cherokee, North Carolina and on the Seneca Reservation in New York State. Must have a Baccalaureate degree in a related field or equivalent experience. Salary up to $14,000 per annum.

BUSINESS PACKAGER (2) - Will screen and counsel prospective business people, conduct market studies, develop sales and operational plans. Assists clients in obtaining loans. College degree in Business or experience running a business necessary. Two positions, one in Sarasota, the other at Cherokee. Salary up to $12,000 per annum.

OUTREACH SPECIALIST - Will make the Business Development Office known to business candidates, collect and disseminate information which will assist clients make sound business decisions. College level education or experience in data collection and dissemination preferred. Salary to $9,000 per annum.

SECRETARY, two positions, one at Sarasota, Florida, the other at Cherokee, North Carolina. Performs secretarial functions to Business Development Offices. Up to $7,000 per annum in Sarasota, $6,000 per annum in Cherokee. Must have experience.

TERMINATION REVERSAL PROPOSED

Washington, D.C. Indians can get ready to color Congress "sincere", judging from new reports on the prospects for passage of legislation to restore the terminated Menominee Tribe of Wisconsin to federal trust status.

According to Rep. Lloyd Meeds, D-Wash., Chairman of the House Indian Affairs Subcommittee, the passage of Menominee restoration would be the litmus test of congressional sincerity in working to improve the status of Indians. The Menominee restoration bill sailed through his subcommittee with a maximum of mea culpas and a minimum of fuss here June 28.

Hearings in the Senate will probably be in late August or early September. Although the Menominee lobby, led by Ada Deer, has not yet "really worked that side of the Hill," preliminary temperature taking reveals no "anti-restoration" fever rising.

In fact, most of the potential "Deer slayers" such as Senate Interior and Insular Affairs Committee Chairman Sen. Henry M. Jackson, D-Wash., Senate Indian Affairs Sub-Committee Chairman Sen. James Abourezk, D-S.D., Indian Affairs Subcommittee Republican Sen. Dewey Bartlett, R-Okla., and powerful Republican conservative Sen. Barry Goldwater of Arizona are among the co-sponsors of the Menominee legislation in the Senate.

Congressional momentum toward restoration is being aided and abetted by the White House. Bradley F. Patterson, Jr., White House executive assistant on Indian Affairs, does not attach as much symbolic weight to restoration as a test of the administration's sincerity toward Indians as Meeds does for the Congress. But he acknowledges it would be one measure.

The favorable report on the legislation by the Nixon administration means that Indians can color them at least "partially sincere." The Nixon administration has demanded some changes in the legislation such as full trust status for the Menominee rather than a partial trust which would amount to little more than a tax shelter and the reorganization of the tribe under the Indian Reorganization Act of 1934 and the like.

The Menominee Tribe was formally terminated by Congress in 1954 and a termination plan was put into effect in 1961. The tribe has a population of 3,270 members and a land base of 233,881 acres.

The Menominee, whose slogan is "Restoration Now," say they can live with the administration's amendments. But, as enactment of the legislation becomes more and more likely, "Restoration Without Domination" is becoming the unwritten postscript to their bumper stickers.

The only voices raised in opposition to the restoration act have come from the non-Indians who brought Menominee land since termination.

The spokesman for the non-Indian property owners in Congress has been the congressman from that district, Rep. Harold Froelich, R-Wisc. Neither they nor Froelich oppose Menominee restoration in principle. But they have threatened to hold up passage of the legislation until their objections to certain provisions of the bill are changed.

Their objections center around a fear that once the Indian land goes back into trust and thereby becomes tax-exempt, the white property owners will have to bear the full burden of county government expenses and a fear that, since Indians will be in the voting majority in Menominee County, they will tax non-Indians excessively in order to drive them out and regain the land. According to one Senate insider, these are "phony issues."

First, because the tribe will become eligible for BIA and IHS services under the proposed act and thus relieve the county of the burden of providing for health, education and welfare needs. Second, there are protections under Wisconsin law which would prevent the Indian majority from excessively taxing the non-Indian minority. And on this last point, one Indian wag noted that "These white people realize what a bad time they gave Indians when they were in the majority, so they expect the Indians to act the same way."

Another issue which could hold up passage of the legislation is that of what kind of government will exist in Menominee County after the tribe has been restored to federal status and begins to operate under a tribal council form of government. The Menominee want to retain the present county lines and government. The opposition want either to change the lines back to pre-1954 period when the land was part of two adjacent counties, or to attach the white-owned land to adjacent counties, or to attach the white-owned land to adjacent counties despite the fact that their property is not contiguous to these counties.

Since Wisconsin law makes the changing boundary lines dependent on a referendum vote in the affected county, there will be no changes in the Menominee County configuration unless the Indians agree to it, because they are in the majority.

The opposition wants to make all these determinations part of the legislation and are threatening to hold up passage of the act unless they are agreed to. The Menominees insist that these are state matters and can be ironed out within the state once the legislation is passed.

If the opposition can hold up passage of the legislation, the Menominee face financial danger and possible loss of more tribal lands.

American Indian Press Association Release, June 28, 1973.

SURVEILLANCE BY WHITE HOUSE

Washington, D.C. The White House staff routed "regular intelligence reports" on "Indian uprisings" to President Nixon's top man in Indian affairs, Leonard Garment, deposed presidential aide John W. Dean III told the U.S. Senate here June 25.

Dean told the Senate Select Committee on Presidential Campaign Activities, which is probing the Watergate scandal, that early in 1971 an Interagency Evaluation Committee (IEC) was created to handle all domestic intelligence information. Some of its information, together with regular reports on Indians prepared by the Federal Bureau of Investigation (FBI) was routed directly to Garment by himself, Dean testified.

(Dean's testimony appeared to confirm reports from reliable sources that the Nixon administration had in fact paid special attention to Indian militants and unrest plaguing the administration since the takeover of Alcatraz Island in November of 1969, and resulting in 1971 and afterwards in the surveillance and investigation of countless militant and moderate Indians across the country.

(The same informed sources told AIPA that sensitive materials sent to Garment by Dean "probably didn't reach (Bradley F.) Patterson Jr.," Garment's executive assistant for Indian affairs, during the period of increased surveillance of Indians nationwide.

("Garment didn't always immediately inform Brad of what he knew," said the sources. "Sometimes he lacked the time and sometimes maybe he felt it wasn't all that important for Brad to know.")

Dean told Senators that Nixon's White House was characterized by "strong feelings that the President and his staff had toward anti-war demonstrators--and demonstrators in general." Beginning in late 1969, Indian demonstrations went on the upswing, replacing black Americans as indicators of ethnic unrest.

Dean also told the Senate he had "received all the available intelligence on the demonstrations the President had been subjected to during the 1972 presidential campaign." The last demonstration involving the President presumably would be the Trail of Broken Treaties Caravans in the nation's capital during the week preceding the elections.

A total of three Indian demonstrations in the capital occurred during the first Nixon term. These are Indian Vietnam Veterans joining other anti-war Vietnam Veterans in a May 1971 demonstration, an attempt to place a citizen's arrest on a top BIA official in September 1971, and the BIA takeover in November 1972.

Dean said the White House "was continually seeking intelligence information about demonstration leaders and their supporters that would either discredit them personally or indicate that the demonstration was in fact sponsored by some foreign enemy."

Beginning in 1971, according to administration sources, however, intelligence gathering operations by the administration were shown in the following ways:

--Surveillance and investigations of moderate Indian leaders and their staffs, Indians holding positions in the federal government, and Indian community leaders began in February 1971, according to non-Indian administration sources;

FBI agents and informers tracked leaders and groups moving west to east along the Trail of Broken Treaties in October 1972 on the eve of the November BIA takeover, according to confidential FBI memoranda obtained by AIPA;

--A network of Indian and non-Indian informers supplied intelligence information to federal agents during and after the November BIA takeover in the capital, the Wounded Knee takeover, in Phoenix, Ariz., and Maxton, N.C., as part of an intelligence-gathering effort to lay the legal groundwork for prosecutions.

American Indian Press Association Release, June 26, 1973.

MUSEUMS REVISE POLICY ON INDIAN REMAINS

New York, N.Y. The American Association of Museums, the most powerful national organization of museums which has the support of top anthropology and archaeology scholars around the U.S., has devised a new policy concerning the digging for skeletons and other human remains of American Indians and the display of those findings in museums.

Says the new policy, authorized by the association's top committee here June 7:

"In recognition of the current concern over the use of human skeletal material in museums, the American Association of Museums has formulated a general policy statement covering certain basic issues for consideration by those museum's trustees and staff members who seek guidance in a complex and unresolved problem.

"In the search for knowledge, we seek answers in the universe, our world, all living things, and in ourselves. As educational institutions, museums are vigorously searching for understanding--most particularly about ourselves as human beings. Much of what we have learned about human development and prehistoric cultures has been derived from burials.

"There is merit in continuing such investigations, but if we are to achieve wisdom, yet adhere to an honorable position as humanists who are concerned with the quality of life and the worth of the individual, the study of skeletal material must be undertaken with dignity, and with a regard for the feelings of the most sensitive among us. Research must be accomplished in a manner acceptable not only to fellow professionals, but also to those of varying religious beliefs.

"In particular, Native Americans feel a kinship to ancestral peoples and museums must seek means of achieving scholarships and interpretative goals acceptable to the actual and spiritual descendants of the peoples under study or run the risk of alienating the segment of our populations most closely related to the subject of those studies.

"Be it therefore resolved, that although there is sometimes a need to use skeletal material in interpretative exhibits, this must be done with sensitivity and understanding of the feelings for human dignity held by all peoples. It is presumptuous to interpret people, unless we respect their rights and intrinsic dignity. The objective of an interpretative exhibit is to help the visitor understand, indeed to identify with, those who lived or live under very different circumstances. The curiosity of the visitor is no justification for the violation of beliefs concerning the dead.

"And be it further resolved, that it is the position of the American Association of Museums that the human being of whatever century and of whatever place is entitled to the same concern that would be accorded a member of one's own family, thereby confirming our belief that we are all indeed of one family."

Signatories of the new policy were Chairman Frederick J. Dockstader, William E. Marshall, Robert G. Baker, Helmuth J. Naumer, Milton F. Perry and George I. Quimby.

American Indian Press Association Release, June 30, 1973.

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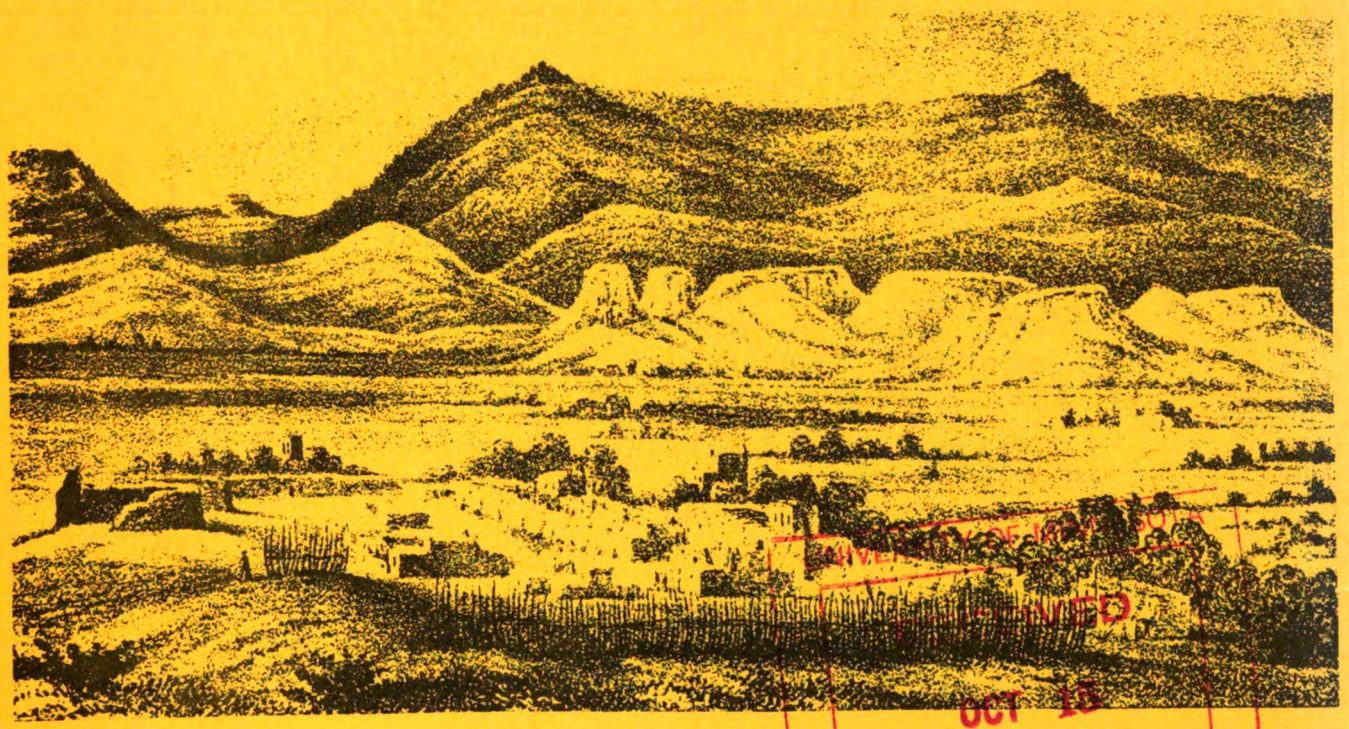

VOLUME 6, NUMBER 8

July 26, 1973

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SCHOOL OF LAW

This issue covers the Congressional Record, Volume 119, No. 105-No. 119, July 9-26, 1973; and the Federal Register, Volume 38, No. 131-No. 143, July 10-26, 1973.

A PUBLICATION OF THE UNIVERSITY OF NEW MEXICO SCHOOL OF LAW, AMERICAN INDIAN LAW CENTER

BILLS INTRODUCED

HOUSE

Shawnee

H.R. 9219. A bill to declare that the United States hold certain land in trust for the Absentee Shawnee Tribe of Indians of Oklahoma; to the Committee on Interior and Insular Affairs.

July 11, 1973; 119 C.R. 107, H6001

Interpretation of Indian Statutes

H.R. 9625. A bill defining and limiting the application of certain acts of Congress to Indians and Indian tribes; to the Committee on Interior and Insular Affairs.

July 26, 1973; 119 C.R. 119, H6782

SENATE

Dept. of Interior Policy

S. 2187. A bill to authorize the Secretary of the Interior to establish a commission for the purpose of evaluating and reviewing regulations of the Department of the Interior which govern the relationship between the United States and the Indian people and to authorize and direct the Secretary of the Interior to revise those regulations in accordance with the policies set forth in this act. Referred to the Committee on Interior and Insular Affairs.

Indian Policy Review Commission

S. J. Res. 133. Joint resolution to provide for the establishment of the American Indian Policy Review Commission. Referred to the Committee on Interior and Insular Affairs.

July 16, 1973; 119 C.R. 111, S13523

Reno-Sparks Colony

S. 2192. A bill to declare that the United States holds in trust for the Reno-Sparks Indian Colony certain lands in Washoe County, Nev. Referred to the Committee on Interior and Insular Affairs.

July 17, 1973;119 C.R. 112, S13629

Navajo

S. 2270. A bill to facilitate the exchange of school lands between the State of Utah and the Navajo Tribe. Referred to the Committee on Interior and Insular Affairs.

July 26, 1973; 119 C.R. 119, S14747

BILLS REPORTED

HOUSE

Asst. Secretary for Indian Affairs

H.R. 620, to establish within the Department of the Interior an additional Assistant Secretary of the Interior for Indian Affairs, amended (H.Rept. 93-374);

Choctaw, Chickasaw, and Cherokee

H.R. 5089, to determine the rights and interests of the Choctaw Nation, the Chickasaw Nation, and the Cherokee Nation, amended (H.Rept. 93-375);

Acoma

H.R. 6925, to authorize the exchange of certain lands between the Pueblo of Acoma and the Forest Service (H.Rept. 93-376);

and

Judgment Funds

H.R. 8029, to provide for the distribution of funds appropriated in satisfaction of certain judgments of the Indian Claims Commission and the Court of Claims, amended (H.Rept. 93-377).

July 16, 1973; 119 C.R. 119 111; D836

SENATE

Economic Development

S. 1341, providing for financial assistance in the economic development of Indians and Indian organizations, with an amendment (S.Rept. 93-348).

July 26, 1973; 119 C.R. 119, D907

COMMITTEE MEETINGS

SENATE

Indian Policy Commission

Subcommittee on Indian Affairs began hearings on S.J. Res. 133, providing for the establishment of the American Indian Policy Review Commission, receiving testimony from John H. Kyl, Assistant Secretary for Congressional and Public Affairs, who was accompanied by Dennis Drabelle, Office of Legislation, both of the Department of the Interior; Lee Cook, National Congress of American Indians, Washington, D.C.; Raymond Simpson, attorney, representing numerous Southwest Indian tribes; Samson Miller, representing the National Tribal Chairmen's Association; and LaDonna Harris, Americans for Indian Opportunity, Washington, D.C.

July 19, 1973; 119 C.R. 114, D861

Indian Policy Commission

Committee on Interior and Insular Affairs: Subcommittee on Indian Affairs concluded hearings on S.J. Res. 133, providing for the establishment of the American Indian Policy Review Commission, after receiving testimony from the following Indian panel composed of Leo Vocu, Oglala Sioux Tribe, Pine Ridge, S. Dak.; John Stevens, representing the Passamaquoddy Tribe of Maine; Kenneth Smith, Confederated Tribes of Warm Springs Reservation, Oregon; Mrs. Gerald One Feather, Standing Rock Sioux, Fort Yates, N. Dakota; Valentino Cordova, Chairman, All Indian Pueblo Council, Albuquerque; Wendell George, Colville Confederated Tribes, Nespelem, Wash.; Reeves Nahwooksy, Comanche

Tribe of Oklahoma; and Hank Adams, National Director, Survival of American Indians Association, Nisqually, Wash. The panel was moderated by Vine Deloria, Jr., of the Standing Rock Sioux Tribe.

July 20, 1973; 119 C.R. 114, D871-2

DECISIONS OF THE BUREAU OF INDIAN AFFAIRS

Archaeological Permits — The authority to grant archaeological permits on Indian land is now transferred from the Commissioner of Indian Affairs to the Director of the National Park Service.

July 12, 1973; 38 F.R. 133, pp. 18547

Exemption allowing the use of peyote on Navajo Reservation in religious services of Native American Church.

Members of Native American Church may transport, sell, purchase, and possess peyote on the Navajo Reservation provided the peyote is used for religious services.

This revision is merely an administrative change reflecting an exemption already granted by the governing body of the Navajo Tribe.

July 25, 1973; 38 F.R. 142, pp. 19909

LAW REVIEW ARTICLES

"American Indian Land Claims: Land versus money as a remedy." 25 U. Fla. Law Review 308-326

"Indian Bill of Rights." 5 Southwestern University Law Review 139-164

Casenote on Mason v. U.S. (which held that the U.S. breached its fiduciary duty by paying Oklahoma estate tax on the property of a noncompetent Osage Indian) 5 St. Mary's Law Journal 161-168

"Criminal jurisdiction over non-trust lands within the limits of Indian reservations." 9 Willamette Law Journal 288-310

Casenote on Leech Lake Band of the Chippewa Indians v. Herbst, which which involved state regulation of hunting and fishing rights. 18 New York Law Forum 442-450

JUDICIAL DECISIONS

Mescalero Apache Tribe v. Jones

93 S. Ct. 1267
March 27, 1973

Facts: Mescalero Apache Tribe protested the New Mexico "use tax" assessment based on the purchase price of materials used to construct two ski lifts at a ski resort operated by the tribe on land in New Mexico located outside the boundaries of the tribe's reservation. The tribe also sought a refund of sales tax it had paid on the basis of gross receipts of the ski resort. The Commissioner of Bureau of Revenue of the State of New Mexico denied both claims.

Issue #1: May the State of New Mexico impose a non-discriminatory gross receipts tax on a ski resort operated by the Tribe on off-reservation land that the Tribe leased from the Federal Government under §5 of the Indian Reorganization Act, 25 U.S.C. §465? Held: Yes.

Issue # 2: May the State of New Mexico impose a "use tax" on personal property that the Tribe purchased out of State and which was installed as a permanent improvement at the ski resort? Held: No.

Reasoning: Issue #1
The New Mexico sales tax law, N.M.S.A. (1953) §72-16-1 et seq., is a non-discriminatory state law applicable to all citizens of the State. Absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to such laws. The Court denied the claim that the Indian Reorganization Act of 1934 rendered the Tribe's off-reservation ski resort a federal instrumentality constitutionally immune from all State taxes.

Issue #2
Section 465 of the Indian Reorganization Act of 1934 provides that "any lands or rights acquired" pursuant to any provision of the Act "shall be taken in the name of the United States in trust for the Indian Tribe or individual Indian for which the land is acquired, and such lands shall be exempt from State and local taxation." Thus, permanent improvements on this tax-exempt land would be also immune from the State's ad valorem property tax.

McClanahan v. State Tax Commission of Arizona

93 S. Ct. 1257
March 27, 1973

Facts: A Navajo Indian filed suit against respondent for refund of state income taxes paid, claiming the tax was unlawful as applied to reservation Indians with income derived wholly from reservation sources. The Arizona courts held that such state taxation was permissible.

Issue: May the State of Arizona impose its individual income tax on a reservation Indian whose entire income is derived from reservation sources? Held: No.

Reasoning: The Court interpreted the 1868 treaty between the U.S. Government and the Navajo Nation as establishing the prescribed lands as being within the exclusive sovereignty of the Navajos under general federal supervision.

Cited were several Acts of Congress which ruled Congress' intent to maintain the tax-exempt status of reservation Indians.

Tonasket v. Washington

93 S. Ct. 1941
April 24, 1973

Facts: Tonasket, a Colville Indian, engaged in a retail cigarette business on Indian land in the State of Washington held in trust by the federal government. He did not affix tax stamps to the cigarettes he sold as required by state law. Tonasket requested a judicial declaration as to his right to do business free of requirements of state retail sales tax laws and

requested that the State Dept. of Revenue be enjoined from harrassing him in attempting to enforce such laws.

The Washington Supreme Court held [79 Wash 2d 607, 488 P.2d 281] that the Colville Confederated Tribes of the State of Washington, by accepting the criminal and civil jurisdiction of the State as authorized by Public Law 83-280, have agreed to the imposition of state excise taxes upon Indian commerce conducted within the boundaries of the Indian reservation. The Court also held that Congress, by enacting P.L. 83-280, authorized states to apply the civil laws of the state to Indian commerce.

Issue: May a state impose excise taxes on an Indian business located and conducted wholly within the boundaries of an Indian reservation and many of whose customers are non-Indian?

Decision: "The judgment of the Supreme Court of Washington is vacated, and the case is remanded to that Court for reconsideration in light of §§ 6 and 7 of c. 157, 1972 Session Laws of the State of Washington, and this Court's decision in McClanahan v. Arizona State Tax Commission ... 93 S.Ct. 1257 ... ."

REALIGNMENT

BIA REALIGNMENT -- THE SENATE SUBCOMMITTEE VIEW

Washington, D.C.--Any review of the pending BIA realignment is "both irrelevant and unnecessary" because Marvin L. Franklin, Interior's Assistant to the Secretary on Indian Affairs, is "serving illegally," according to Senate Indian Affairs Subcommittee Chairman Sen. James Abourezk, D.-S.D.

Abourezk dropped his legal bombshell during the second round of oversight hearings on new BIA plans July 10 before his subcommittee. The full text follows:

"Subsequent to the first day of these hearings, I asked the Library of Congress to provide this Committee with an opinion respecting whether or not the position and responsibilities of the Assistant Secretary of Interior for Indian Affairs was according to law, in view of the fact that no nomination had been submitted to the Senate for the position of Commissioner of Indian Affairs.

"Within the last hour I received the opinion requested. According to the American Law Division of the Library of Congress, any actions taken on behalf of the Indian Bureau by Mr. Franklin are accordingly outside the scope of the Constitution and of the federal statutes. He is serving illegally. The obvious result of this fact makes continuation of these hearings on the proposed realignment of the Bureau of Indian Affairs Central Office both irrelevant and unnecessary.

"In view of the recent court decision which declared that Mr. Howard Phillips was occupying the leadership post at the Office of Economic Opportunity in an illegal manner, it is inexcusable that the White House can continue to be either so negligent or so arrogant as to allow a similar situation to exist at the Bureau of Indian Affairs.

"I am therefore adjourning these hearings until such time as the (Nixon) Administration chooses to act within the law."

American Indian Press Association Release, July 11, 1973

BIA REALIGNMENT--THE TRIBAL CHAIRMEN"S VIEW

Washington, D.C.--Support for Marvin L. Franklin and his plans to restructure the BIA, together with blasts at a meddling White House and Senate were contained in a special press statement made public here July 10 by the National Tribal Chairmen's Association (NTCA).

The following is the full text of the NCTA position on BIA realignment:

"The Indian leadership is now calling on the Nixon administration to keep its promise to improve services to Indian people by calling attention to the fact that they are not satisfied with what is going on. The key issue that has emerged from this concern is the proposed realignment of the Bureau of Indian Affairs.

"The leadership also urges that the White House not interfere but specifically to assist Marvin Franklin, Assistant to the Secretary for Indian Affairs, in implementing the realignment plans that have been discussed with the Indian leadership, but not implemented to date. Congressional committee concerned with Indian affairs was also urged to devote its time to vital Indian legislation.

"These actions were taken by the National Tribal Chairmen's Association, an organization formed in 1971 to give a voice to the Indian population which has not had a distinct and clear voice in all of our history--the reservation Indian who has a special relationship with the United States government. Some 150 tribes now belong to NTCA. The organization is made up of publicly elected tribal chairmen of land-based, federally recognized tribes and the legitimate voice of the Indian people, and the only major group with clear credentials to speak for the federally recognized tribes.

"The (earlier enacted) June 29 resolution of the NTCA Board of Directors cites the Nixon administration's early promise for pursuing programs that would benefit the Indians. While the heartened note was received with great enthusiasm by the Indian people, the inability by the administration to take positive action, either by design or otherwise, resulted in further frustrations to the Indian people and the tribal leadership to the point they could no longer relate to or work with the Cabinet level.

"On numerous occasions since 1969, the intention of making the BIA 'totally responsive' to the Indian people's needs has been touted by Interior and BIA officials. And while the process continues, progress is hard to find. For these reasons, NTCA has taken a firm stand.

"The resolution states: 'The effect of devoting all of this effort to organizing, reorganizing, restructuring and realigning has been to delay and prevent delivery of services to Indian people and the performance of the trust responsibility of the United States... ' The resolution further states that a Cabinet level officer should be allowed to carry on the functions of BIA without outside interference, and urges that the proposed BIA realignment announced by Assistant Secretary Bodman and Secretary of the Interior Rogers C.B. Morton (in January) be carried out by Marvin Franklin without delay..

"It is the feeling of NTCA that Franklin has been discussing the proposal with the tribal leadership in keeping with the President's policy of consultation and self-determination and that is another reason why the White House should not interfere at this point. It is hoped that the end of the realignment and reorganization of the BIA would enable the Bureau to concentrate on its prime missinn-delivery of services and programs to the reservation Indian people consistent with the consultation and self-determination policy of the President.

"The primary intent and desire of NTCA is to return initiative, priority considerations to Indian situations through the elected tribal officials, stated William Youpee, executive director of NTCA. 'These representatives of the Indians on the reservations know the needs of their people. These are the ones we hear about in statistics about poor education, poor health, poor housing, and these are the Indians for whom the government has a special and unique responsibility.'

"These elected leaders call attention to the fact that when President Nixon delivered his message on self-determination and consultation that he specifically was talking about reservation Indians and not the total Indian population. 'These are the Indians who need self-determination and who should be consulted like the President has said and NTCA has been repeating since July 1970,' he said."

American Indian Press Association Release, July 12, 1973

BIA REALIGNMENT--THE NCAI VIEW

Washington, D.C.--Implementation of the new BIA reorganization plan should be delayed until "adequate input from the Indian community can be obtained and analyzed," according to a letter to Marvin L. Franklin from Leon F. Cook, president of the National Congress of American Indians (NCAI) dated July 2.

The NCAI letter, expressing the will of the full NCAI Executive Committee, urged Franklin to consider NCAI's reasons for a request in delaying implementation of the BIA plan and suggestions for wide consultations with Indian people. Following are major portions of the Cook letter:

"We do not feel that we have been consulted regarding the on-going realignment or reorganization of the Bureau. Consultation implies that we are informed on what is happening and asked what we thought of the plan. This did not occur.

"As Indian people, we are fully cognizant of the Bureau's deficiencies and the need for change and improvement. Yet we feel that without Indian consultation and input, such changes will be nothing more than cosmetic.

"...You informed us of the existence of a Steering Committee and plans for a Working Committee to adivse you on the realignment which, we understood, is in full process at this time. We responded that, to us, this is nothing more than the traditional and historic course of conduct for the Interior Department and the Bureau in establishing policy and programs for Indian people. We expressed our concern that Indians were again being excluded from the process of developing policy and programs which so vitally affect them.

"We expressed our objection to the clandestine meetings of high level Washington-based personnel and BIA Area Directors which are being held in Washington and in various locations throughout the country on a monthly basis for the purpose of planning the details of the realignment ...

"We appreciate your offer to open those meetings up to representatives of NCAI and others and expect that we will be notified on a routine basis of the schedules of such meetings so that we may make provisions for representation. Your offer to open up your weekly staff briefing to us and to members of the Indian community is greatly appreciated as well. This 'new openness' will do much to abate the gossip, rumor and intrigue which has permeated the BIA for the past six months.

"These actions show good intentions on your part to establish a good working relationship with the national community which the Bureau was designed to serve. However, this does not lessen our concern, and the concern of the majority of the national Indian community, for immediate Indian input into the reorganization which, as you stated was your desire, would be the final ultimate reorganization of the Bureau.

"Various staff members of the Bureau have urged tribal delegations and tribal leaders to fully support the existing realignment plans and urge its immediate implementation without interference from the Congress or the (Nixon) Administration. The urgency of immediate implementation, according to these staff members, is based on allegations that the Bureau has been basically inoperative for the past six months and further delay in implementing the realignment plans and 'getting the Bureau going again' would do irreparable damage to tribal programs and perhaps lead to termination.

"NCAI feels strongly that the down-time in the reconstruction of the Bureau following the takeover in November was a planned delay designed to buy time for the development of plans for realignment being promulgated by the current leadership in the Bureau. The NCAI Executive Director (Charles E. Trimble) articulated our observations to this effect in hearings before the House Indian Affairs Subcommittee on the takeover of the BIA and the occupation of Wounded Knee:

"We have seen the Administration refuse to restore the services of the Bureau of Indian Affairs since the takeover in November. Their ploy is to bring the Indian community to its knees begging for 'the good old days.' It is our understanding that, waiting in the wings, are the old line bureaucrats who will immediately assume the reins of leadership in the BIA as soon as the Indians are ready to concede that anything is better than nothing.'

"We cannot concede to tactics of rumor and fear designed to panic the Indian community into accepting a redesigned agency which may ultimately be harmful to their unique relationship with the federal government. Nor can we accept the contention that delivery of services to Indian tribes will be curtailed by further delay in the realignment. The vehicles and channels for the continued delivery of services to Indian tribes are there. Any hindrances to the delivery of those services resulting from a mid-stream situation in the Bureau will be attributed to premature and possibly illegal actions toward reorganization.

"We agree with the Chairman of the Senate Indian Affairs Subcommittee (Sen. James Abourezk, D-S.D.) that further implementation of your reorganization or realignment be deferred until completion of the ongoing oversight hearings and adequate input from the Indian community be obtained and analyzed.

"We feel that Indian involvement in this planned realignment, or in any plans which would change the structure or services of this unique Indian agency, is essential for its success. In his historic Indian Message to Congress of July 8, 1970, President Nixon pledged a policy of Indian participation in policy-making: "...It is anticipated that the Indian people continue to lead the way by participating in policy development to the greatest possible degree.'

"To assist you in your expressed desire to consult with Indian people, and to assist you in meeting the expressed desire of the President, the National Congress of American Indians proposes the following:

"First, NCAI, in cooperation with other national and regional Indian organizations, will host a series of five regional meetings with Indian tribes, Indian organizations and individuals to present the plans for the realignment and to obtain and analyze the Indian input to these plans prior to their finalization and implementation. (A proposal to this effect has been forwarded to the Interior Department and is enclosed in this letter.)

"Second, in cooperation with other national Indian organizations, and with the Bureau of Indian Affairs, NCAI will work toward the establishment of an All-Indian Advisory Board on Budget and Policy for the Bureau of Indian Affairs. This board would meet regularly with the Commissioner to recommend and/or advise on budget and policy matters and decisions affecting priorities and the delievery of funds and services to Indian people.

"We request that you consider these proposals and respond immediately. The NCAI Executive Director will meet with you at your earliest convenience to discuss the matter further."

American Indian Press Association Release, July 13, 1973

INDIAN PREFERENCE

Washington, D.C.--A three-way struggle among Indians, non-Indians and the executive branch of the federal government over the constitutionality of the Indian preference laws is reaching the final states of resolution.

Round one in the struggle went to the Indians when a federal district court in the District of Columbia ruled in Freeman v. Morton in December 1972 that the Indian preference statutes must be applied more liberally in the various phases of employment in the Bureau of Indian Affairs (BIA) than the Interior Department wanted to apply them.

Round two also went to the Indians when Interior requested and was denied a stay of the D.C. court order on the grounds that the decision was "unworkable" because it removed all discretion the Interior Secretary might have to hire a non-Indian if hiring an Indian would jeopardize a program.

Round three went to a group of non-Indian BIA employees in Albuquerque, N.M., when a specially impaneled three-judge court ruled in Denver, Colo., in June in Mancari v. Morton, that the granting of preference to Indians over non-Indians in federal employment violated the Equal Employment Opportunity Act of 1972, which amended the Civil Rights Act of 1964.

The diametrically opposite rulings of the two courts mean the decisions will have to be heard by the U.S. Supreme Court in order to resolve the conflict.

The decisions have also put the Interior Department down for the count. According to a July 6 letter from Interior Solicitor Kent Frizell to Assistant Attorney General Wallace H. Johnson, the BIA can only fill approximately 321 of 2,141 vacancies in the Bureau without violating one or the other of the court orders.

In that same letter the Interior Department stated its position on the two rulings:

"Because the Freeman decision is more in harmony with the Department's policy, we recommend that a stay of the Mancari order be sought immediately, with a new effort to stay Freeman as soon as possible after disposition of the request for stay of Mancari."

The Interior letter then goes on to recommend to the Justice Department that the Mancari decision be appealled and, if the Supreme Court takes the Mancari case, the Freeman case be heard at the same time. Thus, the court would be deciding whether to uphold the non-Indian decision, the Indian decision or the Interior position which is a restricted application of the Indian preference laws.

Four non-Indians, who appeared to be very carefully selected non-Indians, are the plaintiffs in the Mancari case. The four are:

--Carla R. Mancari, guidance counselor at the BIA's Southwest Indian Polytechnic Institute in Albuquerque, N.M. She has been in Bureau for three and a half years, most of that time at the BIA's Intermountain Indian School in Brigham City, Utah. She is a GS-11 and an Italian-American;

--Jules Cooper, supervisory training instructor at the Southwest Indian Polytechnic Institute in Albuquerque. He has been in the Bureau for three years. He is a GS-11 and Jewish;

—Anthony Franco, computer operator at the BIA Data Center in Albuquerque. He has been in the Bureau for 12 years, six years of that spent at the Indian Agency in Gallup, N.M. He is a GS-7 and a Spanish-American;

—Wilbert Farrett, computer programmer at the BIA Data Center in Albuquerque. He has been in the Bureau for three years. He is a GS-9 and Black.

It could not be immediately determined whether or not the four non-Indians were members of a loosely organized group of BIA and non-BIA employees who call themselves Dedicated Americans Revealing the Truth (DART). The organization opposes implementation of the Indian preference laws.

The Mancari case had to be heard before the special three-judge panel rather than in a regular district court because of the apparent direct conflict between the Indian preference statutes and the civil rights statutes. According to Gene Franchini, attorney for the plaintiffs, the Supreme Court has to hear the appeal because of this direct conflict in laws and lower court decisions. Ordinarily, one or the other of the decisions would first be heard by a U.S. Circuit Court of Appeals before reaching the Supreme Court.

The Indian preference statutes themselves go back as far as 1882. Another statute was enacted in 1894 guaranteeing Indian preference. The latest statute is the 1934 Indian Reorganization Act which explicitly directed that Indians be given preference in employment without regard to Civil Service regulations.

Until the Freeman decision in December 1972, the Bureau had been using Indian preference only at the initial hiring stage of employment, and not in the promotion, reassignment or reduction in work force stages. After the Freeman decision, the Bureau changed its policy somewhat to conform to the decision, but not entirely.

American Indian Press Association Release, July 13, 1973

WOUNDED KNEE TRIALS

Rapid City, S.D.—Will the trials of the seven principal defendants charged in the takeover of the Oglala Sioux Village of Wounded Knee be held separately or together?

That question will be resolved Aug. 6 when attorneys for the "Wounded Knee Seven" argue the matter before the U.S. federal district court in Sioux Falls.

Atty. Ramon Roubideaux, chief counsel for the seven accused, said the federal government "was very anxious" not to have them tried together but separately. Roubideaux also said a change of venue for the trial or trials will be sought outside the South Dakota area.

The seven principal defendants in the 70-day takeover are Russell C. Means, director of the Porcupine, S.D. chapter of the American Indian Movement (AIM); Dennis J. Banks, AIM national field coordinator; Carter A. Camp, AIM Oklahoma state coordinator; Clyde Bellecourt, AIM Minneapolis chapter director; Stanley Holder, AIM security chief during the takeover; AIM Spiritual Leader Leonard Crow Dog; and Pedro Bissonetter, vice chairman of the reservation-based Oglala Sioux Civil Rights Organization (OSCRO) in Oglala, S.D.

Roubideaux said "about 105 people were indicted" altogether for the takeover, and that Wounded Knee Legal Defense/Offense Committee had not been receiving sufficient contributions for legal needs. "We're in desperate need of substantial contributions, said Roubideaux, who indicated that the defense funds needed about a half million dollars overall for its work.

Only two persons arrested at the end of June remained in jail by July 10 awaiting bond. All the rest were out on bail awaiting trial.

A defense committee spokesman told AIPA the committee expected that the seven major defendants would precede all the others to trial. "It was a mass political arrest situation," said the spokesman, "and if we win on the first seven, they (Justice Department attorneys) may drop charges against the rest."

"Our workload is increasing because we're being asked to assist civil cases on the (nearby Oglala Sioux) reservation," said the spokesman. "Our time and resources are very limited. But there will be more lawyers coming in as we head toward the trials."

The legal defense committee consists of up to 30 lawyers and para-legal professionals. Chief federal prosecuting attorney against those charged in the 70-day takeover will be U.S. Attorney William Clayton.

American Indian Press Association Release, July 12, 1973

ANNOUNCEMENT

The American Indian Law Center has a videotape of Sidney Freeman and his team discussing the B.I.A. Comprehensive Review which they are conducting. The cost is $5.00 for two weeks. If interested contact Alice Scott at the Law Center, 1117 Stanford, N.E., Albuquerque, N.M. 87131, (505) 277-4840.

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SCHOOL OF LAW

BILLS INTRODUCED

HOUSE

Reno-Sparks Indian Colony

H.R. 9732. A bill to declare that the United States holds in trust for the Reno-Sparks Indian Colony certain lands in Washoe County, Nevada; to the Committee on Interior and Insular Affairs.

June 31, 1973; 119 C.R. 123, H. 7062

Economic Development

H.R. 9843. A bill to provide for financing the economic development of Indians and Indian organizations, and for other purposes; to the Committee on Interior and Insular Affairs.

August 2, 1973; 119 C.R. 125, H. 7367

SENATE

Hualapai Reservation

S. 2277. A bill to declare that certain federally owned lands shall be held by the United States in trust for the Hualapai Indian Tribe, of the Hualapai Reservation, Arizona, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

July 27, 1973; 119 C.R. 120, S 14909

BILLS REPORTED

HOUSE

Amending the Act Terminating Federal Supervision over the Klamath Indian Tribe

Mr. Meeds. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (HR 3867) to amend the Act terminating Federal supervision over the Klamath Indian Tribe by providing for Federal acquisition of that part of the tribal lands described herein and for other purposes, with Senate amendments thereto, and concur in the Senate amendments.
The Clerk read the title of the bill.
The Clerk read the Senate amendements as follows:
Page 1, line 6, after "29" insert "(a)".
Page 2, line 2, strike out all after "Forest," down to and including line 13.
Page 2, line 13 insert.
(b) The condemnation action may be initiated either before or after the lands are offered for sale by

the trustee, and for the purpose of carrying out the provisions of this section, there is hereby authorized to be appropriated not to exceed $70,000.000.

Page 2, after line 13 insert:

(c) The homesite provisions of section 28(g) shall apply to the lands acquired by the Secretary pursuant to this Act.

The Speaker. Is there objection to the request of the gentlemen from Washington?

There was no objection.

Mr. Meeds. Mr. Speaker, H.R. 3867 provides for acquisition by the United States for approximately 135,000 acres of Klamath Indian forest lands for inclusion in the Winema National Forest. The acquisition would be by condemnation. In the event the condemnation award exceed $60 million, the House-passed bill would require the Secretary of Agriculture to notify the Committees on Interior and Insular Affairs and the Committees on Appropriations of the House and Senate, and if any committee disapproved the amount within 21 days the condemnation proceedings would be discontinued. The Senate deleted this provision because there was fear that its inclusion in the legislation would result in veto. The administration takes the position that a provision of this nature violates the "separation of powers" between the executive and legislative branches and is therefore unconstitutional.

The other Senate amendment increases the amount authorized to be appropriated to satisfy the condemnation award from $60 million to $70 million. The purpose of this increase is to insure that adequate funds would be available to satisfy the condemnation award. This increase in the amount authorized to be appropriated should not result in additional cost to the Federal Government as the price paid for the forest lands will be based upon the fair market value as determined by normal condemnation proceedings. On the other hand, this increase in the amount authorized to be appropriated would prevent delay in the acquisition of these forest lands should the condemnation award exceeds $60 million. Under the House language, if the condemnation award exceeds $60 million, there would have to be further congressional consideration before the lands could be acquired.

Mr. Speaker, concurrence in the Senate amendments has been recommended by Mr. Haley, chairman of the Committee on Interior and Insular Affairs, by all the sponsors of the legislation, and has been agreed to by the minority. I recommend that the House concur in the Senate amendments.

Mr. Dellenback. Mr. Speaker, I rise in strong support of the Bill H.R. 3867. I concur in the Senate amendments and urge my colleagues to adopt this legislation providing for the Federal acquisition of the Klamath Indian lands.

These lands are an integral part of the forest system which is encompassed by the Winema National Forest. This national forest was created with the Klamath Termination Act which provided for the termination of the Klamath Indian Reservation and the disposal of their lands. The original disposal resulted in the sale of the land which is now the Winema National Forest to the Secretary of Agriculture and the establishment of a trust for the remaining lands. The act provided that at the time the trust was dispersed the lands had to first be offered to the remaining tribal members who had 6 months within which to purchase what lands they desired.

On December 9, 1970, the trustee initiated proceedings to dispose of the lands, however, none of the members of the trust expressed an interest in buying. On July 2, 1971, the trustee offered the lands at a minimum price of $51,369,731 to the Secretary of Agriculture who, under the law, had 12 months within which to buy before they offered for public sale. The Secretary did not exercise his option to buy within the year deadline because of fiscal restraints in the executive branch and the land has now been offered for public sale.

The Klamath Indian forest contains 135,000 acres composed of 133,300 acres of timber 1,100 acres of grassland, and 600 acres of other types of land. Under the original termination act it was intended that at such time as the Indian's relinquished the remaining land the Government should purchase it to be managed on a multiple-use and sustained-yield basis.

Only if the Federal Government purchased this scenic and bountiful timberland can we guarantee

maximum long-run sustained-yield utilization of this magnificent resource. It is feared that the tremendous investment that would be necessary to operate this tract over a long period of time would force a private owner into a "cut and sell" operation in order to recover a substantial proportion of his capital outlay. There would be a strong incentive for rapid removal of the timber and very possibly, instead of sound, immediate and complete reforestation, some alternate use such as subdivision of the area for residential purposes.

Federal purchase would provide the greatest benefit to the Klamath Indians and to other residents in the area by assuring jobs and recreational opportunities for future generations. A rapid cutting of the forest which is expected under private ownership would require a large transient labor force during the period of heavy cut and would severely affect the long-range stability of the local economy.

While there are many other factors that strongly favor Federal purchase of the remaining Klamath Indian Forest I did want to emphasize these points for your consideration today.

I urge my colleagues to act favorably on this proposal.

The Senate amendments were concurred in.

A motion to reconsider was laid on the table.

July 30, 1973, 119 C.R. 122, H 6831-6832.

ADMINISTRATIVE DECISIONS

Alaska Natives

There have been some changes in the regulations governing the procedure for appealing from decisions rejecting applications for enrollment in the roll of Alaskan Natives. Under § 43 h.8, appeals by individuals from adverse decisions must be filed with the coordinating office not later than 30 days after date of receipt of the notice of the adverse decision. Additional appeal procedures are set forth in detail.

August 1973,; 38 F.R. 152, pp. 21403.

Indian Financing Act of 1973

Mr. Mansfield, Mr. President, I ask unanimous consent that the Senate proceed to the consideration of calendar No. 331, S. 1341.

The Acting President pro tempore. The bill be stated by title.
The legislative clerk read as follows:
S. 1341, to provide for financing the economic development of Indians and Indian organizations and for other purposes.

The Acting President pro tempore. Is there objection to the present consideration of the bill?
There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Interior and Insular Affairs with an amendment to strike out all after the enacting clause and insert:
That this Act may be cited as the "Indian Financing Act of 1973".

DECLARATION OF POLICY

Sec. 2. It is hereby declared to be the policy of Congress to provide capital on a reimbursable basis to help develop and utilize Indian resources, both physical and human, to a point where the Indians will fully exercise responsibility for the utilization and management of their own resources; where they will enjoy a standard of living from their own productive efforts comparable to that enjoyed by non-Indians in neighboring communities; and where they will have the opportunity to be integrated socially, politically, and economically into American life.

DEFINITIONS

Sec. 3. For the purposes of this Act, the term-
(a) "Secretary" means the Secretary of the Interior.
(b) "Indian" means any person who is a member of any Indian tribe, band, pueblo, group, or community of Indians or Alaska Natives which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.
(c) "Indian tribe" menas any tribe, band, pueblo, group, or community of Indians or Alaska Natives which is recognized by the Federal Government as eligible for services from the Burea of Indian Affairs.

(d) "Reservation" includes Indian reservations, public domain land occupied by Indians, former Indian reservations in Oklahoma, and land occupied by Alaska Native communities.

(e) "Economic enterprise" means any Indian-owned as defined by the Secretary of the Interior, commercial, industrial, or business activity established or organized for the purpose of profit.

(f) "Other organizations" means any non-Indian individual, firm, corporation, partnership, or association.

TITLE I- INDIAN REVOLVING LOAN FUND

Sec. 101. In order to provide credit that is not available from private money markets, all funds that are now or hereafter a part of the revolving fund authorized by the Act of June 18, 1934 (48 Stat. 986), the Act of June 26, 1936 (49 Stat. 1968) and the Act of April 19, 1950 (64 Stat. 44) as amended and supplemented, including sums received in settlement of debts of livestock pursuant to the Act of May 24, 1950 (64 Stat. 190), and sums collected in repayment of loans heretofore or hereafter made, and as interest or other charges on loans, shall hereafter be administered as a single revolving loan fund and shall be available for loans to Indians having a form of organization that is satisfactory to the Secretary and for loans to individual Indians who are not members of or eligible for membership in an organization which is making loans to its members as well as for administrative expenses incurred in connection therewith.

Sec. 102. Loans may be made for any purpose which will promote the economic development of (a) the individual Indian borrower, including loans for educational purposes, and (b) the Indian organization and its members including loans by such organizations to other organizations and investments inother organizations regardless of whether they are organizations of Indians.

Sec. 103. Loans may be made only when, in the judgment of the Secretary, there is a reasonable prospect of repayment, and only to applicants who in the opinion of the Secretary are unable to obtain financing from other sources on reasonable terms and conditions.

Sec. 104. Loans shall be for terms that do not exceed thirty years and shall bear interest at (a) a rate determined by the Secretary of the Treasury taking into consideration the market yield on municipal bonds: Provided, That in no event shall the rate be greater than the rate determined by the Secretary of the Treasury taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturity, plus (b) such additional charge, if any, toward covering other costs of the program as the Secretary may determine to be consistent with its purpose: Provided, that educational loans may provide for interest to be deferred while the borrower is in school or in the military service.

Sec. 105. The Secretary may cancel, adjust, compromise, or reduce the amount of any loan or any portion thereof heretofore or hereafter made from the revolving loand fund established by this title and its predecessor constituent funds which he determines to be uncollectable in whole or in part, or which is collectable only at an unreasonable cost, or when such action would, in his judgment, be in the best interest of the United States. He may also adjust, compromise, subordinate, or modify the terms of any mortgage, lease, assignment, contract, agreement, or other document taken to secure such loans.

Sec. 106. Title to any land purchased by a tribe or by an individual Indian with loans made from the revolving loan fund may be taken in trust unless the land is located outside the boundaries of a reservation or a tribal consolidation area approved by the Secretary. Title to any land purchased by a tribe or an individual Indian which is outside the boundaries of the reservation or approved consolidation area may be taken in trust if the purchaser was the owner of trust or restricted interests in the land before the purchase otherwise title shall be taken in the name of the purchasers without any restriction on alienation, control or use. Title to any personal property purchased with a loan from the revolving loan fund shall be taken in the name of the purchaser.

Sec. 107. Any organization receiving a loan from the revolving loan fund shall be required to assign to the United States as security for the loan all securities acquired in connection with the loans made to its members from such funds unless the Secretary determines that the repayment of the loan to the United States is otherwise reasonably assured.

Sec. 108. The Secretary may not collect any loan from the revolving loan fund which becomes delinquent or the interest thereon from per capita payments or other distributions of tribal assets derived from a tribal judgment which are due the delinquent borrower.

Sec. 109. There is authorized to be appropriated, to provide capital and to restore any impairment of capital for the revolving loan fund $50,000,000 exclusive of prior authorizations and appropriations.

Sec. 110. The Secretary shall promulgate rules and regulations to carry out the provisions of this title.

TITLE II-LOAN GUARANTY AND INSURANCE

Sec. 201. In order to provide access to private money sources which otherwise would not be available, the Secretary is authorized (a) to guarantee not to exceed 90 per centum of the unpaid principal and interest due on any loan made to any organization of Indians having a form or organization satisfactory to the Secretary and to individual Indians who are not members of or eligible for membership in an organization which is making loans to its members; and (b) in lieu of such guaranty, to insure loans under an agreement approved by the Secretary whereby the lender will be reimbursed for losses in an amount not to exceed 15 per centum of the aggregate of such loans made by it, but not to exceed 90 per centum of the loss in any one loan.

Sec. 202. The Secretary may, to the extent he deems consistent with the purposes of the program, fix such premium charges for the insurance and guarantee of loans as are in his judgment adequate to cover expenses and probable losses, and deposit receipts from such charges in the Indian Loan Guaranty and Insurance Fund established pursuant to section 217(a) of this title.

Sec. 203. Loans guaranteed or insured pursuant to this title shall bear interest (exclusive of premium charges for insurance, and service charge, if any) at rates not to exceed such per centum per annum on the principal obligation outstanding as the Secretary determines to be reasonable taking into consideration the range of interest rates prevailing in the private market for similar loans and the risks assumed by the United States.

Sec. 204. The application for a loan to be guaranteed hereunder shall be submitted to the Secretary for prior approval. Upon approval, the Secretary shall issue a certificate as evidence of the guaranty. Such certificate shall be issued only when, in the judgment of the Secretary, there is a reasonable prospect of repayment. No loan to an individual Indian may be guaranteed or insured which would cause the total unpaid principal indebtedness to exceed $100,000. No loan to an economic enterprise (as defined in Section 3) in excess of $100,000 or such lower amount as the Secretary may determine to beappropriate, shall be insured unless prior approval of the loan is obtained from the Secretary.

Sec. 205. Any loan guaranteed hereunder, including the security given therefor, may be sold or assigned by the lender to any financial institution subject to examination and supervision by an agency of the United States or of any State or the District of Columbia.

Sec. 206. Loans made by any agency or instrumentality of the Federal Government or by an organization of Indians from funds borrowed from the United States, and loans the interest on which is not included in gross income for the purposes of Chapter 1 of the Internal Revenue Code of 1954, as amended, shall not be eligible for guaranty or insurance hereunder.

Sec. 207. Any loans insured hereunder shall be restricted to those made by a financial institution subject to examination and supervision by an agency of the United States, a State, or the District of Columbia, and to loans made by Indian organizations from their own funds to other tribes or organizations of Indians.

Sec. 208. Loans guaranteed hereunder may be made by any lender satisfactory to the Secretary, except as provided in section 206. The liability under the guaranty shall decrease or increase pro rata with any decrease or increase in the unpaid portion of the obligation.

Sec. 209. Any loan made by any national bank or Federal savings and loan association, or by any bank, trust company, building and loan association, or insurance company authorized to do business in the District of Columbia, at least 20 per centum of

which is guaranteed hereunder, may be made without regard to the limitations and restrictions of any other Federal statute with respect to (a) ratio of amount of loan to the value of the property; (b) maturity of loans; (c) requirement of mortgage or other security; (d) priority of lien; or (e) percentage of assets which may be invested in real estate loans.

Sec. 210. The maturity of any loan guaranteed or insured hereunder shall not exceed thirty years.

Sec. 211. In the event of a default of a loan guaranteed hereunder, the holder of the guaranty certificate may immediately notify the Secretary in writing of such default and the Secretary shall thereupon pay to such holder the pro rate portion of the amount guaranteed and shall be subrogated to the rights of the holder of the guaranty and receive an assignment of the obligation and security. The Secretary may cancel the uncollectable portion of any obligation to which he has an assignment of a subrogated right under this section. Nothing in this section shall be construed to preclude any forbearance for the benefit of the borrower as may be agreed upon by the parties to the loan and approved by the Secretary. The Secretary may establish the date, not later than the date of judgment and decree of foreclosure or sale, upon which accrual of interest or charges shall cease.

Sec. 212. When a lender suffers a loss on a loan insured hereunder, including accrued interest a claim therefor shall be submitted to the Secretary. If the Secretary finds that the loss has been suffered, he shall reimburse the lender therefor: Provided, That the amount payable to the lender for a loss on any one loan shall not exceed 90 per centum of such loss: Provided further, That no reimbursement may be made for losses in excess of 15 per centum of the aggregate of insured loans made by the lender: Provided further, That before any reimbursement is made, all reasonable collection efforts shall have been enhausted by the lender, and the security for the loan shall have been liquidated to the extent feasible, and the proceeds applied on the debt. Upon reimbursement, in whole or in part, to the lender, the note or judgment evidencing the debt shall be assigned to the United States. The Secretary shall then take such further collection action as may be warranted, or may cancel the uncollectable portion of any debt assigned pursuant hereto. The Secretary may establish a date upon which accrual of interest or charges shall cease.

Sec. 213. Whenever the Secretary finds that any lender or holder of a guaranty certificate fails to maintain adequate accounting records, or to demonstrate proper ability to service adequately loans guaranteed or insured, or to exercise proper credit judgment, or has willfully or negligently engaged in practices otherwise detrimental to the interests of a borrower or of the United States, he may refuse, either temporarily or permanently, to guarantee or insure any further loans made by such lender or holder from acquiring additional loans guaranteed or insured hereunder; Provided, That the Secretary shall not refuse to pay a valid guaranty or insurance claim on loans previously made in good faith.

Sec. 214. Any evidence of guaranty or insurance issued by the Secretary shall be conclusive evidence of the eligibility of the loan for guaranty or insurance under the provisions of this Act and the amount of such guaranty or insurance: Provided, That nothing in this section shall preclude the Secretary from establishing, as against the original misrepresentation or bar him from establishing, by regulations in force at the date of such issuance or disbursement, whichever is the earlier, partial defenses to the amount payable on the guaranty or insurance.

Sec. 215. Title to any loan purchased by a tribe or by an individual Indian with loans guaranteed or insured pursuant to this title may be taken in trust, unless the land is located outside the boundaries of a reservation or a tribal consolidation area approved by the Secretary. Title to any land purchased by a tribe or an individual Indian which is outside the boundaries of the reservation or approved consolidation area may be taken in trust if the pruchaser was the owner of trust or restricted interests in the land before the purchase, otherwise title shall be taken in the name of the purchaser without any restriction on alienation, control, or use. Title to any personal property purchased with loans guaranteed or insured hereunder shall be taken in the name of the purchaser.

Sec. 216. The financial transactions of the Secretary incident to or arising out of the guarantee or insurance of loans, and the acquisition, management, and disposition of property, real, personal, or mixed, incident of such activities,

shall be final and conclusive upon all officers of the Government. With respect to matters arising from out of the guaranty or insurance program authorized by this title, and notwithstanding the provisions of any other laws, the Secretary may--

(a) sue and be sued in his official capacity in any court of competent jurisdiction;

(b) subject to the specific limitations in this title, consent to the modification, with respect to the rate of interest, time of payment on principal or interest or any portion thereof, security, or any other provisions of any note, contract, mortgage, or other instrument securing a loan which has been guaranteed or insured hereunder;

(c) pay, or compromise, any claim on, or arising because of any loan guaranty or insurance;

(d) pay, compromise, waive, or release any right, title, claim, lieu, or demand, however acquired, including, but not limited to, any equity or right of redemption;

(e) purchase at any sale, public or private, upon such terms and for such prices as he determines to be reasonable, and take title to property, real, personal, or mixed; and similarly sell, at public or private sale, exchange, assign, convey, or otherwise dispose of such property; and

(f) complete, administer, operate, obtain, and pay for insurance on, and maintain, renovate, repair, modernize, lease, or otherwise deal with any property acquired or held pursuant to the guaranty or insurance program authorized by this title.

Sec. 217. (a) There is hereby created an Indian Loan Guaranty and Insurance Fund (hereinafter referred to as the "fund") which shall be available to the Secretary as a revolving fund without fiscal year limitation for carrying out the provisions of this title. There are authorized to be appropriated to the Secretary to carry out the purposes of the fund and the

purposes of section 301 of this Act not to exceed $10,000,000 in each of the fiscal years 1974, 1975, and 1976.

(b) The Secretary may use the fund for the purpose of fulfilling the obligations with respect to loans guaranteed or insured under this title, but the aggregate of such loans which are insured or guaranteed by the Secretary shall be limited to $200,000,000 as authorized in appropriations Acts.

(c) All funds, claims, notes, mortgages, contracts, and property acquired by the Secretary under this section, and all collections and proceeds therefrom, shall constitute assets of the fund; and all liabilities and obligations of such assets shall be liabilities and obligations of the fund. The Secretary is authorized to make agreements with respect to servicing loans held, guaranteed, or insured by him under this title and purchasing such guaranteed or insured loans on such terms and conditions as he may prescribe.

(d) The Secretary may also utilize the fund to pay taxes, insurance, prior liens, expenses necessary to make fiscal adjustments in connection with the application and transmittal of collections, and other expenses and advances to protect the Secretary for loans which are guaranteed or insured under this security property at foreclosure sale or otherwise, and to pay administrative expenses.

Sec. 218. The Secretary shall promulgate rules and regulations to carry out the provisions of this title.

TITLE III-INTEREST SUBSIDIES AND ADMINISTRATIVE EXPENSES

Sec. 301. The Secretary is authorized under such rules and regulations as he may prescribe to pay as an interest subsidy on loans which are guaranteed or insured under the provisions of title II of this Act amounts which are necessary to reduce the rate determined under section 104 of this Act.

Sec. 302. There are authorized to be appropriated to the Secretary (a) to carry out the provisions of sections 217 and 301 of this Act, such sums to remain available until expended, and (b) for

administrative expenses under this Act not to exceed $10,000,000 in each of the fiscal years 1974, 1975, and 1976.

TITLE IV--INDIAN BUSINESS GRANTS

Sec. 401. There is established within the Department of the Interior the Indian Business Development Program whose purpose is to stimulate and increase Indian enterpreneurship and employment by providing equity capital through nonreimbursable grants made by the Secretary of the Interior to Indians and Indian tribes to establish and expand profitmaking Indian-owned economic enterprises on or near reservations.

Sec. 402. No grant in excess of $50,000, or such lower amount as the Secretary may determine to be appropriate, may be made to an Indian or Indian tribe, band, group, pueblo, or community recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs. A grant may be made only to an applicant who, in the opinion of the Secretary, is unable to obtain adequate financing for its economic enterprise from other sources, including its own financial resources, except that no grant may be made to an applicant who is unable to obtain at least 60 per centum of the necessary funds for the economic enterprise from other sources.

Sec. 403. There are authorized to be appropriated not to exceed the sum of $10,000,000 for each of the fiscal years 1974, 1975, and 1976 for the purposes of this title.

Sec. 404. The Secretary of the Interior is authorized to prescribe such rules and regulations as may be necessary to carry out the purposes of this Act.

July 28, 1973; 119 C.R. 121, pp. S14939-14941

WATER RIGHTS

Washington, D.C.--The kindest thing legal experts on Indian water rights have said about six recommendations on Indian water contained in the final report of the National Water Commission is that they are "unsound and unrealistic."

The National Water Commission Final Report, submitted to the President and the Congress on June 19, made six recommendations for actions to avert continuing conflicts over Indian and non-Indian water on the part of the federal government, state governments and Indian tribes.

Following are the views of Indian water rights experts on the report:

--Atty. Jerry Strauss, attached to a prominent Washington, D.C. law firm, labelled the recommendations "unsound and unrealistic", particularly the recommendation which stated that non-Indian users of Indian water in certain circumstances should be provided with substitute water sources or be compensated for losses caused by Indian usage. According to Strauss, "this recommendation would have a chilling effect on Indian water rights if enacted into law."

--William H. Veeder, Bureau of Indian Affairs (BIA) Indian water rights specialist, called the entire report "wholly inadequate and glaringly deficient," and said the report "must be rejected" by the Indian people and the United States as trustee of Indian natural resource rights. Veeder prepared a 23-page memorandum on the controversial final report for superiors at the Interior Department after the commission report was made public.

--Atty. Hans Walker, former director of the BIA Indian Water Rights Office now assigned to the Indian Division of the Interior Solicitor's Office, agreed with the objections of Atty. Strauss and called that recommendation "objectionable and a burden on Indian water rights." Walker also said he was "totally mystified" why the National Water Commission failed to apply the recommendations in its report to Indian-allotted land and the water rights attached to that land, as well as underground water rights.

According to Walker, the commission should have dealt with these issues because under the General Allotment Act of 1887 each Indian allottee is entitled to a water right and that right cannot be encumbered by any means. Therefore, said Walker, if non-Indian users of water from Indian-allotted land must be paid off, it would constitute an encumberance in violation of the 1887 act.

--Atty. George Crossland, former staff attorney for the Indian Water Rights Office and currently staff assistant to Americans for Indian Opportunity (AIO), said the report "has to be fought. Unfortunately, political and economic considerations will force the tribes to inventory and catalogue their reserved rights, then take them into court and validate them. After that, if tribes need water, they will have to apply and pay for it."

One Washington law firm which has many tribes as clients called the report "the proverbial wolf in sheep's clothing. Despite frequent references to the priority, superiority, validity and importance of Indian water rights, the report contains the seed which potentially could result in a total eclipse of those rights."

American Indian Press Association Release, July 20, 1973

AMERICAN INDIAN POLICY REVIEW COMMISSION

Washington, D.C.--If a proposed American Indian Policy Review Commission is enacted into law, it will constitute the first congressional inquiry into the total picture of Indian affairs since the termination era of the 1950s.

Just such a proposal has been introduced into the Senate by Sen. James Abourezk, D-S.D., and hearings were held on the proposed legislation July 19-20 in the Senate Indian Affairs Subcommittee here. The proposal is called Senate Joint Resolution 133.

The special 15-member commission would examine for a period of two years practically every facet of Indian affairs with the goal of bringing order and continuity to that Alice in Wonderland world. The membership of the Commission would be composed of five senators, five congressmen and five Indians.

To forestall charges of "studying Indians to death while needed actions go begging," the Abourezk resolution calls for continued congressional consideration of President Richard M. Nixon's Indian legislative proposals and other important Indian measures before the Congress.

Further, the proposal provides for the submission of an interim report to be issued by the commission not later than one year after the passage of the resolution based upon preliminary findings which would contain recommendations for legislative consideration and specific legislative actions.

The Indian members of the Commission would be selected by the 10 congressional members from the following segments of the Indian community: three from federally recognized tribes, one of whom must reside off-reservation; one from the urban Indian community; and one from an Indian group not recognized by the federal government.

The resolution permits further Indian involvement by providing for the creation of Indian advisory groups to the commission, the holding of regional and reservation hearings, and the contracting of portions of the commission's work to private groups, including Indian groups. The duties of the commission would include:

--To study and analyze the U.S. Constitution, treaties, statutes, judicial interpretations, and executive orders to determine the attributes of the unique relationship between the federal government, Indians and Indian tribes and the lands they possess;

--To review the policies, practices and structures of the federal recognition and extending services to Indian communities and individuals;

--To collect and compile data necessary to understand the extent of Indian needs which presently exist or will exist in the future;

--To explore the feasibility of alternative elective bodies which could fully represent the Indians at the national level of government to provide Indians with maximum participation in policy formulation and program development;

--To consider the alternative methods to strengthen tribal governments so that the tribes might fully represent their members and at the same time guarantee the fundamental rights of individual Indians;

--To recommend such modification of existing laws, procedures, regulations, policies and practices as will in the judgment of the commission best serve to carry out the policies and purposes of the Congress.

Witnesses at the Senate hearings included Nixon administration witnesses who asked for more time to submit a more detailed report, the National Congress of American Indians (NCAI), National Tribal Chairmen's Association (NTCA), Americans for Indian Opportunity (AIO), a group of Southwest Indians, and a panel of Indians led by Vine Deloria Jr., president of the Institute for the Development of Indian Law (IDIL).

Largely favorable remarks went to the resolution and to its author Abourezk. Most substantive comments on the proposal for the commission itself centered around the number and representativeness of the Indian members to the commission.

Deloria proposed the most startling recommendation when he urged that the executive director of the proposed commission not be an Indian "because a lot of time would be wasted while Indians made a political issue of it, because Indians would not want to criticize a report issued by a fellow Indian, and because the executive director should be someone intimately familiar with Congress."

Sen. Dewey Bartlett, R-Okla., raised the issue of permitting the Nixon administration to name one of the Indian members to the commission on the grounds that the commission proposal must have the President's signature to become law. Most of the Indian witnesses rejected Bartlett's suggestion.

American Indian Press Association Release, July 20, 1973

PROBLEMS WITH TRIBAL CONTRACTING

Albuquerque, N.M.--"Hidden costs" are fast becoming a major stumbling block to successful tribal contracting of Bureau of Indian Affairs (BIA) programs.

Wayne Holm, director of the BIA-contracted Rock Point Community School on the Navajo Reservation, in a paper proposing a more in-depth study of the problem, identifies some of these hidden costs, why they occur, and the contradictions and conflicts inherent in contracting under present laws, policies and regulations.

However, according to Holm, other divisions of the BIA--and even other agencies of the federal government--are providing "support services" to the local program. The BIA could not run its local program without those support services, yet contracting groups are expected to do so.

The contracting group is left with two alternatives. Either take the funds for these services out of the program money and thus lessen program effectiveness. Or demand that the contracting BIA division provide enough "administrative overhead" to meet these costs. To take the latter course would be to deprive non-contracted BIA schools of the funds they need.

Holm lists the following "hidden costs" that are not part of the local program budget because they are provided by another agency of government or division of the BIA, but which contracting groups have to bear:

Costs of insurance, legal representation for contracting groups, a wide range of personnel benefits, postage, personnel processing, bookkeeping and accounting, procurement of property and supplies, plant management.

Holm proposes that a more in-depth study be conducted to document this problem and to recommend legislation or new regulations to solve it.

In a postscript, Holm touches on another problem faced by Indian groups attempting to contract to run BIA programs, "the precarious year-to-year nature of contract schools." States Holm:

"Contract schools no sooner win a one-year contract than they must begin to be concerned with re-negotiating that contract. It is difficult to attract, and to keep, good people under such circumstances. It would be much more desirable to set up contract schools on a multi-year basis, subject to meeting certain mutually accepted standards. ...The world does not really end each June 30th (at the end of each fiscal year) and it is not really created anew each July 1st."

American Indian Press Association Release, July 26, 1973

INDIANS GRANTED GREATER FLEXIBILITY IN NEGOTIATING ELECTRIC POWER RIGHTS-OF-WAY

American Indian trust landowners have been given greater flexibility when they negotiate over electric power rights-of-way across their land, and the process of granting these rights-of-way has been streamlined with the abandonment of certain time consuming requirements, Marvin L. Franklin, Assistant to the Secretary of the Interior for Indian Affairs, announced today.

This has come about through amendments to Title 25, Code of Federal Regulations--which concerns American Indians and their trust lands--published recently in the Federal Register.

Prior to the change, power company applicants were required to stipulate that the United States would have the right to purchase surplus power and use the power company's facilities within the rights-of-way under certain terms and conditions.

In Oklahoma for example, where a major portion of the Indian trust land is individually owned, entire transmission facilities were made subject to this stipulation as a result of a right-of-way crossing one of several scattered Indian-owned tracts. One power company has commented:

> "The application of this regulation reaches absurdity...where the whole transmission facility of many miles in length would be subjected to terms of the regulations simply because it happens to cross a 10-acre tract of restricted Indian land."

Lands of the Indian people, for which the Federal Government exercises a protective responsibility, are, in fact, the private landholdings of the Indian people. This is borne out by the fact that the fee interest in restricted Indian land and the beneficial interest in individually owned trust Indian lands are vested in the Indian owners and not in the United States as in the case of public lands. The stipulations constituted an imposition upon the rights of the Indian landowners not otherwise imposed upon the rights of other private landowners.

Power companies with proposed transmission lines of a more than 66 kilovolts capacity crossing Indian-owned trust lands were required to clear the transaction through the Office of the Assistant Secretary for Water and Power Resources of the U.S. Department of the Interior. This is no longer necessary, unless the land is government-owned.

Department of the Interior Release, July 28, 1973

TRIBE THREATENS U.S. WITH CRIMINAL CHARGES

Look Out, Calif.--The Pitt River Tribal Council of California has announced that it will charge the U.S. government with kidnapping and conspiracy if the government decides to prosecute a young male tribal member for failure to report for induction into the armed services.

Bruce Wayne Gali, a member of the Ajumawi band of the Pitt River Nation, was arrested and later released after being ordered to appear in court in San Francisco on August 16 to face charges of draft evasion.

The Pitt River Council stated that it has always disagreed with the practice of the federal government of forcing members of tribes into military service. The council has ordered Gali not to report to the court on Aug. 16, not to leave the boundaries of the Pitt River Nation, and not to "bear arms against other oppressed peoples."

The council announced that if federal officials should come onto the reservation and attempt to force Gali into the military, it would bring charges of kidnapping and conspiracy against the U.S. Government.

American Indian Press Association Release, July 31, 1973

PROPOSED REPEAL OF SYNDER ACT

Washington, D.C.--Should the Bureau of Indian Affairs (BIA) and Indian Health Service (IHS) remain as permanently authorized agencies, or should their status be subject to an annual vote of Congress?

This question is sure to unleash a storm of controversy and to be carefully scrutinized as Indians and the Congress explore the consequences of legislation introduced by Sen. James D. Abourezk, D.-S.D., which would radically change the permanent status of these agencies.

In their current status as permanently authorized agencies, the BIA and IHS are now only subjected to the annual appropriation process. As annually authorized agencies, they would have to first undergo the authorization process before they could recieve an appropriation of money.

The Abourezk legislation, S. 1786, which sets up this two-step process, would in effect repeal the Snyder Act of 1921 which gives the two agencies their permanent authorized status. It would also, in effect, repeal or modify 23 other statutes which permanently authorize specific programs within the BIA. These statutes include those establishing the Revolving Loan Fund and the Adult Vocational Training Program.

Hearings were held on the legislation here June 12. In an unusual departure from Senate Indian Affairs Subcommittee routine, no explanatory letters setting out in layman's language the content and meaning of the legislation were sent ot the tribes. Neither was there an attempt by the subcommittee to secure the testimony of a wide range of Indians and tribal attorneys, as is usually done when major legislation of committee origin is being considered.

The only Indian witnesses to testify at the hearings were Leon F. Cook, president of the National Congress of American Indians (NCAI), Ernest L. Stevens, private Indian consultant, and Orville Langdeau, tribal chairman of the Lower Brule Sioux Tribe of South Dakota.

Langdeau's testimony centered around the objections of his tribe to the closing of an off-reservation boarding school in Pierre, S.D., by the BIA.

Administration witnesses from the Interior Department and the IHS testified, as did BIA Aberdeen Area Director Wyman Babby. Babby's testimony was solicited in relation to the testimony of the Lower Brule Sioux chairman.

The Abourezk legislation has already been reported out of subcommittee to the full Senate Interior Committee. It is expected that the full committee will hear the bill after the August congressional recess. It is also expected that Abourezk will recommend that his bill be changed from requiring an annual authorization for the two agencies to a bi-annual authorization.

If the legislation clears the Senate, House passage will be enhanced by the support of Rep. Lloyd Meeds, D.-Wash., House Indian Affairs Subcommittee chairman, who said however that he does not consider the legislation to be of "top priority."

Below are the views of proponents and opponents of the legislation:

--Sherwin Brodhead, Indian affairs legal assistant to Abourezk: "Abourezk has received many complaints from Indians that the BIA doesn't respond to their budget requests. Indians cannot change the Bureau's budget priorities by going before the appropriation committees of Congress because those committees only discuss amounts of money for ongoing programs, not program direction. For instance, there was a great demand by Indians to increase the Revolving Loan Fund but it could not be done."

--NCAI President Leon F. Cook in subcommittee testimony: "(The Abourezk bill) is the beginning of a new direction that I have been strongly advocating--that being for Congress to assume its constitutional role and authority to establish the national policy governing federal-Indian relations and programs, and bring to a screeching halt the present policy direction of this administration."

--Private Consultant Ernest L. Stevens in subcommittee testimony: "I feel that this committee under the law should keep a close watch over the activities (of the BIA)."

--Rep. Lloyd Meeds, D-Wash.: "I am in favor of the legislation. I have felt for some time that substantive committees ought to have better oversight into the BIA's activities and that there should be a better working relationship between the appropriations and substantive committees of Congress. Indians will be the beneficiaries of this additional work."

--Former Indian Commissioner Robert L. Bennett: "The problems the legislation seeks to solve will not be cured by repealing the Snyder Act and greater problems will be created by the legislation. There is little assurance that Indians will be able to influence the work of the substantive committees now and absolutely no assurance they will be able to influence future subcommittees. Furthermore, periodic authorizations are time-consuming and make long range planning very difficult. Lastly, in future congresses, termination will be made just that much easier. The anti-termination provision of the Abourezk legislation is a meaningless statement."

--P. Samuel Deloria, University of New Mexico Indian Law Center: "The benefits to be gained from this legislation will have to be carefully weighed against the possible harm that it can do. Too many times a good idea is shot down by Indians because we see a termination attempt behind it. On the one hand, Indians would have another avenue of influence by which they can direct the programs of the BIA. On the other hand, the authorization process can bog down because more important issues are before the committees or because you have nit-picking congressmen who are constantly riding the agencies. A bill like this would be excellent if you could assume you would always have a friendly congressman on the substantive committees. However, if you wanted to create a climate for termination, this would be the best way to do it."

--Tribal Atty. Richard Schifter: "It is an outlandish idea. You cannot come out ahead. At best, Indian tribes could only do as well as they are doing now, at worst, they could do much worse."

American Indian Press Association Release, August 2, 1973

THE REGULAR AUTHORIZATION-APPROPRIATION PROCESS

Washington, D.C.--The introduction of legislation into the U.S. Congress by Sen. James Abourezk, D-S.D., to require an annual authorization of appropriations for the Bureau of Indian Affairs (BIA) and Indian Health Service (IHS) highlights the little known and less understood process of how federal programs are created, funded, and maintained.

Following is an explanation of the two-step authorization-appropriation process as it generally works. How the BIA and IHS fit into this process will be the subject of a second article.

Basically, no federal program or agency can come into existence and have money to operate without going through both Houses of Congress first, to set up the program, or authorization, and second, to provide money to run the program, or appropriation. Both processes result in an Act of Congress which must be signed by the President.

Each House of Congress has two differenct kinds of committees to handle the two-step process--substantive and appropriation. The substantive committee controls the authorization process. The substantive committees for Indian affairs are the Interior and Insular Committees of the House and Senate.

Appropriations for Indian Affairs are controlled by the two appropriations subcommittees for the Interior Department and Related Agencies in both Houses.

When a new program or agency is proposed, the proposal in the form of legislation is referred to the substantive committee which has jurisdiction over the area concerned of each House for hearings. If the legislation gets out of both substantive committees, passes both Houses of Congress and is signed by the President, the new program or agency is said to be "authorized by law."

Included in this "authorizing" legislation can be provisions which limit the time the agency or program is to exist, and the maximum amount of money it can receive. The law creating the National Council on Indian Opportunity (NCIO) is a good example of the usual way a program is created with time and money limits. The law states:

"...There is hereby authorized to be appropriated not to exceed $300,000 annually for the expenses of the (NCIO)... The (NCIO) shall terminate five years from the date of this act unless extended by an Act of Congress."

Once the program is authorized in this fashion, the Executive Branch draws up a proposed budget for the new program or agency and submits it back to Congress in the form of legislation. This time the legislation is referred to the appropriations committees of both Houses, must also pass both Houses, and be signed by the President.

The appropriations committees and both Houses of Congress can appropriate any amount they want to, up to the maximum allowed in the authorizing law. They can even "zero fund" or grant no money to a program or agency.

Very seldom is any agency or program appropriated up to the amount allowed by its authorizing legislation. NCIO for example has always received less than the $300,000 allowed in its authorization.

The powers of the substantive and appropriations committees are very different in relation to the full Houses of Congress and in relation to the President. The appropriations committees' powers in the full Houses are weak. The full House or Senate can add back or remove money either deleted or added by the committees through a simple amendment on the floor.

The powers of the committees in relation to the President, on the other hand, are strong because the President does not have an "item veto." He cannot say no to one part of an agency appropriation without vetoing the entire agency appropriation. For example, if the President wanted to get rid of the BIA, he could not do so by vetoing only the BIA appropriation, because it is part of the total budget of the Interior Department and Related Agencies. He would have to veto the entire Interior appropriation. He seldom does this.

The powers of the substantive committees are just the reverse of the appropriations committees. In relation to the full House, they are very strong. The substantive committees can refuse to report legislation, including authorizing legislation, to the floor of the House or Senate.

In order to bring the legislation to the floor, a "discharge petition" would have to be signed by the majority of members in each House, then that petition would have to be voted on. In both Houses this is difficult to accomplish, and is therefore seldom attempted.

In relation to the President, the powers of the substantive committees are weak. He can easily veto an authorization bill. It would require a two-thirds vote of both Houses of Congress to override his veto.

These power relationships between the various committees of Congress, the full Houses of Congress, and the President must be taken into consideration when an annual authorization for the BIA and IHS is sought.

Under its permanent authorization, the BIA as well as the IHS would be very difficult to defund. Under an annual authorization, it would be very easy to abolish them by the failure of one or other of the substantive committees to report out their annual authorizations, or failure of the President to sign the authorization.

The time factor is also important to remember under an annual authorization. As permanent agencies, the BIA and IHS appropriation process is simple--Senate appropriation, House appropriation, President's signature.

Under an annual authorization, the process is more difficult. It would be: Senate authorization, House authorization, signature of the President; then, Senate appropriation, House appropriation, signature of President.--Karen Ducheneaux.

EXCEPTIONS TO THE AUTHORIZATION RULE-BIA AND IHS

Washington, D.C.--The Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS) are two of very few exceptions to the rule that federal programs and agencies have to undergo the authorization process periodically.

It is this excepted status that Sen. James Abourezk, D-S.D., seeks to change with his legislation, S. 1786, requiring the two agencies to be subject to an annual authorization for appropriations.

The special status of these two agencies derives from the Snyder Act of 1921 which has been interpreted to be a permanent, as opposed to periodic, authorization for appropriations for the activities listed therein. The enacting clause of the statute reads as follows:

"That the Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend such monies as the Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States for the following purposes..."

Those purposes are then listed in the act as "general support and civilization, including education, relief of distress and conservation of health, industrial assistance and advancement and general administration of Indian property; extension, improvement, operation, and maintenance of existing Indian irrigation systems and for development of water supplies;

"Enlargement, extension, improvement, and repair of the buildings and grounds of existing plants and projects; employment of inspectors, superintendents, clerks, field matrons, farmers, physicians, Indian police, Indian judges, and other employees;

"Suppression of traffic in intoxicating liquor and deleterious drugs; the purchase of horse-drawn and motor-propelled passenger-carrying vehicles for official use; general and incidental expenses in connection with the administration of Indian affairs."

Note that the act does not contain language setting a time limit on or maximum amount for appropriations. Generally speaking, under the Snyder Act the BIA and IHS would continue to exist in a manner determined by the Interior Secretary and at any level of funding agreed upon by the Congress and President until such time as the act was repealed or amended.

That is what is proposed by Sen. Abourezk. The Snyder Act would in effect be repealed by the Abourezk legislation because it would become inoperative as an authorization for appropriations. Thereafter, the BIA would have to depend on the annual authorization bill passed by Congress and signed by the President. This is the meaning of the language in the Abourezk bill which states:

"Notwithstanding any other provision of law, ... all authority for appropriations for programs (in) the BIA and IHS shall be granted on an annual basis pursuant to a single annual authorization act."

In addition to the broad general authorization contained in the Snyder Act, the BIA and IHS also have authorizations for appropriations contained in special acts which create special programs or activities in the two agencies.

The Abourezk legislation would also, for all intents and purposes, repeal or modify those statutes because the annual authorization legislation enacted each year pursuant to the Abourezk bill would supercede provisions of these statutes in the same manner it would supercede the Snyder Act.

For example, at the present time the BIA operates an Adult Vocational Training Program in conjunction with the Employment Assistance Program. The authorization for these programs is contained in the following statutes:

—the relevant portion of the Snyder Act already quoted in full;

--Public Law 959: "In order to help adult Indians who reside on or near Indian reservations to obtain reasonable and satisfactory employment, the Secretary of Interior is authorized to be appropriated $25 million for each fiscal year (for this program)."

--The Act of April 15, 1950: "The Secretary...is authorized... to undertake, within the limits of the funds from time to time appropriated ... a program of basic improvements for the conservation and development of the resources of the Navajo and Hopi Indians...such programs include ...development of apportunities for off reservation employment and resettlement and assistance in adjustments related thereto." This statute authorizes a range of Hopi and Navajo programs;

If the Abourezk legislation is enacted, it would be possible for Congress simply to fail to include these programs in the BIA's annual authorization act and thereby render these statutes inoperative as they apply to these programs.

Even if the appropriations committees or the President wanted to maintain these programs, they could not as long as they were not authorized in the annual authorization act. The President could, of course, veto the authorization act, but that would kill the whole BIA and IHS operations.

Conversely, the annual authorization could contain new programs to be undertaken by the BIA and IHS. However, if the appropriations committee did not like the new programs, they could simply under-fund or "zero fund" them. The President could veto the whole authorization if he did not like the new programs.

Other statutes which would be affected by the Abourezk legislation and the program activity they authorize in the BIA are:

The Act of Jan. 27, 1906--Eskimo education; the Act of Mar. 29, 1944--forestry; the Act of Sept. 20, 1922--fire suppression and rehabilitation; the Act of Sept. 1, 1937--Eskimo reindeer industry; the Act of Apr. 27, 1935--soil and moisture conservation; the Act of May 26, 1928--road construction and maintenance; the Act of Aug. 27, 1935--arts and crafts; the Acts of Feb. 8, 1887, Apr. 4, 1910, Aug. 1, 1914, and Aug. 7, 1946--irrigation.

The Act of Jun. 18, 1934--authorizing $250,000 annually for education loans, a one-time amount of $20 million for a revolving loan fund, and $2 million annually for land acquisition; the Act of Aug. 27, 1958--road construction; the Act of Aug. 23, 1958--$20 million authorization for Navajo-Hopi road construction; Act of Nov. 4, 1963--revolving loan fund; and Act of Apr. 16, 1934--Johnson-O'Malley.

American Indian Press Association Release, August 2, 1973

DEPARTMENT OF JUSTICE PRESS CONFERENCE OF HONORABLE J. STANLEY POTTINGER ASSISTANT ATTORNEY GENERAL OF THE UNITED STATES AND MEMBERS OF THE PRESS

August 13, 1973
Washington, D.C.

Assistant Attorney General Pottinger: I have the pleasure of announcing today the creation of an Office of Indian Rights within the Civil Rights Division of the Department of Justice.

Carl Stoiber, senior trial attorney in the Civil Rights Division and head of a special task force on Indian rights, has been named Director of the new Office. R. Dennis Ickes will serve as Deputy Director.

The Department of Justice, we believe, has a special statutory mandate to protect the civil rights of American Indian citizens, and, therefore, the Office of Indian Rights will have both a litigative and a coordinating function to carry out this mandate.

The new Indian Rights Office is an outgrowth of a special Division task force that has recently been engaged in studying the legal problems of native American Indians since last January.

After a careful review of this task force's findings, I recommended to Attorney General Elliot Richardson the need to establish a permanent Office of Indian Rights. He has agreed to do so.

The Office of Indian Rights will have the responsibility for enforcing Federal statutes regarding the civil rights of American Indians, with a prime focus on Title II of the 1968 Civil Rights Act. Under this Title, individual Indian citizens are protected from violations of constitutional rights by their tribal council.

The Office of Indian Rights will also have the responsibility of conducting litigation in appropriate cases and recommending intervention or friend-of-the-court participation in cases.

The new Office also will coordinate Civil Rights Division activities regarding Indians.

The new Office will be in close communication and will coordinate its activities with other Federal agencies with responsibilities for the rights of native Americans.

Eventually, we hope to see the Office expanded beyond the Director and Deputy Director and two attorneys which now staff it on a professional basis to a still larger office in order to meet needs that we believe this new Office will have.

Department of Justice Release, August 13, 1973

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The American Indian Law Newsletter is published by the University of New Mexico School of Law on a bi-weekly basis when Congress is in session. We also publish special issues on important developments. The Newsletter's primary purpose is to keep those interested abreast of latest developments in Federal Indian law, legislation, and administration.

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American Indian Law NEWSLETTER

VOLUME IV, NUMBER 19 September 14, 1973

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This issue covers the Congressional Record, Volume 119, No. 126-No. 133, August 3-September 13, 1973; and the Federal Register, Volume 38, No. 156-No. 178, August 14-September 14, 1973.

A PUBLICATION OF THE UNIVERSITY OF NEW MEXICO SCHOOL OF LAW, AMERICAN INDIAN LAW CENTER

CONGRESSIONAL ACTIVITY

BILLS INTRODUCED

HOUSE

Grants for Land Use Planning

H.R. 10294. A bill to establish land use policy; to authorize the Secretary of the Interior, pursuant to guidelines issued by the Council on Environmental Quality, to make grants to assist the States to develop and implement comprehensive land use planning processes; to coordinate Federal programs and policies which have a land use impact; to make grants to Indian tribes to assist them to develop and implement land use planning processes for reservation and other tribal lands; to provide land use planning directives for the public lands; and for other purposes; to the Committee on Interior and Insular Affairs.

September 13, 1973; 119 C.R. 133, H7934

BILLS SIGNED BY THE PRESIDENT

Klamath Termination

H.R. 3867, terminating Federal supervision over the Klamath Indian Tribe by providing for Federal acquisition of certain tribal lands. Signed August 16, 1973 (Public Law 93-102).

September 5, 1973; 119 C.R. 127, D977

ADMINISTRATIVE DECISIONS

Jackson Rancheria

The B.I.A. has proposed regulations to establish criteria to determine the membership of the Jackson Rancheria in Amador County, California, for the purpose of voting on whether a distribution of assets shall be made and to provide the method

of sale of unoccupied tracts within the Rancheria.

Any adult Indian of the Jackson Rancheria may request a distribution of the assets of the Rancheria by sending written notice of such request to the Area Director of the B.I.A. along with information showing his or her allotment, assignment, or residency on the Rancheria.

August 15, 1973; 38 F.R. 157,

Fishing Rights

Effective September 5, 1973, the deadline for issuing temporary identification cards as evidence of entitlement to exercise fishing rights secured by treaty to tribal members who do not have approved current membership rolls is extended to December 31, 1974.

September 5, 1973; 38 F.R. 171, pp. 23945

Irrigation Project Proposed Increases

The B.I.A. has proposed new regulations increasing the rates for annual operation and maintenance assessments on the Ahtunum Indian Irrigation Project, the Toppenish-Simcoe Indian Irrigation Project, and the Wapato Indian Irrigation Project. All three projects are on the Yakima Indian Reservation, Washington.

Interested persons are encouraged to send comments and arguments to the Area Director on or before October 5, 1973.

September 5, 1973; 38 F.R. 171, pp. 23954-23955

Timber Sales

The B.I.A. has adopted new regulations concerning sales of timber. The purpose of the revision is to increase stumpage value limitations and to increase advance payments for allotment timber.

September 10, 1973; 38 F.R. 174, pp. 24638-24639

COURT DECISIONS

Morton v. Ruiz

462 F.2d 818
9th Circuit

The U.S. Court of Appeals, 9th Circuit, held that the Snyder Act requires the Secretary of the Interior to provide general assistance benefits to all Indians throughout the U.S., including those living off reservations as well as those living on reservations.

This holding is contrary to the Secretary of the Interior's established policy of limiting such benefits to Indians living on reservations or in jurisdictions regulated by the B.I.A.

On April 23, 1973, the U.S. Supreme Court granted certiorari Docket # 72-1052.

RECENT LAW REVIEW ARTICLES

Casenote: U.S. v. Kabinte

Judgment in suit between Navajo and Hopi Tribes held to estop individual Navajo Indians not parties to the prior suit from asserting aboriginal title claim to ancestral lands.

26 Rutgers Law Review 909

DISTRIBUTION OF MANPOWER REVENUE SHARING FUNDS TO INDIANS

Washington, D.C.--A dialogue has begun between the Manpower Administration of the Labor Department and Indian tribes and groups to determine how Indians will fit into the Manpower Revenue Sharing (MRS) system, to begin in July of 1975.

Meetings with Labor Department officials were held here and in Window Rock, Ariz., in August. It was expected that Labor will conduct other meetings, perhaps on a regional basis, before a final decision is reached later this year.

Major issues involved in a transition from a categorical to a revenue sharing system are:

Whether or not Indian groups should receive manpower revenue sharing funds directly from the Labor Dept. or from state funds; which tribes would be eligible to receive such funds; and how much of the funds these Indian groups should receive. Also at issue was the method of distribtution of the funds to the Indian groups.

Labor has already decided that Indians would receive funds directly, but the determination of which tribal groups should be included is presenting a problem which that department is trying to resolve by seeking ideas from the Indian community.

As in the General Revenue Sharing (GRS) program, these groups which are performing a substantial governmental function--states, cities, counties, federally recognized and state tribes--will be the direct recipients. However, many tribal groups which are not recognized by the federal or state governments have insisted they have a right to get funds because they are performing governmental functions.

Indian tribes will receive at least $15 million off the top of MRS funds, to be distributed to state and local governments, but this amount is only the total of the amount of money going to approximately 100 Indian tribes under the existing system. Labor Department officials say this is why it is important to find out just how many more tribes there are who should have been receiving funds in the past.

Once a determination is made on how much of the MRS funds will go to Indian tribes, the problem of on what basis to distribute the money arises. Three suggested approaches are first, a straight population/per capita basis; second, a formula approach which would take into

consideration the degree of poverty, unemployment and population; or third, a "hold harmless" approach, which would mean a tribe would be funded under MRS at the same level it was funded under the existing system.

A related issue to the distribution problem is the lack of a reliable and consistent data base among the Indian tribes. The Census Bureau, the Bureau of Indian Affairs, the Economic Development Administration and other agencies working in the field of Indian affairs each have differing population and unemployment statistics.

Finally, Labor has proposed that a tribe would have to qualify for a minimum allocation of $50,000 in order to be a "prime sponsor" for MRS program money. Those tribes whcih did not qualify could, according to Labor's proposal, join together to form consortiums and thereby become eligible to receive funds directly, Any two tribes joining together would receive a bonus.

American Indian Press Association Release, August 23, 1973

APACHE NATIONS WILL REUNITE

Two Apache tribes in New Mexico and two in Arizona will soon form a new intertribal alliance, signaling the reunification of the Apache Nation. The four tribes--Mescalero Apache and Jicarilla Apache of New Mexico, and White Mountain Apache and San Carlos Apache in Arizona--have already formulated an "Apache Bill of Rights" for presentation to the Senate Indian Affairs Subcommittee in September. Leaders of the four tribes will meet in Mescalero, N.M., Sept. 28-29. to advance plans for the reunification. Signatories to the bill of rights were Mescalero Apache President Wendell Chino, Jicarilla President Hubert Velarde, White Mountain President Fred Benashley, Sr., and Roy Kitcheyan for San Carlos President Marvin Mall.

American Indian Press Association Release, September 7, 1973

COMANCHES PREPARING MEMBERSHIP ROLL

The Comanche Tribe of Oklahoma, which has been without one, is now assembling a roll of tribal membership. No time limit has been set for the submission of applications for inclusion on the rolls. All tribal members, who must apply individually, may obtain application forms by writing to: Comanche Enrollment Committee, P.O. Box 1127, Lawton, OK Zip-73501. Or call: (405) 355-2275.

American Indian Press Association Release, September 7, 1973

NIXON'S INDIAN BILLS IN CONGRESS

Washington, D.C.--President Richard M. Nixon in an unprecedented end of the year State of the Union message to Congress called on the Congress to act on his legislative proposals for Indians which would "advance the opportunities of American Indians for self-determination without bringing an end to the special federal relationship with recognized tribes.

The special Nixon message, which recommended action on over 50 administration bills, including the Nixon Indian bills, was sent to the Congress Sept. 10. The full text of Nixon's message pertinent to Indians is as follows:

"The steadfast policy of this administration is to advance the apportunities of American Indians for self-determination without bringing an end to the special federal relationship with recognized Indian tribes. To that end, there are now six major pieces of legislation pending in the Congress which I proposed as long ago as July of 1970.

"This legislation would help to foster greater self-determination for the Indians, to expand their business opportunties, and to provide better protection of their natural resources. Many Indian leaders have indicated strong support for this legislation and I would hope that the Congress will now act on it with the speed that it so clearly deserves."

The status of the Nixon Indian bills in Congress is as follows:

--Bill to raise the status of the Indian Commissioner to the level of an Assistant Secretary in the Interior Department. Status: in the House, ready for floor action; in the Senate, no action;

--A bill to establish an Indian Trust Counsel Authority. Status: in the House, one round of hearings held, another scheduled for Sept. 27-28; in the Senate, hearings held, with markup pending in the subcommittee;

--A bill to amend laws regulating livestock trespass and trader operations on Indian reservations. Status: in the House, hearings held; in the Senate, no action;

--A bill to provide credit and financing for Indian economic development. Status: in the House, hearings tentatively set for Oct. 12; and in the Senate, enacted;

--Three bills to provide for the assumption of control of federal programs by Indians. Status: in the House, no action; in the Senate, hearings held.

It is not expected that either house of Congress will pass Nixon's assumption of control legislation. Rather, Sen. Henry M. Jackson,

D-Wash., chairman of the Senate Interior and Insular Affairs Committee, will soon bring before that committee his alternative expanded contract approach to Indian takeover of federal programs. If the House acts on any "Indian takeover" legislation it will probably be the Jackson bill.

None of the Nixon legislation is expected to be enacted before the end of this session in November. The two houses cannot seem to agree which of the bills are most important, thereby coordinating the schedule of hearings on the same legislation.

American Indian Press Association Release, Sept. 10, 1973

INDIAN PREFERENCE POLICY

Washington, D.C.--Indian preference has received a stay of execution for the present in the form of a decision by U.S. Supreme Court Justice Thurgood Marshall, to delay the implementation of a decision by a U.S. district court in New Mexico which had opposed the policy.

The New Mexico decision, Mancari v. Morton of June, 1973, would have prevented the Bureau of Indian Affairs (BIA) and the Indain Health Service (IHS) from using an Indian preference policy in their employment practices on the grounds that such a policy violated the Equal Opportunity Act of 1972.

The Marshall decision, handed down here Aug. 16, only delays implementation of the Mancari decision until a higher court reviews the Indian preference policy. This delay will, however, permit the BIA to fill some of the 2,141 job vacancies it now has. These positions will have to be filled by Indians under the stipulations of a previous court decision, Freeman v. Morton made in December 1972, which orders that the Indian preference policy must be used at every stage of employment in the BIA and IHS.

The Interior Department had sought and was denied a stay of the Freeman decision which had been handed down by a district court in Washington, D.C.

Until the Freeman decision last December, the BIA had been using Indian preference only at the initial hiring stage of employment, and not in the promotion, reassignment or reduction in work force stages. After the Freeman decision the Bureau changed its policy somewhat to conform to the decision, but not entirely.

The Indian preference statutes themselves go back as far as 1882. Another statute was enacted in 1894 guaranteeing Indian preference. The latest statute is the 1934 Indian Reorganization Act which explicitly directed that Indians be given preference in employment without regard to Civil Service regulations.

American Indian Press Association Release, August 17, 1973

OFFICE OF INDIAN RIGHTS CREATED

Washington, D.C.--The U.S. Justice Department has responded to the new emphasis on the human rights problems of Indians by the creation of a new Office of Indian Rights within its Civil Rights Division.

The new office, announced here Aug. 14, has as its purpose, the protection of Indian civil rights under Title II of the 1968 Civil Rights Act, commonly known as the Indian Bill of Rights, and the investigation of situations of public and private discrimination against Indians on the basis of race.

Atty. Carl Stoiber, director of the new office, said he was aware of the problems which Indian tribal governments have been having with judicial interpretations of the 1968 act which have impinged on the sovereignty of the tribes. Said Stoiber:

"We intend to give tribal sovereignty due deference. We are not interested in becoming a club with which to beat beleaguered tribal governments. We will exercise any authority we might have with circumspection. We feel priorities do not reside in intra-tribal disputes. The major problems of Americans are those generating in the majority culture."

Stoiber listed such problems as discrimination in employment in reservation border areas and urban areas from state and municipal governments, health care discrimination, especially in emergency care refused by hospitals near reservations; discrimination in reservation border towns in the dispensing of justice in terms of arrests, bails, fines and sentencing; and discrimination in housing and public accommodations.

It is expected that the new Justice Department office will have a staff of six attorneys and other support personnel. According to Asst. Atty. Gen. S. Stanley Pottinger, an extensive effort is now being made to recruit Indian lawyers for the staff.

Stoiber outlined the procedure which is usually followed for civil rights complaints in the Justice Department and said the same procedures would generally be followed in the new Office of Indian Rights.

The process begins with the receipt, either by the new office, the local U.S. attorney or the Federal Bureau of Investigation (FBI), of a complaint by an Indian that his civil rights have been violated or that he has been discriminated against in violation of the civil rights laws.

The Indian rights office then requests the FBI to look into the complaint. If the facts disclose that a violation has occurred, the Indian rights office will do a follow-up investigation of its own. If the office decided the complaint has merit, it recommends to the Assistant Attorney General that the Civil Rights Division file suit or begin prosecution depending on the nature of the violation.

D-Wash., chairman of the Senate Interior and Insular Affairs Committee, will soon bring before that committee his alternative expanded contract approach to Indian takeover of federal programs. If the House acts on any "Indian takeover" legislation it will probably be the Jackson bill.

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The establishment of the Office of Indian Rights was an outgrowth of a special Civil Division task force which had been studying the legal problems of American Indians since last January, according to Stoiber.

American Indian Press Association Release, August 14, 1973

CIVIL RIGHTS INFORMATION ON CASSETTES

Washington, D.C.--The U.S. Commission on Civil Rights announced yesterday that it soon will begin distribution of cassette tape recordings explaining the civil rights of American Indians in five tribal languages and English.

Distribution of a Navajo tape will begin within the next few days, the Commission said. Distribtuion of Cherokee, Sioux, Blackfeet, and Yupik tapes will follow.

Text for the recordings is a brief 1972 Commission pamphlet, "Civil Rights of American Indians." The pamphlet covers such topics as freedom of speech and press, the right to vote and hold office, and the rights of persons charged with crimes.

The pamphlet, which applies to Indians living on and off reservations, also suggests remedies for civil rights violations.

Tapes are being made in Indian languages for Native Americans who are more familiar with their tribal languages than with English, the Commission explained. The English tape is designed for Indians who understand English but have limited reading skills.

The cassettes can be used by any group or individual with a small tape recorder. Languages were selected on the basis of the number of tribe members more familiar with their own tongue than with English. Many Indian languages do not exist in written form.

Reservation Indians in the United States have a unique legal status, in that they are subject to tribal codes and tribal courts and not to State laws. The 1968 Indian Bill of Rights expanded the rights of Native Americans in dealing with tribal governments.

The tapes are intended to explain exactly what rights Indians have. For example, although an Indian has the same rights to a lawyer that any citizen has in Federal and State courts, he may have to hire one at his own expense in tribal trials.

Translators for the Commission tapes were Ethelou Yazzie of Chinle, Arizona, Navajo; Peter Red Horn of Browning, Montana, Blackfeet; Paul War Cloud of Sisseton, South Dakota, Sioux; Crosslin Smith of Ardmore, Oklahoma, Cherokee; and Sophie Manutoli of Fairbanks, Alaska, Yupik.

The translations were prepared as part of the Commission's national project on Indian rights. This program has included publishing the "American Indian Civil Rights Handbook" and its shorter version, from which the tapes were made.

The Commission has held hearings on Indian concerns in Arizona and New Mexico, which formed the basis for its recent "Southwest Indian Report."

U.S. Commission on Civil Rights Release, Sept. 9, 1973

NEW INDIAN COMMISSIONER

Washington, D.C.--Some people get watches or neckties for their birthday. Others, if they are Athabascan Indian from a tiny village deep in the Alaskan interior and are named Morris Thompson, get recommended for the post of Indian Commissioner as a birthday present.

Thompson, of Tanana, Alaska, turned 34 on Sept. 11, the same day Interior Secretary Rogers C.B. Morton recommended to President Richard M. Nixon that Thompson be nominated as the new Indian Commissioner.

That post has remained vacant since Nixon fired former Commissioner Louis R. Bruce Dec. 6 in the wake of the seizure of the Bureau of Indian Affairs last November by the Trail of Broken Treaties Caravan.

The Thompson recommendation is now being processed in the White House. This includes a routine check by the Federal Bureau of Investigation (FBI), a conflict of interest check involving disclosure of financial interests which might be incompatible with holding the post of Commissioner, and "congressional clearance" to insure that no senator or congressman, particulary Republican, strongly objects to the nomination of Thompson by the President.

Nixon administration sources have indicated that Thompson, with Morton's endorsement, should easily clear this hurdle.

Once nominated by the President, Thompson must then be confirmed by the Senate. Confirmation hearings will be held before the Senate Interior and Insular Affairs Committee.

Thompson told AIPA he was "very pleased and honored" to be recommended by Morton, but refused to comment on any of the major issues presently confronting the BIA such as reorganization plans for that agency and Indian militancy. He said he preferred to wait until after confirmation hearings to air his views on Indian affairs.

Thompson did acknowledge by implication, however, one problem which has plagued Indian affairs for some time. That is, the various and sundry power struggles which have gone on within the BIA between the Nixon administration and the Congress and among Indian leaders.

Thompson said he hoped to provide "immediate leadership and stability" to the BIA and to "provide the catalyst necessary to meld the administration, Congress and the Indian leadership in a common direction." He said he was impressed with the caliber of BIA personnel and the Indian leadership, and also with the concern Nixon and Morton have shown for Indian matters.

Thompson is undoubtedly the youngest man ever to be recommended for the post of Indian Commissioner. But he sees his youth as an asset rather than a liability. "I think youth can bring enthusiasm into government," he said, "a desire and dedication to get over some of these problems."

In any event, Thompson feels his experience in Indian affairs far outweighs any liability his youth might present. "I think generally the experience I've developed both in state government and national government as special assistant to the Secretary of the Interior and as a (BIA) Area Director stands me in good stead to work with the problems and opportunities of Indian people," he said.

Thompson served from 1967 to 1968 as Deputy Director for Rural Development in Alaska. This agency administered state and federal funds for the development of remote Alaska Native village areas. From 1968 to 1969, he served as Executive Secretary for the North Commission, which advised the Governor of Alaska and other state officials on matters related to the development of the rural Arctic regions in far northern Alaska.

Thompson's federal experience included service as assistant to former Commissioner Bruce and service as liaison between the Commissioner and former Interior Secretary Walter J. Hickel, also an Alaskan, from 1969 to 1971. He left this post to serve as BIA Area Director for the Juneau Area.

The BIA personnel office found itself caught short on information concerning Thompson because a federal grand jury has his file and other documents seized by militant Indians last November locked up pending prosecution of three accused Indian individuals in North Carolina.

A 1959 graduate of the BIA's Mt. Edgecumbe Boarding School in southeastern Alaska, Thompson has had a great deal of personal experience with that institution. It will be interesting to see what policy Thompson devises for the BIA boarding schools which have a somewhat notorious history.

Thompson attended the University of Alaska for two and a half years, but left to study at the Radio Corporation of America (RCA) Institute of Technology in Los Angeles, Calif. Graduating there in 1965, he worked as a technician at RCA's satellite tracking facility at Gilmore Creek near Fairbanks. While employed there, he served as chairman of the board of the Fairbanks Native Association (FNA).

Thompson is married and has two children.

A late entry into the Commissioner sweepstakes, Thompson wound up as the finalist in a field of four candidates. The others were Atty. Martin Seneca (Seneca), former Republican Congressman Ben Reifel (Rosebud Sioux) of South Dakota, and Reaves Nahwooksy (Comanche).

American Indian Press Association Release, Sept. 12, 1973

SUMMER LAW PROGRAM FOR INDIANS

Twenty-four Tribes were represented by 34 participants in the 1973 Summer Session of the Special Scholarship Program in Law for American Indians at the University of New Mexico School of Law.

The curriculum included classes in Introduction to Legal Method, Contracts, Indian Law, Advocacy, Legal Writing, Bureaucracies and Legal Bibliography.

S. Bobo Dean of the Washington, D.C. law firm of Fried, Frank, Harris, Shriver and Jacobson was Visiting Professor in Indian law and Professor William Andersen of the University of Washington in Seattle taught Contracts. Charles Wilkinson, staff attorney for the Native American Rights Fund taught Legal Writing for the second summer. The remainder of the faculty came from the regular University of New Mexico Law School faculty: Professors Jerrold Walden, Joseph Goldberg, Charles Daniels, Sam Deloria and Myron Fink.

The tutors were Sharon Eads, Cherokee and John Roebuck, Choctaw, both attending the University of Oklahoma Law School; John Myers, Monta Provost Blackwell, Omaha/Creek, and Petra Jiminez, all attending the University of New Mexico Law School. Mses. Eads and Blackwell are also graduates of the 1972 Summer Session.

For further information on future Summer Sessions and the Special Scholarship Program in Law for American Indians, please contact:

Director of Special Scholarship Program
American Indian Law Center
University of New Mexico Law School
1117 Stanford Drive, N.E.
Albuquerque, New Mexico 87131

BIBLIOGRAPHY OF MATERIAL ON INDIAN LAW

The American Indian Law Center has recently published a bibliography of material on Indian law, compiled by former Newsletter editor, Joe Sabatini.

The bibliography contains over 500 citations to books, law review articles, and current Indian periodicals.

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American Indian Law NEWSLETTER

Volume 6, Number 11

October 9, 1973

Toby F. Grossman
Editor

Philip S. Deloria
Director
Indian Law Center

Linda Wingfield
Research Staff

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This issue covers the Congressional Record, Volume 119, No. 134 through No. 148, September 17-October 4, 1973; and the Federal Register, Volume 38, No. 179 through No. 194, September 17-October 9, 1973.

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SCHOOL OF LAW

BILLS INTRODUCED

HOUSE

Oklahoma Law

H.R. 1033. A bill to amend the act of April 12, 1926, regarding the applicability of Oklahoma law to Indian land disputes; to the Committee on Interior and Insular Affairs.

September 18, 1973; 119 C.R. 135,H8066

Navajo-Hopi Partition

H.R. 10337. A bill to authorize the partition of the surface rights in the joint use area of the 1882 Executive order Hopi Reservation and the surface and subsurface rights in the 1934 Navajo Reservation between the Hopi and Navajo Tribes, to provide for allotments to certain Paiute Indians, and for other purposes; to the Committee on Interior and Insular Affairs.

September 18, 1973; 119 C.R. 135, H8066

Fort Sill Indian School

Petitions and papers were laid on the Clerk's desk and referred as follow:

303. By the Speaker: Petition of the National Indian Economic Development Board, Cache, Okla., relative to Fort Sill Indian School lands; to the Committee on Interior and Insular Affairs.

October 2, 1973; 119 C.R. 146, H8551

Menominee Termination

H.R. 10717. A bill to repeal the act terminating Federal supervision over the property and members of the Menominee Indian Tribe of Wisconsin as a federally recognized, sovereign Indian tribe; and to restore to the Menominee Tribe of Wisconsin those Federal services furnished to American Indians because of their status as American Indians; and for other purposes; to the Committee on Interior and Insular Affairs.

H.R. 10718. A bill to repeal the act terminating Federal supervision over the property and members of the Menominee Indian Tribe of Wisconsin as a federally recognized, sovereign Indian tribe; and to restore to the Menominee Tribe of Wisconsin those Federal services furnished to American Indians because of their status as American Indians; and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. FROEHLICH (for himself, Mr. OBEY, Mr. MEEDS, Mr. SEIBERLING, Mr. STEELMAN, Mr. STEIGER of Arizona, Mr. STEIGER of Wisconsin, Mr. TAYLOR of North Carolina, Mr. THOMSON of Wisconsin, Mr. UDALL, Mr. WALDIE, Mr. WON PAT, Mr. YOUNG of Alaska, Mr. YOUNG of Georgia, Mr. ZABLOCKI, and Mr. CONLAN):

H.R. 10719. A bill to repeal the act terminating Federal supervision over the property and members of the Menominee Tribe of Wisconsin as a federally recognized, sovereign Indian tribe; and to restore to the Menominee Tribe of Wisconsin those Federal services furnished to American Indians because of their status as American Indians; and for other purposes; to the Committee on Interior and Insular Affairs.

October 3, 1973; 119 C.R. 147, H8651-8652

SENATE

Navajo-Hopi Partition

S. 2424. A bill to authorize the partition of the surface rights in the joint use area of the 1882 Executive Order Hopi Reservation and the surface and subsurface rights in the 1934 Navajo Reservation between the Hopi and Navajo Tribes, to provide for allotments to certain Paiute Indians, and for other purpoees. Referred to the Committee on Interior and Insular Affairs.

September 17, 1973; 119 C.R. 134, S16607

CONGRESSIONAL POLICY AND FEDERAL RESPONSIBILITY TO THE AMERICAN INDIANS AND ALASKAN NATIVES

(Referred to the Committee on Interior and Insular Affairs.)

Mr. BARTLETT (for himself and Mr. DOMENICI) submitted the following concurrent resolution:

S. Con. Res. 48

Whereas the Constitution, legislation, judicial decisions, and executive action have recognized that the United States has a continuing duty and the legal and moral obligations of a trustee to American Indians and Alaska Natives, requiring the highest degree of loyalty, care, skill, and diligence by the United States in fulfilling that trust responsibility; and

Whereas Congress has from time to time, and particularly in H. Con. Res. 108 of the Eighty-third Congress, declared a congressional policy disavowing the responsibility created by the aforesaid trustee obligations of the United States to certain American Indians and Alaska Natives, which has come to be known as the termination policy; and

Whereas the termination policy declared in H. Con. Res. 108 has created among American Indians and Alaska Natives apprehension that the United States may not in the future honor its trustee obligation, and uncertainty has severely limited the ability of Indian tribes to develop fully the human and economic potential of their communities in accord with their cultural values; and

Whereas the termination policy declared in H. Con. Res. 108 has had adverse social consequences for tribal communities and individuals upon which it has been imposed; Now, therefore, be it

Resolved by the United States Senate (the House concurring), That it is the sense of Congress that--

(1) the policy of termination announced by

H. Con. Res. 108 no longer represents the policy of Congress and is hereby repudiated as a policy of the Congress;

(2) the integrity and right to continued existence of Indian tribes and Alaska Native governments are expressly confirmed;

(3) the American Indians and Alaska Natives and their governments are, by this concurrent resolution, assured that the United States will continue to perform its trust responsibilities to them including, but not limited to, responsibilities for their health, education, and welfare, and that those trust responsibilities of the United States are recognized, reaffirmed, and will be performed with the highest degree of loyalty, care, skill, and diligence.

(4) the Federal Government shall be charged with the responsibility for developing program efforts and procedures that will improve the quality and quantity of social and economic development efforts of Indian people and maximize opportunities for Indian control and self-determination which shall be a major goal of our National Indian Policy.

Mr. BARTLETT. Mr. President, over the years the Federal Government has experienced many failures in its relationship with the American Indian. None of the failures of recent years has been so apparent as the termination policy expressed in House Concurrent Resolution 108 passed by the 83rd Congress in 1953. The policy expressed by this resolution served no useful purpose other than to threaten the Indian tribes with the termination of the trust relationship between the tribes and the Federal Government.

Indian people throughout the country have expressed the desire to have the policy of termination rescinded. President Nixon in his Indian message to Congress on July 8, 1970, called for an end to termination when he said:

For many years we have talked about encouraging Indians to exercise greater self-determination, but our progress has never been comemnsurate with our promises. Part of the reason for this situation has been the threat of termination.

Yet as a result of House Concurrent Resolution 108, termination remains the policy of the U.S. Congress.

Mr. President, I am today introducing a resolution asking Congress to repudiate the termination policy which for 20 years has hung over the tribes like the sword of Damocles. The resolution, if enacted, will end the era of termination and begin an era of self-determination for the Indian tribes.

Mr. President, I welcome others who wish to join me in this effort which will allow the Indian to determine his own destiny yet will reaffirm the Federal Government-Indian partnership.
September 28, 1973; 119 C.R. 144, S17989

Salish-Kootenai

S. 2515. A bill for the relief of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Mont. Referred to the Committee on Interior and Insular Affairs.

October 2, 1973; 119 C.R. 146, S18305

BILLS PASSED

HOUSE

Choctaw, Chickasaw, Cherokee

H.R. 5089, to determine the rights and interests of the Choctaw Nation, the Chickasaw Nation, and the Cherokee Nation in and to the bed of the Arkansas River below the Canadian Fork and to the eastern boundary of Oklahoma;

Indian Judgments Against U.S.

House voted to suspend the rules and pass the following bills:

Indian Affairs: H.R. 620, to establish within the Department of the Interior an additional Assistant Secretary of the Interior for Indian Affairs;

Indian Judgments: H.R. 8029, to provide for the distribution of funds appropriated in satisfaction of certain judgments of the Indian Claims Commission and the Court of Claims (passed by a yea-and-nay vote of 331 yeas to 33 nays). Subsequently, this passage was vacated and S. 1016, a similar Senate-passed bill, was passed in lieu after being amended

to contain the language of the House bill as passed. Agreed to amend the title of the Senate bill.

October 1, 1973; 119 C.R. 145, H8397-H8405

COMMITTEE MEETINGS

HOUSE

Spokane Reservation & Chippewa Cree Tribe

Committee on Interior and Insular Affairs: On Friday, September 14, Subcommittee on Indian Affairs concluded hearings on H.R. 5035, relating to the purchase, sale, and exchange of certain lands on the Spokane Indian Reservation; and H.R. 5525, to declare that certain mineral interests are held by the United States in trust for the Chippewa Cree Tribe of the Rocky Boy's Reservation, Mont. Testimony was heard from Interior Assistant Secretary John Kyle and public witnesses. A statement for the record was submitted by Representative Foley.

September 17, 1973; 119 C.R. 134, D1029

Menominee Restoration Act

Committee on Interior and Insular Affairs: Met for consideration of H.R. 7421, Menominee Restoration Act, and will resume consideration on Wednesday, September 26.

September 19, 1973; 119 C.R. 136, D1045

Indian Trust Counsel Authority

Committee on Interior and Insular Affairs: Subcommittee on Indian Affairs held a hearing on H.R. 6106, 6374, and 6494, to provide for the creation of the Indian Trust Counsel Authority. Testimony was heard from Interior Assistant Secretary John Kyle and Assistant Attorney General Wallace Johnson.

Hearings will continue tomorrow.

September 27, 1973; 119 C.R. 143, D1091

Indian Trust Counsel Authority

Committee on Interior and Insular Affairs: Subcommittee on Indian Affairs concluded hearings on H.R. 6106, 6374, and 6494, to provide for the creation of the Indian Trust Counsel Authority. Testimony was heard from representatives of Indian organizations.

September 28, 1973; 119 C.R. 144, D1095

Menominee Termination

Committee on Interior and Insular Affairs: Committee began hearings on S. 1687, to repeal the act terminating Federal supervision over property and members of the Menominee Indian Tribe of Wisconsin, receiving testimony from Senators Nelson and Proxmire; Philip E. Lerman, on behalf of Gov. Patrick Lucey, of Wisconsin; State Senator Reuben LaFave, of Wisconsin; William Giese, Menominee County non-Indian Property Owners, Wis.; Joseph Preloznik and Charles F. Wilkinson, legal counsel to Menominee Tribe; the following representatives of the Menominee Indian Tribe; Ada Deer, Sylvia Wilber, Theodore Boyd, Ben Miller, Robert Deer, Ernest Neconish, Andrew Pyatskowit, George Kenote, and Joan Hart; and the following members of the Seneca Tribe of New York: Harold E. Parker, Meredith M. Quinn, and Lester Maybee.

Hearings continue on Wednesday, September 26.

September 17, 1973; 119 C.R. 134, D1026

Committee on Interior and Insular Affairs: Committee concluded hearings on S. 1687, to repeal the act terminating Federal supervision over property and members of the Menominee Indian Tribe of Wisconsin, after receiving testimony from John H. Kyl, Assistant Secretary of the Interior for Congressional and Public Affairs; Julia A. Vadala, Acting Deputy Assistant Secretary, who was accompanied by Robert Howard, Director, Office of Native American Programs, both of the Office of the Assistant Secretary for Human Development; Dr. Emery A. Johnson, Director, Indian Health Service, Office of the Assistant Secretary for Health; and Joan Hutchinson, Acting Deputy Assistant Secretary for Legislation (Welfare), all of the Department of Health, Education, and Welfare; Charles Trimble, representing the National Congress of American Indians, Washington, D.C.; Dr. Philleo Nash, American University, Washington, D.C.; Dr. Nancy Lurie, University of Wisconsin, Madison; and Dr. Gary Orfield, Brookings Institution, Washington, D.C.

September 26, 1973; 119 C.R. 142, D1081

Indian Policy Commission

Committee on Interior and Insular Affairs: Committee in an open business meeting began consideration of S.J. Res. 133, providing for the establishment of the American Indian Policy Review Commission, but did not complete action thereon and will meet again tomorrow to consider this and other calendar business.

September 27, 1973; 119 C.R. 143, D1089

Committee on Interior and Insular Affairs: Committee discussed further S.J. Res. 133, providing for the establishment of the American Indian Policy Review Commission, but did not complete action thereon, and will meet again on Tuesday, October 2, to consider this and other calendar business.

September 28, 1973; 119 C.R. 144, D1094

BILLS PASSED

HOUSE

Menominee Restoration Act

Committee on Interior and Insular Affairs: Met in open session and ordered reported favorably to the House the following bill:

A clean bill in lieu of H.R. 7421, Menominee Restoration Act.

September 26, 1973; 119 C.R. 142, D1083

FEDERAL AGENCY RULING ON INDIAN LANDS

The Federal Power Commission issued Opinion No. 664, September 14, 1973, stating that neither the 1854 treaty between the United States and Chippewa Indians, nor Section 16 of the Indian Reorganization Act gives the Chippewa Indian Band power to preclude the Federal Power Commission's authority, under the Federal Power Act, to license a hydroelectric project located in part on Indian tribal land.

42 Law Week 2180, Section 2, October 2, 1973

Allowable Purchases

Section 251.5(a) is revised to raise the maximum allowable purchases of U.S. Government employees from Indians, without approval of the Secretary of the Interior, to $500, $750 in Alaska. This new section, §252.4, becomes effective October 17, 1973.

September 17, 1973; 38 F.R. 179, pp. 25987-25988

Alaska Native Villages

The Director of the Juneau Office of the B.I.A. gives notice that the final decision has been made determining the eligibility of certain Native villages in Alaska for land benefits under the Alaska Native Claims Settlement Act.

September 19, 1973; 38 F.R. 181, pp. 26217-26218

The Director of the Juneau Office of the B.I.A. gives first and only notice of applications filed requesting determination of eligibility of unlisted villages under the Alaska Native Claims Settlement Act.

September 21, 1973; 38 F.R. 183, pp. 26472

Salt River Irrigation Project

The B.I.A. announces that it is proposed to modify §221.120 of Title 25, C.F.R., dealing with operation and maintenance assessment against the lands under the Salt River Indian Irrigation Project in Arizona. The B.I.A. proposes to increase annual assessment rates and to change the annual payment due.

September 25, 1973; 38 F.R. 185, pp. 26729

The Director of the Juneau Office of the B.I.A. announces two proposed decisions determining the ineligibility of certain Native villages in Alaska and the eligibility of certain Native villages in Alaska to claim benefits under the Alaska Native Claims Settlement Act.

October 3, 1973; 38 F.R. 191, pp. 27420-27421

Draft Environmental Impact Hearings

A public hearing will be held November 6, 1973, at Crow Agency, Montana, to receive public comments regarding the Department of the Interior's Draft Environmental Impact Statement for the strip mining of coal on coal reserves of the Crow Indians. Written statements can be entered into the record by filing a copy with the presiding officer. Copies of the draft statement may be obtained from the B.I.A. Office in Billings, Montana.

October 5, 1973; 38 F.R. 193, pp. 27629

INDIAN NEWS ARTICLES

THOMPSON SEEKS BACKING FOR COMMISSIONER POST: MacDONALD STILL OPPOSES

Washington, D.C.--The political process by which a potential nominee for the position of Commissioner of Indian Affairs must seek broad and solid backing is long and involved, and the name of the game is "consultation."

Morris Thompson, the 34-year-old Athabascan and Juneau Area Director of the Bureau of Indian Affairs (BIA), was nominated to the President by the Interior Secretary, Rogers C.B. Morton, on Sept. 11; and by Sept. 26 he had arrived here in the nation's capital while great numbers of Indian leaders were in town to seek their counsel and support.

Thompson's arrival coincided with those of the Indian members of the National Council on Indian Opportunity (NCIO) and top officers of the National Tribal Chairmen's Association (NTCA). Some major urban Indian moderate leaders were also in town on business. And in town also were officers of Indians including the National Congress of American Indians (NCAI) and Americans for Indian Opportunity (AIO).

White House sources indicated Thompson's first call was on Leonard Garment, the President's top lawyer for reviewing presidential appointments. Sources say that meeting was extensive.

Then Thompson began a long process of consulting top Indian leaders. He met them in hotel rooms and the offices of the federal agencies.

In Thompson's wake came a number of Alaska Native leaders to boost his candidacy. Fanning out among other Indians into key senatorial and congressional offices on Capitol Hill, they began a sophisticated lobbying

effort for Thompson utilizing their wealth of experience acquired in relation to the historic settlement of oil and land questions in 1971 and continuing to the autumn of 1973.

Major issues and questions concerning Thompson or put to Thompson among Indian leaders, according to AIPA sources who asked not to be named, were these:

--Is he a strong enough individual to withstand the sometimes intolerable pressures which will come down on his head from Interior and the White House?

--As an Area Director would Thompson seek to give enhanced power to his peers, the other Area Directors?

--How did he stand on plans to realign the BIA?

--As an Alaska Native does he fully understand the nature and importance of the trust status of Indian lands to "Lower 48" Indians?

--Does he face any potential conflict of interest as a potential stock owner in the new Athabascan regional Native corporation, which will be affected by any decisions he may have to make in the future concerning Alaska Native land and oil, from which he might benefit personally?

--Would he be able to heal the political schism among the nearly 16,000 employees in the BIA nationwide?

--With what kind of personnel would he surround himself?

These and other questions were components in the equation of power Thompson would hold if and when he is formally nominated by the President to the Senate.

Thompson's name came under consideration after it was offered on a list of three names submitted by NCAI. In recent weeks there were reports that NTCA would move to block the nomination beforehand or to oppose it during Senate confirmation hearings.

By the last week of September opposition to Thompson within NTCA appeared to dwindle significantly. Only Navajo Tribal Chairman Peter MacDonald was publicly opposing him.

The final word on any opposition, however, would only appear if and when the President submits Thompson's name to the Senate, which has promised speedy hearings on the nomination.

American Indian Press Association Release, September 28, 1973

NIXON ADMINISTRATION PUSHES BIA REGIONALIZATION DESPITE INDIAN OPPOSITION

Washington, D.C.--"Reorganization by stealth" is the essence of a drama in three acts contained in an "administratively confidential" classified memorandum leaked out of the highest levels of the Interior Department, foretelling a complete reshaping of the Bureau of Indian Affairs (BIA) and its personnel.

The memorandum, dated July 2, was written by John M. Seidl, deputy assistant Interior secretary for program development and budget to Interior Undersecretary John C. Whittaker. Seidl works for Lawrence Lynn, assistant Interior secretary for program development and budget, which also employs former BIA top staffer Alexander "Sandy" McNabb who is on detail to his office.

The Nixon administration regionalization plan involves the transfer of authorities and monies from centralized government agencies in the nation's capital to 10 Federal Regional Councils across the country which coordinate and clear all federal business.

The drama in the Seidl memorandum proposes the removal of BIA Area Directors, transformation of the existing organizational structure of the Bureau, and ultimate coordination with the Nixon federal regional council system for the administration of public and Indian business.

The first act of the drama outlined in the memorandum, entitled "Removal of BIA Area Directors," is to convince Indian people that it is the BIA Area Office organizational system itself which is responsible for "the burden they have because of extraordinary administrative overhead in BIA programs."

The second act is to "prove to the Indian people that they will receive better services by changing Area Offices into technical service centers." Four of these Technical Service Centers would replace the existing 11 Area Offices, according to the "administratively confidential" memorandum, and two more regional centers would provide "administrative support service."

Once the Indian people have been "convinced" of the wisdom of this system--and "they will agree" according to the memo--the third act begins. The BIA Regional Service Centers would then be "fit into the President's regionalization policy."

It is this closing scene in the third act which has dismayed and shocked Indian people because they have long been loud and vehement against regionalization of the BIA.

Charles E. Trimble, executive director of the National Congress of American Indians (NCAI), stated that his organization opposes

regionalization because "the federal regional councils are susceptible and vulnerable to state control (over Indians) which Indians have long opposed; because the unified power of the small Indian minority would be dispersed; and because Indians would then have to deal with several 'central offices' rather than one."

The National Tribal Chairmen's Association (NTCA) in an August 1972 resolution emphatically opposed what it called the "decentralization and regionalization of the federal government's trust responsibility."

Such an action, according to NTCA, would "directly cripple and hinder existing and future programs" and would be "nothing more than an arbitrary abrogation of the federal government's trust responsibility to the Indian people which will result in a lowering of the quality of services which would be made available to the Indian people."

Other "actor-groups" in this carefully orchestrated drama and their roles are:

--Interior Steering Committee on BIA Reorganization: Created May 11, members are: Chairman Marvin L. Franklin, assistant to the Secretary for Indian Affairs; Lawrence Lynn, assistant secretary for program development and budget; James T. Clark, assistant secretary for management; and Kent Frizell, Interior Solicitor. The memo suggests that this committee could also be used to dispose of the Area Office system. The timetable for the completion of this committee and its working group, below, was to be three to four months from July 2. Their predefined goal: to create "some type of regional technical service center operation." The memo implies that John Whittaker, Morton's second-hand man, "tells" this committee "how to proceed."

--Interior "Implementation Working Group": Under Sydney Freeman, project director of the group who came recently from the White House to Interior, the ostensible purpose of this staff working group is to study the BIA organizational structure and make recommendations for changes to the Steering Committee after "maximum Indian consultation on all major decisions." According to the Seidl memo, however, this group may be used to "effect the complete abolishment of the existing Area Office structure."

--Civil Service Commission: After the two above groups set up the new system, the Civil Service rules and regulations would be used "to take appropriate personnel actions against the present Area Directors."

--Members of Congress: Some congressmen in the past during the Nixon administration had prevented the transfer of certain Area Directors. The memo states: "If we develop a strategy where our main concern and effort are in reorganizing the field structure of the BIA and a necessary by-product of the reorganization is the movement of individuals, I firmly believe, with proper briefing and discussion with key congressional members, we can shortcut a great deal of the political disagreement."

--NCAI, National Indian Youth Council and others: The memo mandate is to "muster the support" of these groups. NCAI, however, is on record in opposition. The memo nevertheless referred primarily to "dislodging the Area Directors" and "changing Area Offices into technical service centers."

--NTCA: The "bad guys" in the Seidl drama are NTCA's tribal chairmen. The memo says Interior "would probably be at loggerheads" with NTCA "because its present diminishing membership is largely composed of those chairmen under the tutelage of the Area Directors to be replaced."

Who these "Area Directors to be replaced" are is not stated in the memorandum. However, Seidl does write: "In an oral briefing to you (Interior Assistant Secretary John Whittaker), (Alexander) Sandy McNabb outlined his views on the effectiveness of various Area Directors. If you so desire, we can provide you with a few scenarios showing you how specific Area Directors could be reassigned."

American Indian Press Association Release, October 4, 1973

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SCHOOL OF LAW

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BILLS SIGNED BY THE PRESIDENT

Indian Judgement Funds

S. 1016, to provide alternative methods for the disposition of certain Indian judgment funds. Singed October 19, 1973. (Public Law 93-134).

October 23, 1973; 119 C.R. 159, D 1201.

COMMITTEE MEETINGS

HOUSE

Indian Lands & Mineral Interests

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS: Subcommittee on Indian Affairs met in open session and approved for full committee action the following bills:
H.R. 5035, relating to the purchase, sale and exchange of certain lands on the Spokane Indian Reservation; and
H.R. 5525 amended, to declare that certain mineral interests are held by the United States in trust for Chippewa Cree Tribe of the Rocky Boy's Reservation, Montana

October 11, 1973; 119 C.R. 152, D1164.

Economic Development of Indians

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS: Subcommittee on Indian Affairs concluded hearings on H.R. 6371, 6493, and economic development of Indians and Indian organizations. Testimony was heard from Interior Assistant Secretary John Kyl and public witnesses.

October 12, 1973; 119 C.R. 153, D1169.

Indian Financing Act

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS: Subcommittee on Indian Affairs met for markup and approved for full committee action H.R. 6371 amended, Indian Financing Act of 1973.

October 23, 1973; 119 C.R. 159, D1201.

BILLS REPORTED

HOUSE

Menominee Termination

Committee on Interior and Insular Affairs. H.R. 1017. A bill to repeal the act terminating Federal supervision over the property and members of the Menominee Indian Tribe of Wisconsin as a federally recognized, sovereign Indian tribe; and to restore to the Menominee Tribe of Wisconsin those Federal services furnished to American Indians because of their status as American Indians and for other purposes (Rept. No. 93-572). Referred to the Committee of the Whole House on the State of the Union.

October 11, 1973; 119 C.R. 152, H8936

BILLS PASSED

HOUSE

Indian Judgement Funds

Senate agreed to the House amendments to S. 1016, to provide alternative methods for the disposition of certain Indian judgment funds, thus clearing the measure for the White House.

October 8, 1973; 119 C.R. 149, D1136, S18752-18753.

Bill passed repealing Menominee Termination

House voted to suspend the rules and pass the following bill:
H.R. 10717, to repeal the act terminating Federal supervision over the property and members of the Menominee Indian Tribe of Wisconsin as a federally recoonized, sovereign Indian tribe (passed by a yea-and-nay vote of 404 yeas to 3 nays).

October 16, 1973; 119 C.R. 156, H9096-9105.

COURT DECISIONS

Rider v. Board of Education of Independent School District No. 1
May 25, 1973

The Tenth Circuit held that an Oklahoma school-hair-length regulation, which prohibits male students from wearing their hair long and in braids, does not violate the Pawnee Indian students right to free speech or due process, or discriminate against their race and religion.

Petition for certiorari filed September 7, 1973. #73-459. No action on petition.

These cases are scheduled for oral argument before the United States Supreme Court.

1. #72-851. Oneida Indian Nation v. Oneida County. Issue: Is there jederal jurisdiction over suit?

2. #73-1052. Morton v. Ruiz. Issue: Is Secretary of Interior required to provide general assistance to all Indians?

This case is awaiting decision by the United States Supreme Court.

1. #72-481 and 72-746. Department of Game of Washington v. Puyallup Tribe. Issue: Is regulation prohibiting Indians from net fishing at usual places valid?

BOOK REVIEW

"Monroe Price, Law and Indian"

by S. Bobo Dean*

Students of Federal Indian Law, practitioners in the field, and American Indians generally are indebted to Monroe Price for the publication of "Law and the American Indian - Readings, Notes and Cases", a casebook in Federal Indian law recently published by Bobbs-Merrill in its Contemporary Legal Education Series.

*Mr. Dean, a member of the Washington, D.C. law firm of Fried, Frank, Harris, Shriver and Jacobson was a visiting Instructor on Indian Law in the 1973 Summer Session of the Special Scholarship Program in Law for American Indians.

The Federal laws applicable to tribal and reservation Indians and Alaska Natives constitute a highly technical area of legal learning with many unique principles and complexities.

Unlike other ethnic minorities in the United States, reservation Indians have a legal right to self-government within racially-defined jurisdictional enclaves. This fundamental principle of Federal Indian law--stemming from the decision of the Founders to treat Indian tribes in the Constitution as legal entities whose relations with the United States would be a Federal responsibility--is itself enough to lead to many apparent anomalies, minunderstandings and--on occasion--to actual conflict between Indians and non-Indians or within the Indian community.

Yet the Indian right to self-government--as Professor Price's work demonstrates--is only one of the unusual principles of Federal Indian law which are widely misunderstood or misapplied--sometimes by the very Federal officials whose duty it may be to apply them.

Lawyers who have had the personal experience of trying to explain to a non-Indian official the concept that the United States in holding legal title to trust lands for the benefit of Indian owners is held to the "strictest fiduciary standards" and has been greeted by the rejoinder--"But this is Government land, isn't it?", can only applaud Professor Price for furnishing an additional valuable tool for broadening general awareness of what the law is with respect to Indian rights.

Special congratulations should go to Professor Price for the compilation of materials in Chapters 1 and 2, which provide an excellent survey of the development of the fundamental concepts of Indian tribal sovereignty, Federal authority in Indian affairs, and the relationship between the several states and the Indian tribes. In particular, Professor Price's inclusion of such little-known cases as Cisna, Bailey and Doxtater, which show the development in the 19th Century of a minority view that States may apply their laws to reservation Indians in the absence of express Congressional consent, casts valuable light on the Supreme Court's surprising McBratney doctrine permitting the application of State law to non-Indians within reservation boundaries.

The landmark decision of the United States Supreme Court in Arizona Tax Commission v. McClanahan came too late for inclusion by Professor Price. Since this key case strongly reaffirms the governmental authority of Indian tribes (except as curtailed by the Congress) and lays to rest Justice Frankfurter's pernicious notion that a State may regulate the affairs of reservation Indians in the absence of Congressional authorization, it is to be hoped that in the next edition the impact of McClanahan will be fully exposed.

Professor Price's work gives little attention to an area which will be a central concern to Indian people in the next decade--the struggle to transform the Federal role from one in which the Federal Government provides bureaucracies whose function is to serve Indian needs to one in which the Federal Government provides financial assistance to Indian tribes to carry out their own programs for their own people.

Several pages are devoted to the President's 1970 Message on Indian Affairs, which promised rejection of the "suffocating pattern of paternalism" and that Indian people would be permitted to do for themselves those things which have in the past been done for them by others". Brief reference is made to the so-called "Zuni Plan."

At Zuni the Federal bureaucracy has been placed under the day-to-day direction of Pueblo officials. While Professor Price spells out in his note the shortcomings of the Zuni Plan--that the bureaucrats remain Federal employees with all personnel management decisions still made by Federal, not Pueblo, officials, it is not fully explained that this is only one of the devices for tribal control, which the Federal Government has utilized. For example, for three years the Miccosukee Tribe has operated its Federal agency under a contract in which the entire program is operated by tribal employees and the Federal Government merely provides the funding.

Other tribes and Indian organizations have entered into similar contracts, especially in the educational field (for example, the Ramah Navajo School, the Rock Point School on the Navajo Reservation, the Northern Cheyenne Tribe, the Oglala Sioux Tribe, the Navajo Tribe, the All-Indian Pueblo Council, and a number of others).

Sophisticated analysis is not required to see the advantage in local control which accrues when an Indian community is given authority to fire bureaucrats and replace them with bureaucrats of its own choice.

More extensive coverage of this particular area would have been expecially useful because of the widespread misinterpretation of the President's Message. It has been ridiculed on the theory that "self-determination" means "self-termination" and that (contrary to the express promise in the Message) tribal control of Federal services will lead to a decline in Federal financing. It has been objected (contrary to the opinion of the Interior Department's attorneys) that the new legislation proposed in the message to expedite "contracting" was necessary to permit contracting Federal programs to Indian tribes at all.

Finally, and most perniciously, a pattern has developed within certain levels of the Bureau of Indian Affairs of asserting that tribal direction of Federal programs is being forced on Indians by the Administration without their approval.

While many tribal groups (including the Rosebud Sioux Tribe, the Navajo Tribe, the Tanana Chiefs Conference of Athabascan Indians in Alaska, the Nevada Intertribal Council, the Oneida Tribe of Indians of Wisconsin and many others) wait with growing impatience for BIA action on their self-determination proposals, some Bureau officials persist in promoting the myth that the Nixon Administration is forcing self-government on a reservation Indian population which is really quite content under the benevolent wing of the Bureau of Indian Affairs.

The long-awaited appointment of a Commissioner of Indian Affairs may possibly produce a more loyal acceptance in BIA ranks of the thrust of Administration policy. In any event a key requisite in proceeding toward greater tribal control of Federal Indian programs will be greater understanding by the Federal officials with whom Indian people must negotiate self-determination arrangements of what the legal options actually are. It is hoped that Professor Price's next edition will go into this area more fully.

Another field of Indian law which is slighted in the casebook is the increasingly promising area of State-tribal cooperation. While the casebook accurately reflects the past pattern of State-tribal conflict, some attention should be given to the efforts of a few States to accept Indian tribes as permanent neighbors and work with tribal government cooperatively on programs of mutual benefit. South Dakota deserves special mention for the imaginative arrangement under which the State now collects sales tax within the Oglala Sioux Reservation, acting on its own behalf with respect to the tax on sales by non-Indians to non-Indians and remitting the tax proceeds on all other sales (less a small collection fee) to the tribal council.

Another example is the proposal of the Governor of Florida--not yet acted on by the Florida legislature--to recognize the two Indian tribes of Florida as local governmental entities for purposes of State Law.

States which have consumed so much energy in recent years in litigating doubtful tax issues involving reservation Indians should consider whether a good faith acceptance of tribal sovereignty and the devotion of the same energy to an attempt to devise in cooperation with tribal governments mutually acceptable solutions to common problems might be more productive, as well as more dignified.

Whatever minor deficiencies Professor Price's effort may have, it now stands--next to Felix Cohen's classic Federal Indian Law--as the most useful single volume in the field, which should repay Professor Price--and his associates--for the sleepless nights which have no doubt gone into the several revisions of the work.

CHEERS!

TITLE IV Suite Filed Against North Carolina

Washington, D.C. The state of North Carolina, which has nearly 400 Indian teachers, has been hit with a civil suit by the U.S. Department of Justice charging "racial discrimination" in the hiring of teachers.

On April 19, the state enacted a statute which required applicants for teacher certification to achieve a minimum score, set by the state board of education on the National Teachers Examination.

The National Teachers Examination is a typical nationally standardized test provided by the Princeton University testing service. The North Carolina state law required every teacher applicant to pass the test, but, according to Justice Department sources, statistics showed that blacks, American Indians, and Orientals have a "very much higher failure rate on the examination than whites."

The Justice Department, in its suit asking the Raleigh, N.C. U.S. District Court to issue preliminary and permanent injunctions against the state, will allege in court that the national test has not been shown by the state to be a valid test for the purposes the state is using it.

A recent U.S. Supreme Court decision ruled that where it has been established that criteria for employment have a disproportionate racial impact, the employer, if he wants to use that test, must demonstrate the validity of the test as an indication of the characteristics for the position.

According to Ms. Linda Oxendine, Lumbee Indian from North Carolina who has taught in the state school system, the national test is like other standardized tests such as the college entrance exam. Many Indians, says Ms. Oxendine, "are not geared culturally" to work with the tests.

"Among the Lumbee Indians, teaching is the only road to success--and to fail to be certified after having completed required college courses is a big financial and social loss for many Lumbees," said Ms. Oxendine, who is currently employed by the Coalition of Eastern Native Americans (CENA) in Washington, D.C.

Most other states, according to Ms. Oxendine, issue certificates to teachers who have completed certain required courses in an accredited institution.

According to a BIA educator, the National Teachers Examination was developed to screen teachers for graduate school, and constitutes, "a reasonable test" of a student's knowledge of the literature of education. However, noted the educator, "no relationship has been established between NTE test results and competency in the classroom."

The Justice Department suit charges that the state and its 13 member board of education are violating the equal employment opportunity section of the 1964 Civil Rights Act by using a racially discriminatory minimum text score established by state law for certification of teachers. Says the suite: "The failure of the defendants to grant appropriate certification of otherwise qualified black, American Indian and Oriental persons because of minimum NTE score requirements unlawfully hinders or prevents such persons from obtaining employment as public school faculty and staff members in North Carolina."

American Indian Press Association Release, October 22, 1973.

Menominee Termination Reversed

Washington, D.C. By an astounding 404-to-3 record vote, the U.S. House of Representatives led by House Indian Affairs Subcommittee Chairman Rep. Lloyd Meeds, D-Wash., passed legislation restoring the terminated Menominee Tribe of Wisconsin to federal trust status here October 16.

"I am elated with the passage of the legislation," said Meeds. "I think it is an overwhelming repudiation of the unwarranted and unworkable policy of termination. The size of the vote indicates that most members of the House have realized this."

Meeds gave "high marks" to the Menominee lobby led by Ada Deer in an AIPA interview. "You don't get the support of (former congressman and now presidential counsellor) Mel Laird, the President and the Bureau of Indian Affairs without a lot of work. While Congress passed the legislation, Ada and her group laid the groundwork." said Meeds.

Ms. Deer herself, underscoring the importance of the Menominee restoration legislation to all tribes as a sign of the end of the termination era, said:

"I am just excited by our tremendous victory, not only for the Menominee but for all American Indians. The size of the vote is a clear indication of the reversal of the termination policy."

Chairman Meeds and Ms. Deer both expressed the hope that the Senate would now take quick action on the Menominee restoration bill. Ms. Deer said the Menominees "don't anticipate any real problems with passage in the Senate."

The Senate Indian Affairs Subcommittee has held two hearings on the legislation. Jerry K. Verkler, counsel to the Interior and Insular Affairs Committee in the Senate, however, is not very hopeful of Senate floor action before the end of this session. Said Verkler:

"We have two or three tough bills on the agenda in the energy field. If Congress is still in session past-Thanksgiving, there may be some chance the bill will be acted on. If not, we may not get to it until after the first of the year. The Menominee legislation is a high priority item for us, however," said Verkler.

The Menominees need the bill passed before next Jan. 1 because the stocks in Menominee Enterprises, Inc. (MEI) will then become av ailable for purchase on the open market. The Menominees have been successful in forestalling this by getting the state of Wisconsin to pass legislation putting a moratorium on the sale of stocks.

Ms. Deer is concerned that a MEI stockholder may challenge the constitutionality of the state law. Enactment of the Menominee restoration bill would render such a challenge moot, since the assets of MEI would be transferred back to the Menominee Tribe under the provisions of the legislation.

The Menominee Tribe was terminated in accordance with House Concurrent Resolution 108 passed in 1953, which declared it the sense of Congress that the federal trust relationship with Indian tribes should end.

American Indian Press Association Release, October 16, 1973.

B.I.A. Reorganization May be Illegal

Washington, D.C. Sen. James Abourezk, D-S.D. has requested the U.S. Civil Service Commission (CSC) to investigate possible violations of civil services procedures and regulations in the shifting of personnel at the central headquarters of the Bureau of Indian Affairs (BIA).

In a letter to CSC Chairman Robert E. Hampton dated September 21, Abourezk stated that if, as he believed, Marvin L. Franklin were holding his position illegally, then personnel shifts cleared by Franklin were also illega. Abourezk also pointed to a number of complaints from BIA personnel received by his office as the origin of his concern and his request for the inquiry.

Said the full text of the Abourezk letter:

"I am writing you in regard to the on-going reorganization of the Bureau of Indian Affairs.

"According to an opinion I have received from the Law Division of the Library of Congress (on July 10), Mr. Marvin Franklin, who has been acting head of the BIA for the past eight months, is serving illegally. If this opinion is correct, then it follows that the many personnel actions taken under Mr. Franklin's opinion also are illegal.

"In addition to the apparent overall illegality of the reorganization, I am disturbed by reports which I have received as to specific actions which seem to be counter to civil service procedures and regulations. I am told, for example, that Mr. Franklin and his associates are shifting personnel, which do not fit into the reorganization plans, through the use of informal details which lack appropriate personnel actions including changes in the detailed person's position description.

"Vacant positions, or newly created positions also appear to have been filled without first utilizing established merit selection proceedings.

"I also understand that a number of re-employed annuitants have been retained to fill permanent key positions without utilizing merit selection procedures.

"I would greatly appreciate if the civil service commission would investigage this informal, but on-going reorganization of the BIA to determine if civil service procedures are, indeed, being violated as appears to be the case."

American Indian Press Association Release, October 12, 1973.

Federal Government Owes Interest On Uninvested Indian Trust Funds.

Washington, D.C. A "lost law" makes the federal government liable for five percent compound interest on uninvested Indian trust funds, the Indian Claims Commission (ICC) has ruled here in an opinion issued October 4.

The 117-page opinion was delivered by the ICC's only Indian commissioner, Brantley Blue, a North Carolina Lumbee, in the cases of the TeMoak Bands of Western Shoshone Indians and the Mescalero Apache Tribe against the United States.

The ICC opinion held that the Act of September 11, 1841, required miscellaneous reservation revenues to be invested in government bonds. Compound interest is awarded as the approximate equivalent of what the tribes lost due to the failure of the federal government to invest.

During the period from 1883 to 1930 the federal government kept miscellaneous Indian reservation revenues in a non-interest bearing account in the U.S. Treasury, with balances sometimes exceeding $7 million.

The first section of the 1941 "lost law" required the interest accruing on the bequest of one James Smithson, then invested largely in worthless state bonds, to be reinvested in "stock of the U.S. bearing a rate of interest not less than five per centum per annum."

The second section of the "lost law" stated that "all other funds held in trust by the United States, and the annual interest accruing thereon when not otherwise required by treaty, shall in like manner be invested in stocks of the United States, bearing a like rate of Interest."

The Blue opinion held that the 1841 act was never repealed and applies to the Indian trust funds. Wrote Blue: "By the plain language of the 1841 act all interest on Indian trust funds which a treaty did not require to be paid out or otherwise used had to be invested. The act means exactly what it says."

As a result of codification of federal law in the Revised Statutes of 1873, the opinion stated, the 1841 act was "buried in the title dealing with the public monies." While federal law was later recodified in 1926 the 1841 act was dropped out of the U.S. Code entirely although it had never been repealed. "In American jurisprudence...a statute is not repealed by being forgotton," wrote Blue, "and must be enforced when rediscovered."

The ICC opinion applies only to the fund called by the U.S. Treasury "Indian Monies, Proceeds of Labor" (IMPL) and only to the period 1883-1930. It may be extended, however, to other non-interest bearing Indian trust funds held in the U.S. Treasury between 1880 and 1929, and possible from 1930 to the present. The federal government is expected to appeal the ICC opinion to the U.S. Court of Claims.

ICC Commissioner Margaret Hunter Pierce concurred with Blue opinion, and Commissioner Richard W. Yarborough dissented from the compound interest aspect of the opinion. ICC Chairman Jerome K. Kuykendall joined in the dissent. The decision appears to ge the first instance where compound interest has been awarded against the U.S.

MORTON LAUDS NOMINATION OF MORRIS THOMPSON TO BE COMMISSIONER OF INDIAN AFFAIRS

Secretary of the Interior Rogers C. B. Morton today called President Nixon's nomination today, of Morris Thompson, 34 of Juneau, Alaska, to be Commissioner of Indian Affairs "a key step in assuring constructive progress in helpingout Indian citizens move forward."

"Morris Thompson, an Indian himself will bring to the Bureau of Indian Affairs the professional qualifications and leadership which are needed to meet the urgent challenges facing the Indian people today," Secretary Morton said.

"We have gegun to move and move in a very orderly way to upgrade our delivery system and our service to the Indians and I think the time has been well-spent in our search for exactly the right man for this job," Morton added.

Thompson is an Athabascan Indian, born in Tanana, Alaska, Sept. 11, 1939. On March 1, 1971, he was named by then Commissioner of Indian Affairs, Louis R. Bruce as the Alaska Area Director of the Bureau. Thompson was the first Alaska Native to be Alaska Area Director and was the youngest man ever to be named to a BIA Area Director post. He will also be the youngest man to serve as Commissioner.

Prior to his Alaska assignment, Thompson had served in the Department of the Interior as an assistant to Commissioner Bruce and a special assistant for Indian Affairs to former Secretary Walter J. Hickel.

Thompson attended the University of Alaska, majoring in civil engineering with a minor in political science. He was graduated from the RCA Institute of Technology in Los Angeles in 1965 and from 1965 to 1967 he worked

as a technician at the RCA satellite tracking facility at Gilmore Creek near Fairbanks, Alaska. While employed there he served as chairman of the board of the Fairbanks Native Association. In 1967 and 1968 he served as deputy director for rural development for the State of Alaska and in 1968 and 1969 he was executive secretary of the NORTH Commission which advised the Governor of Alaska on matters relating to the development of the Artic regions in northern Alaska. Thompson is married and has three children.

Thompson succeeds Louis R. Bruce, whose resignation as Commissioner was announced December 8, 1972, and became effective January 20, 1973. On February 7, 1973, Secretary Morton announced the appointment of Marvin L. Franklin to the new position of Assistant to the Secretary of Indian Affairs. Since his appointment, Franklin, who reports directly to the Secretary has been responsible for Deparment programs concerning Indian and Alaska Native people.

U.S. Department of Interior Release, October 30, 1973.

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American Indian Law NEWSLETTER

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November 13, 1973

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This issue covers the Congressional Record, Volume 119, No. 164-No. 175, October 30-November 15, 1973; and the Federal Register, Volume 38, No. 208-No. 218, October 30-November 13, 1973.

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CONGRESSIONAL ACTIVITY

COMMITTEE MEETINGS

SENATE

Indian Policy Review Commission

Committee on Interior and Insular Affairs. In an open business meeting, began reconsideration of S.J. Res. 133, providing for the establishment of an American Indian Policy Review Commission, which had been ordered reported on October 2, but took no final action thereon.

November 13, 1973; 119 C.R. 174, D1282

Thompson Nomination Hearings

Committee on Interior and Insular Affairs began hearings on the nomination of Morris Thompson, of Alaska, to be Commissioner of Indian Affairs, receiving testimony from Senators Stevens and Gravel; Representative Young; and Rogers C.B. Morton, Secretary of the Interior.

The nominee was present to testify and answer questions on his own behalf.

Hearings were recessed subject to call.

November 14, 1973; 119 C.R. 175, D1291

RECENT LAW REVIEW ARTICLES

"Indian property and state judgment executions." 52 Oregon Law Review, No. 3, Spring 1973.

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ADMINISTRATIVE DECISIONS

Irrigation Rates — The B.I.A. has adopted the proposed revisions to Part 221 of Title 25 of the Code of Federal Regulations raising the rates assessed for irrigation of the Salt River Indian Irrigation Project in Arizona.

November 1, 1973; 38 F.R. 210, pp. 30105

INDIAN NEWS ARTICLES

NCAI ELECTS OFFICERS

Tulsa, Okla.--New top officers and area board members of the National Congress of American Indians (NCAI) elected during its 30th annual convention here Nov. 1 are as follows:

President, Mel Tonasket (Colville), Omak, Wash.; First Vice President, Ernest L. Stevens (Oneida), Phoenix, Ariz.; Secretary, Catherine White Horn (Osage), Muskogee, Okla.; and Treasurer, Raymond Goetting (Laguna-Caddo), Albuquerque, N.M.

Eleven area vice presidents, each elected by caucus from one of the 11 administrative areas parallel to the Bureau of Indian Affairs (BIA) structure, were:

Walter Moffett (Nez Perce), Kamiah, Ida., Portland Area; Clarence Jackson (Tlingit-Haida), Kaiki, Alaska, Juneau Area; Matthew Calac (River Band of Rincon), Pauma Valley, Cal., Sacramento Area; James Ely (Flathead), Billings, Mont., Billings Area; Joseph Chase (Mandan-Sioux), Holiday, N.D., Aberdeen Area; Juanita Learned (Arapahoe), Oklahoma City, Okla., Anadarko Area;

John Shaw (Osage), Burbank, Okla., Muskogee Area; Peter Homer Jr. (Mojave), Phoenix, Ariz., Phoenix Area; Victor Sarricino (Laguna Pueblo), Laguna, N.M., Gallup Area; Victoria Gokee (Lac du Flambeau Chippewa), Madison, Wisc., Minneapolis Area; and Eugene Begay (Navajo-Chippewa) Sarasota, Fla., Southeast Area.

American Indian Press Association Release, November 2, 1973

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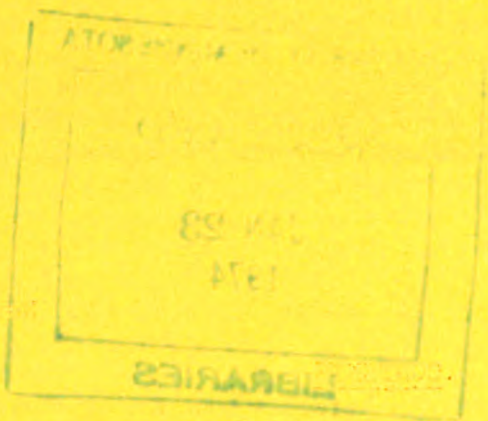

CONGRESSIONAL ACTIVITY

COMMITTEE MEETINGS

SENATE

Indian Health Services

Committee on Interior and Insular Affairs: Subcommittee on Indian Affairs began general oversight hearings on Indian Health Service recruitment problems, receiving testimony from Dr. Everett Rhoades, National Indian Health Advisory Council of the Association on American Indian Affairs; Rosemary Wood, American Indian Nursing Association; Dr. Charles Allen, Rosebud Indian Health Service Hospital, Rosebud, S.Dak.; Dr. Philip K. Olson, Minneapolis; and Sonny Waln, director, Health Programs, Rosebud Sioux Tribe, Rosebud, S. Dak.

Hearings continue tomorrow.

November 19, 1973; 119 C.R. 178, D1314

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Hearings were adjourned subject to call.

November 20, 1973; 119 C.R. 179, D1321

Indian Policy Review Commission and Morris Thompson Nomination Approval	Committee on Interior and Insular Affairs reconsidered its action of October 2 when it ordered favorably reported S.J. Res. 133, providing for the establishment of an American Indian Policy Review Commission, agreed to an additional amendment thereto, and again approved the bill for reporting to the full Senate. Committee ordered favorably reported the nomination of Morris Thompson, of Alaska, to be Commissioner of Indian Affairs. November 27, 1973; 119 C.R. 182, D1333

HOUSE

Navajo-Hopi Settlement	Committee on Interior and Insular Affairs: Subcommittee on Indian Affairs began markup of H.R. 5647, 7679, 7716, and 10337, Navajo-Hopi legislation, and will resume markup on Thursday, November 29. November 27, 1973; 119 C.R. 182, D1335
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COURT DECISION

The United States Supreme Court, on November 19, 1973, decided the case of:

Department of Game of State of Washington
v. The Puyallup Tribe

In 1963, the Washington Departmet of Game brought this action against the Puyallup Tribe claiming they were subject to the State's laws that prohibited net fishing at their usual and accustomed places

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SENATE

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HOUSE

Navajo-Hopi Settlement

Committee on Interior and Insular Affairs: Subcommittee on Indian Affairs began markup of H.R. 5647, 7679, 7716, and 10337, Navajo-Hopi legislation, and will resume markup on Thursday, November 29.

November 27, 1973; 119 C.R. 182, D1335

Navajo-Hopi Settlement

Committee on Interior and Insular Affairs: Subcommittee on Indian Affairs continued markup of H.R. 5647, 7679, 7716, and 10337 Navajo-Hopi legislation, and will resume markup on Thursday, December 6.

November 29, 1973; 119 C.R. 184, D1350

COURT DECISION

The United States Supreme Court, on November 19, 1973, decided the case of:

Department of Game of State of Washington
v. The Puyallup Tribe

In 1963, the Washington Departmet of Game brought this action against the Puyallup Tribe claiming they were subject to the State's laws that prohibited net fishing at their usual and accustomed places

and seeking to enjoin the Tribe from violating the State's fishing regulations. The Supreme Court of Washington held that the Tribe had protected fishing rights under the Treaty of Medicine Creek and that no injunction may be issued restraining any member from fishing at a usual fishing place of the Tribe unless the member was violating a state statute or regulation "which has been established to be reasonable and necessary for the conservation of fishing." 70 Wash. 2d 245, 262.

Justice Douglas delivered the majority opinion and Justice White filed a concurring opinion, joined by Chief Justice Burger and Justice Stewart; there were no opposing votes or dissenting opinions. Douglas states that Washington's ban on all net fishing for steel head trout, (the method used by the Indians), in effect grants the entire run to sports fishermen. This is held to be discrimination against the Indians under the Treaty of Medicine Creek. The Court holds that the State of Washington must find ways to accomodate the rights of the Indians under the Treaty with the rights of other people and also find a way to conserve the species of steel head trout without prejudicing the rights of either net or hook-and-line fishermen.

DECISIONS OF THE BUREAU OF INDIAN AFFAIRS

The Bureau of Indian Affairs gave notice of the proposed addition of Part 60 to Subchapter G, Chapter I, of Title 25 of the Code of Federal Regulations. Part 60 would govern the method of planning for the use or distribution of funds from judgments awarded by the Indian Claims Commission and the United States Court of Claims.

The text of the proposed Part 60 is printed in full on pages 31430-31432 along with the address to which comments may be sent before December 14, 1973.

November 14, 1973; 38 F.R. 219, pp. 31430

The Bureau of Indian Affairs announced that, effective November 23, 1973, chapter 14H of Title 41 of the Code of Federal Regulations is amended. The amendment deals with internal Bureau procedures and primarily reflects organizational and title changes.

November 23, 1973; 38 F,R. 225, pp. 32258

CIVIL SERVICE COMMISSION INVESTIGATES B.I.A. VIOLATIONS

Washington, D.C.--The Bureau of Indian Affairs (BIA) central office has violated Civil Service Commission (CSC) regulations in moving its employees around and placing them on over-extended "acting details" to other offices, charges the CSC, which has ordered a "prompt and thorough review" of the situation and an "early report" to bring about full compliance with CSC requirements.

CSC staff began an investigation into the rotation of BIA central office employees following two letters requesting such an investigation of the matter from Sen. James Abourezk, D-S.D., chairman of the Senate Indian Affairs Subcommittee, on Sept. 21 and again on Oct. 16.

Abourezk's concern, as stated in his two letters, what that the shuffling and detailing of BIA employees was part of an overall plan to reorganize the BIA by whittling away at excess or politically unacceptable employees through such procedures. Abourezk has been a vocal and powerful opponent of the BIA reorganization plans for several months past.

At Abourezk's behest the CSC met with representatives of the Interior Department and the BIA. CSC staff found that during a "period of transition" between one form of central office organization and its projected reorganization, a number of BIA employees had been put on other interim assignments--including high level managerial posts--and that lines of authority inside the BIA had been changed as well. CSC staff also found that BIA employees had been assigned to their new temporary duties beyond the legal CSC limit of 120 days.

Both Interior and the BIA refused to discuss the matter in general or in particular with the press. Responsibility for the forthcoming Interior Department report to the CSC on the matter, however, lay with John F. McKune, Interior's director of Personnel Management.

A Senate subcommittee source told AIPA that since the BIA had altered its structure from an original 13 offices to six, that the entire central office and its personnel would fall under the Interior Department report.

Wrote CSC Executive Director Bernard Rosen to Abourezk on the matter in a letter dated Nov. 19:

"Because of the scope of this situation, in that it encompasses the entire central office of the Bureau, plus the involvement of the (Interior) Department in the reorganization decisions leading to it, we have told the Department to conduct a prompt and thorough review. We have also asked for an early report from the Department on the action being taken to bring about full compliance with (Civil Service) Commission requirements.

"As far as current improper details over 120 days are concerned, the Bureau can come into compliance with Commission requirements by returning the employees to their official positions, by officially reassigning or promoting the employees if applicable merit promotion requirements are met, or by obtaining Commission approval for extension of the details.

"Commission approval will not be granted unless the agency can demonstrate that a detail is the only practical means by which it can get the necessary work done and that employee equity will not be adversely affected. We would also like to point out that should any employee be affected by reduction in force or adverse action by the reorganization, the Bureau will have to follow established procedures and employees will have applicable appeal rights to the Commission."

On the matter of BIA reorganization itself, Rosen wrote:

"It is our understanding that steps have been taken to put a new organizational structure into effect within the central office of the Bureau, but that the final form of the new organization is still under consideration by the Department."

"The nature of the Bureau's reorganization is not subject to review or investigation by the Commission. Each agency has the authority to determine how it will plan its work and organize its work force to accomplish its mission. The decision to reorganize and the resulting organizational structure are the responsibility of agency management."

American Indian Press Association Release, November 20, 1973

WHITE HOUSE PREPARES TO ANSWER WOUNDED KNEE INTERROGATIVES

Washington, D.C.--Officials in the Justice and Interior Departments have set to work preparing responses for the White House on a "Bill of Particulars" including 15 questions on the 1868 Treaty of Fort Laramie submitted here by lawyers and defendants of the Wounded Knee springtime takeover on Nov. 19.

The Bill of Particulars, with specific treaty questions related to the ongoing federal responsibility to the Lakota Nation under terms

of the 105-year-old treaty, was drafted by experts and submitted to White House Minority Affairs Special Assistant Bradley F. Patterson Jr. here by Sioux lawyer and author Vine Deloria Jr.

Patterson told AIPA the Sioux treaty questions were "valid and responsible" and "we'll respond seriously and honestly. They are serious questions in terms of their realism. They aren't at all like the Trail of Broken Treaties 20 Points, which were 'blue skies' ideas--and everybody knew that."

Federal officials now at work on the treaty questions in Justice are Walter Johnson and Craig Decker; at Interior Solicitor Kent Frizell and Charles Soller. Decker, Frizell and Soller were members of the original White House Task Force on Wounded Knee who met with Wounded Knee representatives at Kyle, S.D., following the May evacuation of that beseiged village.

Patterson cautioned that the eventual White House response to the treaty questions could not jeopardize or prejudice a Sioux claims case on the famed Black Hills land now pending before the Indian Claims Commission (ICC). Patterson said responses had been sought from Marvin L. Franklin, assistant to the Interior Secretary on Indian Affairs and Indian Commissioner-designate Morris Thompson. No deadline for responses had been imposed by the White House, added Patterson.

Behind the presentation of the 15 treaty questions to the White House was apparent dissatisfaction with repeatedly aborted plans to schedule a top-level meeting between the Wounded Knee representatives and the White House Task Force. Plans had continuously run afoul on a second top-level meeting since the first May meeting between the two parties.

Accompanying Deloria on the treaty issues journey was Russell C. Means (Oglala Sioux), a leader of the Wounded Knee occupation now awaiting trial on Jan. 8 from charges arising from that action. Patterson declined to meet with Means on the grounds it might appear the White House was involved in "plea bargaining" over those charges. Means is also a candidate for the Oglala Sioux tribal presidency this winter, and Patterson said the refusal to meet with Means was a preventive measure to insure there was no appearance of meddling in tribal elections.

"Somebody for sure would accuse us of intervening on the reservation" said Patterson, who pointed to the nearby Rosebud Sioux elections at the end of October where the victor, Robert Burnette, defeated the incumbent chairman, Webster Two Hawk, by a slender 200 votes. Patterson told AIPA the White House Task Force was still willing and interested in meeting with Wounded Knee representatives Matthew King, Frank Fools Crow, and chief legal counsel Ramon Roubideaux. He said any future meeting with them would not be aborted because of the January opening of the first of the Wounded Knee trials.

Washington, D.C.--Following is the full text of 15 specific questions on the continuing applicability of the 1868 Treaty of Fort Laramie submitted to the White House here Nov. 19 by lawyers and defendants of the springtime occupation of Wounded Knee:

QUESTION ONE: "Does the United States of America regard the treaty of April 29, 1868..., ratified Feb. 16, 1869, and proclaimed by the President of said nation on Feb. 24, 1869 as a valid legal document binding the Lakota Nation and the United States in a legal relationship? (a) If the United States does not regard this treaty as a valid and legally binding document at what point did the United States disclaim or delcare invalid such treaty? (b) If the United States does not regard this treaty as a valid and legally binding document, what doeument does the United States regard as legally binding upon either party or both parties? (c) If the United States does not regard this treaty as valid and legally binding upon it, what is the basis for the claim by the United States that it has any jurisdiction over the people of the Lakota Nation at all?"

QUESTION TWO: "What is the current status of the 1868 Treaty? (a) What articles of this treaty does the United States regard as binding upon it? (b) What articles of this treaty does the United States believe that it has fulfilled? (c) What articles of this treaty does the United States admit having not yet fulfilled?"

QUESTION THREE: "With respect to Article I of said treaty, we regard the dispatch of federal marshals to the Pine Ridge Indian Reservation last winter as a violation of said article in that such behavior violates the provision and promise of Article I that the United States 'desires peace, and they now pledge their honor to maintain it.' How does the United States justify its invasion of the lands of the Oglala Band of the Lakota Nation by federal marshals last winter?"

QUESTION FOUR: "With respect to Article II of said treaty, we regard the building of dams on the Missouri River as a violation of the treaty which continues until the present in that the United States has unilaterally and unconstitutionally deprived the Lakota people of their rights to use all of said Missouri River, the totality of said river laying within the boundaries of the Lakota Nation. What position does the United states take with respect to this violation?

QUESTION FIVE: "With respect to Article III of said treaty, we regard the acts of the United States consequent to the Treaty of 1868 as violations of this article in that we are unaware of any effort by the United States to determine the amount of arable land suitable for the people of the Lakota Nation. Does the United States maintain that it has fulfilled this article of the treaty? If so, when? And how?"

QUESTION SIX: "With respect to Article V of the treaty, we maintain that the United States has failed to enforce the provisions of this article to the benefit of the Lakota people and that far from keeping the agent's office open to investigate cases of depredation of person and property the agent and his successor the superintendent have aided and abetted such depredation at Wounded Knee. If the United States feels that it has performed its duties under this article in good faith, can it list its efforts to perform its duties and their results?"

QUESTION SEVEN: "With respect to Article VI of the treaty, we maintain that the procedures described in this article were the only means open to either the Lakota people or the United States to allot the lands of the Lakotas. We maintain that the United States, in fraudulently allotting the lands of the Lakotas has violated this article of the treaty. Does the United States claim that it has either fulfilled or followed the procedures described in this article in making allotments of the lands of the Lakotas? If so, how?"

QUESTION EIGHT: "With respect to Article VII of the treaty, we maintain that this article provides for a special and ongoing educational program for the Lakota people. We maintain that the United States has not fulfilled the provisions of this article and remains liable to the Lakota people in the field of education. Does the United States maintain that it has fulfilled this article of the treaty? If so, how?"

QUESTION NINE: "With respect to Article VIII of this treaty, we demand an accounting of the fulfillment by the United States of the provisions of this treaty."

QUESTION TEN: "With respect to Article X of this treaty, we demand an accounting of the fulfillment by the United States of the provisions of this treaty."

QUESTION ELEVEN: "With respect to Article XI of this treaty, we declare that we, the Lakota Nation, have fulfilled this provision. Does the United States maintain that it has fulfilled the provisions of this article of the treaty? If so, when? And how?"

QUESTION TWELVE: "With respect to Article XII of this treaty, we maintain that the ratification by Congress of this treaty foreclosed the use by the United States of America any other possible means of gaining additional land cessions from the Lakota Nation. Does the United States feel that it has fulfilled the provisions of this article of the treaty? If so, when? And how?"

QUESTION THIRTEEN: "With respect to Article XV of this treaty, we maintain that when the Lakota people accepted the reservation outlined in this treaty as a permanent home such acceptance thereby foreclosed any cession of jurisdiction by the United States over the Lakota Nation. How does the United States interpret the phraseology 'permanent home'?"

QUESTION FOURTEEN: "With respect to Article XVI, how does the United States interpret the phrase 'unceded Indian territory'?"

QUESTION FIFTEEN: "With respect to Article XVII of this treaty, how does the United States interpret this article insofar as it only abrogates those portions of previous treaties and agreements that obligate the United States to provide money, clothing, or other articles of property?"

American Indian Press Association Release, November 21, 1973

INDIAN JUDGMENT FUNDS TO BE CONTROLLED BY INTERIOR

Washington, D.C.--The role of federal regulations in the lives of Indian people is being highlighted by a flap which has already developed over the Interior Department's proposed regulations implementing the Omnibus Judgment Distribution Act enacted on Oct. 19, according to Bureau of Indian Affairs (BIA) officials.

The act returns to the executive branch a power Congress took away in the early 1950s to approve distributions of monies won by Indian tribes, bands and groups before the Indian Claims Commission (ICC). Under the terms of this act, the Secretary of the Interior working with tribes creates a plan of distribution and submits it to Congress. The distribution plan becomes effective after 60 days unless either house of Congress objects. Then the method of distribution is turned over to Congess to decide through legislation.

The proposed Interior Department regulations were published in the Federal Register on Nov. 14. Interested parties had until this Dec. 14 to submit their objections to them. Immediate objections were raised by high level Interior officials to the proposed regulation regarding the 20 percent programming of judgment funds required by the act.

Those Interior officials felt the drafters of the proposed regulations interpreted too strictly the following language of the act:

"A significant portion of such funds shall be set aside and programmed to serve common tribal needs, education requirements and such other purposes as the circumstances of the affected Indian tribe may justify, except no less than 20 per centum of such funds shall be so set aside and programmed unless the (Interior) Secretary determines that the particular circumstances of the pertinent Indian tribes clearly warrant otherwise."

The drafters of the new regulations interpreted that provision thus:

"In assessing the programming percentage contained in a proposed plan (for judgment distribution) the Secretary shall consider

the following factors: the percentage of tribal members residing on or near the subject reservation, including trust land areas in Oklahoma or Alaska Native villages; the formal education level and the general level of social and economic adjustment of such reservation residents; the nature of recent programming affecting the subject tribe or group and particularly the reservation residents; the needs and aspirations of any local Indian communities or districts within the reservation and the nature of organization of such local entities; the feasibility of the participation of tribal members not in residence on the reservation; and the availability of funds for programming purposes derived from sources other than the subject judgment."

The proposed regulation, according to its critics, does not point out that the 20 percent programming language in the act is not a "hard and fast rule" but a lesser amount can be programmed if circumstances warrant.

Regulation drafting is one of the more obscure and most important steps on the road from idea to legislation to act to actuality. Vine Deloria Jr., noted attorney and author, has said:

"Once you get to the final clauses in a lot of legislation the concluding phrases usually say, 'The Secretary of the Inteiror shall have the authority to promulgate rules and regulations necessary to carry out the intent of this act.' In effect, what this does is take the legislative process, as far as defining how the law operates, and hand it over without any controls or guidelines whatever to the Bureau of Indian Affairs, the Department of Interior and particularly the Solicitor's Office.

"Here is where the rules and regulations are drawn up laying down guidelines as to how the BIA will administer this particular law. This is where much of the policy on Indians is actually made and this, I think, is one of the major reasons why we have the conditions that we have on the reservation."

This situation as described by Deloria obtains because there is much room in most laws for creative interpretation and just plain creativity on the part of the drafters of federal regulations.

For example, nowhere in the Omnibus Judgment Distribution Act of 1973 do the words "aggrieved historic tribe," "successor tribe" or "descendant group" appear. Yet they appear in the proposed regulations.

The matter of which tribe, tribes or individuals should participate in a claims award has always been an item of controversy in Indian country. It has been the primary reason for the delay in the distribution of many judgments. To whom does the money from a claims award belong? A modern tribe? Only a descendant of an ancient tribe? Three tribes?

The act states, "The Secretary shall prepare a plan which shall best serve the interests of all those entities and individuals entitled to receive funds of each Indian judgment."

On what basis does the Secretary decide who is entitled to receive funds? According to the new proposed regulations the BIA is to research all pertinent data in the areas of cultural and political history and all pertinent rolls or records are to be considered.

"The results of such research shall specify a successor tribe (or tribes) to an aggrieved historic tribe, combinations of tribes and portions of tribes, a descendant group (or groups) or any combination of such entities found to be representative of an aggrieved historic tribe. If more than one entity is determined to be eligible to participate in the use or distribution of the funds the results of the research shall include a formula for the division or apportionment of the judgment funds among or between the involved entities," the proposed regulations state.

Here, the drafters have made part of federal law a system of distribution of judgment awards which has been used before by Congress--but which is not necessarily the only, best or moral way to distribute the funds.

Who decides what is a "successor tribe" or a "descendant group"? According to the proposed regulations, that is done by the Secretary of the Interior.

American Indian Press Association Release, November 21, 1973

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This comprehensive directory of more than 600 American Indian newspapers, magazines, news services, publishing houses, radio broadcasts, television training centers and telecasters, film production enterprises, music listings and theater organizations, agencies, groups and programs is the first statistical look at Indian media involvement in these areas. The directory includes addresses, telephone numbers, subscription and advertising rates, and statistics on urban and reservation Indian populations. A reference book with a multitude of uses, it includes an index for easy reference use.

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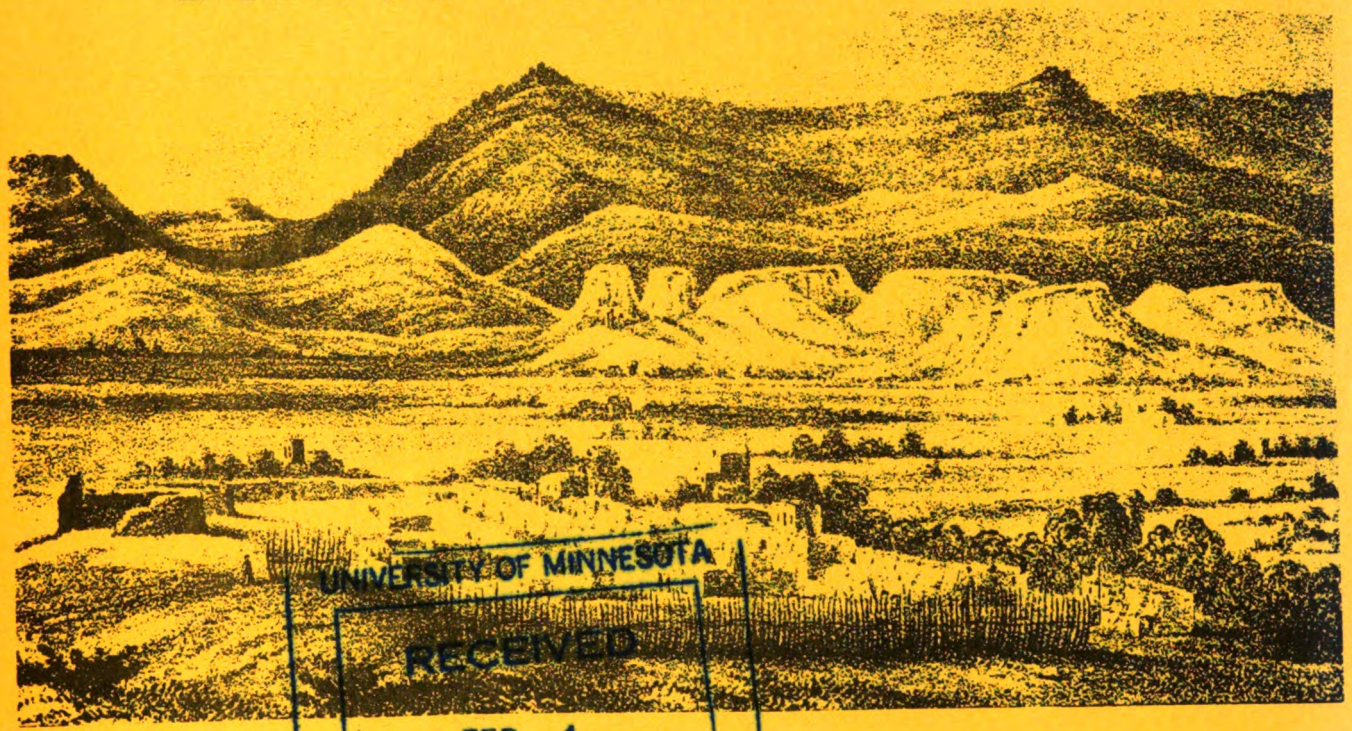

VOLUME 6, NUMBER 15 January 2, 1974

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SCHOOL OF LAW

This issue covers the Congressional Record, Volume 119, No. 189-No. 202, December 1-December 21, 1973; and the Federal Register, Volume 38, No. 227-Volume 39, No. 1, November 27, 1973 -January 2, 1974.

A PUBLICATION OF THE UNIVERSITY OF NEW MEXICO SCHOOL OF LAW, AMERICAN INDIAN LAW CENTER

CONGRESSIONAL ACTIVITY

BILLS INTRODUCED

HOUSE

State Jurisdiction over Indian Lands

H.R. 11748. A bill to extend State jurisdiction over certain lessees of Indian lands; to the Committee on Interior and Insular Affairs

December 3, 1973; 119 C.R. 188, H10543

Potawatomi Lands

H.R. 11890. A bill to declare that the United States hold certain lands in trust for the Citizen Band of Potawatomi Indians of Oklahoma; to the Committee on Interior and Insular Affairs.

December 11, 1973; 119 C.R. 194, H 11154.

Apache, Kiowa, Comanche Lands

H.R. 11949. A bill to declare that certain federally owned land is held by the United States in trust for the Kiowa, Comanche, and Apache Indian Tribes of Oklahoma; to the Committee on Interior and Insular Affairs.

December 13, 1973; 119 C.R. 196, H 11360.

Ute Lands

H.R. 1197. A bill to authorize the sale and/or exchange of certain lands owned by the Ute Mountain Ute Indian Tribe in order to consolidate and obtain more intensive management on tribal land resources, and for other purposes; to the Committee on Interior and Insular Affairs.

December 18, 1973; 119 C.R. 199, H 11673.

SENATE

Interior Department

S. 2777. A bill to establish within the Department of the Interior an additional Assistant Secretary of the Interior for Indian Affairs, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

December 4, 1973; 119 C.R. 189, S 21767.

Apache, Kiowa Comanche Lands

S. 2818. A bill to declare that certain federally owned land is held by the United States in trust for the Kiowa, Comanche, and Apache Indian Tribes of Oklahoma. Referred to the Committee on Interior and Insular Affairs.

December 14, 1973; 119 C.R. 197, S 22889.

BILLS REPORTED

HOUSE

Assistant Secretary of Interior.

House disagreed to the amendment of the Senate to H.R. 620, to establish within the Department of the Interior an additional Assistant Secretary of the Interior for Indian Affairs; and returned the measure to the Senate.

December 19, 1973; 119 C.R. 200, D 1463

SENATE

Indian Policy Review Commission

S.J. Res. 133, providing for the establishment of an American Indian Policy Review Commission, with Amendments (S. Rept. 93-594).

December 3, 1973; 119 C.R. 188, D 1367.

Indian Lands

H.R. 5089, determining the rights and interests of the Choctaw Nation, The Chickasaw Nation, and the Cherokee Nation in and to the bed of the Arkansas River, Oklahoma, (S. Rept. 93-603); and

Menominee Termination

H.R. 10717, to repeal the act terminating Federal supervision over property and members of the Menominee Indian Tribe of Wisconsin, with amendments (S. Rept. 93-604).

December 6, 1973; 119 C.R. 191, D 21985.

Department of Interior

H.R. 620, establishing within the Department of the Interior an Assistant Secretary for Indian Affairs, with an amendment (S.Rept. 93-623).

December 13, 1973; 119 C.R. 196, D 1428.

COMMITTEE MEETINGS

HOUSE

Disposition of Lands

Committee on Interior and Insular Affairs: Subcommittee on Public Lands held an information hearing on the recommendations of the Department of Interior regarding the disposition of D-2 lands set aside under the Alaska Native Claims Settlement Act of 1970. Testimony was heard from Assistant Secretary of Interior Laurence Lynn, Jr.

December 4, 1973; 119 C.R. 189, D 1378.

Disposition of Lands

Committee on Interior and Insular Affairs: Subcommittee on Public Lands held an informational hearing on the recommendations of the Department of Agriculture regarding the disposition of D2 lands set aside under the Alaska Native Claims Settlement Act of 1970. Testimony was heard from Assistant Secretary of Agriculture Robert W. Long.

December 6, 1973; 119 C.R. 191, D 1395.

Hopi and Navajo Tribes Surface Rights

Committee on Interior and Insular Affairs: Subcommittee on Indian Affairs met and approved for full committee action H.R. 10337 amended, to authorize the partition of the surface rights on the joint use area of the 1882 Executive Order Hopi Reservation and surface and subsurface rights in the 1934 Navajo Reservation between the Hopi and Navajo Tribes, and to provide for allotments to certain Paiute Indians.

December 11, 1973; 119 C.R. 194, D 1416.

Assistant Secretary of Interior

Committee On Interior and Insular Affairs: Met and adopted a motion directing the Chairman to disagree to the Senate amendment, returning the bill to the Senate, to H.R. 620, to establish within the Department of the Interior an additional Assistant Secretary of the Interior for Indian Affairs.

December 19, 1973, 119 C.R. 200, D 1465.

SENATE

Menominee Termination

Committee on Interior and Insular Affairs: Committee in an open business meeting, ordered favorably reported the following measures:

H.R. 10717, to repeal the act terminating Federal supervision over property and members of the

Menominee Indian Tribe of Wisconsin (amended); and

Indian Lands

H.R. 5089, determining the rights and interests of the Choctaw Nation, the Chickasaw Nation, and the Cherokee Nation in and to the bed of the Arkansas River, Oklahoma.

December 4, 1973; 119 C.R. 189, D 1376.

Assistant Secretary of the Interior

Committee on Interior and Insular Affairs: Committee ordered favorably reported H.R. 620, establishing within the Department of the Interior an Assistant Secretary for Indian Affairs.

December 13, 1973; 119 C.R. 196, D 1431.

Indian Education Programs

Committee on the Judiciary: Subcommittee on Administrative Practice and Procedure began oversight hearings on the fiscal and education accountability of the Office of Education and the Bureau of Indian Affairs in administering Indian education programs, receiving testimony from Ramona Osborne, Education Administration Specialist, Division of Education, Bureau of Indian Affairs, Department of the Interior, Kirke Kickingbird and Lynn Shelby, both of the Institute for the Development of Indian Law, Washington, D.C.; Myron Jones, Indian Education Training, Inc., Washington, D.C.; Gerald Clifford, Coalition of Indian Controlled School Boards, Longmont, CO. Hearings were recessed subject to call.

December 13, 1973; 119 C.R. 196, D 1431.

MEASURES PASSED

HOUSE

Repeal of Menominee Termination

House agreed to the amendments of the Senate to H.R. 10717, to repeal the Act terminating Federal supervision over the property and members of the Menominee Indian Tribe of Wisconsin as a federally recognized, sovereign Indian tribe; clearing the measure for the President.

December 17, 1973; 119 C.R. 198, P. 11534-35.

SENATE

Indian Policy Review Commission

Senate took from calendar, passed with committee amendments, and cleared for the House S.J. Res. 1[illegible] providing for the establishment of an American Ind[illegible] Policy Review Commission.

December 5, 1973; 119 C.R. 190, pp. 21879-21881.

Choctaw Indians

Senate took from calendar, passed without amendment, and cleared for the White House H.R. 5089, determining the rights and interests of the Choctaw Nation, the Chickasaw Nation, and the Cherokee Nation in and to the bed of the Arkansas River, Oklahoma

December 7, 1973; 119 C.R. 192, p. 22257.

Menominee Termination

Senate took from calendar, passed with committee amendments, and returned to the House H.R. 10717, to repeal the act terminating Federal supervision over property and members of the Menominee Indian Tribe of Wisconsin.

December 7, 1973; 119 C.R. 192, P. 22257.

Assistant Secretary of Interior

Senate cleared for the White House H.R. 620, establishing within the Department of the Interior an Assistant Secretary for Indian Affairs (with further technical amendments).

December 14, 1973; 119 C.R. 197, D 1436.

Assistant Secretary of Interior

Senate insisted on its amendments to H.R. 620, establishing within the Department of the Interior an Assistant Secretary for Indian Affairs, requested conference with the House, and appointed as conferes Senators Jackson, Metcalf, Abourezk, Bartlett, and Stevens.

December 19, 1973; 119 C.R. 200, D 1462.

BILLS SIGNED BY THE PRESIDENT

Indian Land Rights

H.R. 5089, determining the rights and interests of the Choctaw Nation, the Chickasaw Nation, and the Cherokee Nation in and to the bed of the Arkansas River, Oklahoma. Signed December 20, 1973, (Public Law 93-195).

December 21, 1973; 119 C.R. 202, D 1475.

"Delegation"	The Bureau of Indian Affairs announced the delegation of all the power and authority of the Area Director of the Aberdeen Area Office to the Deputy Area Director of that office. November 28, 1973; 38 F.R. 288, p. 32826.
"Protest Rejected"	The BIA announced the rejection of a protest filed by the Department of the Navy, Naval Petroleum and Oil Shale Reserves, against the determination of eligibility of the Atkasook, Alaska, under the Alaskan Native Claims Settlement Act. The Director of the Juneau Area Office has found no merit in the protest and has upheld the determination of eligibility. November 29, 1973; 38 F.R. 229, p. 32958.
"Indian Judgement Funds"	A hearing was held in Denver, December 13, on proposed rules for implementing the Use of Distribution of Indian Judgement Funds Act of 1973, (87 Stat. 466, 467,468). December 4, 1973, 38 F.R. 232, p. 33401.
"Navajo-Hopi Rules"	The B.I.A. announced proposed rules governing grazing on the Navajo-Hopi Joint Use area. December 4, 1973; 38 F.R. 232, p. 33402
"Alaskan Eligibility"	The Bureau of Indian Affairs announced the final determination of eligibility of Kokhanok Village under the Alaska Native Claims Settlement Act. The B.I.A. announced that its determination of Pauloff Harbor as being ineligible was being appealed. The B.I.A. also announced the final determination of the village of Unga, Alaska as eligible under the Alaska Native Claims Settlement Act. December 6, 1973; 38 F.R. 234, pp. 33620-33621.
"Eligibility Protested"	The B.I.A. announced the filing of appeals protesting the determination of eligibility of three Alaskan villages under the Alaskan Native Claims Settlement Act: Afognok, Chitina and Kaguyok, Alaska. December 10, 1973; 38 F.R. 236, pp. 33999-34000.

"BIA Increases Water Charges"

The B.I.A. issued final regulations raising the rates for water charges on three irrigation projects: the Ahtanum Indian Irrigation Project, the Wapato Indian Irrigation Project and the Toppenish-Simco Indian Irrigation Project.

December 12, 1973; 38 F.R. 238, pp. 34189-34190.

Alaskan Eligibility"

The B.I.A. announced the final determination of eligibility of Point Jay, Nooiksut, Manley Hot Springs, Salamatof, Uyok and Kasaan, Alaska. Protests have been filed challenging the eligibility of these villages.

December 12, 1973; 38 F.R. 238, pp. 34210-34214.

The B.I.A. announced the final determination of ineligibility of Seldovia, Alaska under the Alaskan Natives Claims Settlement Act.

"Periods of Trust Extended"

The B.I.A. announced the issuance of an order providing that the periods of trust or other restrictions against alienation contained in any patent applying to Indian lands, whether of tribal or individual status, which, unless extended would expire during calendar years 1974 through 1978, are extended until January 1, 1979.
This order does not apply to any case in which Congress has specifically reserved to itself authority to extend the period of trust or tribe or individual Indian lands.

December 14, 1973; 38 F.R. 240, p. 34463.

"Appeals Procedures Amended"

The BIA announced proposed amendments to regulations governing hearing and appeal procedures under the Bureau of Indian Affairs.

December 19, 1973; 38 F.R. 243, p. 34812

The BIA gave notice that it is proposed to amend Department Hearings and Appeals Procedures in 43 C.F.R. Part 4, to provide for the taking of appeals direct to the Interior Board of Indian Appeals by persons aggrieved by administrative actions of BIA officials.

December 19, 1973, 38 F.R. 243, p. 34812.

"Alaskan Eligibility" — The BIA announced final determinations of eligibility or ineligibility of certain unlisted Native Villages under the Alaskan Native Claims Settlement Act.

December 21, 1973; 38 F.R. 245, p. 35028.

LAW REVIEW ARTICLES

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1. "Indian Law: The Pre-emption Doctrine and Colonias de Santa Fe". 13 National Resources Journal 535, July 1973.

2. "Res judicata - Judgment in Suit Between Navajo and Hopi Tribes Held to Estop Individual Navajo Indians not Parties to the Prior Suit from Asserting Aboriginal Title Claim to Ancestral Lands." 26 Rutgers Law Review 909. Summer 1973.

3. "Indian Property and State Judgement Executions." 52 Oregon Law Review 313. Spring 1973.

4. "Indian Schools and Community Control." 25 Stanford Law Review 489. April 1973.

5. "Indian Patrol in Minneapolis: Social Control and Social Change in an Urban Context." 7 Law and Society Review, 799. Summer 1973.

6. "Ruiz v. Morton (462 F.2d 818): B.I.A. Welfare Extended to All American Indians." 3 NYU Review of Law and Social Change 201. Spring, 1973.

THOMPSON FACES PROBLEMS AS NEW COMMISSIONER

Washington, D.C. The ascension of Morris Thompson to the post of the Indian Commissioner presents an opportunity to explore the power and the effectiveness of the position as it relates to the political realities of this city and to the political realities affecting Indian America.

Previous Indian Commissioners, in the eyes of many Indians, were assumed to have almost godlike powers to do good or ill for Indians. Recent years and more approachable Commissioners have done much to reduce and to eliminate much of that mystique surrounding the men and the office.

And in status-conscious Washington, one must determine just how much power and effectiveness can be given to any Commissioner. One must determine the kind and quality of current controversies raging when that man takes the oath of office, as Thompson did on the morning of December 3.

Thompson arrives midstream in the tide of the troubled Nixon administration, with four individuals preceding him at the helm of the BIA--Robert L. Bennett, Louis R. Bruce, Richard S. Bodman and Marvin L. Franklin--during the Nixon era. There are general problems he inherits in his position--long-standing problems inherent in the current picture of Indian affairs. There are also numbers of specific problems in the current season of the trouble-plagued Bureau of Indian Affairs (BIA) which Thompson inherits, and which he will either master or succumb to.

First, the general problems of the BIA:

The BIA, sitting beneath the powerful Department of the Interior, collides with the many other powerful interests of its sister sub-agencies such as the Bureau of Reclamation and the like. Thompson's position is somewhat improved over that of his predecessors, in that he will no longer have indirect lines to the Secretary of the Interior, but, in federalese, will "report directly" to Interior Secretary Rogers C.B. Morton. But some barriers between Thompson and Morton will remain arising from the "conflict-of-interest" situation where other sub-agency heads vie for Morton's ear with their own special interests. Thompson will not always be heard or heeded.

Although there has been solid rapport between the executive branch and the U.S. Congress on basic Indian policy since the inception of the Nixon administration in 1969, the fact that the Democrats rather than Republicans control the Congress will inevitably restrict the initiatives of the Indian Commissioner. And the Senate Indian Affairs Subcommittee, which took to task Thompson's predecessor Marvin Franklin, promises close scrunity of the BIA and Interior and intermittent opposition, particularly on any continuing plans to "reorganize" the BIA.

Since the Indian Commissioner works for the President and the Interior Secretary, Thompson has to please Nixon and Morton or be fired. Thompson may find himself in the position of championing clear Indian desires or opposing aspects of policy because of an Indian mandate, and meeting great conflicts with presidential or secretarial policy. One critical instance of this potential conflict emerged during the tenure of former Indian Commissioner Louis R. Bruce, whose key staffers advocated the extension of BIA services to all Indians regardless of residence in the face of a narrower hard-line Nixon administration policy. Bruce paid dearly for his advocacy.

Second, Thompson is now immersed in the ongoing hot political controversies and disputes within the walls of Interior and the BIA.

Top on the hotseat issues is that of reorganizing the BIA--in pre-Nixon years a non-controversial in-house management and office shuffle. In the works now for over a year and one of the most volatile and strident of the public Indian controversies, the new reorganization plan is only partially in effect. Thompson has to do something to make the BIA all of one piece or another in order to have the BIA machinery working properly. Personnel are scattered about in temporary positions and no clear office structures have yet been set in shape. No matter what Thompson does on this matter he will probably make some segment unhappy--the Indian community, Interior, the White House--and he will be forced to spend time combatting dissidents or compromising with them.

Thompson also falls heir to the political divisions within the national Indian community, with diverse constituencies and the diverse interest of rural conservative Indians, urban Indians, militant Indians, mainstream Indians and others. The National Congress of American Indians (NCAI) and National Tribal Chairmen's Association (NTCA) are split on many BIA-related issues. The American Indian Movement (AIM) and many tribal chairmen are at loggerheads. And whichever way Thompson goes, he will draw flak and have to spend time again combatting dissidents and compromising.

A pending Supreme Court case, Ruiz v. Morton. will determine whether Thompson's BIA must serve Indians living away from reservation trust land. Also in the courts is litigation on Indian preference in BIA hiring and promotions. The Civil Service Commission (CSC) has prodded the BIA and Interior to account for the rotations of BIA employees on the suspician that many have been exiled from power as political punishment. These legal snarles will be resolved under Thompson.

Add to this the machiavellian politics in Indian affairs both at Interior and inside the polarized BIA. At interior there are conflicting views and pressures on policy, Indian legislation and litigation. Within the BIA, there are polarized special-interest groups--the so-called "old line" bureaucrats who joined the BIA in the 1950s, the Louis Bruce loyalists, the Marvin Franklin loyalists, and now the Thompson loyalists. What gets done for Indians will be done through the labyrinth of competing political interests and styles inside the BIA.

The Watergate malaise itself also affects deeply the forward movement of Indian concerns, a "luxury item" of national concern. Thompson may well receive no critical assistance from the White House either in Congress or elsewhere while the White House is embroiled in its own defense--and survival.

Finally, only a year from now will Thompson and his yet-to-be-selected staff have the power to affect the shape of the BIA budget. They inherit the programs, priorities and spending picture for the coming year already set in concrete by Marvin Franklin. Any Thompson impact on BIA spending will have to wait a year.

Consequently the pressures on Thompson will be many, widespread and immense.

TRIBAL LEADERS ASSERT AUTHORITY

Phoenix, Arizona. It was a very serious and determined group of tribal chairmen who gathered at the second annual National Tribal Chairmen's Association (NTCA) convention here December 5-8 to define and then assert the role of the elected tribal leader in the face of continuing clamor for recognition and legitimacy made by other groups and individuals in the past few years as spokesmen for the Indian people.

From the opening salvo of Mescalero Apache President Wendell Chino on the first day of the session to the closing line of an NTCA "position paper" on Indian issues adopted on the last day, the message to the federal government, to other Indian organizations and individuals, to the news media and to the world was the same: We, the elected tribal leaders, are the official spokesmen for the federally recognized tribes."

Said Chino: "The credentials of the tribal chairmen have no equal in Indian affairs. First, we are associated and identified with a tribe; second we are elected or selected by our people to be a tribal leader which gives us the privilege and responsibility for speaking and acting on behalf of our people." That theme was echoed in the speeches made to the assembled chairmen by invited dignitaries such as Robert Robertson, executive director of the National Council on Indian Opoortunity (NCIO) and former Indian Commissioner Rober L. Bennett. Said Robertson:

"We (in NCIO), as most of you know, have hewn to the policy line of listening to the voices of the elected leaders in all that we do, in believing that we have one prime purpose in existing: to give maximal support to the elected leaders in Indian country and to do everything possible to strengthen tribal government."

Former Indian Commissioner Bennett urged the chairmen to get of the defensive and onto the offensive by laying before the nation, as the elected tribal leaders, their goals and priorities, but to do so in a statesman-like manner in welcoming back to the fold dissident Indian voices:

"You are the heart of Indian society, the reality of tribal sovereignty and you have been the keeper of the fire in the face of experiences when lesser people would have given up. You know the glory of tribal tradition, what being an Indian means, and you are the hope in framing the destiny of the Indian world. You are the manifestation of Indian life."

Counter-balancing this strong assertion of their role as spokesman for the federally recognized Indians was a recognition of the havoc which had been visited

on the Indian community by the political schisms among Indians in existence at least since the late 1960s, and an attempt at reconciliation with the other Indian groups.

That reconciliation, however, would be in terms which recognized the asserted role of the chairmen. This attitude was decidedly reflected in the adopted "position paper":

"The NTCA welcomes and appreciates the cooperation and support of everyone who has the welfare at heart in its efforts to secure self-determination and sovereignty for Indian people..."

The attitude of "reconciliation with recognition" was also evident in an interview with the newly elected NTCA President, Robert Lewis, governor of Zuni Pueblo in New Mexico. Said Lewis: "There is a place for everybody in doing what they can to assist their Indian people. ...Other organizations have expertise in certain fields that we need, and it should be utilized. We should use them as extra resources."

NCAI officers and staff including NCAI President Mel Tonesket and Executive Director Charles E. Trimble attended the NTCA session at the NTCA convention and were officially welcomes by NTCA. a number of federal officials spoke to the assembly, the highest ranking of them being Labor Secretary Peter J. Brennan and the new Commissioner of Indian Affairs. Morris Thompson.

The newly elected NTCA board enacted a number of resolutions, mostly pertaining to individual tribal issues but including one commending the efforts of NCIO Director Robertson calling for his retention in office until a "qualified Indian could be found to replace him" and another which asked "that NCIO be continued."

Officers elected were: President, Gov. Robert Lewis (Zuni) Zuni, NM; Vice President, Elmer Savilla (Quechan), Ft. Yuma, AZ; Secretary Nathan Little Soldier (Three Affiliated Tribes), Ft. Berthold, ND; Treasurer, Kenneth Black (Otoe-Missouri), Oklahoma.

Elected board of directors members were: Aberdeen Area, Herold Barse (Siseton-Sioux); Albuquerque Area, Alvino Lucero (Isleta); Anadarko Area, Lawrence Snake, (Delaware); Muskogee Area, B. Bob Stopp (Cherokee); Phoenix Area, Antone Gonzales (Colorado River); Sacramento Area, Banning Taylor (Los Coyotes Band); Central Office Area, Buffalo Tiger (Miccosukee); Billings, Juneau and Minneapolis Area members would be selected later.

JUSTICE FILES CHOCTAW DISCRIMINATION SUIT

Assistant Attorney Gen. J. Stanley Pottinger, head of the Justice Department's Civil Rights Division, on December 10 announced the filing of a civil suit against the owner of a coffee shop in Philadelphia, Mississippi, for alleged segregation of Indian customers in a rear kitchen area. Filed in U.S. District Court in Jackson, Mississippi, the suit charges Mary Ann Oxiner, owner of Mary's Coffee Shop in Philadelphia, just outside the Mississippi Choctaw Reservation, with violations of the public accommodations section of the 1964 Civil Rights Act. The suit asked for a court order enjoining Ms. Oxiner from practicing racial discrimination in the operation of her establishment and requiring her to post notices that "all persons will be served without regard to race or color."

McGOVERN ON INDIAN TREATIES

At Augustana College in Sioux Fall in his home state on December 3 Sen. George McGovern, D-S.D., was asked if he was in support of the treaty rights of Indian peopel. Said McGovern, the former chairman of the Senate Indian Affairs Subcommittee: "No, I'm not; I think the treaties were abrogated by an act of Congress over 100 years ago and that it's ridiculous to talk about the (Sioux) Treaty of 1868 being carried out." McGovern was asked about his concern for correcting the domestic ills of Indians. "Well," added the Senator, "if you start with the wrongs of that kind that go back 100 years or more, every government that exists on the face of this earth probably would have to fall."

ABOUREZK RAPS BIA EMPLOYEE LOAN

Senate Indian Affairs Subcommittee Chairman Sen. James Abourezk, D-S.D., on Dec. 14 sharply criticized the Interior Department for recent transfers of several BIA employees to Interior's Office of Oil and Gas. In a letter to Morton, Abourezk labelled the transfers "unconscionable," and that they would "further deprive the Indian citizenry of the meager services to which they are entitled." Abourezk said the transferes constituted "an additional illegal act" on top of BIA's personnel transfers to temporary details which the Civil Service Commission (CSC) in early December decided were in violation of employee rights. A spokesman for Abourezk's office said these transfers were "a specific example" of using salaries for reasons other than for what they were intended.

EASTERN INDIANS MEET IN JANUARY

From Jan. 17 to Jan. 19, The Coalition of Eastern Native Americans (CENA), now one year old, will conduct a three-day session of community development workshops for representatives of the 60 remaining Indian tribes east of the Mississippi. Workshops scheduled include those on community development, community participation, community communications, identification of funding sources, and retention of Indian culture. CENA's co-directors are W.J. Strickland, a North Carolina Lumbee, and since early fall former Indian Commissioner Louis R. Bruce, a Mohawk-Sioux. For additional information contact: Ms. Robin Shield, Coalition of Eastern Native Americans, 927 15th St., N.W., Washington, D.C. 20005. Or call (202) 638-6727.

FORD MAY MEET WITH INDIANS

When the Executive Committee of the National Congress of American Indians (NCAI) gathers in annual session in Washington, D.C. in the third week of January, its members may meet and discuss Indian concerns with Vice President Gerald Ford, who with his Dec. 6 confirmation in office and swearing-in became the chairman of the National Council on Indian Opportunity (NCIO) NCAI has already established a committee to make recommendations on the future of NCIO under Ford under the direction of NCAI President Melford Tonasket. Wrote NCAI Executive Director, Charles E. Trimble to Presidential Counsel Leonard Garment on Dec. 12: "We also respectfully request your intercession with the Office of the Vice President to arrange a meeting between members of our Executive Council and Vice President Ford on January 22 or 23, 1974. We would be most willing to sponsor a banquet or luncheon as a forum for his introduction into the area of Indian affairs."

ALASKA NATIVE CORPORATIONS BEGIN TO GET LAND IN EARLY 1974

Alaska Natives will begin to get one-twelfth of the land in their State, and a sizeable chunk of cash as well, under terms of the Alaska Native Claims Settlement Act in early 1974. This will come about through a system of corporations that is uniquely Alaskan.

The Bureau of Indian Affairs is now making up a roll of United States citizens who are of one-fourth or more Indian, Aleut or Eskimo ancestry or combination of these born on or before December 18, 1971. The roll will show each person as a resident of a region and in most cases a village and thus eligible to become a stockholder in village and regional corporations.

Alaska now has 12 Alaska Native Regional Corporations. They reflect 12 geographic sections of Alaska and are composed of Native people with a common cultural heritage and common interests. Alaska Natives who do not claim to be permanent residents of Alaska are being enrolled in one of the 12 regions of Alaska with which they have personal or ancestral ties.

The 12 corporations were established by June 30, 1972. Each was advanced about $500,000 or more from the Alaskan Native Fund -- which includes $462,500,000 to be appropriated from the general fund of the U.S. Treasury and $500,000,000 credited to the fund by the State of Alaska and Bureau of Land Management of the Department of the Interior on a revenue sharing basis.

After the Secretary of the Interior signs the roll of the Alaska Natives December 18, the regional corporations will: 1. Identify their stockholders; 2. Issue shares to stockholders; 3. Elect a board of directors; 4. Receive their first major distribution of moneys from the Alaska Native Fund; 5. Select lands for conveyance to them; and 6. Make investments. Many of these events will occur simultaneously.

The 12 regionals have been formed as businesses for profits, and their articles of incorporation and by-laws have been approved by the Secretary of the Interior. A duly elected board of directors will be charged with responsibility for the management of the regional corporation and the investment of corporate assets. Such investments might include stocks and bonds and business enterprises in construction, tourism, and service industries.

In addition to 12 regionals there will be about 200 village corporations. While they, together with the regionals, will get title to a total of 40 million acres of land a a stake in the Alaska Native Fund, the subsurface rights to the land will go solely to the regional corporations.

Up to 22 million acres of land are available for selection of surface rights by eligible Native villages. The amount each village is entitled to is determined by the Native population of that particular village on April 1, 1970.

Where possible, 25 townships around each village have been withdrawn by the Alaska Native Claims Settlement Act. A township is 36 square miles. From these townships, the village will make its selection.

This selection must include townships in which any part of the village is located. In many cases, however, circumstances -- such as an ocean, navigable river, national park, etc. -- restrict selection. The village must then make alternate selections from "deficiency areas."

Regional corporations are more restricted then village corporations in selecting their 16 million acres. They may, for example, select what have come to be known as "checkerboard lands" in the village withdrawal areas. They will get, in addition, part of 2 million acres of "hardship lands."

Hardship land grants will be distributed to regional corporations for existing cemetery and historical sites, Native groups too small to qualify as villages (less then 25 Natives), individual Natives who apply for a primary place of residence outside of the village withdrawal areas or individual Native allotment, and Natives in Sitka, Kenai, Juneau, and Kodiak. These are originally Native villages but are now predominantly non-Native.

Department of the Interior News Release, November 26, 1973.

NEW OFFICE ON INDIAN AFFAIRS?

Washington, D.C. The new Indian Commissioner, Morris Thompson, barely got the chair warm before he was faced with what may well become a test of the depth of Interior Secretary, Rogers C.B. Morton's commitment that Thompson would be "principal policy advisor to the Secretary for Indian Affairs."

On Dec. 6, two days after Thompson was sworn in as Commissioner and while he was out of town, the Interior Department sent out an in-house memorandum announcing the creation of a new office of Indian and Territorial Affairs to be located in the Office of the Assistant Secretary for Program Development and Budget. Sources close to the Commissioner indicated that Thompson had not been informed such action was to be taken.

The new office, to be headed by Alexander "Sandy" McNabb, was given responsibility for a wide range of Indian Affairs concerns within and without the Department which many BIAologists felt usurped the role of the Commissioner.

Thompson himself said: "I have great concern about the role of this office and will be meeting with the under Secretary (John C. Whittaker) to give my views on the matter."

Some of the responsibilities over Indian Affairs given to McNabb included: analyzing the economy and effectiveness of Interior programs and their consistency with Departmental and Nixon administration policy "as well as the expressed needs and desires of the constituent (Indian) population;" developing and evaluating major programs, policy and budget initiatives; providing analysis and advice to the Assistant Secretary as well as other Secretarial officials on programs, policies and budget issues; and performing, supervising and coordinating major studies of current and proposed programs and policies.

Robert Gajdys, assistant to McNabb, told AIPA that they, along with Robert Livingston, had been exercising the responsibiilities outlined in the new secretarial directive since the spring of 1973 and that the directive "formalizes that original arrangment." McNabb, Gajdys and Livingstone worked in the Bureau of Indian Affairs (BIA) under former Commissioner Louis R. Bruce. They are three of every few members of the Bruce "team" who survived the literal and figurative wreckage of the BIA Central office last November after the Trail of Broken Treaties Caravan occupation of that bastion.

Reaction in the Indian Community is varied with National Congress of American Indians (NCAI) executive director Charles Trimble stating: "Apparently, as I understand it, this just solidified an office that has been there all along. Other Bureaus in the Department, such as Land Management, have representation in the Program Development and Budget Office. This just establishes an Indian office there."

National Tribal Chairmens Association executive director William Youpee said: "The NTCA leadership believes in giving Morris Thompson a chance. This office cuts the rug out from under him before he even gets started."

Another Washington official said, however, that he understood the need for such an office, but termed the timing of the announcement and the failure to inform the new Commissioner, "unfortunate, screwy and strange." He also said "such an office demands objectively and many questions have been raised about the apparent or real objectivity of the two men who will man the office."

This statement has reference to the fact that McNabb and Gajdys, as powerful assistants to former Commissioner Bruce, forcefully pushed to bring drastic changes in the BIA structure. Most remembered by many was their attempt to end the Area Office structure of the BIA.

The memorandum, written by Deputy Assistant Secretary for Program Development and Budget, John M. Seidl to Under Secretary Whittaker stated: "In an oral briefing to you, San McNabb outlined his views on the effectiveness of the various Area Directors. If you so desire, we can provide you with a few scenarios showing you how specific Area Directors could be reassigned indicating which ones, due to their abilities, ought to take over Central Office positions, or direct administration or technical service centers."

According to one Washington expert on public administration, many federal departments have Program Development and Budget offices with sub-offices similar to the Office of Indian and Territorial Development.

He said, "Almost every Secretary insists on having attached to him an office which can look objectively and impartially at the competing and conflicting interests from the various bureaus under him. Budget, in its broadest sense, is a statement of priorities. An office like Program Development and Budget aids the Secretary in sorting out priorities because each of the Bureau's is an advocate it its own interests."

"Those who work in these positions, " he stated, "must, however, be true impartials with no axes to grind."

There was some indication that Secretary Morton may have changed his mind about the existence of his new creation, or at least its existence as outlined in the December 5 memorandum. Some BIA observers believe Thompson's concern had something to do with this change. Others have suggested that the delay in setting up the office or the change in its mandate has to do with the fact that Lawrence Lynn, Assistant Secretary for Program Development and Budget, may be leaving his post.

Interior Department Information Officer, Andrew Newman acknowledged that something has delayed the implementation of the December 6 memorandum and stated: "The matter is still under discussion (the memo order creating the office), maybe modified and changed." Newman went on to say that reports of Lynn's leaving was just "rumor."

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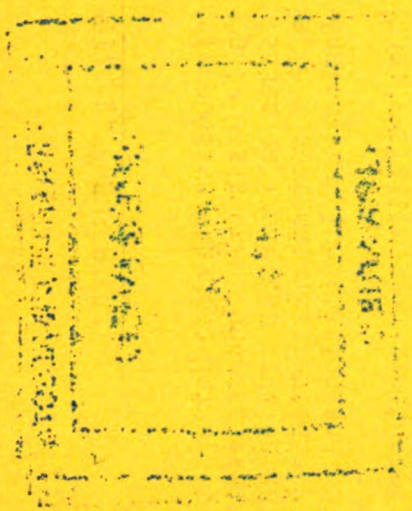

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SCHOOL OF LAW

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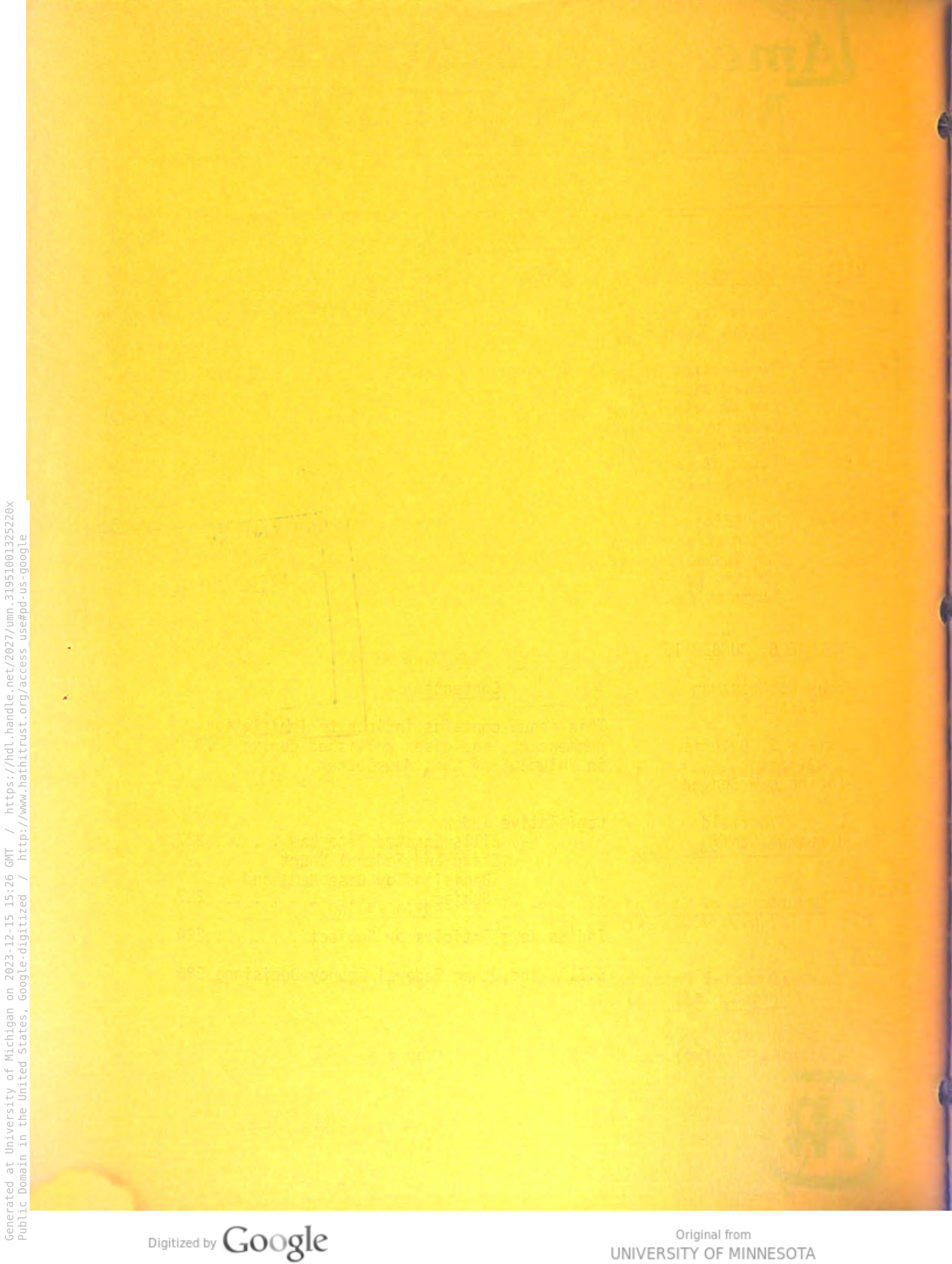

Bills Enacted Into Law

Bill	Subject	Tribe	Date Signed	Public Law #	AILN
S. 721	Funds for Indian Claims Commission		5/29/73	P.L.# 93-37	6 AILN 83
H.R. 3867	Terminating Federal Supervision over the Klamath Indian Tribe by providing for Federal acquisition of certain tribal lands	Klamath	9/5/73	P.L.# 93-102	6 AILN 157
S. 1015	Providing alternative methods for disposition of certain Indian judgment funds		10/23/73	P.L.# 93-134	6 AILN 184

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6 AILN 39

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5 AILN 23

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6 AILN 118

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