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**Hearing
Before the
United States
Commission on Civil Rights**

**AMERICAN INDIAN ISSUES
IN THE STATE OF SOUTH DAKOTA**

Hearing Held in

**RAPID CITY,
SOUTH DAKOTA**

July 27-28, 1978

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U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to denial of equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information in respect to denials of equal protection of the laws because of race, color, religion, sex, or national origin;
- Submit reports, findings, and recommendations to the President and Congress.

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Arthur S. Flemming, *Chairman*

Stephen Horn, *Vice Chairman*

Frankie M. Freeman

Manuel Ruiz, Jr.

Murray Saltzman

Louis Nuñez, *Acting Staff Director*

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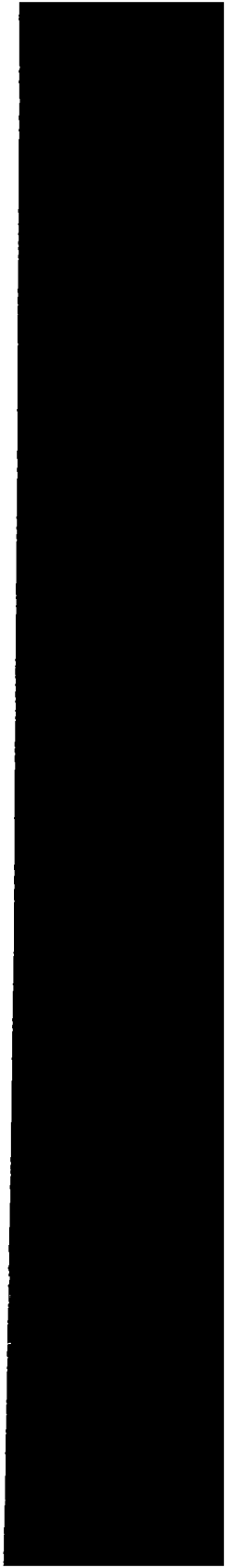
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UNITED STATES COMMISSION ON CIVIL RIGHTS

Thursday, July 27, 1978

The public hearing was convened, pursuant to notice, at the Mount Rushmore Civic Center, Rapid City, South Dakota, Arthur S. Flemming, Chairman, presiding.

Present: Arthur S. Flemming, Chairman; Frankie M. Freeman, Commissioner; Louis Nunez, Acting Staff Director; Richard Baca, General Counsel; Paul Alexander, Assistant General Counsel; Shirley Hill Witt, Regional Director; Jack Hartog, Counsel; Linda Huber, Counsel; Marvin Schwartz, Counsel; and William Levis, Regional Counsel.

PROCEEDINGS

CHAIRMAN FLEMMING. Come to order, please.

The function of the U.S. Commission on Civil Rights is to investigate deprivation of equal protection of the law and to submit its findings to the Congress and to the President along with the recommendations the Commission decides to make for corrective action. To enable the Commission to fulfill these duties, the Congress has empowered it to hold public hearings and issue subpoenas for the attendance of witnesses and for the production of documents.

This hearing is being held under the authority of the Civil Rights Act of 1957 as amended. As required by law, notice of the hearing was published in the *Federal Register* on June 23, 1978. A copy of this notice will be introduced into the record at this point as Exhibit No. 1.

The purpose of this hearing is to listen to evidence relative to Indian tribes and tribal people and non-Indian governments and people and, also, to consider evidence relative to Indian governments and non-Indian governments working together to arrive at constructive solutions of common problems.

The Commission on Civil Rights is an independent bipartisan agency of the U.S. Government established by Congress in 1957. Its duties are the following;

To investigate sworn allegations that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, or national origin;

To study and collect information regarding legal developments which constitute denial of equal protection of the laws under the Constitution in such fields as voting, education, housing, employment, and use of public facilities, transportation, or in the administration of justice;

To serve as a national clearinghouse for information with respect to denial of equal protection of the laws because of race, color, sex, religion, or national origin;

Finally, to investigate sworn allegations of vote fraud in Federal elections.

The session we begin today will be a public session. The majority of the witnesses we will hear have been subpoenaed by the Commission, and the schedule, as you note from the agenda, has been planned in advance. There will be, however, on Friday afternoon, a session at which persons who have not been subpoenaed, but who feel they have relevant testimony may appear and speak. Anyone desiring to speak at this session should contact staff and make appropriate arrangements.

Under the law under which we operate, the Chairman of the Commission is authorized to designate two members of the Commission to hold a public hearing, provided both political parties are represented.

In connection with this hearing, I am joined by Commissioner Freeman. Ms. Freeman is a resident of St. Louis. She has served on the U.S. Commission on Civil Rights longer than any other member, having been appointed by President Johnson and having served continuously since then. She is a recognized outstanding trial lawyer from St. Louis. I'm happy to recognize Commissioner Freeman at this time so she can acquaint you with the rules and the procedures which will be followed in connection with this hearing. Commissioner Freeman.

COMMISSIONER FREEMAN. Thank you.

At the outset I should emphasize that the observations I'm about to make on the Commission's rules constitute nothing more than brief summaries of the significant provisions. The rulings themselves should be consulted for a fuller understanding. Staff members will be available to answer questions which arise during the course of the hearing.

In outlining the procedures which will govern the hearing, I think it is important to explain briefly a special Commission procedure for testimony or evidence which may tend to defame, degrade, or incriminate any person. Section 102(e) of our statute provides, and I quote:

If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall receive such evidence or testimony in executive session.

The Commission shall afford any person defamed, degraded, or incriminated by such evidence or testimony an opportunity to appear and be heard in executive session with a reasonable number of additional witnesses requested by him, before deciding to use such evidence or testimony.

When we use the term "executive session," we mean a session in which only the Commissioners are present in contrast to a session such as this one in which the public is invited to be present. In providing for an executive or closed session for testimony which may tend to defame, degrade, or incriminate any person, Congress clearly intended to give the fullest protection to individuals by affording them an opportunity to show why any testimony which might be damaging to them should not be presented in public. Congress also wished to minimize damage to reputations as much as possible and to provide persons an opportunity to rebut unfounded charges before they were well publicized.

Therefore, the Commission, when appropriate, convenes an executive session prior to the receipt of anticipated defamatory testimony. Following the presentation of the testimony in executive session, and any statement in opposition to it, the Commissioners review the significance of the testimony and the merit of the opposition to it. Next, if we find the testimony to be of insufficient credibility, or the opposition to it to be of sufficient merit, we may refuse to hear certain witnesses, even though those witnesses have been subpoenaed to testify in public session.

An executive session is the only portion of any hearing which is not open to the public. The hearing which begins now is open to all, and the public is invited and urged to attend all the open sessions.

All persons who are scheduled to appear who live or work in South Dakota or within 50 miles of the hearing site have been subpoenaed by the Commission. All testimony at the public sessions will be under oath and will be transcribed verbatim by the official reporter. Everyone who testifies or submits data or evidence is entitled to obtain a copy of the transcript on payment of costs. In addition, within 60 days after the close of the hearing, a person may ask to correct errors in the transcript of a hearing of his or her testimony. Such requests will be granted only to make the transcript conform to testimony as presented at the hearing.

All witnesses are entitled to be accompanied and advised by counsel. After the witness has been questioned by the Commission, counsel may subject his or her client to reasonable examination, within the scope of the questions asked by the Commission. He or she also may make objections on the record and argue briefly the basis for such objections.

Should any witness fail or refuse to follow any order made by the Chairman or the Commissioner presiding in his absence, his or her

behavior will be considered disorderly, and the matter will be referred to the U.S. Attorney for enforcement, pursuant to the Commission's statutory powers.

If the Commission determines that any witness' testimony tends to defame, degrade, or incriminate any person, that person, or his or her counsel, may submit questions, which, in the discretion of the Commission, may be put to the witness. Such person also has a right to request that the witnesses be subpoenaed on his or her behalf. All witnesses have the right to submit statements prepared by themselves or others for inclusion in the record, provided they are submitted within the time required by the rules.

Any person who has not been subpoenaed may be permitted, in the discretion of the Commission, to submit a written statement at this public hearing. Such statement will be reviewed by the members of the Commission and made a part of the record.

Witnesses at Commission hearings are protected by the provision of Title 18, U.S. Code, section 1505, which makes it a crime to threaten, intimidate, or injure witnesses on account of their attendance at Government proceedings. The Commission should be immediately informed of any allegations relating to possible intimidation of witnesses. Let me emphasize: We consider this to be a very serious matter, and we will do all in our power to protect witnesses who appear at this hearing.

A copy of the rules which govern this hearing may be secured from a member of the Commission staff. Persons who have been subpoenaed have already been given their copies. Finally, I should point out that these rules were drafted with the intent of ensuring that Commission hearings be conducted in a fair and impartial manner. In many cases, the Commission has gone significantly beyond congressional requirements in providing safeguards for witnesses and other persons. We have done that in the belief that useful facts can be developed best in an atmosphere of calm and objectivity. We hope such an atmosphere will prevail at this hearing.

With respect to the conduct of persons in this hearing room, the Commission wants to make clear that all orders by the Chairman must be obeyed. Failure by any person to obey an order by Dr. Flemming or the Commissioner presiding in his absence will result in the exclusion of the individual from this hearing room and criminal prosecution by the U.S. Attorney when required. The Federal marshals stationed in and around this hearing room have been thoroughly instructed by the Commission on hearing procedures, and their orders also are to be obeyed.

This hearing will be in public session on Thursday and Friday of this week. The sessions will begin at 8:30 a.m. and will continue until 6:15 p.m., with a 1-hour break for lunch. On Friday, the final day of this hearing, the session will begin at 8:30 and continue to 6 p.m. The time between 4 p.m. and 6 p.m. has been set aside for testimony from per-

sons who have not been subpoenaed but wish to testify. As noted by Chairman Flemming, persons wishing to appear at the open session should be in contact with members of the Commission staff in Room 201 throughout today and until 12 o'clock noon Friday. Such persons will be heard in the order in which they signed up. I wish to repeat, the time between 4 p.m. to 6 p.m. has been set aside for testimony from persons who have not been subpoenaed but wish to testify. Persons wishing to appear in the open session should be in contact with members of the Commission staff in Room 201 throughout today and until 12 noon tomorrow.

Thank you.

CHAIRMAN FLEMMING. Thank you, Commissioner Freeman.

At this time, it is my privilege to recognize the Vice Chairperson of the U.S. Commission on Civil Rights' Advisory Committee for the State of South Dakota, Mary Ellen McEldowney. As she comes to the witness table, may I, on behalf of Commissioner Freeman, Mr. Nunez, our Acting Staff Director, and all of our colleagues on the Commission, express our very deep appreciation for the outstanding help and assistance that we have received from the South Dakota Advisory Committee. I want to express in particular our appreciation for the report that has been developed by the South Dakota Advisory Committee dealing with many of the issues that will be under consideration in connection with this hearing. Ms. McEldowney has been joined by Mr. Stanford Adelstein, also a member of the State Advisory Committee. I understand that he will make a brief opening statement in behalf of the Chairperson, Mario Gonzales, who is unable to be present today. At this time, I'm very happy to recognize Mr. Adelstein.

WELCOMING STATEMENT OF STANFORD ADELSTEIN, MEMBER, SOUTH DAKOTA ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS

MR. ADELSTEIN. Good morning, Chairman Flemming, Chairman Freeman, Commission staff, ladies and gentlemen in our audience this morning. I am Stanford Adelstein of the South Dakota Advisory Committee to the U.S. Commission on Civil Rights. On behalf of the Advisory Committee, I would like to welcome each of you to South Dakota, to Rapid City, and to this hearing.

The members of the Advisory Committee who are also present here this morning, as I see them, Dorothy Butler—

CHAIRMAN FLEMMING. As your names are called, we would appreciate your standing, so that we can recognize you.

MR. ADELSTEIN. Barbara Bates Gunderson, Mary McEldowney, in just a moment—David Volk I see is here. William Walsh is here. Robbi Ferron—is Robbi in the room? In addition, of course, we have our Chairman, who is not here this morning, Mario Gonzales. Robbi Ferron, Grace Kline, Eric J. LaPointe, Hilario Mendoza, Rev. Frank M. Thorburn, all of whom have worked closely together during the period

of our first report, and while we don't always agree, we have a great camaraderie and a sense of purpose.

The Advisory Committee was established by the U.S. Commission on Civil Rights to assist the Commission at the State level in factfinding and the development of appropriate recommendations. Our State Advisory Committee feels strongly about its existence and about the importance of the Advisory Committees at the State level.

More than 3 years ago, our Advisory Committee agreed to begin a study of the quality of justice available to Indians in the State of South Dakota. Our carefully considered and weighed decision to act in this area was based on our individual and group personal observations of the justice system at work in the State, on reports and complaints we received, and on the statistics which were then available. We were convinced they pointed to a wide range of unique problems which appeared to confront Indian persons in the process of administration of justice. We knew our survey might not be universally popular because we were aware that the situation would require that we would be looking and looking hard at the police and the courts and studying their involvement with Indians.

Because of time and resources, we limited our inquiry to two separate geographic areas: Pennington County, where we are today, allowed us to examine criminal justice practices in a largely urban setting, and Charles Mix County, a rural setting.

Members of the Advisory Committee and Commission staff from the Rocky Mountain Regional Office in Denver traveled throughout the State and interviewed more than 130 officials, law enforcement officers, attorneys and prosecutors, members of the judiciary, and citizens. In December 1976 the Committee held a lengthy public discussion and public factfinding in Rapid City. We received unsworn testimony from more than 50 persons, many at great length. Our work resulted in a release of a report entitled *Liberty and Justice for All*. We issued findings and 22 carefully weighed and discussed recommendations for change. These were directed to State and local officials and agencies. Copies of that report are available here today, and we urge you, please, to study the findings and recommendations. They may not be universally accepted. We find they are often not popular. However, we believe strongly in these recommendations.

Governor Kneip and a number of other officials to whom recommendations were directed have responded. Some responses have been positive, some negative. We have been pleased that some of the recommendations have in fact been implemented; others are under study. I personally feel confident our work has led to some serious thinking, even more serious rethinking, and certainly many new and creative approaches to problems. Most important, though, is that we believe the report has led to some alleviation of problems that were outlined in the report.

In a few moments, Mary Ellen McEldowney, Vice Chairman of the South Dakota Advisory Committee, will speak. I understand her remarks will include a discussion of our findings and recommendations. The hearing which begins here today stems at least in part from our requests to the Commission on Civil Rights for further studies of the issues identified in our report. The Commission has responded and is prepared to examine in considerable detail the overall situation of Indians in the State of South Dakota and the consequent impact on the administration of justice. We are very appreciative, really very appreciative of the presence of the Commission here today and the vast amount of staff work that already has been carried out. We believe that the testimony received here today and tomorrow will be of great benefit to the citizens of our State and hopefully to the Nation.

Let me introduce Mary Ellen McEldowney. I must say that she is an attorney, but an attorney of unusual perception, sensitivity.

**STATEMENT OF MARY ELLEN MCELLOWNEY, VICE CHAIRPERSON,
SOUTH DAKOTA ADVISORY COMMITTEE TO THE
U.S. COMMISSION ON CIVIL RIGHTS**

Ms. McELLOWNEY. Thank you, Stan.

Good morning. I am Mary Ellen McEldowney, Vice Chair of the South Dakota Advisory Committee to the U.S. Commission. I am pleased to be here today, but even more pleased the Commission is here today. I look forward with considerable interest to hearing the testimony for the 2 days that you will be here and hope I will be able to spend much of the time with you. Also, I hope the members of the audience will be able to spend the better part of the 2 days so that we will all get a full picture of what you will be hearing.

I believe the hearing which begins today is important to all of us in the State. The hearing will examine how and where Indians and non-Indians are involved in governing, settling disputes, and working cooperatively. The hearing will examine how Indians and non-Indians view each other and will outline the nature of their day-to-day contacts. No doubt there will be evidence of both success and failure. Obviously, there are problems in this State which continue to confront us as Indian and non-Indian peoples. Our recollections of history, our lives as Indians and non-Indians have been different. But there is much of life here that is common to every one of us.

In South Dakota, and I am a native of South Dakota, there still exists a tradition of oral history which lends to our lives a strong sense of contact with the extraordinary events which took place here during the last centuries. In many ways, what we know of history begins with what we learn from our grandparents and great-grandparents when they told us of the days they lived through. That history, then, I believe, is a necessary backdrop to the testimony we will hear today and tomorrow. While I in no means am an expert in the area of Indian history, in this area I will be sharing with you my understanding of, with a brief overview, of where we have come from.

The story of the native peoples on this continent begins before recorded history, but from the time of the first arrivals of Europeans as colonists, expansionist pressures were already building which would eventually be felt halfway across this continent by the Sioux Indians. Almost from the beginning, European settlement began to push westward in search of land, furs, and trade. Inevitably, the presence of whites in Indian country led to tension and conflict. Some Sioux began to move west. By 1750 there were Sioux already living in the Black Hills area and other parts of South Dakota.

The Sioux Nation, as you may know, divided itself into three groups, and they defined the groups by the dialect they spoke; the Lakotas, generally known to have gone west of the Missouri River; the Nakotas and the Dakotas, who remained on the east bank of the Missouri River. The land area in which the Sioux were found at any given time was immense. They traveled and hunted over a territory which ranged all the way from Hudson's Bay to the Gulf of Mexico and between the Alleghenies and the Rockies.

At the end of the War of 1812, various groups of Sioux entered into the first treaties between themselves and the United States. These treaties were sought by the Government in Washington as a means of establishing legal grounds for exploration, trade, and obtaining land. The pressure of white settlement and military action were powerful inducements to the tribes to engage in treaty-making with the United States. Also, since the Sioux culture did not share the European concept of land ownership, often there was no mutual understanding of the full ramifications of the various treaties. While the Western concept was that an individual could own a parcel of land outright, in fee simple; the Sioux concept was that the land was not subject to ownership by individuals or groups; rather it was there for the common use.

Step by step the Sioux land base was eroded. In 1851 the eastern Sioux, under pressure from advancing settlement and treaty negotiators, moved onto reservations and lost to the Government half the present State of Minnesota and much of Iowa for about 6 cents an acre. Meanwhile, in 1851 the Government was dealing with the western Sioux in a different manner and signed the first Treaty of Fort Laramie, declaring it then a Sioux Nation. The treaty outlined the Sioux Nation as occupying vast sections of present-day South and North Dakotas, Montana, Wyoming, and western Nebraska.

During the 1850s the Sioux tried to resist the encroachment of the settlers who were attempting to move through the Indian homelands and hunting grounds. To the east of the Missouri River, the Santee Sioux and others in Minnesota carried out a short-lived rebellion, known as the "Minnesota Uprising," against the Government's failure to provide adequate payments for land and its "let them eat grass" attitude. Army troops moved in and crushed the rebellion and, following the Civil War, the Federal Government pressed the Sioux in the West to yield land for wagon routes and the railroads. The Sioux fought

these plans under Chief Red Cloud and forced the army to the treaty table. The second Treaty of Fort Laramie, known as the "1868 treaty," guaranteed the Sioux a reservation made up of all the western half of South Dakota and added an unceded Indian territory, vast portions of Montana, Wyoming, Nebraska, North Dakota. The Sioux in exchange granted rights of way to the Government. However, the signing of treaties did not establish peace, nor did it guarantee the territory of the Sioux.

The discovery of gold in the Black Hills prompted further conflict as the Government sought to open the hills to prospecting despite treaty assurances to the contrary. The Sioux valued the Black Hills as sacred and resisted the efforts to induce them to sell. Finally, the army simply stepped aside and allowed thousands of armed whites to occupy the Black Hills in the mid-1870s. The Sioux then were forced onto agency reservations to become farmers. The reservations functioned under the authority of a white agent regardless of the power or stature of the individual Sioux chiefs residing therein.

The loss of the buffalo herds had left the Sioux with no alternative to the reservation system. BIA [Bureau of Indian Affairs] rations and farming had become the only means of avoiding starvation. The 1887 Daws Act, also known as the "Allotment Act," cut the reservation lands into individual 160-acre plots for each Indian and declared the rest surplus land available to white settlers. In 1889 Congress passed a law requiring the Sioux to give up almost half of the land remaining in the great Sioux reserve in South Dakota. Smaller reservations were established which confined and limited the travel and hunting of the Sioux.

By 1890 the final efforts by groups of Indians to avoid confinement on the reservations were being played out. Chief Big Foot and a large group of men, women, and children sought to travel to Pine Ridge rather than be arrested and taken by the army to the Cheyenne River Reservation. At Wounded Knee they were surrounded by a large number of troops armed with light artillery and rifles. Fighting broke out, and the army's crossfire of guns, explosives, shells, killed an estimated 340 men, women, and children.

The years following Wounded Knee were marked by unrelenting attempts to acculturate the Sioux to white values and thought. Indian ceremonies and dancing were discouraged or forbidden. Indian languages were forbidden by law. Indian children were taken from their parents and placed in white foster homes or boarding schools. Economic self-sufficiency was never fully supported by the Bureau of Indian Affairs and never achieved. Indian health and life expectancy sunk to one of the worst on this continent.

Indians were encouraged to take up farming and ranching, but the Bureau developed ranching and farming districts which were often arbitrarily drawn and ignored the realities of soil conditions and water availability. Indian lands were leased out in large parcels at minimum rates to non-Indian ranchers and farmers.

In 1934 the Indian Reorganization Act was seen as restoring some measure of self-government and established elected tribal councils. Seven of the nine federally-recognized tribes in South Dakota today are organized pursuant to that act and, therefore, have their own separate constitutions, bylaws, and tribal codes. The act also limited slightly the powers of BIA agents and did away with the allotment system which had the effect of selling off parts of the reservation in a piecemeal fashion. That policy was terminated with the act. In the 1940s and fifties, a massive damming project was carried out in the Missouri River. As a result, vast expanses of lush land on the river terraces were lost by reservations all along the Missouri. To non-Indians, the dams are viewed as progress. Flooding was controlled, power was generated, water for irrigation became available, and the Missouri became a major recreation resource, but to the Indians the dams meant more loss of land and their history. The wild game, the trees, the berries, which were so abundant on the water's edge, were lost as the reservation centers and the whole populations of Indian people were moved and relocated to higher ground. Even today, many of the Sioux look upon the dams as a devastating blow to traditional life.

However, with every change there is some good and some bad. One of the positive things we are seeing today is the irrigation has meant the productivity can be vastly increased and marginal land can be put into use. The distribution of irrigation water now stands as probably the major issue which will determine the economic future of reservation life and non-Indians as well.

During the 1950s, the Eisenhower administration made the decision to terminate the reservations and relocate Indians to the cities. This policy continued up into the sixties. As the Sioux moved to Omaha, Chicago, Denver, Texas, and California, the spirit which had survived Wounded Knee found itself in collision with the realities of urban poverty. Out of the cities, Indian organizations grew in size and influence. A newly determined mood among the Indian people emerged. The National Congress of American Indians, United Sioux Tribes, the American Indian Movement, and other national and international Indian organizations were formed. Years of anger boiled over and the occupation of Alcatraz, the BIA building, and Wounded Knee II took place. Those of us in South Dakota are very much aware of the clashes that followed between Indians and non-Indians. There was a period of special turmoil in Pine Ridge during which a number of shootings and deaths occurred.

For the most part, the years following the occupation have been marked more by litigation than confrontation. The hearing which begins today will, among other areas of inquiry, examine the impact of the *Oliphant* decision on law enforcement in Indian country. We expect, also, that the hearing will cover the diminishment issue: how large are the reservations and what is the size of the reservation? What impact is it going to have on the future development of the individual tribes and non-Indian people?

However, in our State Advisory Committee study, we found there were some aspects of life which have not changed for the better. In the area of administration of justice, I would like to discuss briefly the findings and recommendations of our State Committee with regard to Indians, police, and the courts. During our study in 1976, the Committee found criminal justice recordkeeping by localities in the State is badly lacking in uniformity. We, therefore, recommended the development of a comprehensive, statewide, criminal justice data system which would allow the public to assess law enforcement practices and performance. I suspect this lack of data has provided some problems to your staff in preparing for this hearing.

Secondly, the Committee found Indians seriously underrepresented on the employment rolls of law enforcement agencies and the courts. We found no affirmative action plan adequate to correct this situation. The Committee found the lack of representation of Indians on juries and the attitude of non-Indian jurors prejudiced the opportunities of Indians in some cases to obtain an impartial jury. We recommended the jury selection procedures be broadened to ensure the representation of Indians. Also, we called on the supreme court to commission a study of the attitudes of potential jurors towards Indians.

Fourthly, the Committee found cash bail and the requirement of property for surety bonds often worked special hardships on Indians who are both poor and lacking in community ties. The Committee recommended, therefore, that bail be set at the minimum required to guarantee appearance. Also, we called on the State legislature to enact a law that would foster the use of personal recognizance releases, and we called for the circuit courts in the alternative to assume the bonding functions of a commercial agency and refund the bonding fee where the defendant had satisfactorily appeared.

I save the best for last, because one of our recommendations was passed by the legislature which followed our report, and that was—we asked for the development of a statewide public defender system to provide counsel to indigent persons. This was one of the recommendations that we felt strongly about. In the legislative session following the release of the report, it did pass permissive legislation so counties can now develop their own public defender systems.

As Stan said, the South Dakota Advisory Committee made a total of some 22 recommendations regarding the administration of justice, recommendations going to the Governor, the legislature, the courts, the State bar association, and other agencies. We continue to believe that if the recommendations are carried forward much will have been done to alleviate present inequities in the system of justice in South Dakota. We call on our fellow citizens to join us in supporting the recommendations and the goals of equal justice for all.

CHAIRMAN FLEMMING. Thank you very, very much. I want to express our deep appreciation for both of these presentations, and then want to underline again our gratitude for the work that went into the report

and for the content of the report. It has proved to be of real help to us, and I'm sure will continue to prove to be of real help to us. I'm delighted to have noted in your presentation that there has been not only some positive reaction to some of the recommendations, but that in some instances something has happened. That is always encouraging.

MS. McELDOWNEY. There is continued work to be done. We intend to pursue it.

CHAIRMAN FLEMMING. We are very, very grateful to both of you for being here this morning and opening our hearing in this way. Thank you very, very much.

Counsel will call our first witness.

MR. ALEXANDER. Frank Fools Crow and Matthew King.
[Chief Fools Crow and Mr. King were sworn.]

TESTIMONY OF CHIEF FRANK FOOLS CROW (EAGLE BEAR) AND MATTHEW KING (NOBLE RED MAN)

CHAIRMAN FLEMMING. We are very happy to have you with us:

MR. ALEXANDER. Mr. King, you are going to serve as interpreter for Chief Frank Fools Crow. Could you ask the chief to identify himself and where he lives for the record? And he is Chief Frank Fools Crow, otherwise known as Eagle Bear?

CHIEF FOOLS CROW. Yes.

I live west, about 8 miles from Kyle.

MR. ALEXANDER. Could you identify yourself for the record?

MR. KING. My name is Matthew King. King is a misinterpretation of my Indian name. My name is Noble Red Man, also a chief.

MR. ALEXANDER. Chief Fools Crow, this hearing today and tomorrow concerns relationships between Indian people and non-Indian people and many of the problems that have developed throughout the years. We are interested in hearing from Chief Fools Crow, in his wisdom, in his years, as to what advice he would have to the United States Government in solving some of the problems and what some of the causes of some of the problems we face today in the State are.

CHIEF FOOLS CROW. I am happy to be here, I hope, among friends. The first time my life I was in Rapid City was in 1916. I got married that year.

MR. ALEXANDER. The chief has lived most of his life on the Pine Ridge Reservation; is that correct?

CHIEF FOOLS CROW. Yes.

MR. ALEXANDER. He is how old now?

CHIEF FOOLS CROW. June 27, I reached the age of 90 this year.

MR. ALEXANDER. Could the chief tell us in his view what it is that the United States Government should be doing today in relations between Indian people and white people that it is not doing?

CHIEF FOOLS CROW. In the past we got along with the white man. We helped one another. Many Indian men joined the United States Army during the First World War. There was an agreement between the Government and the Indian people that they will only fight within their own country, in defense. They send him overseas which is contrary to the agreement that was made. It is something unusual for an Indian to fight in a foreign country. The experience that he has gone through during the war, when they come back they are not the same boys. They drink. They destroy themselves. They led the way in using the alcohol, teaching some of the Indian children, both boys and girls, to get involved in drinking and so forth.

Today, we have many towns that sell liquor that are adjacent to the Indian reservation. We have one that sells liquor right on the reservation, Swett at Pine Ridge. It hurts me more than anything else to see this happen.

I remember distinctly the year of 1916 when the relationship between the white man and the Indian was the best, excellent. I still maintain that idea of life today. I will get along with everybody, even the policemen, doctors, other government officials. I never drink beer, whiskey, wine in my life. The reason I want to get along with all the good people on the face of the earth—if this organization had power to act on the things that are a detriment to a good life of the Indian people, I want you to take action that there shall be no liquor on the Indian reservations, Pine Ridge particularly.

Under one of the treaties, the penalty for drinking is 1 year and 1 day in the penitentiary and a \$500 fine. This law has never been rescinded. We want to put it back into force again.

The relationship, as I have said, between the white man and the Indian people—there was a detriment in later years due to the liquor. You're privileged to say anything you want in behalf of the Indian people.

Today we are having a big council meeting at my place. If you could give me an answer today, I will relay that message to my people at this meeting.

MR. ALEXANDER. The chief mentioned that this liquor problem is a violation, in his view, of the treaties.

CHIEF FOOLS CROW. Yes.

MR. ALEXANDER. Are there other things that are outstanding in either of you gentlemen's view in terms of the treaties the United States should live up to?

CHIEF FOOLS CROW. One thing, uppermost in my mind, we all know the Black Hills belong to the Indian people. We give permission to the Government to seek gold, whatever he could find, with half of what he found returning to the Indian people, which was never carried out. If the Government meets its obligations, we will be happy because we kept our end of the bargain intact.

We know that the white man's law with reference to credit is most severe; if you do not pay your rent, you are out. The Government owes rent to the Indian people. The Indian have only one oral law, never to tell a lie. They are afraid that the Great Spirit will do something about it because the Great Spirit is true; we cannot lie. We do not understand the President. We have appealed, we called, we wrote, he never gave an answer. We don't know what kind of leader he is. He have many debts to look into—fulfill—in many treaties. If he can pay us, we will be happy.

I am happy that I have this privilege to speak my mind freely to this organization.

MR. ALEXANDER. Thank you.

Mr. King, when we met you had mentioned that you had been on the Longest Walk to Washington.

MR. KING. Yes.

MR. ALEXANDER. Could you briefly tell us from your own experience and perspective, what in your views are the major issues you were petitioning the Government to respond to? How could some of those affect things that go on everyday in South Dakota?

MR. KING. You want me to answer that?

MR. ALEXANDER. Yes.

MR. KING. I have nothing to do with the Longest Walk. Somebody else planned. As a chief, we have an obligation to look into it that they may not get into trouble. The Indian people are a peaceful people. White men are violent men. They do not understand one another. The Indian understand the white man, but the white man does not understand the Indian people. So in protest of the many bills that were introduced in Congress to abrogate treaties so that the white man may own a whole of Indian country—they don't want that. That is one of the reasons why they walked across the country. Cunningham—I'm going to tell you I challenged Cunningham to a worldwide debate on treaty issues. I do not know whether he will accept it or not, but I challenged him when I was in Washington a few days ago. I want the whole world to know the treatment of the Indian people at the hands of a foreign nation.

I'm sorry to say this, but it is the truth. You know it. I think we treat the white man good because the Indian is the most religious man on the face of the earth, the most sympathetic and the most understanding. He doesn't want no one to suffer in his country. So he adopted the white man and gave him land and worked with him. All the treaties that were made—372 different treaties—they kept it intact because God was involved in it and they must not lie, but the white man from the beginning—seems to me like he has the power—priority in everything to do as he please.

One of the greatest thing—an accusation that the Indian people hold against the Government is that he lied, which is a rule, supreme rule of Indian people. They kept their treaty intact while the Government broke treaty after treaty. He broke 372 different treaties.

But this is God's country, ruled by the power of the Great Spirit. The Indian religion says there must not be any evil in God's world because, within the universe God created, he also imbued it with the Holy Spirit of His power. There is no room for evil. They have been afraid to think evil. Always fearing God, when they get together they pray for the peace pipe which was given to them through a beautiful maiden that was sent by God. The peace pipe is still in the hands of the Sioux people. This morning we had a ceremony, peace pipe ceremony. We always begin a day with prayer. The wisdom comes to the Indian people in that way. They heard God's voice. There are signs in heaven which give them wisdom. They are honest people. They are generous people. They are God-fearing people. When things happen to them, they don't know what to think. How can any human not know his Creator, not know why he is in this world, and do things which is contrary to law of nature and the natural law of the universe? Why? They ask that question many times.

So when we got to Washington—I was there, I marched with them only 8 days from Pueblo, Colorado, to Sand Creek where some Indians were massacred. For what reason we do not know. At Wounded Knee, they took all the guns away from—the weapons, hatchets—away from the Indian people. They was slaughtered, most of the women and children. That was in revenge for Custer's defeat at the Little Big Horn. They forget that they made a treaty, '68 treaty, that certain land is Indian territory. No white man should set foot within that territory. Custer went in anyway. So in defense of their country, Custer was wiped out.

Today the people who occupy Black Hills are trespassers according to that treaty. The Government protected the people, protects the evil even though it is an evil, he protected them. There will be a day of reckoning, and before that happens the Indian people—

Before they went to Geneva, I was selected as a spokesman for South, North America, Canada. I was sick, I didn't go. I feel that it is no place for Indians to file a complaint against their own country which is occupied by white men. We made treaties. I said, "Let us give the President a chance to redeem himself on the treaty, take action on the treaty. Give him a chance. If he doesn't, then we will take it to the United Nations court or the world court and sue for the back pay we got coming," but they went anyway.

That was against my wishes because after all, we made the treaties in good faith with the Government. We should resolve it in good faith. So that was the reason I didn't go, and today—a few days ago we were in Washington. We talked to Mr. Mondale. A lot of things that are discussed. The President was waiting for us 45 minutes. We were late. We couldn't get in. They wouldn't let us in. Finally they let us in, but it was too late, the President already left. So we talked to Mr. Mondale and the Secretary of Interior and many of the lawyers. We present our case. I want to tell these people that we didn't lie. Everything we said

was the truth. We have the records to prove what we said was true. Mr. Mondale understood, he understands what we were telling him. He agreed to most of our talk.

Not very many years ago I talked with people, State officials from South Dakota, why couldn't we get together, resolve the differences, the broken treaties, and the things that belong to the Indian people. Let us do it in an official—under God—to resolve this issue. But they used the strong-arm message, the only message the white man know. The Indians will not take that. The Indians believe in God. They can be just as tough as any human on the face of the earth when the time comes. They don't want to do that.

So Wounded Knee was occupied because for 200 years the Government had lied to them. They want the treaties to be resolved by the President after every department of Government has failed to act. The Act of '77, 44th Act of Congress, provision number 6 says, if the '68 treaty—if we have trouble with the '68 treaty, we must get the President to contact all the treatymaking body and resolve the treaties for better understanding. That what's we are doing as a last resort.

If it is a failure, we take it to the world court or the United Nations court. There are 72 lawyers waiting to put that into force.

MR. ALEXANDER. Thank you, Mr. King.

MR. KING. Yes, sir.

MR. ALEXANDER. The other members of the panel, Dr. Flemming and Commissioner Freeman, have some questions for you and Chief Fools Crow.

COMMISSIONER FREEMAN. I have some questions for you. We appreciate your coming.

Chief King, Chief Fools Crow, I want to express my appreciation for the testimony which you have given. I have just one question to follow up on the statement which you made concerning the fact that Government owes rent to the Indian people.

Does your organization have—do you have the amount of this rent—have you made a demand for it? What is the amount of rent that is owed to the Indian people?

MR. KING. We don't demand it, but the Government come and wanted to lease certain land. We do it in good faith. He broke the treaty, so in a nice way, can you pay us for the use of it?

COMMISSIONER FREEMAN. But you don't have a figure. You don't have a sum?

CHIEF FOOLS CROW. I'm going to tell you, this may shock you. Some of the Congressmen who are working for the Indian people, two of them called me, I'm not going to mention—while I was up in Washington. King, we asked how much the Government owe you. The interest alone come up to \$600 billion in interest.

COMMISSIONER FREEMAN. \$600 billion?

MR. KING. Yes, \$600 billion. I want that now.

[Laughter]

COMMISSIONER FREEMAN. Thank you.

MR. KING. All of these different claims could come in different sections. We have 117 different treaties with the Government of the United States. They all involve territory, all involve peace. Indians want peace; white man want peace, so be it. They never carried that part of the bargain.

COMMISSIONER FREEMAN. You stated that the existence of the liquor stores on the reservation is in violation of the treaty.

MR. KING. Yes.

COMMISSIONER FREEMAN. Would you describe, for the record, the process of how a liquor store gets into operation, who is it who has to approve it or is it necessary to have approvals? What is the process?

MR. KING. The Justice Department in Washington, the treaty of 1868, later treaties, all mentioned that Indians must not be given liquor because they did here in the Black Hills. When the Black Hills was negotiated, they gave him liquor and made him sign the papers, but it wasn't three-fourth majority as it says in the paper.

COMMISSIONER FREEMAN. This is not recognized by the State of South Dakota?

MR. KING. I do not know. I do not know. I have nothing—

COMMISSIONER FREEMAN. The liquor store is licensed by the State?

MR. KING. The State of South Dakota. We don't want liquor on the reservation.

COMMISSIONER FREEMAN. I understand that. I'm trying to get at the process by which the liquor store gets the license, who it is specifically with responsibility to enforce the treaty, to recognize the fact that the treaty prohibits the liquor store.

MR. KING. Yes. Today they are going to discuss that. I do not know what course of action they are going to take, but it is on the agenda today. We will know, we will probably put it in a paper, but there is another thing; when we say anything, discuss claims, the paper will not print it. I don't think they let us get on the television to present our case. Those are all suppressed. We are working under a handicap, but we are not going to stop. We are going to do it. We are going to tell the world. That is why I challenged Cunningham to a debate on treaty issues. I told him it has got to be worldwide. What I have to say, I want the world to hear; what he has to say, I want the world to hear. If he is right, if I'm wrong, the people will decide.

COMMISSIONER FREEMAN. Thank you.

CHAIRMAN FLEMMING. Dr. Witt, do you have anything?

DR. WITT. No.

CHAIRMAN FLEMMING. May I join my colleague, Commissioner Freeman, in expressing to both of you our very deep appreciation for your being with us and for the nature of your testimony. It has been very helpful. Thank you very, very much.

MR. KING. We are happy to be here. Thank you.

CHAIRMAN FLEMMING. Thank you very much.

Counsel will call the next witnesses please.

MR. BACA. Eugene Trottier, Neil Long, Ralph Olauson, Thomas De Coteau.

CHAIRMAN FLEMMING. May I ask the four of you to stand and raise your hand?

[Messrs. De Coteau, Long, Olauson, and Trottier were sworn.]

TESTIMONY OF THOMAS DE COTEAU, CHIEF OF POLICE, SISSETON-WAHPETON SIOUX, SISSETON, SOUTH DAKOTA; NEIL LONG, SHERIFF, ROBERTS COUNTY, SISSETON, SOUTH DAKOTA; RALPH OLAUSON, SHERIFF, MARSHALL COUNTY, SOUTH DAKOTA; AND EUGENE TROTTIER, SPECIAL OFFICER, BUREAU OF INDIAN AFFAIRS, ABERDEEN, SOUTH DAKOTA

CHAIRMAN FLEMMING. The Chair is very happy to have you with us.

MR. BACA. Beginning with Sheriff Olauson, would each of you identify yourself, giving your correct title and business address, for the record, please?

MR. OLAUSON. Sheriff Ralph Olauson, Marshall County, South Dakota.

MR. LONG. Neil Long, Roberts County, sheriff, Sisseton, South Dakota.

MR. TROTTIER. Eugene Trottier, assistant area special officer, Bureau of Indian Affairs, Aberdeen, South Dakota.

MR. DE COTEAU. Chief of police, Sisseton-Wahpeton Sioux, Sisseton, South Dakota.

MR. BACA. Thank you.

Officer Trottier, you were a special BIA officer for Sisseton in 1976 and 1977. Would you describe your duties there, please?

MR. TROTTIER. Yes, sir, my major duties were the investigation of the major crimes. I also had the duties and responsibilities of providing technical assistance and advise the tribal police, and to try to promote effective interagency cooperation among various law enforcement agencies.

MR. BACA. Was it in that capacity that you called some special meetings on the different law enforcement agencies in the area?

MR. TROTTIER. Yes, that is the reason.

MR. BACA. Tell us about those.

MR. TROTTIER. Yes. Those meetings we term them coffee meetings. We kept them informal. We invited all of the law enforcement agencies as well as the members of tribal, city, and county governments to attend. The first couple of meetings were strictly just little social gatherings. As I recall, Mr. De Coteau and I bought the coffee and the rolls on that day.

As we went along, my initial hope was to promote more efficient, effective law enforcement through cross-deputization which was lacking in that area.

MR. BACA. Excuse me, when you are talking about in that area, describe the law enforcement agencies you are talking about.

MR. TROTTIER. Yes. Of course, the Lake Traverse Reservation was diminished and in its place are approximately 100 parcels of land held in trust and considered to be Indian country, and these are in Day County, Marshall County, Codington County, and Roberts County. So that is the area I'm referring to.

MR. BACA. Thank you. Go ahead, please.

MR. TROTTIER. Based on a law enforcement study conducted by the State of South Dakota that was completed in 1975, I followed their lead and their advice in developing a specific agreement for cross-deputization. Rather than merely giving a man broad general powers of the sheriff, as for an example, this agreement specified ways in which you would give the particular officer only certain amounts of authority at certain times, and mainly our concern at that time, I think, was drunk drivers.

MR. BACA. Your main concern was where, as to drunk drivers?

MR. TROTTIER. Anywhere the officer would happen to encounter them, we felt that drunk drivers should be taken off the roads.

MR. BACA. Checkerboard jurisdiction was creating a problem?

MR. TROTTIER. A very difficult problem. There were many times that in an accident situation it took us a half hour or more, either with the sheriff's department or the highway patrol, trying to determine whose jurisdiction actually it was on. Without cross-deputization, I felt law enforcement officers just couldn't do their jobs.

MR. BACA. How much success did you have in fostering the idea of cross-deputization?

MR. TROTTIER. We were able from these meetings to work out an agreement with Marshall County, although my initial hope had certainly been Roberts County since that is where the tribe had its headquarters.

MR. BACA. Sheriff Olauson, you have now such an agreement as to cross-deputization; do you not?

MR. OLAUSON. Yes, sir.

MR. BACA. When did that go into effect?

MR. OLAUSON. June of last year.

MR. BACA. I believe you were asked to bring a copy of the agreement with you. Do you have it?

MR. OLAUSON. Yes, we have.

MR. BACA. Mr. Chairman, I would like to have this inserted into the record at this point.

CHAIRMAN FLEMMING. Without objection it will be entered in the record as Exhibit No. 2.

MR. BACA. Sheriff Olauson, could you tell us how the agreement works in general terms.

MR. OLAUSON. We are just cross-deputized, the tribal officers are cross-deputized the same as if they were Marshall County deputies, my men cross-deputized the same as if they were tribal police officers.

MR. BACA. Was that an approach that met with immediate acceptance by both people of the tribe and of your county?

MR. OLAUSON. Yes. They both agreed on the agreement we had wrote up; the county commissioners agreed on it, and also the tribal board of directors agreed on it.

MR. BACA. How has it been working?

MR. OLAUSON. So far it has been working all right.

MR. BACA. You had a prior cross-deputization agreement?

MR. OLAUSON. Yes, we did earlier.

MR. BACA. Why was that terminated?

MR. OLAUSON. Well, I guess that time it was—the tribal police were having quite a turnover in officers, and it was terminated through the county commissioners until they got their tribal police force straightened out down there, that they pulled the cross-deputization.

MR. BACA. When exactly was it terminated? Do you remember?

MR. OLAUSON. I couldn't give you the exact date.

MR. BACA. Roughly then?

MR. OLAUSON. I would say it was spring of '75, somewhere around in there.

MR. BACA. Was that after the De Coteau decision? That was March 1975, roughly the same time?

MR. OLAUSON. Approximately the same time if I recall right.

MR. BACA. Sheriff Long, your county does not have such an agreement?

MR. LONG. That is correct.

MR. BACA. Could you describe in general the kind of system that you operate under at present; that is, I know that Sheriff Olauson has what is known as a unified system and yours is not; is that correct? In other words, what I'm asking, are there two different law enforcement agencies in your county, nontribal?

MR. LONG. I recall Ralph Olauson's system, a countywide system is what I refer to it as. In other words, rather than having police officers in the towns, let's get more or less police officers based out of Britton is the way I understand it.

MR. BACA. Could you move closer to the mike?

MR. LONG. I refer to Sheriff Olauson's law enforcement system as countywide law enforcement—our system, Roberts County, is a little unique. All our police officers within the county, with the exception of the tribal police, like the police officers at Effington, Rashalt, Summit, or Wilmot, are all, as soon as they have been certified with the State of South Dakota, become deputy sheriffs. They only take care of calls outside that city limits or their original jurisdiction with a radio message or permission from the sheriff's office. They are reimbursed by the Roberts County Sheriff's Department at the rate of \$3.50 an hour and 16 cents a mile. This all has to be verified by turning in a voucher and so through at the county level.

MR. BACA. What is your county's position on the cross-deputization?

MR. LONG. Well, at the time they had a meeting, I can't give you the date, but there was a meeting some time ago and a decision come

down that they were against it, and they didn't want to consider it at this time.

MR. BACA. Were you a participant in that meeting?

MR. LONG. Yes, I was.

MR. BACA. Did you make a recommendation to the commission?

MR. LONG. It is a very complicated situation, probably take me 10 hours to explain all the things that were discussed. I did make some recommendations, yes.

MR. BACA. Did you recommend for or against cross-deputization?

MR. LONG. I couldn't really say I was strongly against or for it either way. I had some ideas how I thought some things should be done. Everybody wasn't in agreement on it.

MR. BACA. Sheriff, did you attend those meetings that Officer Trottier was talking about that he had organized?

MR. LONG. I tried to attend as many as I could. I know I was at some of them.

MR. BACA. What was your feeling about the purpose of those meetings?

MR. LONG. Well, as the time went by and nothing apparently was being accomplished either way, it kind of seemed to me as if we were talking about the same thing over and over and over and I have to admit it did involve a certain amount of antagonism, and myself, whether it was right or wrong, I began to build up a certain amount of anxiety over it.

MR. BACA. Could you help me understand, is your county also somewhat checkerboarded?

MR. LONG. Absolutely, yes.

MR. BACA. So Officer Trottier was describing some of the problems that might exist in that sort of jurisdiction—that's where the officers would know where their jurisdiction started or stopped or not—is that presently a problem?

MR. LONG. Yes, it is some problem, yes.

MR. BACA. But your feeling was that, on balance, cross-deputization was not the answer?

MR. LONG. I do not know exactly how to answer that. Back some time ago I talked to Gene here, I wanted to deputize and went to the county commissioners, and I wanted to deputize certain tribal police officers to try to get the program going. At the time, Gene came back a couple weeks later and told me it would have to be all or none, so that was out.

I hate to give you plain yes or no on that. I'm really not able to.

MR. BACA. Is there a particular problem since the *Olipphant* decision with enforcement on tribal lands by tribal police, where the person apprehended is a non-Indian? If there is that kind of incident, how is it handled? Are those people turned over to your police force or what?

MR. LONG. As it stands right now, the way I understand it, the white person that commits a minor offense on trust lands or allotments is not subject to arrest by tribal police, which can create some problems.

MR. BACA. Has it created any problems?

MR. LONG. A few, yes.

MR. BACA. There have been incidents where people were arrested or attempted arrest was made?

MR. LONG. Yes, I would have to say there has been.

MR. BACA. There was no prosecution as a result of any of those arrests?

MR. LONG. Well, that is kind of a loaded question because there is—that is the State's attorney's prerogative on whether to prosecute or not. But that is correct; there have been some cases where nobody has been prosecuted.

MR. BACA. Thank you.

Chief De Coteau, could you comment on what you see the problem being in terms of the checkerboard jurisdiction, in terms of arrests by tribal officers of non-Indians on tribal property?

MR. DE COTEAU. My understanding of the *Oliphant* decision is that it said our judicial system could not prosecute non-Indians, but as for lawful arrests, more officers do have arrest powers over anybody on their jurisdiction. Before the *Oliphant* decision, we attempted to file charges against non-Indians in the State court, county court, and they were turned down.

MR. BACA. That would be in which county?

MR. DE COTEAU. Roberts County.

And since there were no charges, we couldn't file charges. We went through the citizen's arrest form that way. We talked to their circuit judge there and she stated that—at that time, Sheriff Long was there—and she stated we could make citizen's arrests. That went for a while. On traffic, if we caught somebody for speeding, we called the sheriff. He would come and we would make out the citizen's arrest form and hand it over to him and he would take it to the clerk of court.

Then on one particular day, I can't remember what day it was, the State's attorney advised me that we could not be making citizen's arrests, we could only make citizen's arrest on major crimes where someone could be sent to the penitentiary.

MR. BACA. What reason did he give for that decision?

MR. DE COTEAU. He said that it was in the State code.

MR. BACA. And he referred to the State penal code?

MR. DE COTEAU. Right.

MR. BACA. Criminal code?

MR. DE COTEAU. Right.

MR. BACA. Prior to *Oliphant*, how had you handled that situation; that is, a person violating the law on tribal property?

MR. DE COTEAU. After we couldn't arrest him on the citizen's arrest, we attempted again to file charges in the State's attorney's office, and he just wouldn't accept our complaints and stated that tribal police officers didn't have authority to be arresting white people, he stated.

And so, after that I met with the chairman of the tribe and he met with the general counsel there, and the tribe at that time stated to us police officers that [inaudible] non-Indians, anybody that violated any laws, it would go to tribal court. That is what we started enforcing.

MR. BACA. That is what you have been doing?

MR. DE COTEAU. No, until the *Oliphant* decision that came down.

MR. BACA. What are you doing now?

MR. DE COTEAU. We ain't doing nothing now. We catch non-Indians violating laws on the trust land, usually for traffic. We usually just stop them and let them go, because we attempted to file charges and the State court—State's attorney wouldn't accept it.

MR. BACA. Is this a frequent occurrence?

MR. DE COTEAU. Yes.

MR. BACA. Can you give us any estimate?

MR. DE COTEAU. Well, say, if the officer is out on 8-hour shift, he stops maybe 10 people, and percentwise, probably 2 out of the 10 would be non-Indians.

MR. BACA. Have you noticed any particular increase or decrease in that sort of incident since the *Oliphant* decision?

MR. DE COTEAU. It has been increasing.

MR. BACA. You keep statistics on the incidents on stopping for speeding violations?

MR. DE COTEAU. They are kept on record, but they are not classified as Indian or non-Indian unless the officer is going to court.

MR. BACA. Mr. Chairman, I have no further questions at this time.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Sheriff Long, I believe you stated a white person who commits a minor offense on trust lands is not subject to arrest. Under what circumstances is a white person who commits an offense, any offense, subject to arrest anywhere in South Dakota?

MR. LONG. I meant to say a white person that commits a minor on trust land wasn't subject to arrest by tribal police. That is what I meant to say.

COMMISSIONER FREEMAN. I'm glad I asked. That is not what you said.

MR. LONG. All right

COMMISSIONER FREEMAN. I was becoming very troubled by the possibility that you were saying that a white man is above the law. Is that what you are saying?

MR. LONG. No. I do not mean that by any means.

COMMISSIONER FREEMAN. Would you have any recommendations for this Commission as to what procedures need to be undertaken or what changes need to be made to assure that the peace of the trust lands will not be violated?

MR. LONG. It appears to me that the cross-deputization is not going to happen in Roberts County any time in the near future. They used to have a system where the sheriff's deputies, State patrol, State police officers in these towns took care of the county with the assistance of

a special officer, BIA officer, as I refer to them. That system did work fairly well. That was quite some time ago. I think that system would probably work quite well.

COMMISSIONER FREEMAN. Would you describe exactly how this system should be undertaken?

MR. LONG. When they used to have a special officer assigned to the Sisseton area, he would take care of these problems on Indian land involving Indian people.

COMMISSIONER FREEMAN. This special officer you are referring to would be an employee of the Bureau of Indian Affairs?

MR. LONG. That is correct.

COMMISSIONER FREEMAN. That is your recommendation?

MR. LONG. It is an idea that I think might work. I don't really know what to tell you to recommend. I haven't got the answer.

COMMISSIONER FREEMAN. You indicated that cross-deputization would not be permitted in Roberts County. Who is it who makes such decisions in Roberts County?

MR. LONG. Okay. Anybody to be deputized in Roberts County for any length of time has to be deputized with the sheriff with the approval of the county commissioners and the State's attorney. In other words, it involves five county commissioners, one State attorney, and the sheriff.

COMMISSIONER FREEMAN. Are all of those individuals white?

MR. LONG. Yes, they are.

COMMISSIONER FREEMAN. Is there any input or any involvement from the representatives of the tribe or representatives of the trust country? Do you seek the advice or counsel of any of the persons who would be concerned, any Indians who would be concerned?

MR. LONG. Are you speaking now for the county commissioners?

COMMISSIONER FREEMAN. Yes.

MR. LONG. I really don't know for sure, not to my knowledge, but I do not know for sure. It is possible.

COMMISSIONER FREEMAN. But the statement, the testimony which you have given concerning what will not happen in Roberts County is based upon your own personal opinion, or is this based upon a decision that was made by the county council?

MR. LONG. From what I know about it, I don't think it is going to happen in the near future. From the attitude of the people I talked to, I don't think it is going to happen in the near future.

COMMISSIONER FREEMAN. Then you are saying the attitude of the people is contrary to law enforcement as it relates to Indian tribe trust lands, if it involves white people?

MR. LONG. No, I couldn't really say that. I don't think that any of the county commissioners, State attorney, or myself are actually anti-law enforcement. I hope I understood your question.

COMMISSIONER FREEMAN. Yes, I'm trying to understand how there can be two kinds of law and order. The way you describe it there must

be two kinds. What then is your perception, how do you define law enforcement and law and order?

MR. LONG. We have a lot of problems in our area about this matter. For instance, in game violations we were trying to enforce the game violations last spring. Indian people were spearing fish on trust land, and there was absolutely nothing could be done about it. Apparently, to my knowledge, there is no tribal code against it. These are some of the problems we have. We have to live with it. These things exist.

If a major crime is committed, there is always somebody that has the power to take care of this offense. But there are some minor offenses, like spearing fish, where apparently there is nothing that can be done about it, or speeding, for instance.

COMMISSIONER FREEMAN. Speeding is considered a minor offense?

MR. LONG. I consider it a minor offense.

COMMISSIONER FREEMAN. Therefore, a person who would be driving 100 miles an hour down a business street may knock over a few people, but that is still a minor offense?

MR. LONG. I would not consider that speeding; I would consider that reckless driving or something, you know, when they are endangering life to that extent. I wouldn't consider that speeding at all. In fact, if somebody was driving 100 miles an hour down some main street, he would end up in jail someplace.

COMMISSIONER FREEMAN. Be he Indian or non-Indian?

MR. LONG. That is the way I feel about it, yes.

COMMISSIONER FREEMAN. Thank you.

MR. NUNEZ. Sheriff Long, you indicated that in the issue of cross-deputization that you are not against deputizing several of the Indian officers, but that the tribe wanted you to deputize them all. What was your personal objection to deputizing them all who were recognized peace officers?

MR. LONG. Well, at that time the county commission, the State's attorneys, and myself, there was no way they were going to deputize them across the board. I thought that would be a way of entering into this and getting this program going and seeing how this program was going, seeing how it worked out. It wasn't necessarily I have anything particularly against any particular officer.

MR. NUNEZ. How many officers are in the tribal police force?

MR. LONG. I just couldn't tell you right offhand how it was back in '76, I believe that we talked about this.

MR. NUNEZ. You saw it as a gradual step forward. You felt it could be done all across the board?

MR. LONG. Eventually, possibly, yes, that is what I had thought.

MR. NUNEZ. I'm not quite clear as to the objections that the county commissioners and the county attorney had specifically for not doing this. Could you elaborate on that point?

MR. LONG. There are several things that have happened that created some problems. I have got a copy of a letter here that the chief judge

from the tribe mailed to our judge, flat out says they will not honor an opinion issued by our circuit court judge. That created some hard feelings. There are several things like this that have happened.

MR. NUNEZ. There was no issue as to the qualifications?

MR. LONG. No.

MR. NUNEZ. Their training? It was kind of a personal animosity?

MR. LONG. No. I'm talking about an order that came down from our judge, our Circuit Court Judge Mildred Ramynke.

MR. NUNEZ. Was there an effort made to talk this out, get together, you are all in one county—

MR. LONG. It is hard to get along with people well when the judge over them writes a letter and tells our judge that they won't honor her decisions; when the judges aren't honoring each other's decisions, there are problems from the top to start with.

MR. BACA. Could we have a copy of that letter?

MR. LONG. You can have this if you want it.

CHAIRMAN FLEMMING. Do you want that entered as an exhibit? You want that entered as an exhibit?

MR. BACA. Yes.

CHAIRMAN FLEMMING. Without objection, the letter referred to will be entered as Exhibit No. 3.

Did you finish?

MR. NUNEZ. Yes, sir.

COMMISSIONER FREEMAN. Do you have a copy of the order of the circuit judge you are referring to?

MR. LONG. No, I haven't.

COMMISSIONER FREEMAN. Mr. Chairman, I would like to ask the staff to obtain a copy of the order to which Sheriff Long was referring and have that also inserted into the record at this point in the hearing.

CHAIRMAN FLEMMING. That will be done and entered as Exhibit No. 4, without objection.

MR. BACA. Mr. Trottier, Sheriff Long has talked about the major crimes having an organized and systematic way of being investigated. Could you describe the system?

MR. TROTTIER. Yes, of course. All of your major crimes would be under the exclusive jurisdiction of the United States. The special officer is generally the first officer to handle those cases jointly with the Federal Bureau of Investigation and Federal court system.

MR. BACA. Who makes the presentation to the U.S. attorney?

MR. TROTTIER. In most instances, the Federal Bureau of Investigation's agents.

MR. BACA. Why is that?

MR. TROTTIER. I believe it is the insistence of the United States district attorney that he will work with those agents whenever possible.

MR. BACA. I'm interested in your opinion. Is it a frequent occurrence that the same incident or set of incidents is investigated both by the BIA and FBI?

MR. TROTTIER. That is a common occurrence.

MR. BACA. Why the redundancy, what is the need for that?

MR. TROTTIER. There is an immediate need to secure the crime scene and to gather and collect evidence. For reasons unknown to me, sometimes the particular prosecutor does not accept the investigation done by the Bureau of Indian Affairs and orders a full scale investigation by the Federal Bureau of Investigation. This is not always the case, however.

MR. BACA. What is the percentage, if you know, or your opinion of cases referred to the U.S. attorneys by the FBI that are accepted or declined?

MR. TROTTIER. I suppose, of the major crime cases on reservations, 99 percent are presented by the FBI and 1 percent by the Bureau of Indian Affairs. Of those presented, I feel there is about 90 percent declination.

MR. BACA. In 90 percent of the cases the U.S. attorney refuses to prosecute?

MR. TROTTIER. Yes.

MR. BACA. Do you have an opinion why that is?

MR. TROTTIER. Yes, I feel that the reason for this is the way the presentation is made by the agent that is presenting it. If I might be allowed to clarify this, in all of my law enforcement experience, I have always had the ability to get an authorization on any person that I ever wanted arrested as long as I had grounds to do so. As far as I know, the FBI has the same working relationship with the prosecutor's office, but I suppose because of the fact that the FBI agent comes in maybe 3 days or 3 weeks or 3 months after the commission of the offense, it is not interesting anymore. He doesn't live in the community to know what the pressures and the feelings of the community are and presents them in a somewhat negative fashion. I'm not criticizing the agents. I feel that if I were in their position I wouldn't be interested in those cases either, and I would probably would present them the same way.

MR. BACA. Could you describe what you mean by that? What is their position?

MR. TROTTIER. For the most part, the agent is located perhaps 100 miles away from the reservation. He does not reside there. In most instances, he is not an Indian person. He doesn't feel the local pressures of the people in the community.

MR. BACA. Have you talked to FBI agents about this problem?

MR. TROTTIER. Yes.

MR. BACA. Can you share with us some of the opinions they might have expressed to you?

MR. TROTTIER. They are somewhat apologetic; that is all I can recall. Of course they have always said to me, "If you feel something should be done, certainly feel free to share that with me. I would be happy to pursue that." For the most part, of course, the agents are very cooperative, very thorough in their work.

MR. BACA. Could you tell us to what extent you share information with them? Do they begin an investigation as though you had never conducted one? Or do they build on what you have done? Could you describe that?

MR. TROTTIER. That kind of depends on the individual agent. Many agents throughout the years have accepted the work that has been accomplished, have taken copies of it and have done only the new things. We have had some agents who insist on doing the full, the complete investigation themselves.

The U.S. attorney doesn't seem to care. In many cases, now when the FBI reduced the manpower somewhat, one interview is conducted by the Bureau of Indian Affairs, the next by the FBI.

MR. BACA. Thank you.

CHAIRMAN FLEMMING. Mr. Trottier, you are still convinced the type of working agreements you developed with Marshall County is at least a partial solution to the problem that confronts you?

MR. TROTTIER. Yes, sir, I am. I am convinced that the only way to have effective law enforcement is for the officer who observes the violation to be able to take the action and to get the successful prosecution.

CHAIRMAN FLEMMING. Mr. Olauson, you were asked the question. I'd just like to pursue it a little. Your experience with the working agreement has been a positive experience. Have you run into any difficulties in connection with it that you would care to identify, the kind of difficulties that may be worked out over a period of time?

MR. OLAUSON. Since this new cross-deputization went into effect, we haven't had any real problems. Most of the arrests that tribal police have made was speeding violations. There has been a few drunken driver violations. There was one question that went to court where the white man they had arrested for drunk driving, he didn't feel they had jurisdiction, and as the State's attorney explained to him, we had cross-deputization and he accepted that. There was no more input on it.

CHAIRMAN FLEMMING. So you don't have any hesitation in recommending this kind of a working agreement as a solution?

MR. OLAUSON. Not at the time. The way we got it drawn up in the agreement, the officer has to be certified by the State before they can be cross-deputized.

CHAIRMAN FLEMMING. Okay. We appreciate very, very much all of the members of the panel being with us and presenting this testimony. Thank you very much.

Counsel will call the next witness.

MR. HARTOG. The Commission calls Jerry Flute, Edward Red Owl, Leslie Stillson, Roger Pearson. Will they please come forward.

[Messrs. Flute, Pearson, Red Owl, and Stillson were sworn.]

**JERRY FLUTE, TRIBAL CHAIRMAN, SISSETON-WAHPETON SIOUX TRIBE;
ROGER PEARSON, MAYOR, CITY OF SISSETON; EDWARD RED OWL, PLANNING
DIRECTOR, SISSETON-WAHPETON SIOUX TRIBE; AND LESLIE STILLSON,
BUSINESSMAN, SISSETON, SOUTH DAKOTA**

CHAIRMAN FLEMMING. We are very happy to have with us.

MR. HARTOG. For purposes of the record, starting with Mayor Pearson, would you please identify yourselves, giving your title, as appropriate, and your business address?

MR. PEARSON. Roger Pearson, mayor, city of Sisseton, South Dakota.

MR. STILLSON. Leslie Stillson, businessman, Sisseton, South Dakota.

MR. FLUTE. Jerry Flute, tribal chairman, Sisseton-Wahpeton Sioux Tribe.

MR. RED OWL. Edward Red Owl, planning director, Sisseton-Wahpeton Sioux Tribe.

MR. HARTOG. As all of you know, many members of the Sisseton-Wahpeton Sioux Tribe live, shop, and work in and around the city of Sisseton. Tribal headquarters in fact are located but a few miles outside the city limits. I would like to ask each of you, starting with Mayor Pearson, as leaders of your communities, if you would briefly characterize the present relations between Indians and non-Indians in the Sisseton area.

MR. PEARSON. I believe the relations at this time are well and as good as they have been in the last 4 or 5 years.

MR. HARTOG. Right now, how would you characterize things at present?

MR. PEARSON. Good.

MR. HARTOG. Mr. Stillson?

MR. STILLSON. I think business relations are very good in our community.

MR. HARTOG. No major problems?

MR. STILLSON. No major problems.

MR. HARTOG. No real tensions?

MR. STILLSON. No, I don't think there is any minor problem.

MR. HARTOG. Could things be improved?

MR. STILLSON. I do not know. Not unless I had a direct salesman working in the country, maybe.

MR. HARTOG. Could they be improved?

MR. PEARSON. I think so.

MR. HARTOG. A lot or just a little?

MR. PEARSON. Well, I suppose a little.

MR. HARTOG. What kinds of things?

MR. PEARSON. I guess the thing that I would like to see happen in our community is a human relations commission organized which we are in the process of doing. We have had some setbacks in getting this ordinance established. I would truly like to see this, that we could have some type of a commission that could be a sounding board for solving problems that may arise.

MR. HARTOG. We will return to that later.

Mr. Flute—the Indian, non-Indian relations in the Sisseton area?

MR. FLUTE. Mr. Chairman, how much time are you going to give me to respond to that?

MR. HARTOG. The question was briefly. Could you take about 2 minutes? And you will have time to amplify—the present relations?

MR. FLUTE. Mr. Chairman, members of the Commission, I appreciate the opportunity to appear before you today. I would like to make one recommendation: that you provide some more comfortable chairs for the witnesses.

I think the climate between the Indian and white community with the Sisseton area, in terms of business relationships, would have to be deemed as excellent because, by later testimony we will show you that because of the tribe's efforts that many millions of dollars are brought into that community, and because of those millions of dollars, the business climate ought to be excellent.

In terms of the social relations between the Indians and the non-Indians, I think, to say the least, there needs to be some major attitudinal changes to see a better relationship between the two communities.

MR. HARTOG. Mr. Red Owl?

MR. RED OWL. I would concur with Chairman Flute's statement. Also, I would like to amplify on that. The relationship is primarily a consumer relationship, the Indians buying goods from the merchants, and in Sisseton, the majority of the merchants are non-Indian.

The social context, interracial, interpersonnal relationships are nonexistent. The two communities are distinct and separate.

MR. HARTOG. Could you amplify on that?

MR. RED OWL. Yes. The two communities stay with their own kind. Socially that is true. Economically that is true. Religiously that is true. There are white churches and Indian churches there. All goods are purchased from the non-Indian.

MR. HARTOG. In amplifying on the economic matters, Mr. Red Owl, you are the tribal planner and are responsible for the tribe's economic development; is that correct?

MR. RED OWL. Yes.

MR. HARTOG. What is the tribe's annual budget?

MR. RED OWL. The Sisseton-Wahpeton Sioux Tribe has a budget of \$8,755,483.

MR. HARTOG. How much of this budget would you estimate is spent in Sisseton?

MR. RED OWL. I would say a good healthy 70 percent of the budget is spent in Sisseton.

MR. HARTOG. The tribe has approximately 400 employees?

MR. RED OWL. That is correct.

MR. HARTOG. How many of them do you know to live, shop, work around the Sisseton area?

MR. RED OWL. I would say safely 60 percent of the employees.

MR. HARTOG. I understand you brought with you a document—

MR. RED OWL. Yes, I have.

MR. HARTOG. —describing the economic background of the tribe. Would you briefly describe that?

MR. RED OWL. Yes. The document that we have for the Commission here is entitled "Fiscal Year 1978." And it provides information regarding the outlay of Federal funds for the benefit of the Sisseton-Wahpeton Sioux. There are three agencies providing funds. First, the Sisseton-Wahpeton Sioux Tribe and they provide Federal funds amounting to \$8,755,483. The second agency providing Federal funds for the benefit of the Sisseton-Wahpeton Sioux is the Sisseton agency of the Bureau of Indian Affairs which contributes \$2,229,292. The third agency is the Sisseton service unit of the Indian Health Service which contributes \$5,021,640 for a total Federal outlay for the current Federal fiscal year amounting to \$16,006,415.

MR. HARTOG. Mr. Chairman, I would like to request that this document be entered into the record with the appropriate exhibit number.

CHAIRMAN FLEMMING. Without objection it will be entered into the record at this point as Exhibit No. 5.

MR. HARTOG. Mr. Stillson, you run a gas station and a service and tire service in Sisseton?

MR. STILLSON. Yes, sir.

MR. HARTOG. Can you estimate roughly how much business you do with the tribal members, small, large, substantial?

MR. STILLSON. Substantial. I do not know the percentages. We don't try and keep track. I know a lot of the people trade with us.

MR. HARTOG. Do Mr. Red Owl's and Mr. Flute's statements about the economic contribution of the tribe to the city's economic well-being come as any surprise to you?

MR. STILLSON. No.

MR. HARTOG. Do you think other business leaders in the community are aware of that?

MR. STILLSON. I'm sure they are.

MR. HARTOG. Do you think the townspeople should look favorably or unfavorably on the growth and the existence of these kinds of economic resources in the tribe?

MR. STILLSON. Favorably, very favorably.

MR. HARTOG. Do you think people in fact do?

MR. STILLSON. As a rule I think they do.

MR. HARTOG. Could you characterize your understanding of those people who don't? How is that segment of the business community which is not sympathetic and favorable to the economic contribution of the tribe? How does that part of the business community feel about the situation?

MR. STILLSON. Well, there are some people once in a while who will kind of ridicule the way the tribe is building up out there at old agency because they are spending a lot of money and they say, "Well, it is our money they are spending." I don't hold with it because what they

are doing out there is employing a lot of people. The people are learning to work and hold jobs and they are good citizens.

MR. HARTOG. Mayor, do you share that view?

MR. PEARSON. Yes.

MR. HARTOG. Do you think the business community is aware of the—supports the economic contribution of the tribe?

MR. PEARSON. Those that do not hold with the view probably are very critical of a lot of other things. I do not know what the word is I would want to use to describe them. Nothing would be right with those other type people.

MR. HARTOG. Is that a small or large percentage?

MR. PEARSON. Very small.

MR. HARTOG. Very small? One or two people?

MR. PEARSON. I won't say that small, no.

MR. HARTOG. But certainly not any consequential part of the community?

MR. PEARSON. I would say not.

MR. HARTOG. It is a consequential amount of people who hold the negative view to the tribe in the community?

MR. PEARSON. Would you repeat that?

MR. HARTOG. There is a substantial amount of people who do hold a negative view towards the tribe?

MR. PEARSON. No, I don't think so.

MR. HARTOG. Mayor, you have been in the city government for a number of years?

MR. PEARSON. Yes.

MR. HARTOG. Ten or 12 years?

MR. PEARSON. Right.

MR. HARTOG. Would you describe how you think the city's relations with the tribe have changed in the past years.

MR. PEARSON. I think we have gotten along much better. We have traded work with each other. The tribe has helped us this last winter; we had tremendous snowfall in our area. Our city just does not have the type of equipment to handle those types of snowstorms. They assisted us many times in snow removal with equipment and with manpower. We have in return done some things; we don't have all that much equipment, but we have done some sweeping with our sweeper for them, allowed them storage space for gravel, and this type of thing. In that area, I think, the working back and forth has been very good.

MR. HARTOG. Roughly what is the city's budget?

MR. PEARSON. We are operating on about \$800,000 per year.

MR. HARTOG. How much of that is by the city's municipal liquor operation?

MR. PEARSON. About \$90,000.

MR. HARTOG. You were talking about some present cooperation. Can you describe for me some of the earlier relations between the tribe and city government, in the early seventies, the beginning of this

decade. You said in your opening, in response to my opening question, things have improved.

MR. PEARSON. Just in the past 4 years I have been mayor. I have been a city councilman for a number of years before this.

It used to be a little hard for any kind of cooperation between not only the tribe but the county and the city in working back and forth together.

MR. HARTOG. Could you amplify on that a little bit?

MR. PEARSON. I do not know if I can or not.

I guess I have become more aware in the last 2 or 3 years because of the mayor's position that I have had to deal more with Chairman Flute and members of his staff. Before that, I guess I wasn't that familiar or that inclined to show that concern.

MR. HARTOG. Why?

MR. PEARSON. I guess, as a new councilman on the council concerned with parks, streets, water improvements, these types of things, I emphasized that more.

MR. HARTOG. There was no need to deal with the tribe in earlier years?

MR. PEARSON. Not in my capacity as councilman.

MR. HARTOG. Mr. Stillson, there is no significant industry, major employers of any consequence, in the city of Sisseton, 30, 40, 50, 100 employees; is that correct?

MR. STILLSON. No, there isn't. Landsberger, seasonally, I guess, produce—and that is getting smaller each year.

MR. HARTOG. You are the president of the Sisseton Development Corporation, a profitmaking enterprise, which is seeking to buy land and build an industrial park to attract developers to Sisseton?

MR. STILLSON. That is right.

MR. HARTOG. Can you tell us a little bit about that corporation and what your objectives are?

MR. STILLSON. Our development corporation is composed of a bunch of businessmen investing some money together to try and develop something, to entice some industries into town that would create employment. Basically, that is what we started some years ago. Still that is what we are trying to do.

MR. HARTOG. Mr. Red Owl, the tribe has for several years had an industrial park which, despite your office's best efforts, still remains unoccupied, is that correct?

MR. RED OWL. That is correct.

MR. HARTOG. Can you tell us a little about that?

MR. RED OWL. The industrial park is located at the agency village, 8-1/2 miles south of Sisseton, South Dakota. The project was funded by the Economic Development Administration [EDA] approximately 3 years ago. The project cost approximately \$260,000 and provides adequate land, water, and sewer facilities and highway facilities to the site.

The tribe has been active since its construction and has had a very intensive effort to attract industry to the site, primarily through solicitation.

MR. HARTOG. Mr. Red Owl, has there been any common communication or cooperation between the two development enterprises?

MR. RED OWL. To my knowledge, there has been no communication.

MR. HARTOG. Mr. Stillson?

MR. STILLSON. In the last 3 years, I'm sure that is right.

MR. HARTOG. Why?

MR. STILLSON. We have been very inactive until about a year ago last March. Then we decided to give it a go again, get some more money in and try and do something. Before that time it was very inactive.

Earlier than the 3-year term Mr. Red Owl talked about, when our development corporation had a meeting, the tribe was there, their employees. I do not know who all it was. I know Chris Johnson, a few of them were there. We were talking with EDA. I suppose part of the upshot of that was that EDA helped them to build their industrial park. Nothing ever came of it as far as we knew, as getting industry in.

MR. HARTOG. Mr. Red Owl, the same question. It's rather anomalous from an outside point of view, to see these two communities which, according to the mayor, have good relations and, according to Mr. Flute, having good economic relations, have side-by-side development corporations?

MR. RED OWL. That is correct. I recall the tribe's officers and specifically Chairman Flute's offer at the time of his inauguration as tribal chairman. This was, I believe, 3-1/2 years ago, wherein an invitation was extended to the counties on the reservation area as well as the city to form a joint economic development consortium for purposes of fostering industrial development. To my knowledge, there have been no responses to that appeal.

MR. HARTOG. Chairman Flute, would you care to comment on this situation?

MR. FLUTE. Sure. I think it was probably a year ago, to the best of my recollection, that I talked to my EDA planner and asked him if he felt that the attitude within the town of Sisseton and those business leaders who were interested in industry would be favorable to where we would host a meeting and to discuss mutual areas of concern, namely industry and jobs, and his response was to me he thought the timing was right, the attitude was right, and that such a meeting should take place.

I asked him to extend the invitations to a number of business leaders to discuss economic development. To my recollection, there were three members of the community that came to a meeting, the editor of the local newspaper and one farmer-rancher and another individual

that I don't recall at this time. We discussed the possibilities of joining forces in economic development, and the sum result of that meeting was that one of the members of the non-Indian community expounded for about an hour and a half on all the failures of industrial development and they got up and thanked me for the meeting and walked out. That was the extent of our session.

From that meeting—I read into that that if we were going to do anything on industrial development that the tribe ought to keep its nose to its own business and proceed as we have been.

MR. HARTOG. Mr. Flute, the mayor earlier was talking about the improvement of the relations between the tribe. Could you give us your historical overview in the change in the relations with the tribe? Of course, the tribe has not always had the resources it currently has. Could you include that in your overview?

MR. FLUTE. The Sisseton-Wahpeton Sioux Tribe was really not organized as any visible form of government until the early seventies. Prior to that time the tribal government, per se, had no credibility within the community with both the Indian or non-Indian. This was primarily due to the fact that Federal funds that were available to the tribe were either not applied for, or the tribal council at that time did not have the experience or expertise available to take advantage of any programs.

There were a number of EDA projects available to the tribe which, to my understanding, the city and the tribe jointly applied for and that included water and sewer expansion for the city of Sisseton, construction of a hospital, airport runway, and a number of other projects.

None of these directly had an impact to the tribe. They were directly advantages to the Sisseton community. It wasn't until 1971 that the tribe began extensively contracting under the 1910 Buy Indian Act and through the Buy Indian Act and up until the Public Law 93-638, the Indian Self-Determination Act, the tribe has steadily increased the number of contracts we have with Federal Government for proper providing services. The tribe itself has virtually no independent income. Through tribal lands, the gross income to the tribe probably averages \$2,000 a year. Through Federal contracts now we have built a very shaky economy, year-to-year economy on the Federal contracts, approximately \$9 million a year business.

During this period of time, the tribe, because of jurisdictional problems, and these were caused primarily by a number of lawsuits that were filed in the State and Federal courts and ultimately resulted in the U.S. Supreme Court decision that ruled the reservation boundaries had been terminated and the reservation was diminished to those parcels of trust land.

When that Supreme Court decision—prior to the Supreme Court decision when the lower courts were ruling on the issue, we went through a period of about 2 months where there was absolutely no law and order for the Indian people on the reservation. The State courts

had ruled and the appeals courts had ruled the State did not have jurisdiction over any Indian people anywhere within the boundaries of the reservation, and this left the tribe and the community in a chaotic situation that the tribe was not prepared financially or manpower-wise to quickly put into effect the judicial system or court system.

The court rulings forced us to do this. It was the long-range plan of the tribe to eventually do this in a staged process. The lower court rulings forced us into this. This caused many problems within the community. When the case was finally resolved by the U.S. Supreme Court and the decision was that the boundaries had been terminated and that the tribe had jurisdiction only over its own members on trust land again, we went through a chaotic period of time when no one really knew who had jurisdiction, where law enforcement started, where somebody else took over, whatever the situation was.

That also caused some economic problems with the tribe in that we had one local bank and a savings and loan institution that began refusing to make loans to Indians. That caused a lot of problems for us. The attitude, I think, within the community at that time as far as the tribe was concerned was extremely poor. The tribal council then made a decision that, even though the town is named after the tribe's namesake, that perhaps it was time to move out of the community. And since the attitudes were not favorable, there didn't seem to be any type of progress, the decision was made that the entire operations of the tribe would be moved to the old home ground, the old agency village, and that any developments through Federal programs would occur only on Indian trust land.

In my mind, had the attitude of the community placed itself in a position for negotiation and if there were room for compromise between the tribe and the non-Indian community, I would estimate that somewhere between \$5 to \$10 million worth of development probably could have taken place right within the Sisseton community. But instead, it was the tribal council's decision to move the operations out of town, and we began a period of isolationism, aside from the economic needs of the tribe in consumer goods, and that is currently the status of the tribe.

MR. HARTOG. Mayor, would you care to comment on that. Do you share that overview and perspective?

MR. PEARSON. Well, to say that our community hasn't gotten along that well or done anything as far as the tribe is concerned, I don't think that is exactly correct. Our council voted in 1968 to approve this Operation Turn Key, which is 80 units of low-income housing. Our council seen a definite need in our community. People were living in housing that wasn't fit to be lived in. Renters were renting homes to people and getting exorbitant rents.

MR. HARTOG. Mr. Flute was talking more in the last few years rather than 1968. In that period of time would you agree with his characterization?

MR. PEARSON. I guess I'm trying to lay a little background. This leads up to, and it isn't a project solely for 1968. We are still involved in the project. It still continues to be a very important part of our program of low-income housing. This resulted in 80 units of housing initially, and the city of Sisseton received a cash sum plus the new garbage compactor to help take care of the additional homes that would be using those services. It also placed a little growing pains on us in that we had to amplify our water system, maintain some streets that we never had before, provide fire protection that we never had before, and it has been of some cost to our community to have this. But we are thankful we do have it. I think the people that live in these homes are thankful this happened also.

MR. HARTOG. Mayor, in the spring of 1977 some AIM [American Indian Movement] members and some tribal members approached the city council regarding a human relations commission.

MR. PEARSON. That is correct.

MR. HARTOG. A series of meetings was had, helped along by the Community Relations Service, Department of Justice.

MR. PEARSON. That is correct.

MR. HARTOG. Was the CRS helpful in moving the commission effort forward?

MR. PEARSON. There was two individuals that were very helpful, Art Montoya of the U.S. Justice Department and Manuel Salinas. There was one, I'm not so sure he was associated with the Department, that was a detriment to the whole community.

MR. HARTOG. What is the status of the efforts to have a human relations commission right now?

MR. PEARSON. Our status right now, at this point, is that we have had the first reading of an ordinance establishing the human relations commission within our city. At this reading of the ordinance we had a very good delegation of people there that indicated they would like to see some changes in the wording, different paragraphs they would like to see added to the ordinance. It was at this time that we found it necessary to get an attorney general's opinion on those things that were wanted to be added. We just recently received that back. We will be proceeding to establish this ordinance.

MR. HARTOG. Have you communicated to the tribe the response to the question by the attorney general?

MR. PEARSON. No, I have not.

I guess the other reason that this ordinance has not been passed, there seems to be a lack of interest from the other two governmental entities in establishing this type of ordinance.

MR. HARTOG. My understanding, you have had that opinion now for well over a month.

MR. PEARSON. That is right.

MR. HARTOG. Have you not brought that to the attention of the tribe?

MR. PEARSON. I have not.

MR. HARTOG. Why?

MR. PEARSON. Our council has decided there should be some effort shown by the tribe to show some interest in this ordinance. I have attended many, many meetings and so have other members of the council and members that are in the employ of the city like our police chief and so on, and it is very rare we see any representation from the tribe at these meetings, and especially now, at this first reading of this ordinance there was no delegation at all from the tribe at that meeting.

This involves three entities of government, but if it is just one entity of government that is concerned about it, we feel there should be some more input from the other two.

MR. HARTOG. Mr. Flute, would you care to respond?

MR. FLUTE. Yes, I am also waiting to see what the attorney general's opinion would be on the request that was made by members of the public during the discussion on the human relations commission. There was some feeling on our part that when both units of government, to my understanding, requested the attorney general's opinion that this was nothing more than a delay tactic, since the language that was proposed giving the commission subpoena power was considered to be standard language in most human relations commissions throughout the country.

If we have not had participation up until now, I would have to take my licks for that, because up until the time that the recommendation was made that the commission have subpoena power, I think we had representation at most of the meetings. I was there at several myself. I have had representation at meetings up until the request for the attorney general's opinion.

MR. HARTOG. I have no further questions at this time, Mr. Chairman.

CHAIRMAN FLEMMING. I ask the chairman of the tribe about the contracts you enter into with the Federal Government for services. Do you in turn, after you enter into these contracts and receive the Federal funds, enter into subcontracts for the delivery of some of these services, or do you assume complete responsibility for the delivery of the services?

MR. FLUTE. Our subcontracts, Mr. Chairman, are very minimal. We do have some, but the majority are carried out by the tribal administration.

CHAIRMAN FLEMMING. Where you do enter into a subcontract, do you make a determination that the subcontractor has an affirmative action program?

MR. FLUTE. That is normally standard language in any of the Federal contracts that we have. The tribe obviously is covered under the Indian preference law which was tested in the Supreme Court and upheld.

CHAIRMAN FLEMMING. Right.

MR. FLUTE. In addition, any of the subcontract forms that accompany major contracts that we have requires the equal opportunity and affirmative action plans; yes, that is standard language in subcontracts.

CHAIRMAN FLEMMING. Have you had any occasion to determine whether or not the affirmative action plan put into effect by the subcontractor has produced results as far as Indian employment is concerned?

MR. FLUTE. I'm satisfied that the subcontracts we have had comply with the provisions. The tribe is sometimes caught in embarrassing situations where, using the Office of the Federal Contract Compliance, we force Federal contractors, highway contractors, manufacturing contractors, into hiring Indian people, and the problem we run into is that many of our Indian people are very reluctant to leave the reservation. We may find jobs for them with contractors that are engaged in Federal contracts that are off the reservation, and our retention rate with the Indian employees is very low. If the employment is on reservation within commuting distance, whether it be standard employment or training, whatever, I think our success ratio has been very high. We have had many graduates, many employees, who stayed with the project to completion. Many times when the employment is off reservation it is not very good.

CHAIRMAN FLEMMING. Could you just give us a picture of the employment situation as far as the members of the tribe are concerned, either on the reservation or off the reservation? You have identified what I recognize as one of the problems, but what is the overall picture? What is the unemployment rate at the present time?

MR. FLUTE. We average, Mr. Chairman, a year around 50 to 55 percent unemployment. And in spite of the tribe's efforts on the contracts we have through the Federal Government, as I stated before, many of these are training contracts and not considered employment. Many are year-to-year contracts; it might be a 3- or 9-month contract. It doesn't lend itself to any type of assurance you are going to have a job for a number of years.

The entire tribal government is premised on the year-to-year contract basis. If for any reason, if the Congress decided that the tribes would be terminated, for example, we would not have an economic base to operate from to provide the same services we have now. But generally, I think 50 to 55 percent is the unemployment average.

CHAIRMAN FLEMMING. Does the tribe have an active counseling, training, placement program designed to decrease the unemployment rate?

MR. FLUTE. We have a manpower staff with—administratively there are probably eight or nine individuals that are involved in placement, training, and counseling. We also work very closely with the South Dakota Employment Service and very closely with the Department of Labor. That doesn't necessarily mean that because of these resources we have high success ratio in employment placement or in training. If it is done on reservation, very close to home, we have very good success. Off reservation, not too good.

CHAIRMAN FLEMMING. As you look to the future, what do you think is the solution in terms of cutting down that very high rate of unemployment?

MR. FLUTE. I don't believe that the solution is going to be a simple one; it is not simple. It is going to be costly.

In the rural area we are located in, from all the economic resource people we have talked to, our chances for any major industry that would employ 25, 30 people year round doesn't look that good. We are really not in a good rail location area. We have got problems with the railroads threatening to close down the line every other week. We have got problems with grain shipment for farmers, getting grain moved out. The major interstate highway is not scheduled for completion until 1980, 1981, possibly longer depending on Federal funds. Transportation-wise we are very weak. The air transportation in South Dakota is very poor, particularly in the northeast area of South Dakota. Generally, the characteristics that would induce industry to move into the area are confined to one thing: we have a readily available labor force. Industries are very reluctant to move into an area that have only that ingredient; they need the rail lines, they got to have a good transportation network to move goods in and out. We don't have that in our area.

CHAIRMAN FLEMMING. That has been the problem as far as your industrial park development is concerned?

MR. FLUTE. Right.

CHAIRMAN FLEMMING. Mayor Pearson, does the city government have an affirmative action plan?

MR. PEARSON. Yes, sir.

CHAIRMAN FLEMMING. As far as employment is concerned?

MR. PEARSON. Yes, sir.

CHAIRMAN FLEMMING. What is your employment of minorities?

MR. PEARSON. I would say we are about 20 percent.

CHAIRMAN FLEMMING. Are a large number of the minorities Indians?

MR. PEARSON. Yes.

CHAIRMAN FLEMMING. What kind of positions are they employed in?

MR. PEARSON. We have Mr. James Yammerino, our police chief, and Elbert Star, highway patrolman for us. He has been with us for many years. Also we have an employee that is the assistant street superintendent. Through the years various positions, not just menial jobs of picking up garbage.

CHAIRMAN FLEMMING. Right.

MR. PEARSON. But as to qualifications, if they meet the qualifications, they are treated like everyone else.

CHAIRMAN FLEMMING. Is there a good working relationship between the manpower activities of the tribe that have just been described and your personnel office?

MR. PEARSON. I think there has, yes.

CHAIRMAN FLEMMING. Would you comment on that, Mr. Flute.

MR. FLUTE. I couldn't give you a positive answer, Mr. Chairman. The tribe's employment branch, as I described to you before, is in the branch of administration which is not my day-to-day responsibility, so I'm sure there has been some interrelationship. Whether it is good, bad, I can't tell you.

CHAIRMAN FLEMMING. Mr. Stillson, what is the picture as far as private employment is concerned in the community in terms of the employment of minorities?

MR. STILLSON. Well, I do not know what percentage it would be. At the present time, I do not employ any Indians. I have—I would if they were qualified, no problem.

A lot of the businesses in Sisseton are family-owned businesses where the family itself works the business predominantly. I believe right now I have—I have three of my own children in my business with me, two sons and a daughter in my business with me. That fills part of the slots. A lot of other businesses are the same.

CHAIRMAN FLEMMING. Mr. Flute, what is the experience of the tribe as far as employment of Indians in the private sector in the community is concerned?

MR. FLUTE. I don't believe that the tribe has ever made a strong effort within the community itself. We experienced a situation a few years ago where the wages within those areas of employment were less than what an individual could draw on welfare and, as a result, it was very difficult to get an Indian who was, say, with a family of five drawing \$550, \$600 a month on welfare to go to work for \$400 a month. As a result, there were a few efforts made to place Indians in jobs within the community, but the wages were lower than what they could draw on welfare. As a result, we have never done that again.

CHAIRMAN FLEMMING. Are there any members of the Indian community serving on the city council at the time?

MR. PEARSON. No, sir.

CHAIRMAN FLEMMING. I assume that all of the witnesses on this panel would state that the kind of issues that were described by the previous panel are issues that do create real problems, real tensions as between or within the community. We haven't pursued that. You have listened? I do not know whether you were here at the time that testimony was being presented or not. If you have anything to add to that, I know we would be glad to hear from you on it.

COMMISSIONER FREEMAN. Mr. Flute, how much land is owned by the tribe?

MR. FLUTE. Corporately, the tribe owns approximately 12,000 acres. Individually, there are approximately 100,000 acres that are owned by individual members of the tribe.

COMMISSIONER FREEMAN. Is this land from which you receive income of less than \$2,000 a year?

MR. FLUTE. From the 12,000 acres?

COMMISSIONER FREEMAN. Yes.

MR. FLUTE. Most of that land is mortgaged to FHA at this point. We don't receive a large income from that, aside from making the payments. Prior to the tribe's loan with FHA for land purchased, we owned approximately 900 acres of land to the corporate tribe itself. That is where the estimated \$2,000 a year income is derived from.

COMMISSIONER FREEMAN. Would you describe for the Commission the present use which is being made of that land.

MR. FLUTE. The present use is primarily agriculture. It is being leased to non-Indians as well as Indian farm-ranch operators. A small percentage of the land is used for low-rent housing and HUD's [Department of Housing and Urban Development] mutual self-help home ownership program. The tribe makes land available to individual members of the tribe that do not own land for the purpose of qualifying for the HUD program.

COMMISSIONER FREEMAN. Would you have an opinion as to whether the present use is the maximum utilization or if there is another potential for greater utilization of the land?

MR. FLUTE. In our opinion, the maximum utilization of this land would be made by the tribe's farm operation. We currently have a farm operation that utilizes approximately 2,500 acres of cropland. The current plan is to expand this operation, and the goal is set where the tribal farm itself will farm an estimated 20,000 acres of cropland.

COMMISSIONER FREEMAN. What is the status of the plan of that operation?

MR. FLUTE. It is progressing slowly. We did see some improvement this year. We have increased our acreage by about 30 percent from last year.

COMMISSIONER FREEMAN. What needs to be done for the tribe to obtain the potential or maximum utilization of the land?

MR. FLUTE. First thing, we need good weather. We have gone through severe drought and this had caused an impact on the entire area of all agriculture. We also went through some rocky times on cattle production with the prices, and those prices have just recently been on an increase and are at least stabilizing now. The tribe would need to have at least three or four good productive years to begin expansion of the farm operation as rapidly as we would like to see it expand. If not from the income derived from the farm, then we would need to capitalize the expansion either through loans or some other Federal grant program.

COMMISSIONER FREEMAN. If there could be expansion of the farm operation, is it your opinion that it would have any impact on the present unemployment rate? If so, how much?

MR. FLUTE. The tribal farm operation is very low in labor. With the type of machinery available now, we have a three-man operation that farms the estimated 2,500 acres of land. What we hope to accomplish by the farm operation is to encourage more of our younger people to get into agriculture. Agriculture is the economy in our area. We have

many acres of land that are in tribal or individual ownership. A lot of this land is good productive cropland. We have seen an expansion of individual operators since the beginning of the tribal farm operation.

We have a training program in agriculture right now, and we have 16 members of the tribe who are participating in this training and these members are either making their sole livelihood from a farm operation or they are working at a farm operation part time. They are enrolled in the training program which gives them academic training in all phases of agriculture—livestock production, crop rotation, pesticides, herbicides. We hope to see this type of program increase utilizing the tribal farm as the nucleus for experience, expertise, possibly utilization of the tribe's farm machinery, and this year we are doing exploratory well-drilling for irrigation. I hope that possibly the next growing season the tribe will have 6 to 10 center-pivot units in operation in irrigating farms. If that happens I'm sure we are going to see more Indian young people interested in agriculture.

The philosophy we have is that because of a high rate of alcoholism on the reservation which is due to poverty conditions that there has been a complete dismemberment of the family unit, and when you look at a farm operation, a family farm operation, you see a very strong cohesiveness within the family. Each of the members of the family are dependent on each other to carry out certain responsibilities in the farm operation. It is our theory that if we can induce this type of thinking and demonstrate that the family farms are still capable of supporting a family, that perhaps this will bring some form of family cohesiveness back as we knew it years ago.

COMMISSIONER FREEMAN. How long would it take this program to become operational?

MR. FLUTE. I would estimate this type of transition would probably take 15 to 20 years.

COMMISSIONER FREEMAN. So that what you are saying is even under a program which you have outlined, there would be one generation that would be completely lost.

MR. FLUTE. Yes, that is an accurate statement.

COMMISSIONER FREEMAN. Thank you.

MR. NUNEZ. Just one question on the economic development of the area, as I understand the problem, the reservation had this industrial park developed and they invested approximately a quarter-million dollars. The town or the town merchants are working along developing a private economic development center in the town area. The question that comes to my mind, perhaps all of you could respond to it briefly, I think Chairman Flute responded they made an effort to work together. It would seem to me that this would have been a natural—the tribe has access to Federal funds, the private merchants have a certain amount of expertise in this area, there is an enormous need for employment. Why wasn't there a more aggressive affirmative effort made to work together to see if a joint industrial development effort

could have gotten off the ground in this area that so badly needs it? Perhaps you could all respond to this question.

MR. STILLSON. I might make a statement there. I don't recall who drew up the articles. I guess I was one of the businessmen that formed it. I don't recall. It has been about 11 years ago, I think now, 9 years, something like that.

This corporation we have is set up as a profitmaking corporation. Looking at it from a business standpoint, I guess first of all, if we have an opportunity to talk to industry about coming into Sisseton as a profitmaking standpoint, we want to try to develop it. If there is any question or wish to desire to look someplace else, I'm sure we would help them, just like we do in our own businesses. If somebody doesn't want to trade with me or I can't help them, I send them across the street. But our corporation has been set up as a profitmaking corporation.

MR. NUNEZ. Would anyone care to make any further comments on this question?

MR. FLUTE. I think probably the basis of that particular problem lies in the fact that we still have these underlying racial problems within the community, and I can certainly appreciate the comments coming from Mr. Stillson and Mayor Pearson that perhaps there are a small number of people within the community that object to everything. There are a small number of people who probably have discriminatory attitudes towards Indians. But by and large, I think it has been our experience that because of much publicity on land claims, because of American Indian Movement activities, and many things involving jurisdiction—school board problems, Johnson-O'Malley, funding problems—that I can't honestly in my own opinion believe that the hostility towards Indian people is not very high within that community. I can't honestly believe that at this particular time, in view of these problems, that any type of successful joint venture could be accomplished. I believe that within the community there are many, many problems because of race.

It has been my own personal attitude that we do our thing, they do theirs. We don't get into any hassles with anybody. If the community of Sisseton is fortunate to get an industry, I'm sure that somewhere down the line there will be Indians employed in that industry. If the tribe is fortunate in securing an industry, somewhere down the line there will be white people employed by the industry, but I think for contemporary purposes until attitudinal changes take place, we continue as we are.

CHAIRMAN FLEMMING. Is there any regular mechanism within the community whereby regularly you sit down and talk with one another; that is, leaders in the business community, the city government, and leaders of the tribe?

MR. FLUTE. I would like to make one comment to that, Mr. Chairman.

I guess I have been around the horn long enough in tribal government. I have been knocked around by people that are discriminatory as much as any other minority. I know what it is to be on the receiving and the giving end. I have taken an attitude upon myself, try something once and if it doesn't work and I have no response, then I'm not going to do it again. When I was inaugurated as tribal chairman 3-1/2 years ago, I extended an invitation to the city council of Sisseton for a joint meeting with the tribal council. I had no response whatsoever. I extended a written invitation to the county commissioners of Roberts County. I did have a response. We had one meeting. That meeting was more or less an informal get-together. It wasn't to discuss any problems in depth. It was generally to get acquainted. We left the door open; the tribal council was open to the county's invitation for the next meeting. Then we would start getting into a format of discussing common problems. We have never had that invitation in return.

With absolutely no disrespect to the current mayor, I do not know if he was on the city council at that time. I know he wasn't mayor at the time of the invitation. We have not had a meeting nor have I ever extended another invitation to the city council or the county commissioners.

CHAIRMAN FLEMMING. I think I interrupted Mr. Red Owl, who was about to respond to Mr. Nunez.

MR. RED OWL. The question as I recall dealt with joint cooperative ventures in economic development.

The Sisseton-Wahpeton Sioux Tribe has contributed Federal funds to the city of Sisseton in rather sizable quantities. The mayor's earlier statements alluded to those contributions. We have included in the handout here a listing of the contributions, specifically \$11,066,750 contribution which includes a Bureau of Indian Affairs high school in Sisseton, airport, water and sewer lagoons, 83 units of HUD housing, costing in excess of \$5 to \$6 million.

Now, the point of this is, as we talk or at least I talk to the people in the tribe, I'm their employee with an outlay of Federal funds. These funds are not simply the taxpayers' funds. These are obligations of the United States to a federally-recognized Indian tribe, pursuant to statute and treaty. These are not handouts to a poverty group. These are legally binding obligations.

Now, whenever such a thing occurs, there must correspond an equal part; that is, control of those funds and participation in those infrastructure elements in the community. That hasn't happened. I can't explain why not.

CHAIRMAN FLEMMING. Do you have anything else?

MR. NUNEZ. No.

DR. WITT. Mayor Pearson, you stated earlier that there is not now an Indian as a city commissioner. My question for you, has there ever been an Indian as a city commissioner?

MR. PEARSON. In my 10 to 12 years involved in the city government there has not.

DR. WITT. Mr. Red Owl, my question is in the context of your statement earlier about the noncontact between Indians and non-Indians on the social level. We are aware of the cultural difference between Indians and non-Indians, different customs, points of view, lifestyles, and the like. Do these cultural factors count in any way or to what extent for differences in Sisseton?

MR. RED OWL. No. I don't think the cultural uniqueness of the Sisseton-Wahpeton Sioux contribute to the differences. The mother tongue for the Sisseton-Wahpeton is English. Very few of the Sisseton speak their native tongue anymore.

The educational system occurs there. We have a very high educational level as Sisseton-Wahpeton. So the separateness cannot be attributed to cultural or language differences.

DR. WITT. That is all.

CHAIRMAN FLEMMING. I would like to ask Mayor Pearson whether he would like to comment on Mr. Red Owl's reference to the Federal funds—what he feels should be the relationship, the connection with the expenditure and administration of those funds.

MR. PEARSON. There is no question that the city of Sisseton has enjoyed a lot of Federal money through the years. I guess the thing that I don't quite see is the disassociation. I feel we are all citizens of our community, and whether you are Indian or non-Indian, you enjoy the same services if you are a resident of the city of Sisseton. The airport benefits everyone, just as we received a grant for economic development, LPW [local public works] project, for additional water storage and transmission lines through our community, and this in fact helps everybody, members of our community. I guess through the years I have never made the distinction between Indian and non-Indian, but all are citizens of our community.

CHAIRMAN FLEMMING. On the airport, who administers the airport? Is there a board or commission?

MR. PEARSON. It is the chairman, it is the board within the city council.

CHAIRMAN FLEMMING. It is a committee of the city council?

MR. PEARSON. That is correct.

CHAIRMAN FLEMMING. Does it have any advisory committees of any kind?

MR. PEARSON. No, sir, it does not.

CHAIRMAN FLEMMING. In view of the fact there isn't a member of the Indian community on the city council, that means there is no member of the Indian community that participates in any way in the administration of the airport.

MR. PEARSON. Only with the exception that the city council meetings are open to the public. This information could be disseminated.

CHAIRMAN FLEMMING. Is any member of the Indian community employed at the airport?

MR. PEARSON. We don't have any employees.

CHAIRMAN FLEMMING. You don't have any. Right. It is serviced by one of your regular departments of city government?

MR. PEARSON. We do have a part-time girl. This has only been recently within the last 2 months, just to sit and answer the phone. Otherwise, the mowing of the runway and the maintenance is taken care of by our street departments.

CHAIRMAN FLEMMING. Ms. Freeman, any additional questions?

If not, thank you very, very much. We appreciate your testimony.

MR. FLUTE. I would like to make one parting comment, Mr. Chairman, if you don't mind.

CHAIRMAN FLEMMING. Certainly.

MR. FLUTE. It seems that chairmen always want to get the last word.

In looking at the past work of this Commission, I have seen some public things where you have had rebuttal with the attorney general of the State of South Dakota, and I am sure you have had it with other officials within other States. When you begin to analyze our particular area of South Dakota, the relationship between the tribe and the non-Indians up there, this committee and this Commission may have authority to recommend legislation. You may have the authority to change administrative policy and statutes. That is all well and good, but I don't think that this Commission, the tribe, the city, anybody has got it together to change attitudes. And until attitudes are changed within the community, the tribe and the white community are going to be this far apart [indicating] and it will stay this way. And I think this holds true for minorities across the country. And I don't know whether any kind of public information type of things do any good.

When your attitude is set, that is it. I'm that way many times. It doesn't make any difference who it is; to convince me to do otherwise, if my attitude is that way, I want to stay that way. And I am sure that many of our people in the community, within the State of South Dakota, that have an attitude of discrimination against Indians are not going to change. I guess what I am saying is I appreciate the fact of your coming here, but I don't think you're going to do anything.

COMMISSIONER FREEMAN. Mr. Flute, I would like to respond; you will not have the last word. First of all, this Commission recognizes its limitations with respect to changing of attitudes. However, this Commission does have the authority to make recommendations to the President and the Congress which may have the effect of changing the conduct.

Now, if I may give you an example of—at least with respect to what happened to the public accommodation laws in those States where blacks were relegated to the back of the bus, and actually the person who was the victim of such discrimination couldn't care less about the attitude as long as that person was not denied the opportunity to sit where he or she wanted to sit on the bus. I think that it is important to recognize the difference between conduct and attitude. If the con-

duct can be changed so that the practice will mean a better job, then at least we could hope that the attitude will change at some other time. But the job is what will give you the right, the opportunity to improve the quality of life.

So that we do have recommendations and we do have the authority to make recommendations that may, we hope, change the conduct, change the practice, and this is very important.

CHAIRMAN FLEMMING. I would also like to add to that.

MR. FLUTE. See, you didn't get the last word.

CHAIRMAN FLEMMING. I didn't follow up on the discussion that took place relative to the possibility of a human rights commission, but I certainly hope that that concept is going to be pursued, and I certainly hope that on that commission that representatives of the Indian community and the white community will have the opportunity of working together to deal with some of those problems, because certainly it has been my observation over a lifetime that where members of minority groups and the white community are put in a position where they are called upon to work together in the discharge of responsibilities looking toward a common objective, that attitudes do begin to change because they do begin to understand one another, understand one another's culture, and so on, and that was what goes back to my question as to whether or not within this community arrangements have been made for a regular sitting down together to take a look at the common problems that come up, I am sure, on a day-to-day and a week-to-week basis. Certainly they exist in the law enforcement area, as well as in the industrial park area, and in the other areas that you have identified.

MR. FLUTE. Ms. Freeman, in view of the fact that the Sisseton-Wahpeton Sioux Tribe has begun to get very sophisticated in learning the ropes of the Federal Government and securing Federal funds and earning money on our own, if you are ever asked to sit in the back of a bus again, let us know and we will buy the damn bus for you.

CHAIRMAN FLEMMING. Thank you all very much. Counsel will call the next witnesses.

MR. SCHWARTZ. Ruth Potter, Ronald Goldsmith, Robert C. Philbrick, Michael Jandreau.

[Messrs. Goldsmith, Jandreau, and Philbrick and Ms. Potter were sworn.]

**RONALD GOLDSMITH, DIRECTOR, DAKOTA MENTAL HEALTH CENTER;
MICHAEL JANDREAU, COUNCILMAN, LOWER BRUIE TRIBE; ROBERT
PHILBRICK, CHAIRMAN, CROW CREEK TRIBE; AND RUTH POTTER,
DIRECTOR, TITLE I PROGRAM, CHAMBERLAIN PUBLIC SCHOOL SYSTEM**

MR. SCHWARTZ. May I ask each of you please to state your name, address, and occupation for the record, starting with Mrs. Potter?

MS. POTTER. My name is Ruth Potter. My address is 1107 South Main, Chamberlain, South Dakota, and I am a schoolteacher and Title I director in the Chamberlain Public School System.

MR. SCHWARTZ. Mr. Goldsmith?

MR. GOLDSMITH. My name is Ronald Goldsmith, Box 372, Chamberlain, South Dakota. I am director of the Dakota Mental Health Center.

MR. SCHWARTZ. Mr. Philbrick?

MR. PHILBRICK. Yes, I am Robert Philbrick, and I am the chairman of the Crow Creek Tribe. What else do you need?

MR. SCHWARTZ. I think that will be fine. Mr. Jandreau?

MR. JANDREAU. My name is Michael Jandreau. I am a councilman for the Lower Brule Tribe.

MR. SCHWARTZ. Mr. Philbrick, I would like to start the questioning with you this morning and I understand that you have a statement to submit to the record which has been given to the Chairman.

CHAIRMAN FLEMMING. Without objection, this will be accepted and will be entered as Exhibit 6.

MR. SCHWARTZ. Mr. Philbrick, it is my understanding you have been on the Crow Creek Reservation in the central part of the State of South Dakota for all your life. Although your statement addresses some of these points in detail, I would like you to just give us a very brief, if you would, recent history of the Crow Creek people and their existence in the midst of the State, which will give us a brief historical perspective from which we can go on with some more questions, interaction between the governments and the people in the central part of the State.

MR. PHILBRICK. Yes, I would like to start by saying that since I was born and raised there on the reservation and I got acquainted with the older people, I learned all the history from them, and I talked to the people that talked the Dakota language, and I found out that throughout the years that the Dakota language was a lot easier to understand than the English language because the English language seems to get you in a lot of trouble, and that is why you have so many court systems and lawyers and it takes a long time to translate whatever you want to say and people have a hard time understanding each other. But the Indian language was easy to understand and I learned a lot from the older people that were there and they're gone, passed away now, but a lot of the history since the beginning of the tribe on the Crow Creek Indian Reservation has been very bad to some of the members, in fact all of the members.

First of all, they enjoyed their life along the Missouri River, and this is where their headquarters were and in fact Fort Thompson was started in 1864, as I remember being told, and since that time all the people relied on the Missouri River and its woodland for their income, their livelihood.

And back in 1951 the Corps of Engineers had taken steps to condemn reservation land which took all of Fort Thompson and maybe

some 10,000 to 12,000 acres of land, their choice land of woodland and berries and where they also got trees for building homes and corals and so forth to live in.

And before that time—I should have went back to the time that I went to school, 1 year with the Indian school at Fort Thompson—I didn't start until I was about 9 or 10 years old and the next 2 years I went to white schools where there were all whites. And I know what I had to go through in those years. Maybe it was new to them that they seen an Indian, but I was told I was an Indian every day and I got used to that. But it wasn't too long until I got acquainted to the point where we made friends.

But it was only to a degree that I would understand, in the later years, that the United States Government never intended to do what the treaties told them they were to do. In fact, they never intended to uphold the treaties. They didn't intend to pay the Indian people the land that they had lost in the beginning. And another thing, because if the United States Government would fulfill their treaty right, then we wouldn't be having the problems that we have today, but due to the fact that the United States didn't want to do these things we have run into different kinds of law.

First, we were made citizens back in 1924 when I was 13 years old and, I don't know, nobody asked me if I wanted to be a citizen and I don't think they even told the Indians that they were citizens. Congress just passed a law and I feel that some of these Senators and Congressmen are not aware of some of these things. And then they go to work and pass another law back in 1934 which said that—they called, it is the Wheeler and Howard bill. Now they said the Indians were going to be back like they used to be in 1868 or in the sixties so that they can enjoy the life they used to. But what really happened was it set the Indian people back because some of us didn't accept the rule, the law. So right now the Wheeler and Howard bill is practically a dead issue; the government don't follow this rule. The only time they follow it is when they go back to the Code of Federal Regulations and say the Indian reservations are governed by this law which was passed probably way back when the Bureau of Indian Affairs first started. And some of the laws didn't apply to the modern times.

So we were wondering what is going to become of things, because the laws were so old and we needed some updated laws. Then they go and pass your civil rights law which didn't interpret for the Indian people their civil rights. It was mostly—I think it helped mostly the colored people as far as their rights were concerned, but the Indian rights are still being violated and they are violated right now on the reservations. And so I think something should be done in this respect.

The last thing I want to say is that I hope the Commission can help the tribe. And each tribe has a different treaty to go by, and I feel that if we can sit down with the Government and rewrite these treaties instead of talking about them, rewrite them so that we can both un-

derstand each other, then I think we will have a better working relationship. Because I lived 60 some years now on the reservation there and I know there is lots of improvement can be made.

MR. SCHWARTZ. Mr. Philbrick, what are some of the obligations of the treaty with the Crow Creek Indians that you feel the Federal Government has not lived up to? Can you be somewhat specific on that?

MR. PHILBRICK. Well, one of the things was paying for the land that they had lost due to the Black Hills claim and all the gold that was in these hills and all the trees and all the animals plus all the intangibles. And now on the reservations there isn't any of these things. And we feel that we are badly neglected to progress so we can be in the same stream with the white man.

MR. SCHWARTZ. Mr. Jandreau, you live across the river from the Crow Creek on the Lower Brule Reservation, and I was wondering if the Lower Brule have had a similar or somewhat different experience with the Federal Government in its obligations, particularly around the construction of the dam.

MR. JANDREAU. Which dam?

MR. SCHWARTZ. That would be the Big Bend Dam, I believe.

MR. JANDREAU. Both with the Big Bend Dam and the Fort Randall Dam?

MR. SCHWARTZ. Would you explain what impact those projects had on your tribe?

MR. JANDREAU. Well, the two dams took approximately 30,000 acres of the most fertile, productive lands that were available anywhere in the State for a number of approximately \$2 million or \$1.7 million. And, you know, there is no way that you can replace that type of land for those types of dollars. It also set us back economically, from the standpoint that the ability to develop was hindered and hindered greatly.

MR. SCHWARTZ. Was a movement of people living on the reservation also required by the construction?

MR. JANDREAU. Yes, it was. Approximately 75 percent of the people were moved.

MR. SCHWARTZ. Can you tell us what impact that had on reservation life there?

MR. JANDREAU. That has had tremendous social and economic impact on the people. The people were forced together because of the need to provide cheap housing within the monies that were available. The people were forced together in a very small initial community. However, that community has broadened and become quite large, but it was primarily through the efforts of the tribe that this was done.

The Corps of Engineers and the Bureau of Indian Affairs, in my estimation, greatly neglected their responsibility in helping the tribes to plan, adequately plan and project development for a period of years. It seemed as though they were so intent on getting them the hell out of their hair.

MR. SCHWARTZ. Mr. Philbrick, a moment ago you mentioned some of the problems that exist in the Chamberlain-Crow Creek area, that community today, some of which may have to do with the treaties and some not. Could you go into, on the basis of the present day, what problems you see between Indians and non-Indians in the Chamberlain-Crow Creek area?

MR. PHILBRICK. Well, I have to go back to when the Corps condemned Fort Thompson and all this land. Fort Thompson had a hospital there and nurses and doctors. Well, they could perform some operations there, they had the equipment, and they had a complete high school there. And things seemed to be going pretty good for the Indian people at the time and it wasn't probably a few years in operation.

However, when the Corps condemned all these things, then the Chamberlain hospital had negotiated with the tribe to take their facilities over there to Chamberlain. When I say facilities, I mean things they used to operate with, all the things they had within the hospital at Fort Thompson. And in return they were going to give the services to the Indian people and even was guaranteed so many beds that were going to be in this hospital would be reserved for Indians. And the Indian people then would have to travel to Chamberlain to get these services.

But when these took place there were complaints right away from some of the patients that were there that they were neglected to the point that—not the doctors who are still there today, Drs. Holland and Bender, it wasn't their negligence, but it was the people that were running the hospital like the nurses and the personnel. And the Indians were not given the kind of care they give the other patients and they weren't admitted to the rooms unless the person that was in the room accepted to be in the room with an Indian. And that is all I can say because the hospital was the only thing that we made a deal with, with Chamberlain.

MR. SCHWARTZ. Mrs. Potter, it's also my understanding that you have lived in the Chamberlain area for a long time and that you're also a member of the Crow Creek Tribe and that you have lived among the white community as well. So you have sort of a double vantage point from which to view that community.

I would like you to comment, if you could, on what Mr. Philbrick has said and to add whatever you can about the interaction of Indians and non-Indians in the Chamberlain community.

MS. POTTER. What Mr. Philbrick has said is very true, and the agreement with the hospital—we'll all talk about the hospital there for a minute. The agreement was just as he said it would be and we'll all go back to what was said a little bit earlier on attitudes. So when the hospital then agreed to take all the Indian patients from Crow Creek, they were compensated for it, of course. But there were many in the community who did not wish to be in a room with an Indian patient.

And so, therefore, some of the white community were seeking hospitalization in other places and the hospital in Chamberlain more or less became a hospital for the Indian people. However, that attitude is changing and we are finding that local patients don't mind being roomed in the same room with an Indian patient.

I think probably the thing that was the greatest stumbling block to the Indian people, when they were forced to come to Chamberlain to the hospital, was the fact that if you are Indian you take care of your sick people and you support them emotionally and physically whenever anyone is ill. And of course, with the hospital rules in a white community, it says you will visit between 2 and 4 in the afternoon and you will visit between 7:30 and 9 at night. And this is not the Indian way of doing it. If you are ill, anyone in your family should be allowed to be with you. And so this was where the first friction began over the visiting hours. And then lack of understanding in that area caused attitudes to not be as pleasant as they should.

But it is true when the dam went in, Fort Thompson lost everything. The whole area was inundated. And of course they lost the hospital and they lost their high school. The educational system has not been the same on the Crow Creek Reservation since they lost that beautiful school. There hasn't been a pride in the education of their children the way there should have been.

In going back to what Mr. Jandreau said about Lower Brule, probably the worst thing that could have happened at Lower Brule, psychologically, was that all their dead had to be reburied and you had to disturb the resting ground of the dead. The whole cemetery had to be relocated, in other words.

Well, now, those are just inner problems. Those are things that Indian people think about and worry about and are concerned about.

But let's go back to different attitude. There was a breakdown in the educational system because of the loss of the school. They did have good staffing at that time. They had an excellent school. They had an excellent athletic program in which they competed highly with Chamberlain and with other schools in the State. In fact, the Fort Thompson boys had a team that went to the State tournament. And there was great pride. And then when the school system fell apart, the children were not being educated the way they should. Something has happened.

But now there is a turnaround and many parents in Fort Thompson and on the Crow Creek in the rural area are busing their children to Chamberlain in which the children are getting a good education. There isn't any discrimination that I can see in the school system. However, we do find that when the Indian children come down they are a year to a year and a half behind. And so therefore, they have to be put in remedial situations and those in elementary—a lot of them go through the Title I room and as soon as they are caught up to their grade level they are put with their regular class and they go right along.

Children don't have any trouble with discrimination in school; they really don't.

MR. SCHWARTZ. You mentioned that many children are being bused from the Crow Creek Reservation to the school in Chamberlain. How far away is that?

MS. POTTER. It is 20 miles to Fort Thompson and that would be the longest way that they would have to be bused. Maybe 25 miles would be the farthest anyone would have to ride, I would assume.

MR. SCHWARTZ. That is one way?

MS. POTTER. Yes.

MR. SCHWARTZ. And how many children would be doing this and how big is the school population?

MS. POTTER. Well, I did a revamp on that after speaking with you earlier and mentally calculated the Indian children from various classes. Out of a school population of 1,150 students—K through 12—we probably have 150 Indian students.

MR. SCHWARTZ. And that is out of a school population of how many?

MS. POTTER. 1,150.

MR. SCHWARTZ. Thank you.

MS. POTTER. And we anticipate more because at the last board meeting the bus routes were being rerouted, and they had to purchase another bus to transport reservation children. So we are anticipating more.

MR. SCHWARTZ. Mr. Goldsmith, I don't want to leave you out over there. I understand you're the director of the Dakota Mental Health Center in Chamberlain; is that correct?

MR. GOLDSMITH. Correct.

MR. SCHWARTZ. Can you tell us just a little bit about the center and what its purpose is, what it does?

MR. GOLDSMITH. The mental health center is essentially a professional, psychology, counseling service providing family, marriage, child, adult, and group therapy counseling services.

MR. SCHWARTZ. How long have you been in the Chamberlain area?

MR. GOLDSMITH. A year and a half.

MR. SCHWARTZ. In that time have you had an opportunity to observe the community, the interactions that exist between people in the community, both within Indian and non-Indian communities and then also cross culturally?

MR. GOLDSMITH. To some extent, I would say.

MR. SCHWARTZ. Have you been able to draw any conclusions or could you share with us your observations about communication among people in the area?

MR. GOLDSMITH. Well, to start I would say that the reservations are more, much more willing to accept non-Indian professionals then vice versa. For example, I have been invited to participate in a number of committees and commissions on both Lower Brule and Fort Thomp-

son. For example, the school committee at Lower Brule Alcohol Treatment Center and the child protection team at Fort Thompson. I don't see that reciprocated in Chamberlain.

I do so, in other words, professionally, and as Mr. Philbrick mentioned, also in terms of the hospital and also businesses, the reservations have a fair degree of dependence on the Chamberlain community for professional and medical services, education, and also economically as Chamberlain is a trade center. That isn't the case as perceived by the Chamberlain people in a reciprocating way. However, Chamberlain is dependent to, I think, a larger extent than I think is generally recognized economically on the reservations, for the income because of commercial transactions and so on. I think that is probably highly underestimated.

MR. SCHWARTZ. Mr. Jandreau, have you had an opportunity to estimate the economic impact that Lower Brule has had on the Chamberlain area?

MR. JANDREAU. Approximately a million and a half a year.

MR. SCHWARTZ. When you say that what are you talking about? That is money coming from the reservation?

MR. JANDREAU. Yes, that is salaries coming from the reservation to the Chamberlain community which is probably 75 percent of the total income of the reservation through Federal programs.

MR. SCHWARTZ. What about such things as spending by tribal residents within the Chamberlain community?

MR. JANDREAU. We don't really have that many residents in Chamberlain from Lower Brule.

MR. SCHWARTZ. So most of the impact comes from professional salaries?

MR. JANDREAU. Yes.

MR. SCHWARTZ. Mr. Philbrick, have you had an opportunity to look and see what economic impact the Crow Creek Reservation might be having on Chamberlain?

MR. PHILBRICK. On Chamberlain?

MR. SCHWARTZ. Yes.

MR. PHILBRICK. Yes, it would have had a larger impact than it has now, but I would say it's not a million, it's several million dollars that goes into Chamberlain from our reservation. We get right around \$4 million in Government programs and all that money is spent and most of it is spent in Chamberlain.

I wanted to say one thing here before I say too much about the money going in there, is that in the first place the agency when it was flooded out was going to be moved to Chamberlain and the people in Chamberlain opposed it, the commission. They took up a petition and they said they didn't want any Indians around there, so the agency wasn't moved there. It was moved to Pierre which is 60 some miles away. And that created a big hardship on our people because the Chamberlain—I don't say all of the people in Chamberlain would have

felt this way—but the people that were on the committee didn't want the Indian agency there or whatever.

And I want to go a little further and say something about this law and order system down there. I don't think it's the kind of system that the Indian would like to accept because in recent years there have been several Indian people that got run over by automobiles in the Chamberlain area and they never have been solved up to this time. Whether they took action I don't know, but they say they did, but nobody got arrested for these people getting killed.

And another thing that I noticed that it depends on who you are as far as if you are going to break the law or if you get caught at breaking the law. The first thing when an Indian gets in an accident down there in Brule County or in Lyman County—they are adjoining, the reservation—why the first thing they do is take you to the police station and make you take a blood test so that they can determine whether you are drunk or not. They don't care how badly you're hurt; they do that first.

And also some people get arrested for drunken driving and it doesn't come up, I mean the State's attorney doesn't do nothing about it because he might be the superintendent of the Crow Creek Indian agency so they don't want to prosecute. But if somebody else gets in this place, they take a lot of effort and time to prosecute. And we feel that we all got to be treated alike as far as law and order is concerned.

MR. SCHWARTZ. Has the tribe followed up with the local law enforcement authorities to determine what, if anything, has been done to investigate these traffic deaths that you mentioned or the change in their system of enforcing the law so that it would at least appear to be more fair toward both the Indian and non-Indian in the community?

MR. PHILBRICK. Well, we have been talking to them. In fact, I have talked myself to State's attorneys and some of the city commission, and that's as far as we can ever get, as far as trying to get better working relations, better law enforcement equal to everybody.

MR. SCHWARTZ. Mr. Jandreau, as long as we are on the subject of talking to officials, other authorities outside of the Indian tribe, I was wondering if you could characterize for us the mechanisms that exist at the State and at the local level through which the tribes, like the Lower Brule, can manage to work out problems if they feel that there are some.

MR. JANDREAU. Well, there are probably several different ways. One way that was established several years back by the legislature was the South Dakota Indian task force. The purpose of this was to help generate legislation that would be beneficial both to the State and to Indian tribes in living in some sort of harmony. This had a life of approximately a year or I believe it was extended to about 18 months and worked real well. There were seven major bills that came through the State legislature that were very beneficial to creating an atmosphere whereby State and Indian tribes could enter into monetary

and cross-deputization agreements. That seemed to have run its life after it did these things.

The tribes, in discussing with the Governor and with members of the legislature, requested to go on with a similar situation or the same if possible. However, because of the positive effect, in our estimation, that it had, the legislature chose not to continue this. They put in its place an organization called the State negotiating committee. The State negotiating committee has been very ineffective, in my estimation, in producing anything that would have a positive bearing on relationships between Indians and non-Indians, both at the State and local governmental areas.

MR. SCHWARTZ. Can you tell us why it appears that the first task force that you mentioned was somewhat successful and the negotiating committee doesn't seem to be?

MR. JANDREAU. To me the task force was successful in that all the reservations in the State were represented on this. There were some legislators that worked also with this, but there seemed to be a real positive attitude of trying to come to an agreement on things that were in question, whether it be jurisdiction, whether it be collection of taxes, or whatever the problem may be. And with the other organization there was no Indian representation. Primarily, the object seemingly was to go to these people and to help them help you solve your problem. You really weren't required to be that active in the process. I think that this had a lot to do with the failure of it.

MR. SCHWARTZ. If a legislative proposal were made to reorganize that State negotiating committee so that it would be successful, what elements would you consider to be crucial in doing it?

MR. JANDREAU. Positive or negative?

MR. SCHWARTZ. Well, towards a positive result, I guess it would be positive change to be made.

MR. JANDREAU. I don't really understand how you're stating that.

MR. SCHWARTZ. What you're saying is that the State negotiating committee has not done as well as that task force that you mentioned earlier, that there are some problems that exist with the organization of that State negotiating committee. And I am wondering what you would suggest as changes in the way that that State negotiating committee is set up so that there could again be an effective State mechanism for working out community problems.

MR. JANDREAU. I would say very definitely there would need to be appointed to this negotiating committee Indian tribal representatives and representatives from every tribe within the State. Also, I would see that the attitude of really respecting the rights and the sovereignty of those tribal governments is a key in coming to any type of agreement that may know be discussed or may arise.

MR. SCHWARTZ. Thank you.

MR. Chairman, I have no further questions at this time. Let me ask just a few more questions since we do have more time.

Mrs. Potter, I would like to know since the Chamberlain school system has a number of Indian children coming from particularly the Crow Creek Reservation into it, I would like to know what special arrangements it has made, what programs it has established or pursued, what things it had done to account for Indian culture in that school system?

Ms. POTTER. Well, about 3 years ago I was approached by the administration and asked to write a curriculum on Indian culture and Indian studies for the school. And I volunteered most gladly to do it. And then after I collected material and started I was later told that I—no. Then I was told that—I assumed I was writing curriculum that would teach 30 youngsters in a class, maybe 5 of them would be Indian or 40 in a class or 20. But I was later told that no, the curriculum that I was devising and putting together was for Indian children only. And so I said, “I just don’t see the purpose of this whatsoever.” And they said, “Well, it’s that way or we don’t get the grant.” And I said, “Well, then we just better forget it,” because no way can you, when you’re trying to build a relationship and an understanding between people that live 20 miles north of you and people in your own community, you don’t write a curriculum and say I want the six Indian kids in this class to come to the all-purpose room because we’re going to have Indian culture for you today. If they were to have their Indian culture studies, their parents or their grandparent should be teaching it. What we should be teaching in a curriculum is how to understand one another and how to break down attitudes and how to conduct ourselves in such a way that we respect each other and what we believe and what we feel. And then we can begin to practice a better way of living in our community and with the community at Crow Creek.

So the whole thing was dropped and I believe that this was just Johnson-O’Malley money that was to give me a grant to write this, but when it was all printed it had to be given to the Indian children only. So what purpose do you serve if you write a curriculum and the Indian children already know their culture or they should. It’s the other people that need to have some understanding.

MR. SCHWARTZ. What do you see as the need for this understanding? What are the attitudes that exist?

Ms. POTTER. Well, the administration is doing what they can to create a togetherness of understanding, and they are trying to do it through the arts and through the social studies courses and through athletics.

MR. SCHWARTZ. Mr. Goldsmith, it’s my understanding that you are also doing something in the area of a speaker’s program which is having a similar effect among the adult community. Could you describe that for us, tell us what it’s doing?

MR. GOLDSMITH. I would like to first give a little background that I didn’t mention before; that is that the Dakota Mental Health Center is somewhat unusual in that it’s a private mental health center. Much

of the funds come through State contracts, and also, we are funded by the Dakota Indian Foundation, but we are not a governmental body and that sets a different tone, I think.

One of the needs that I saw, and again I speak with a certain humbleness about trying to speak on the area of Chamberlain, Lower Brule, and Fort Thompson only living there a year and a half, but perhaps sometimes coming from another area certain things become more apparent.

One of the needs that I saw was, as Mrs. Potter described it, a need for bicultural interaction. And I see that lacking. It's been discussed earlier today about the need to have attitudinal changes and that there is separate, really—the perception is two separate or three separate communities. My perception is that there is an interdependence between and among the three communities. They have actually formed social and culturally and economically, at least in my view, a cluster community.

So what we attempted to do is to form a small informal planning committee as a preventative mental health measure, and that committee consists of people from those three areas to try to find areas of interest that were mutual among the people regardless of and respectful of each other's differing cultural backgrounds. And the committee met several times and decided the area of the family was really a common denominator. And we applied for a small grant through the South Dakota Committee on Humanities, which is a State division or agency of the National Endowment for the Humanities, for funds to bring speakers. This was an excellent speaker, highly educated, well regarded with family ties in those two reservations, although he came from another one. And he spoke at those three locations in March after a couple of months of planning on different areas related to the family, bicultural viewpoint of the family, and that program that weekend was highly successful. In an area where the PTA [Parent-Teachers Association], for example, feels fortunate to get maybe a dozen parents to a meeting in Chamberlain, for example, we had about 140 people from all ages attend this program. And it was well balanced in terms of both Indian and non-Indian participation.

We see this as a small start in helping people to find the mechanisms to rub shoulders with and to have a dialogue with one another in a safe and structured way. We have a planning committee making a proposal for the next year to have speakers on a regular basis related to issues regarding the family, an oral history project, and providing training in parenting skills for people from the reservations throughout South Dakota to become trained in skills and also make the material relevant as a child abuse prevention project.

MR. SCHWARTZ. So both Indians and non-Indians serve on that planning committee?

MR. GOLDSMITH. Yes, they do.

MR. SCHWARTZ. How are those people chosen?

MR. GOLDSMITH. Well, again this was very informal, and it was essentially people who expressed an interest after sitting down over coffee and getting some ideas back and forth. I knew of some people, they knew of some people, and it kind of grew naturally so that there is no formal selection process. People volunteer and we hope to continue growing in that manner. We have 9, 10 members and we meet approximately every month.

MR. SCHWARTZ. Are there any positive aftereffects that you have been able to detect either among the members of the planning committee who got together in the first place or among the communities that were involved in attending these functions?

MR. GOLDSMITH. I think the response has been highly favorable. The evaluations after the program were very favorable. This was the first time in our area, to my knowledge and to the knowledge of other people on the committee, that anything of a bicultural nature regarding a humanities concept had been attempted. And of about 90 questionnaires, over 80 people wanted to have regular programs such as this.

And then at other public meetings that I have had the opportunity to attend, I have heard other spinoff types of positive comments, like there is one or two Indian people who I know who commented on the change in the feeling, tone when they are in town or working on a committee or something of that sort. These are rather intangible, I admit, but we don't deal that much with hard core statistics in the matter of attitudinal changes, and I have sensed a positive change.

Also for example, in Chamberlain there is an arts council which had originally attempted to have more interaction with people on the reservations several years ago when it formed, and there is renewed interest now in having programs go to each of the reservations as well as Chamberlain, and the money involved is rather minimal for our project. For example, it is approximately \$450, and yet we have been a good positive spinoff.

I think also I might mention in terms of our mental health center that about half of our clients—this is in relation to the clients that we serve—it's about half Indian and half non-Indian which is about five times the State average for mental health centers. The average is about 10 percent, and we feel fortunate that somehow we hit on a formula that seems to make our services available and comfortable for both Indian and non-Indian people to avail themselves of.

MR. SCHWARTZ. Thank you, Mr. Goldsmith.

CHAIRMAN FLEMMING. Dr. Witt?

DR. WITT. Thank you.

My question is for Mrs. Potter.

It is my understanding that you are a member of the board of directors of the Dakota Indian Foundation. I wonder if you would describe for us its membership and its functions.

MS. POTTER. The Dakota Indian Foundation was conceived by a deceased friend of mine, John Frank Lindley, several years ago. His

primary idea was that the Dakota Indian Foundation would preserve and protect and continue the Indian culture and artifacts from the Indian culture and the Indian language. Many of us saw this slipping away, and precious artifacts from the Crow Creek and Sioux Tribes and Lower Brule, anyplace, were being sold to antique and art collectors as they would come through the State. So Frank's idea was that we should preserve and protect some way for the Indian people of South Dakota that which was rightfully theirs. So the Dakota Indian Foundation, at this time, funds what is known as the Ella de Lauriat Chair at the University and Dr. Piquot is there working now in that position since we began, and she is putting together the Indian language in a form that it can be taught, in a preserved form, with all of the various dialects. So that's one thing we are doing.

And we are funding Mr. Goldsmith in the mental health area because we thought that there was a dire need for young people to find a direction in this mixed-up society. And if we can help the young people find a direction and to set themselves right, then they in turn can lead others. Because we all know that we all need models and the Indian young people need some good models at this time because they have had some people who are not such good models to pattern after.

All right. What else do we do? The Dakota Indian Foundation has purchased Indian artifacts that would slipped out of the fingers of South Dakota, and these are on display, some of them are on display at the Corps of Engineers' Research Center in Crow Creek in Fort Thompson.

Now, another thing that we are involved in is called the Great Plains Resource Center. And when this dream is done, the Great Plains Resource Center will have a room which will be devoted to Indian culture and Indian studies. And if any of you would like to, 10 years from now, maybe come out, I will teach you Indian culture in a 2-week course or a 6-week course or whatever, providing the board of directors decides that that will be my job after I retire. See, I have thrown that out.

Now on the board we have doctors and teachers and bankers and attorneys and farmers—who else do we have? I can't remember anybody else, but we are represented by Indian people, members of the tribes, and so forth.

DR. WITT. Thank you.

MS. POTTER. We think it's great.

DR. WITT. Clarification. Indian people and non-Indian people?

MS. POTTER. Yes, right.

CHAIRMAN FLEMMING. Counsel has one additional question.

MR. SCHWARTZ. Mr. Jandreau, recently some legislation has been introduced, several pieces of Indian legislation have been introduced in the Congress nationally, the Meeds bills, one in particular, one or two particular ones. I was wondering if you could comment on what effect some of the recent legislation introduced in Congress would have on the Lower Brule Tribe.

MR. JANDREAU. Well, it wouldn't have any effect right now because hopefully it will be defeated. But if it makes it, it will have probably some very drastic effects. We have legislation presently that would—many of us look at it as a godsend in being able to contract for services that we weren't able to get before. However, in studying this legislation we find that it's only developed to slaughter us in the end. It's kind of like Custer's Last Stand with a little subtlety thrown in. The legislation I am talking about or law I am talking about is 93-638 that gives us the opportunity to contract for any and all services available through not only the Bureau of Indian Affairs but any other Federal agency that so recognizes it.

However, you find within this law, built-in traps, destruct mechanisms, and we really got no way out of it. Anytime that services are provided to us by particularly the Bureau of Indian Affairs, and we're critical of the quality, the first thing that is thrown at us is, "Well, if you don't like it, contract it." You know, the funds aren't there—available now to provide adequate services and we are flatly being told by the Government through mechanism that that is tough, that is the way it's going to be. So I guess it is, you know, with this idea in mind that you look at Meeds' legislation and you can't really get that frustrated about it because you have learned to expect it, and we have learned to expect that kind of attitude from Congress because they do not really realize and respect those decisions made through the treaties many years ago.

You know, the Indians have got to have those opportunities in order to develop for themselves a lifestyle by which they can survive. I sincerely believe that if the attitude and the subtle pressures that are constantly being applied to Indian tribes continue, that the Indians will react in a way that will show very adverse aggression to the non-Indian communities in and around them. I think that it behooves this Commission to look with a great deal of intensity at the programs, the Federal programs that are currently being funded to Indian tribes. And in them you will find mechanisms of funding that allow tribes to only go so far and seemingly build in failure in the granting system. And I think there is a real problem.

I think we can, you know, hope that we can preserve that. But I think we have to really realize where we are at. We are in the last part of the 20th century, and how we develop economically is really how we are going to survive and being able to maintain our land base, being able to develop structures, whether it be through agriculture, manufacturing, or what it be through, to come to the point where we can become self-sufficient. And those Federal agencies dealing with us, I think you have to look at them, the requests that we make and to evaluate them on that basis. I think failure to do so will only drag out the same problems that we have talked about for the last hundred years.

CHAIRMAN FLEMMING. You feel that the basic problem you are putting your finger on is illustrated by the bill that has been introduced by Congressman Meeds; is that correct?

MR. JANDREAU. Yes, I do.

CHAIRMAN FLEMMING. You don't happen to have the number of that bill?

MR. JANDREAU. Not right off.

CHAIRMAN FLEMMING. That is sufficient identification. I think that should be called to the attention of the Commission by the staff, but you feel that it's a good illustration of what you feel is the basic problem in terms of the Government's relationship with the tribes?

MR. JANDREAU. Yes.

CHAIRMAN FLEMMING. All right. Could I go back? I was very much interested, Mrs. Potter, in your proposal, at least they gave you the opportunity to start work on the proposal, for a course which would provide both Indian children and non-Indian children with the opportunity of learning something about the Indian culture. Do I understand correctly that they told you that you couldn't do that because that couldn't be funded under Johnson-O'Malley?

MS. POTTER. It came down to the statement that this curriculum that I would be writing which would cover maybe a 6-week or 9-week period would be for Indian students only.

CHAIRMAN FLEMMING. And it had to be that way under Johnson-O'Malley?

MS. POTTER. Right. I don't know what act the money was coming from, but wherever the grant money was coming from it had a finger on it that said this is for Indian children only, don't let anybody else hear what you have written or read what you have written, I guess. I don't know. But anyway, so the whole thing was dropped. So the school system then continues with its own little curriculums in each classroom, you know, each grade, and the Indian children—there is a need for interaction with the children. We had a group of children that wanted to do an Indian dance and explain it. So we have a nice principal that said, "Okay, this afternoon John Bird and so on and so forth are going to dress up and we are going outside and we are going to watch them do Indian dances." They brought their tape of the music that was recorded on it, I presume up at some powwow in Fort Thompson, and they did their dancing in their costumes. The kids loved it.

CHAIRMAN FLEMMING. The only reason I was pursuing that, I was interested if there was that kind of a ruling under Johnson-O'Malley. I was just wondering whether it was a provision of the law or whether it was somebody's idea of a regulation, and I would kind of like to have that pursued a little bit so we can see whether or not there is some kind of a regulation that has been worked into it.

How many Indian teachers are there on the faculty of your school?

MS. POTTER. I'm the only one that has a drop of Indian blood.

CHAIRMAN FLEMMING. Are you ever given any opportunity of working with the other teachers in terms of helping them to develop a better understanding of the Indian culture?

Ms. POTTER. I have had inservice sessions with them, or, if they are stuck up a tree with some particular thing, they will come and ask.

CHAIRMAN FLEMMING. All right. But those responsible for the school do not feel that they are in a position where, without this additional help from the outside, that they could make it possible for you to offer this kind of 6- to 9-week course?

Ms. POTTER. Yes, I'm not going to say that that's not possible. The thing is, yes, I think the school would like to have someone volunteer to go ahead and do it.

CHAIRMAN FLEMMING. I see.

Ms. POTTER. But no one has said, "We are going to have a curriculum meeting," like they do on science or math or English. They just don't call a special staff meeting and say, "We are going to have a curriculum meeting on Indian studies, on Indian cultures, whatever." That hasn't been done. But we get the word passed around.

CHAIRMAN FLEMMING. Mr. Goldsmith, did I catch one figure that you gave correctly that you said, as far as your mental health program was concerned, approximately 50 percent of those that you serve are from the Indian community?

MR. GOLDSMITH. That's correct.

CHAIRMAN FLEMMING. Whereas you said statewide, you're referring to the mental health clinics and so on, statewide it was 10 percent or less?

MR. GOLDSMITH. That's correct.

CHAIRMAN FLEMMING. What is the percentage of Indian population in the State of South Dakota?

MR. GOLDSMITH. About 5 percent.

CHAIRMAN FLEMMING. Personally, I am very much interested in what you're doing in terms of trying to bring people in terms of talking about some common objectives of families being the approach that you have seized on, but the idea that you are actually bringing people together from both the Indian and non-Indian community and you feel that you're getting results?

MR. GOLDSMITH. Well, I don't think it would be possible unless there were significant numbers of people with the significant interest to go ahead and explore these topics. I don't find most people overtly hostile toward one another, but there are very few opportunities to pursue things together within our clustered community and perhaps this is one opportunity to do that.

CHAIRMAN FLEMMING. We are very grateful to all the members of this panel for coming here this morning and sharing your insights and your convictions with us. It will be very, very helpful to us as we evaluate the record of this hearing.

Thank you very, very much.

The hearing is in recess until 1:30.

AFTERNOON SESSION

CHAIRMAN FLEMMING. The hearing will come to order. Counsel will call the next witnesses.

MR. SCHWARTZ. Boyd L. McMurchie, William Shields, Vernon Grady Collins, Leonard Andera, please come forward and remain standing to be sworn.

[Messrs. Andera, Collins, McMurchie, and Shields were sworn.]

TESTIMONY OF LEONARD ANDERA, STATE'S ATTORNEY, BRULE COUNTY;
VERNON G. COLLINS, CHIEF DEPUTY, SHERIFF'S OFFICE, BRULE COUNTY;
BOYD L. McMURCHIE, JUDGE, CIRCUIT COURT FOR THE FOURTH JUDICIAL
DISTRICT; AND WILLIAM SHIELDS, JR., POLICE CAPTAIN, FORT THOMPSON,
CROW CREEK RESERVATION

CHAIRMAN FLEMMING. We appreciate your being here.

MR. SCHWARTZ. Would you each please state your name, address, and occupation for the record, starting with Mr. Collins.

MR. COLLINS. My name is Vernon G. Collins, and I'm chief deputy from Brule County Sheriff's Office, Chamberlain, South Dakota.

MR. McMURCHIE. My name is Boyd L. McMurchie. I am a circuit court judge for the fourth judicial district, and I reside in Chamberlain, South Dakota.

MR. SHIELDS. William Shields, Jr., captain of police, Fort Thompson, South Dakota, Crow Creek Reservation.

MR. ANDERA. I am Leonard Andera. I am the State's attorney in Brule County. I live at Chamberlain, South Dakota.

MR. SCHWARTZ. Mr. Andera; it's my understanding that you're the State's attorney in Brule County; is that correct?

MR. ANDERA. Yes, sir.

MR. SCHWARTZ. And that you also have experience as a tribal judge at the Crow Creek Indian Reservation; is that correct?

MR. ANDERA. That's correct, Three and a half years.

MR. SCHWARTZ. Mr. Andera, as a former tribal judge, would you please describe the practical impact of the recent *Oliphant* decision by the United States Supreme Court, the effect that you would see it having on the Crow Creek Reservation?

MR. ANDERA. Well, *Oliphant*, I personally feel, has created as many problems as it purports to solve. And I say that in spite of the fact that the State of South Dakota appeared in the case as a friend of the Court. For one thing, the Court very carefully pointed out that it dealt

only with tribal courts. It also very carefully pointed out that it dealt with only criminal jurisdiction, and I think those two things are sufficient to start with some of the problems.

I believe that the Court, in a footnote, has spelled out the ratio of the types of courts on the reservations of the United States. I believe there are 127 courts functioning on Indian reservations. Of these 127 there are 71 tribal courts, 30 CFR courts or Code of Federal Regulation courts, 16 of the traditional Pueblo courts, and 10 conservation courts. The CFR courts, of course, are by regulation, I think, BIA regulation I believe, limited to offenses committed by Indians within the boundaries of reservation.

MR. SCHWARTZ. Can you tell me what kind of court it was that you are presiding over at Crow Creek?

MR. ANDERA. Yes, tribal court. So I think the next question, if these do not apply to the traditional courts nor to the conservation court, whether or not a tribe could then, by changing its court format which it apparently has the power to do, once more raise the same issue that *Oliphant* purported to settle.

The difficulty that arises as a practical matter is that if the tribal court does not have "criminal" jurisdiction over non-Indians within the boundaries, then who does? And I can go along with the concept that the Federal Government may have jurisdiction for Federal offenses within the reservation boundaries, but the thing that the tribe will deal with from day to day are not Federal crimes. They are not major crimes; they are not the assimilated crimes, but they are instead traffic violations, intoxication violations, disturbing the peace, criminal destruction of private property, simple assaults—these are the types of things that they deal with. And in most instances, all the instances that I am aware of, these would be violations of State law. Now, we have the question then as to whether the State has jurisdiction to do anything within the exterior boundaries of an Indian reservation. If these offenses take place off a State highway, for example, if they take place on the Indian trust land does the State have jurisdiction to say you have violated a section of the State code? My own personal feeling is that they do not, for a number of reasons which are probably too lengthy to enumerate.

MR. SCHWARTZ. Well, I would like to understand some of them because it is at least very important to know who has jurisdiction.

MR. ANDERA. All right. It goes back to the old issue then of where does the Indian community stand in relationship to the total concept of jurisdiction and power. In many areas they are convinced, and I think rightly so, that they have a certain amount of sovereignty. Many cases tribal governments feel, and again I have no quarrel with this, that they are in effect sovereign nations, that their boundaries are almost international boundaries.

The State of South Dakota, for example, did vote on whether they would assume jurisdiction of the reservations or not at one point in our

history. It was turned down by the voters. They have now said we do not have jurisdiction within the boundaries, all right? If that then is the situation, if I'm driving on a Bureau road, a road built by the Bureau of Indian Affairs across Indian trust land, and I am violating the posted speed limit, which again is the common offense, and it's posted there presumably for the protection of that community, and in this case an Indian community, and I'm stopped by the tribal police for that violation. I'm a non-Indian. So what does he do? Let's assume that all of the desires that have been expressed on the part of many Indian people and non-Indian people alike in this State, there is a cross-deputization program, he is also a deputy sheriff of that county. Can he then write me a ticket for violating the State speeding law? The State did not establish that speed limit. It is not on land or roads maintained by the State or over which the State exercises any care, any maintenance, any control. It is not part of the highway system, it is not—

MR. SCHWARTZ. Well, there are a number of alternative possibilities as to how the jurisdiction might be asserted, assuming the tribe cannot directly assert it in tribal court. For example, the Assimilative Crimes Act makes some State crimes—it takes a State law and applies it to a Federal enclave, in this case an Indian reservation, and it will make that State law a violation of Federal law for purposes of enforcement within that boundary. Is that a possibility for the speeding situation?

MR. ANDERA. Okay. I think that's a possibility. But the problem that I foresee is that it is not there now. The kinds of violations I do not believe are not covered by the acts that we have available now. In other words, what I'm saying, it's going to take congressional action and I think, in effect, that's what the Supreme Court was saying is that somewhere Congress is going to have act now. They are going to have to take some affirmative action here. Whether they will or not, I don't know.

MR. SCHWARTZ. Can this also be done on a State level, in your opinion?

MR. ANDERA. I don't think it can. I don't think that the State can assume that jurisdiction.

MR. SCHWARTZ. So there would then be a problem with the State posting its own speed limit on a road over which it has no jurisdiction in the example that you gave.

MR. ANDERA. That's my belief.

MR. SCHWARTZ. Would it be possible, do you think, at the State level, under something like the joint powers agreements that have been established as possibilities by legislative action of this State's legislature, that an agreement could be entered into or further enabling legislation could be passed which would allow an agreement to be entered into where the State could post such a speed limit?

MR. ANDERA. I'm not certain that under present legislation in existence at this time that a tribe in the State of South Dakota could agree formally by a quasi-treaty type document that they could

exchange jurisdiction in these areas. I do believe that was the proper and appropriate State legislation and legislation by the tribal legislature, whether it's tribal council or however the particular reservation might be operated, that could be accomplished. But under the present situation I'm skeptical.

MR. SCHWARTZ. Would congressional enabling legislation be necessary to—that is the Federal level, in order to allow the two parties even if they wanted to, to agree to that arrangement?

MR. ANDERA. You're asking a question which should properly be put to an expert and I would like to point out I haven't reached that point and probably never will. Again, my own opinion is that that would certainly be desirable. Whether it would be absolutely necessary or not, I'm uncertain.

MR. SCHWARTZ. All right. I began by asking you the question about your experiences as a tribal judge and what other problems you think might be posed by *Oliphant* and I don't know that I got your complete answer.

MR. ANDERA. Okay. I think basically that is, you know, covers the majority of the problems that I foresee. In other words, I see a great number of violations of tribal law which do not violate State law. Public intoxication would be a good example. The tribe, Crow Creek Tribe, for example, has a public intoxication ordinance which is an offense for which they can be arrested and fined and jailed, as far as that goes. The State of South Dakota has no such statute. So what you do is you stand there and even the cross-deputization, you arrest the Indian members of a group and you, I guess, pat the others on the head and say, you know, "Please go home, but if you don't want to, you don't have to." I think that's a problem.

MR. SCHWARTZ. Why with cross-deputization would that be the case? Couldn't the tribal officers cite the—oh, I see, it's the public intoxication statute not existing elsewhere?

MR. ANDERA. Right. It's not a violation of State law.

MR. SCHWARTZ. Is it your understanding that if it's a violation of State law also being committed that the cross-deputization agreement would in effect enable the tribal officer to cite the non-Indian into the State court?

MR. ANDERA. I think that goes back to what I mentioned earlier, that it depends on where it's located and whether the State can even exercise its jurisdiction in that area. And there is a lot of controversy within the State on that.

I'm in a minority here on this point. I think our attorney general says they can. I'm not as convinced as he is.

MR. SCHWARTZ. Captain Shields, you're the captain of the Crow Creek Reservation Police Force; is that correct?

MR. SHIELDS. Yes, sir.

MR. SCHWARTZ. Could you describe the size of that police force, how many officers there are?

MR. SHIELDS. Well, I have about seven officers. About a week ago I had 10 and before that it was even less than that.

MR. SCHWARTZ. Can you describe the training that the officers receive before they become tribal police officers?

MR. SHIELDS. It all depends on where they go to school. If they are Bureau officers they will go to Brigham City, Utah, and attend the U.S. Indian Police Academy. And tribal officers generally go to the State school located in Pierre.

MR. SCHWARTZ. Is your current force a mixture of tribal and BIA employees?

MR. SHIELDS. Yes, it is.

MR. SCHWARTZ. But you have command of the entire force?

MR. SHIELDS. Yes.

MR. SCHWARTZ. I understand that the outer boundaries of the Crow Creek Reservation contain within them parts or all of a number of counties; is that correct?

MR. SHIELDS. Yes, sir.

MR. SCHWARTZ. What are the counties that are contained within this reservation?

MR. SHIELDS. There is Hughes County, Hyde County; Hand County; Buffalo County. Really it's just three counties on the reservation, but the other one does border it.

MR. SCHWARTZ. Are you talking about Brule County?

MR. SHIELDS. I think it's Hand County.

MR. SCHWARTZ. Do you have a cross-deputization agreement with any of those counties?

MR. SHIELDS. None besides Buffalo.

MR. SCHWARTZ. So in Buffalo you do?

MR. SHIELDS. Yes.

MR. SCHWARTZ. What difference does that cross-deputization agreement with Buffalo—well, let's backtrack a minute. The first question should be the nature of the cross-deputization agreement. What does that provide?

MR. SHIELDS. Well, it gives us the authority to arrest non-Indians in Buffalo County on the reservation.

MR. SCHWARTZ. Does that apply to every member of your force?

MR. SHIELDS. Yes, it does.

MR. SCHWARTZ. When you're faced with the problem of a non-Indian committing a misdemeanor on the reservation within Buffalo County in that area of the reservation, what is the procedure that you follow?

MR. SHIELDS. Well, if he is committing a misdemeanor, he is normally arrested and brought to our jail and put in jail and the sheriff is notified. Well, it all depends. If it's a traffic violation, probably he will be issued a citation. If it's drunken driving, he is probably put in jail until the sheriff arrives and takes him to the magistrate or whatever.

MR. SCHWARTZ. And then what happens in the court procedure later on?

MR. SHIELDS. That I do not know.

MR. SCHWARTZ. Have you never been involved in that?

MR. SHIELDS. Very rarely.

MR. SCHWARTZ. Do you know what the procedure is supposed to be in that case?

MR. SHIELDS. Well, he is supposed to be brought to trial as fast as he can, I guess.

MR. SCHWARTZ. And then would the police officer from your reservation from your police force participate in that proceeding?

MR. SHIELDS. Not normally, unless he has pled not guilty and has asked for a trial.

MR. SCHWARTZ. And then what would happen?

MR. SHIELDS. Then they are issued a subpoena and a trial date is set and they go to court.

MR. SCHWARTZ. Has that ever occurred?

MR. SHIELDS. Yes, it has.

MR. SCHWARTZ. In the other counties, let's take Hughes County for example, what would be the procedure for someone committing a misdemeanor there who is a non-Indian?

MR. SHIELDS. Again, we are not cross-deputized with Hughes County so, if he is speeding or something on the reservation, we would probably just stop him and give him a warning and tell him to slow it down. That is it.

MR. SCHWARTZ. What about the possibility of making a citizen's arrest of this person? Has that ever been tried?

MR. SHIELDS. No, it hasn't.

MR. SCHWARTZ. Is that something that could be done, in your opinion?

MR. SHIELDS. Yes, I believe so.

MR. SCHWARTZ. Can you give us a reason why that hasn't been done?

MR. SHIELDS. You got to be a cop for all seasons, you know.

MR. SCHWARTZ. I don't understand what that means.

MR. SHIELDS. A cop should be able to do his job no matter where he is at.

MR. SCHWARTZ. No, what I was asking is you had said that in Hughes County your officers were not making citizen's arrests of persons committing misdemeanors and I was wondering why that procedure hadn't been followed.

MR. SHIELDS. I don't know.

MR. SCHWARTZ. Are there violations of the law occurring in that section of the reservation?

MR. SHIELDS. Yes.

MR. SCHWARTZ. Does that create a problem for law enforcement generally?

MR. SHIELDS. Yes.

MR. SCHWARTZ. Would cross-deputization in these other counties, like Hughes, be useful for the tribal police, do you think?

MR. SHIELDS. I would think so.

MR. SCHWARTZ. Mr. Collins, you are a member of the Crow Creek Tribe, and it's also my understanding that you are a deputy sheriff in the Brule County Sheriff's Office; is that correct?

MR. COLLINS. Yes, sir, that's correct.

MR. SCHWARTZ. I would like you to explain for this Commission the kinds of law enforcement problems that are faced by the Brule County Sheriff's Office, particularly those with respect to bordering on Indian reservations.

MR. COLLINS. Basic law enforcement problems. Big problem we have like anywhere else is alcohol. Most of our problems are alcohol related. We don't have many problems. Crow Creek does not have extradition, but that is not really a problem either unless we want somebody for a violent act or something where it is essential that you get him into court before the momentum and everything goes out of the case. But as far as checks and your normal charges, everybody comes off the reservation sooner or later and there is nothing I can do about it but work with it, try to get along with it.

MR. SCHWARTZ. Do you have any kind of cooperative working arrangement with the police force at either Crow Creek or Lower Brule?

MR. COLLINS. Yes, sir, I do. I work with both Lower Brule and Crow Creek as a dispatcher, as a jailer, and as a police officer.

MR. SCHWARTZ. But that is your prior employment. I am talking about now as a—

MR. COLLINS. Well, I do have contacts from my prior employment, and I do work with them very well.

MR. SCHWARTZ. Can you give us an example of what that enables you to do?

MR. COLLINS. It enables me to call Fort Thompson or Lower Brule, if I want to, and I can investigate on a reservation. If I want to interview a suspect, normally they will ask him to come in when I arrive at Fort Thompson, and he is usually there for me to talk to. The captain in Lower Brule gave me a man at my disposal to drive me around Lower Brule one time. It's been a real good working relationship. There are no problems as far as that goes.

MR. SCHWARTZ. Has your membership on the force as an Indian changed that relationship in any way?

MR. COLLINS. Personally, I suppose I would like to think so.

MR. SCHWARTZ. How has it changed?

MR. COLLINS. It's a personal relationship between our office and the Fort Thompson Police Department and the Lower Brule Police Department because I know these guys, I have worked with them. I have come up through the ranks with them and it is just more personal. Nobody's uncomfortable when they come down to the sheriff's office because I am there. They know me and it has solved a lot of problems.

MR. SCHWARTZ. Now, Brule County is one of the counties for which there is no cross-deputization agreement with Crow Creek, as I understand it?

MR. COLLINS. Yes, sir, that's correct. I don't see much need for it.

MR. SCHWARTZ. You don't think that that would make law enforcement an easier matter if there were?

MR. COLLINS. Well, we don't have any reservation in our county. We are right on the border there, but we have done fine in the past and there really isn't a problem as far as deputizing our officers. As far as I am concerned, if I needed help and I called these guys, they would come to help me and they would probably, basically, be obligated to help me.

MR. SCHWARTZ. Judge McMurchie, you have served as a circuit court judge, I believe it is in Brule County, the fourth judicial circuit, is it?

MR. MCMURCHIE. Yes, there are 10 counties in the circuit. We extend on the northern tier of counties from Hand through Buffalo County and from Sioux Falls through Brule County.

MR. SCHWARTZ. Which reservations would that circuit include?

MR. MCMURCHIE. The reservations would be Crow Creek as far as Buffalo County is concerned, and I'm not too sure what Moody County would encompass. I do not know the boundaries of Moody County. That's on the Minnesota line. Moody County could have some reservation land, but I don't know.

MR. SCHWARTZ. Where does your court sit? Where do you preside?

MR. MCMURCHIE. Well, I reside in Chamberlain. I'm primarily responsible for Buffalo, Brule, Aurora, and Jerauld County. I sit in all 10 counties.

MR. SCHWARTZ. Can you tell this Commission the kinds, if you can characterize, the kinds of criminal offenses that you have to deal with on a day-to-day basis as a circuit judge there and what impact, if any, the reservation communities have on the jurisdiction process?

MR. MCMURCHIE. That is kind of a mouthful.

MR. SCHWARTZ. I guess it is. Perhaps we can break it up. Let's try the first part, which is the types of crimes that you deal with on a day-to-day basis?

MR. MCMURCHIE. It would consist of about everything from murder to spitting on the sidewalk, from the \$5 small claims court hearing to a multimillion dollar lawsuit. It's very diverse. It's quite, frankly, very interesting.

As far as Indian people are concerned, I have very few in court. I believe I had the clerk check on it—it's difficult to define Indian people to begin with within that area because you have a number of people that you may not be acquainted with as Indians that are in fact though they are not recognized as such within the community. I think we have had five felony cases in the last 3-1/2 years involving Indian people. The misdemeanors would run from an assault once in a while

to a DWI [driving while intoxicated] once in a while to a reckless driving once in a while. I have no idea about the speeding or traffic violations from that standpoint. We have very few cases quite frankly.

MR. SCHWARTZ. Does the State court system have any interrelationships or interaction with the tribal court system existing there?

MR. McMURCHIE. Do you mean by law do we, or do we in actuality?

MR. SCHWARTZ. I would like the answer to both of those.

MR. McMURCHIE. By law we do not. It's like dealing with New York State. I am not bound by New York State decisions. You can study the conflict of laws which of course I am sure all the attorneys are well aware of. It's a very confusing field. The law says that you do, but in actuality we all realize that you make your own independent decision as you sit on those.

In practicality, in some areas we do have a relationship. Let us take the case where you have an Indian family and you have a charge brought before the court, neglect of children, dependency, something of this nature where it involves the possible removal of a child from the home. Many times you will find that they are under the order of a tribal court as far as the custody is concerned. And I request in those cases that that matter be made an exhibit and a portion of the evidence either at the dispositional hearing or the adjudicatory hearing, usually the dispositional. So there is that type of relationship.

Other than that I can't offhand think of any.

MR. SCHWARTZ. Do you in your court recognize tribal process or any form of tribal judgment that may be issued?

MR. McMURCHIE. Quite frankly I have never had it placed before my court.

MR. SCHWARTZ. There are some situations existing where—let's take the situation of a warrant, a criminal arrest warrant may be issued by one court and, it's my understanding, and I don't know the extent to which it occurs in the State, but it's my understanding that in some cases the State arrest warrant will be given effect in a tribal court and then that suspect will be picked up pursuant to that arrest warrant. Sometimes it goes the other way. Is there any such arrangement that exists?

MR. McMURCHIE. You mean as far as extradition on a State warrant where the defendant is confined within the boundary of the reservation?

MR. SCHWARTZ. Yes.

MR. McMURCHIE. Lower Brule has an extradition proceeding. I do not become involved in that to any degree. I understand that it functions very well. Crow Creek, as I understand it, does not. The proceedings themselves would be held in tribal court and, in practicality, you would either go through your extradition proceedings in tribal court through the State's attorney's office or you can sit and wait.

MR. SCHWARTZ. What about the matter of executions on civil process? There must be a number of circumstances where a party will be in one jurisdictional area and assets will be in another or some such thing.

MR. MCMURCHIE. I don't understand your question.

MR. SCHWARTZ. In civil matters there may be a judgment that may be issued, let's say, out of your court. Is there any kind of arrangement which would enable assets located within the reservation area to be levied upon?

MR. MCMURCHIE. Not to my knowledge. That would depend on each tribal code. There are some reservations that have provisions for that that I'm personally aware of. I have been on the bench for going on 4 years. I don't know the changes within that 4-year period. But I don't believe that Lower Brule or Crow Creek have any provisions within their code for that type of situation.

MR. SCHWARTZ. Does this have an effect on commerce existing in Chamberlain for reservation residents.

MR. MCMURCHIE. You mean the jurisdictional issue?

MR. SCHWARTZ. Yes.

MR. MCMURCHIE. I would say very definitely. The system is created in such a fashion. I believe Leonard touched upon it. It's a quasi-sovereignty. If you want to read the Supreme Court decisions, it is the same, the extent to which we don't quite know yet.

Take the example of lending institutions. You have Federal and State regulations pertaining to how much money an institution may loan on a signature loan. And beyond that point certain collateral is necessary. Now, you take the example of an Indian rancher, let's say, and he is no different than anyone else in today's society. He must function with liquidity, and you gain that liquidity by borrowing money. It puts a lending institution, if it's a State institution, in a very serious position. You can get a note, you can sign the mortgage or the security agreement, and everything is valid. But you understand in the event of default there is no way that that can be enforced for purposes of collection against the securities, as the State courts have no jurisdiction over an independent person or his property within the confines of the reservation. So what it amounts to is that type of loan is consequently a signature loan.

MR. SCHWARTZ. Mr. Andera, as a former tribal court judge, would you agree with that analysis that there is nothing available for the—

MR. ANDERA. Yes, as a matter of fact, you may be interested to know that there is no execution provision for a judgment in tribal court between the Indian parties in Crow Creek. There is no way in which you can actually enforce a judgment except under a criminal statute which provides that you have violated a lawful order of the tribal courts. And that's the only method by which you can legally enforce a judgment even in tribal courts.

MR. SCHWARTZ. That means that you would have to execute with respect to the criminal law what you would normally handle as a civil case elsewhere?

MR. ANDERA. What you would do in connection with the judgment, you would include in that an order to pay over to the prevailing party *X* number of dollars within *X* number of days, and if the losing party failed to do so, you would then charge him by a criminal complaint with failing to obey a lawful order of the tribal court. And he might then be subject to the criminal provisions. I have some question about the constitutionality of that, of imprisoning him for failure to obey a civil order, but that's all that's there.

MR. SCHWARTZ. Is there any legal impediment to changing that law so that a tribal court could execute on civil matters in a similar manner, let's say, to the State court system?

MR. ANDERA. No, I don't think so. There are reservations, one that immediately strikes me is Cheyenne River which does have quite a good civil procedure code.

MR. SCHWARTZ. Thank you. Mr. Chairman, I have no further questions at this time.

CHAIRMAN FLEMMING. Mr. Andera, I was very much interested in your response to questions relevant to the impact of the *Oliphant* decision. We have only been at this a few hours, but we have heard quite a little about that *Oliphant* decision already. And after listening to your testimony I gather you feel that possibly the only way out of the present rather confusing situation is through action on the part of the Congress; is that the point?

MR. ANDERA. Yes, sir, it is. I think there is something that might help clarify my feeling on this. As near as I can determine at least, the problem is also inseparable with the problem of what actually constitutes an Indian person. We have again, as I understand it, a case law which in effect says that there is a two-pronged test: first, is there a recognizable amount of Indian blood, and second, is he acknowledged as an Indian in the community in which he lives?

Now this is great if you have several months and a lot of time and a lot of witnesses and the usual appellate procedures available to you. But it doesn't really give any guidance to the police who are charged with enforcing this, and I don't know, it's part of the whole overriding problem here. How do you determine what happens? Does the State really have any jurisdiction at all? In answer to your basic question, yes. One, we need congressional action. I think we need to answer the sovereignty question.

Secondly, I think we need to have continued State and tribal agreements, treaties, if you will, whatever. I think there needs to be an overhaul of a lot of tribal codes. I think you need to open tribal courts to non-Indians in the civil arena to clear up a lot of this. I think you need to place a money limit on civil actions in tribal courts and invest the rest of it between Indian and non-Indian in the Federal courts.

During my time as tribal judge we had a civil action in which the money amount was \$1 million. Frankly, that has no business being in tribal court. Number one, most tribal judges, including myself, just aren't up to it. The code and the body of law is not sufficient on tribal level to settle matters of this nature. I think the tribal court ought to be limited to something similar to small claims. And then if there is a diversity or if there is an excessive dollar amount, let it be handled in either State or Federal—and now I think it would have to be Federal. I think those are the things that would have to be done at the minimum.

CHAIRMAN FLEMMING. Have you seen any or have you learned of any move in the direction of getting congressional action going on the *Olipphant* decision?

MR. ANDERA. I'm not familiar with any. No, I'm not aware of any.

CHAIRMAN FLEMMING. Judge McMurchie, you have listened to this discussion on the impact of the *Olipphant* decision. I'm wondering if there are any observations that you would care to make relative to the problem that has been created growing out of the experiences that you have had.

MR. McMURCHIE. I quite frankly don't believe that it's created any additional problems that weren't already there. It has not been the solution to many of the questions that we had in our minds 5 years ago. In fact, if you want to read it very closely, and I have not read that closely, I have read it five times, but it's going to take more than that. It may create a few more problems.

CHAIRMAN FLEMMING. Little bit like the *Bakke* decision.

In other words, you sum it up by saying that it really didn't resolve some of the basic problems that need to be resolved; it possibly may have created one or two additional ones?

MR. McMURCHIE. It may have resolved some. It may have created some additional ones. It's not all that positive depending on how you wish to argue or present it.

CHAIRMAN FLEMMING. Do you have any reaction to the suggestion that it may take action on the part of Congress to clear up the matter?

MR. McMURCHIE. Well, in reality from the standpoint of the law, it's like a tool. You only have those tools to work with that your Congress or your legislature gives you. And obviously within this area we're lacking in tools. So I think it has to be affirmative action from a legislative standpoint if that in fact can be done within the framework of the Constitution.

CHAIRMAN FLEMMING. I would like to shift to another area. As you probably know, our State Advisory Committee conducted an investigation into this whole criminal area, held some hearings, and developed a report which of course was made available to us which we have read with a great deal of interest. I notice that in the report they put a good deal of emphasis on the process that is followed in the State in impaneling a jury and put quite a little emphasis on the fact that under

existing law it would be very difficult for an Indian to become a member of jury because of its relationship to the voting.

Am I correct that there is a relationship between the exercise of voting rights and a person actually being drawn for jury duty, his name being drawn for jury duty?

MR. McMURCHIE. As I understand it, that is your conclusion. As to the same, I would not agree on, however; but I did take the time to check Brule County and I believe that every resident of Brule County of Indian extraction has at one time or another served on a jury.

CHAIRMAN FLEMMING. Right. So that you don't see the existing law as maybe a serious obstacle to the involvement of the members of the Indian community in the jury system?

MR. McMURCHIE. Well, obviously it's the same as selected from your jury list, your master panel is selected from voter registration. It would reflect only those who have so registered. And this again is within the legislative area, you see. But in both Buffalo and Brule County your Indian people have been consistently on your panels.

CHAIRMAN FLEMMING. Right. And in connection with the trials over which you have presided, is it rather common for members of the Indian community to be on the trial jury themselves?

MR. McMURCHIE. In Brule County, I don't believe we had over 25 to 50 families. It is common that they would be on a jury to my knowledge. In Buffalo County I have only had one jury trial and I'm going on 4 years. I believe that either three or four members of the panel were enrolled members of the Crow Creek Tribe. There may have been another two or three, but I'm not sure whether they are entitled to enrollment or not. In other words, I don't know whether they are Indian people or not.

CHAIRMAN FLEMMING. In the report of our State Advisory Committee there was a good deal of emphasis placed on the fact that there was good deal of plea bargaining which would result in cases being settled short of a trial before a jury. Would you care to comment on that particular issue?

MR. McMURCHIE. First of all, you would have to define plea bargaining because I think you have about 50 definitions floating around the United States. Generally, I would say in the fourth judicial district we do not have plea bargaining. That does not mean, however, that an offense charged in multiple counts will not be considered by the court for dismissal of some counts as opposed to taking a plea on another. However, prior to doing so the arraignment proceedings which this court, the fourth circuit, uses, myself specifically, requires the State's attorney to make the motion and then to explain why factually it is being done. I will not grant the motion until after I have accepted the plea, which basically means after I have discussed the matter with the defendant on the record to determine his version of the facts. And if that version of the facts is consistent with the State's motion for the dismissal of the remaining plea or the remaining counts,

then I will accept a portion of it. If it does not, I will enter a plea of not guilty for and on behalf of the defendant and will schedule the matter for trial.

Now with regards to reduction of charges, the same way. We will accept no pleas conditioned upon any specific sentence. In other words, all four of us are in agreement that the Constitution places the responsibility of sentencing upon court. And to allow the State or the defense to do your sentencing for you is obviously not doing your job is the way I feel about it personally. So plea bargaining, as such, is probably not done except, obviously, if he is overcharged, which can occur very legitimately because if the initial investigation shows first degree robbery and later, after full investigation, it's obvious that first degree is not the proper charge, I don't really consider that as plea bargaining.

CHAIRMAN FLEMMING. Overcharging can occur legitimately, and then I suppose there are circumstances under which it would not be regarded as—

MR. McMURCHIE. It can be abused.

CHAIRMAN FLEMMING. Mr. Andera, do you care to comment on extradition from the standpoint of your present position?

MR. ANDERA. As far as plea bargaining is concerned?

CHAIRMAN FLEMMING. Either one of the issues that I raised with the judge.

MR. ANDERA. I have to agree with the judge that it depends on how you define plea bargaining. There is a lot of discussion about pleas. You would be ridiculous to claim otherwise.

The question of racial balance of juries, as the judge pointed out—those who are eligible by virtue of their residence within Brule County and who are also of Indian blood is very, very small in comparison to total population. And also, it's been my experience as prosecutor since 1973 that on the occasions when an Indian is seated on the jury panel and there is an Indian defendant the defense preempts him. And somebody else is going to have to explain that, but it's happened to me three times. I don't know why. So I have had very few trials in which there have been members on the actual jury. They have been on the panel but never gotten on the jury.

CHAIRMAN FLEMMING. I don't know whether Mr. Shields would like to comment on either one of those issues or not from the standpoint of his experience.

MR. SHIELDS. Well, I really don't have—really don't pay attention to it that much, I mean as far as in Brule County.

CHAIRMAN FLEMMING. Mr. Collins, do you have any comments you would like to make?

MR. COLLINS. That basically is attorney's work. My job's hard enough.

CHAIRMAN FLEMMING. That's right, that's right.

MR. ANDERA. Mr. Chairman, if I could—there was one thing that Judge McMurchie mentioned which I don't think he is aware of a change and it may possibly make a difference, and that is he mentioned Lower Brule Reservation does have an extradition ordinance. It's my understanding that just within the last few days that that has either been repealed or something has been done with it and it is now closed; is that correct?

MR. COLLINS. Yes, sir.

MR. MCMURCHIE. I would add something to the record as far as Brule Reservation is concerned. In this State the court services offices are directly under the authority of the court, and the cooperation that I have received in Lower Brule has been exceptional. They assign an officer to him and make his contacts, give him facilities to use and everything else, and the cooperation with Crow Creek has been good. This is very much appreciated from my standpoint because your sentence is no better than the followup in the event that you suspend a balance of jail time or suspend imposition of the same.

CHAIRMAN FLEMMING. Thank you.

Mr. Nunez?

MR. NUNEZ. Nothing.

CHAIRMAN FLEMMING. Do you have another question?

MR. SCHWARTZ. Mr. Andera, how long has the tribal court system existed at Crow Creek? Are you aware of that?

MR. ANDERA. Can't answer that, I'm sorry. I don't know.

MR. SCHWARTZ. One of the things you suggested in earlier testimony was possibly placing a limitation on the amount in civil actions that can be brought before the tribal courts. I wonder if another alternative would be to develop the tribal court system so that it could better handle the civil matters that may come before it.

MR. ANDERA. Absolutely, yes. Again, you have to understand that for many, many years, and I don't know how long, maybe Mr. Shields or Mr. Philbrick can answer this, the tribal judge had no legal background of any kind. I believe that I was only the second tribal judge in the history of that court with any legal background of any kind. And the previous judge lasted through the first jury trial. And I don't know if he ran from the scene or was driven from the scene, but in either event he didn't last long. And that's a tremendous burden to place on a layman and it's amazing that the court has functioned as well as it has over the years.

So, I'm not being that critical of the tribal court. I think it's done a fantastic job with the tools it had.

MR. SCHWARTZ. Thank you.

Captain Shields, one last question for you. I would like to know the role that BIA police, with whom you operate, plays in the investigation of major crimes committed in the reservation.

MR. SHIELDS. Well, our police department is probably the first on the scene. This is in relationship with the FBI?

MR. SCHWARTZ. Yes, we can get to that.

MR. SHIELDS. Well, when we determine that a major crime has been committed, we notify the FBI. And whether they come right now or 2 weeks from now, we usually have a suspect or know who did it and can generally put it together for them and preserve evidence.

MR. SCHWARTZ. Which police force, the FBI or your own, does the investigation of the crime scene usually?

MR. SHIELDS. We do first. We are the first officers there.

MR. SCHWARTZ. And then what role will the FBI play when they arrive? Will they repeat what you have done or will they go from there or what will they do?

MR. SHIELDS. Essentially, they will do the interviews after we do it. They will do them again.

MR. SCHWARTZ. They will do the same things?

MR. SHIELDS. We don't do a lot of interviews. We do most of the legwork for them. We preserve the crime scene, identify the suspect, the victims, get the description of the land, whether it's Corps land or Indian land, trust land or whatever. They pretty much take it from there.

MR. SCHWARTZ. From your view as a BIA police officer, what are the elements that the FBI provides in the investigation that you can't provide as a BIA police force?

MR. SHIELDS. Probably their professionalism. They really know how to do a job.

MR. SCHWARTZ. Do you consider them to be of assistance then?

MR. SHIELDS. Yes, sure do.

MR. SCHWARTZ. Thank you very much.

CHAIRMAN FLEMMING. We appreciate very, very much your coming here and providing us with this testimony. It will be very helpful to us. Thank you.

Counsel will call the next panel of witnesses.

MR. BACA. Elijah Whirlwind Horse, Art Brown, Francis Horacek, Philip Hogen, please come forward and be sworn.

[Messrs. Brown, Hogen, Horacek, and Whirlwind Horse were sworn.]

TESTIMONY OF ART BROWN, COMMUNITY ACTION PROGRAM DIRECTOR, EAGLE NEST DISTRICT; PHILIP HOGEN, STATE'S ATTORNEY, JACKSON COUNTY; FRANCIS HORACEK, BUSINESSMAN, KADOKA, SOUTH DAKOTA; AND ELIJAH WHIRLWIND HORSE, CHAIRMAN, OGALA SIOUX TRIBE, WANBLEE, SOUTH DAKOTA

CHAIRMAN FLEMMING. Thank you. Nice to have you with us.

MR. BACA. Would you please each identify yourself, give your title if appropriate, and your business address for the record.

MR. WHIRLWIND HORSE. My name is Elijah Whirlwind Horse, chairman of the Oglala Sioux Tribe, Wanblee, South Dakota.

MR. BROWN. I am Art Brown, community action program director for the Eagle Nest District. My address is Wanblee, South Dakota.

MR. HORACEK. Francis Horacek, I own and operate a general merchandise store in Kodoka, South Dakota. That is my mailing address.

MR. HOGEN. Philip Hogen, Jackson County State attorney; I live at Kadoka.

MR. BACA. Mr. Whirlwind Horse, could you tell us approximately how many people reside on your reservation?

MR. WHIRLWIND HORSE. I would say approximately 13,000.

MR. BACA. Are those all enrolled members of the tribe?

MR. WHIRLWIND HORSE. Yes, sir.

MR. BACA. Can you tell us what the annual budget is for the tribe?

MR. WHIRLWIND HORSE. I would say approximately \$20 million.

MR. BACA. Are there facilities within the boundaries of the reservation where persons can buy the things they need, groceries, such as that?

MR. WHIRLWIND HORSE. Yes, in some areas there are. Other areas there are not.

MR. BACA. Could you tell us roughly, if it is possible, what area yes, what areas no?

MR. WHIRLWIND HORSE. We have facilities at Pine Ridge and Kyle and a small grocery store in Porcupine, Manderson, Wanblee, and Sharp's Corner.

MR. BACA. Do residents of Wanblee have to leave the reservation for other kinds of purchases?

MR. WHIRLWIND HORSE. Yes, sir.

MR. BACA. Where do they go for that?

MR. WHIRLWIND HORSE. Kadoka and Rapid City.

MR. BACA. Mr. Horacek, could you tell us, at least as far as you are able to form an impression, what percentage of your business is done with persons from the reservation?

MR. HORACEK. I won't be able to tell you the exact percentage, but I do know that we do a considerable amount of business with the people from Wanblee or from the reservation area.

MR. BACA. Mr. Whirlwind Horse, can you tell us, in your experience, whether the relations between the persons in Kadoka and the reservation have improved over the last several years?

MR. WHIRLWIND HORSE. I would say just recently there has been an improvement, but it has been rather slow, just been very recent that there has been some improvement.

MR. BACA. Can you describe that? I'm particularly interested in the area of law enforcement.

MR. WHIRLWIND HORSE. Well, there has been a considerable amount of police brutality toward the Indian people from the Kadoka Police Department throughout the years.

MR. BACA. Does this continue?

MR. WHIRLWIND HORSE. I haven't had any reports of late.

MR. BACA. What about treatment generally speaking; that is, by people in stores as they conduct their business in town?

MR. WHIRLWIND HORSE. I think that the consumer-business relationship there has improved quite a bit. There are indications that Indian people are receiving credit, and I do not know how extensive that is, but I know several of the merchants there have had a change.

MR. BACA. Mr. Horacek, was there some problem prior to this time to granting credit for people from the reservation?

MR. HORACEK. I would like to point out I moved to Kadoka 2 years ago, so I'm not familiar with anything prior to that time. I know that in my situation I have extended credit to the Indian people, and I also extended credit to the white people. What it was prior to that time I have no idea, except I have talked with other people who have indicated to me that there has been more of it recently than there was prior. I don't want this to indicate I'm the reason that it happened. I speak only again that in the time that I have been there. Prior to that time I guess it was tight. I have no idea.

MR. BACA. If you are not the reason that it happened, is the organization that you helped to form one of the reasons that it happened?

MR. HORACEK. Well, I think in discussing this matter with other people in the organization I feel or sense there is a change of attitude in the thing. The feeling is that you have only so much business that you can do, and it is senseless to drive it away. Whether they be black, white, Indian, whatever they might happen to be.

I see things or ideas that I have encountered in the eastern part of the State slowly taking place. They have given it some thought, and I would have to say that I think there is a change of heart, yes.

MR. BACA. What was the original purpose in organizing the merchants' association?

MR. HORACEK. There again, I really have no idea except that I suppose someone that had been there longer than I could tell you. It is similar to a chamber of commerce, anything you can do to prompt the businesses, services you have to offer to the community or to people that would make themselves available and the services you have to offer.

MR. BACA. In your discussions with other members of the association, can you tell us some of the reasons given why the credit was refused in the past?

MR. HORACEK. Well, the gentlemen here prior to our being seated had mentioned, I think, that the roughest thing, the thing that I find hard is the ability to collect a bad debt. I don't care whether it be white or Indian, I'm not leaning on the Indians, but I think this is the problem that we have. You can't, because of the jurisdiction situation, you have no recourse if they choose not to pay. You simply have to hope that they will have a change of heart, come back, pay the debt that is long overdue. I would feel that possibly this one matter is the thing that maybe is the worst towards not extending credit.

MR. BACA. That continues to this day?

MR. HORACEK. Yes, I have the situation right now. It bugs me, but I do not know what recourse I have or whether or not I can follow to alleviate the situation.

MR. BACA. Have you or other merchants attempted to use the tribal court?

MR. HORACEK. Well, just recently—I have checked through another man—I found the tribal court now is supposedly getting themselves into the situation where they can handle these and hopefully can have a solution as to how we might be able to go about collecting the debt that might be bad or overdue or something like that. That is as far as I have gone with it.

I would say if this is the situation, definitely it should be a step forward that would help the feeling on both sides.

MR. BACA. I realize you have only been there a short time, but can you to the extent, or perhaps Mr. Hogen could help you, tell us whether earlier attempts were made to use the tribal courts and, if so, with what results?

MR. HORACEK. I have no idea.

MR. BACA. Mr. Hogen?

MR. HOGEN. I was born and raised in Kadoka, although I just moved back in '74. To my knowledge, no Kadoka merchant has ever gone into tribal court to collect a debt. Now, it is also my understanding, as Mr. Horacek summarized here, that more utilization is being made of the tribal court by individuals, including non-Indian businessmen who live off the reservation, for collection action. As the Jackson County State's attorney—that is a part-time position and I also have a private law practice—merchants have retained me to make collections. In my practice to date I have not gone to tribal court, although with the developments I have been advised of, we will explore that as a possibility. Hopefully, that would promote the ability of Indian customers to be able to buy on credit from off-reservation merchants and help merchants to maintain a business relationship with them by being able to enforce credit sales.

MR. BACA. Mr. Whirlwind Horse, two members of the panel referred to recent developments. You, as chairman of the tribe, could perhaps can help us understand what the developments are.

MR. WHIRLWIND HORSE. As far as the courts?

MR. BACA. Yes.

MR. WHIRLWIND HORSE. The court is now assisting bill collection. There are instances of repossessing cars, trailer houses, etc. I think the merchants of Nebraska have moved on this a lot sooner and are utilizing the courts quite readily to settle these problems, and I understand it is going quite well. I have a personal friend that collected—repossessed a car the other day. I thought the hearing was conducted very formally, very fairly. He was awarded what he came after. They did consider the individual's ability to get the payment up to snuff; the person had refused to pay. Then they awarded the car back to the dealer. That has been the case in several instances.

MR. BACA. Are these accurately described as recent changes or was the court always available to merchants?

MR. WHIRLWIND HORSE. The court has always been available to the merchants.

MR. BACA. Moving to the area of law enforcement, we have heard a great deal about checkerboard jurisdiction and about non-Indians and the problems that perhaps the tribes might have in effecting arrests on tribal lands.

Mr. Hogen, could you describe the kinds of jurisdiction that exists in and around the Pine Ridge Reservation?

MR. HOGEN. The jurisdiction, as I understand it, as Jackson County attorney, would be this: first, Jackson County is an organized county and Washabaugh unorganized. Washabaugh County makes up the northern portion of the Pine Ridge Reservation. Washabaugh County is attached to Jackson for judicial purposes, so consequently, as the Jackson County officer I serve that area as well as Jackson County.

In Jackson County, I consider that my office, the State attorney's office, and therefore, the State of South Dakota has jurisdiction over everyone that is there.

There are some exceptions. That would be the Bad Lands National Monument which is served by the Park Service, which lies within Jackson County and so is under Federal jurisdiction. Within Washabaugh County, I do not consider that the State of South Dakota has jurisdiction over anyone that is an Indian. I consider that, pursuant to the *Oliphant* decision and the law that went before that, the State of South Dakota has jurisdiction over everyone not an Indian. I think the *Oliphant* decision said we solely would have that jurisdiction.

Now, I have heard earlier discussion here about *Oliphant*. I think that answers the question. I think that helped us solve some of the problems.

Certainly, there are other unanswered problems, but I viewed that as a solution. This implementation of these jurisdictions does present some problems, as the speaker before said, deciding who is an Indian. That question might have to be answered before you can decide who has jurisdiction.

MR. BACA. First, is each State's attorney free to interpret the *Oliphant* decision as he or she reads it?

MR. HOGEN. Yes.

MR. BACA. Let me ask the question in a different way. I heard some State's attorneys earlier in the day say that their reading is that a non-Indian cannot even be arrested by tribal police on trust lands. I have heard others say, yes, an arrest could be made by tribal police of a non-Indian, but the person could not be tried in tribal court. What is your reading?

MR. HOGEN. My view would be that there is no jurisdiction by the tribal police or the tribal courts over non-Indians in Indian country, including the right to arrest. I do not believe an Indian law enforcement

officer, clothed with some legal tribal authority, would have authority to exercise that authority on a non-Indian. I think, at the same time, they would be fully clothed with all the rights and obligations as any other citizen. They could do what an Indian or non-Indian might do. I'm not saying that individual who might be an Indian officer wouldn't have the right to make a citizen's arrest. I would not view that as an arrest by a law enforcement officer.

MR. BACA. Are there any cross-deputization agreements between Jackson County and the Pine Ridge Reservations?

MR. HOGEN. No.

MR. BACA. Could you tell us why?

MR. HOGEN. I really can't tell you why because I have only been there for a few years in this present capacity.

There have been some changes recently that I view as positive changes in law enforcement on the reservation. Recently a change was made from what I term BIA law enforcement to tribal law enforcement. I don't have much experience in the area of BIA law enforcement, but my experience in the last year or year and a half with tribal law enforcement has been very positive. There is a very good working relationship between the tribal police force and the Jackson County Sheriff's Department, and lines of communication are open. And we have never run into a situation in my experience wherein we might have been better served with cross-deputization than we are now with this open line of communication we have. So I can't give you a specific answer why we have not done that.

I think there is one problem that would have to be addressed before we could enter into such an agreement. That would be the liability that the county and likewise the tribe would have for these cross-deputized officials. For example, if we did have a cross-deputization agreement, wherein we said the Jackson County Sheriff's Department would have jurisdiction or would have the authority that a tribal officer would have to arrest and take an Indian to tribal court in Indian country, and then likewise, the tribal officer would have authority over non-Indians in the Washabaugh County area, if something was done by that Indian officer while he was acting as a Jackson County deputy and an action was brought against that officer in his capacity as a Jackson County deputy, then Jackson County would be responsible to answer for that. We would not have recourse against that officer, if in fact it was the officer's wrongdoing, and he personally in the county's view should be liable, but we have no jurisdiction over him because we have no State jurisdiction over that individual in Indian country.

MR. BACA. You don't think that if both the tribe and the county agreed that a person in that situation would have to surrender themselves to the jurisdiction of the county and that could be integrated into the agreement, that that problem would be taken care of?

MR. HOGEN. I think that would be a very worthwhile avenue to explore. I do not know how binding it might be on the individual officer.

That is a question to be answered to get a workable cross-deputization situation.

MR. BACA. Let me ask you another question. I do not know the answer. That is, if tribal police can make only citizen's arrests, can they, if a suit is filed for alleging some misconduct during the arrest, can they clothe themselves with whatever immunities other police officers can under the same circumstances?

MR. HOGEN. My initial reaction off the top of my head would be no, they cannot, they would not be a law enforcement officer in that situation. I have not researched the question and certainly don't know the answer.

MR. BACA. What is done by your office when you receive a citizen's arrest, when you receive a person under citizen's arrest? If the circumstances and evidence warrants, do you prosecute?

MR. HOGEN. Yes, we do and have in the past. It certainly is a much more effective situation than when we have a citizen's arrest in Jackson County because the tribal law enforcement people are well trained and they are handling the situation as a law enforcement officer should. We get a case and we go to trial and we subpoena the tribal officer if necessary. We don't subpoena him because he wouldn't come voluntarily, but that permits us to pay fees, so forth, and it has worked well in the past. We haven't had a great number of incidents like that. But when we have, we have prosecuted them just as we would an arrest made by a law enforcement officer or by a citizen in Jackson.

MR. BACA. Mr. Whirlwind Horse, can you tell us if, since the *Oliphant* decision, you have seen an increase or any particular significant change in the number of incidents of violation of misdemeanor laws on the reservation by non-Indians?

MR. WHIRLWIND HORSE. I don't have any statistics to base my opinion on, but I feel that it is very negligible. We don't have that much trouble with non-Indians on the reservation anyhow.

MR. BACA. Why is that?

MR. WHIRLWIND HORSE. We have some good friends on the reservation. Not all white people are bad, but you know, we have Indians that look like white people too, blond hair, blue eyes, so it would be our opinion, since the *Oliphant* thing, is to make the arrest and bring them in to a tribal hearing to determine whether they are Indian or non-Indian. I think that for most of the major crimes that are committed by non-Indians the FBI is quite available, and our officers probably have the situation worked out, but the population that lives there, we don't have that much problem with them.

MR. BACA. One other thing that I would like to follow up with, Mr. Whirlwind Horse, is that Mr. Hogen has referred to again recent changes in the tribal police force. Could you comment on those recent changes, tell us what they are?

MR. WHIRLWIND HORSE. I suppose it takes advocacy on both sides to make these changes that have happened or taken place between Washabaugh County tribal policemen and Jackson County police officers. I think it is a matter that those people were willing to get together to work things out.

MR. BACA. I guess the thrust of my question was whether there had been some improvement in the tribal police force that would lead to a new era of trust?

MR. WHIRLWIND HORSE. Well, the tribe did contract the law enforcement agency from the Bureau of Indian Affairs. We do have internal problems we are working on that tend to make it better. We are quite satisfied with what we are doing, and it does have an effect on how police officers do operate.

MR. BACA. Mr. Brown, I know that you were particularly concerned with what was previously a centralized police department on the reservation. I understand there has been a decentralization of the police on the reservation; is that correct?

MR. BROWN. Yes, there has been. Before if we needed any police in Wanblee, we had to wait for them to respond to whatever need was from the agency. Then, usually it took several hours or a day, but now we have the officers there available to cover whatever happens right there.

MR. BACA. When did that change take place?

MR. BROWN. Last year, I believe, when the tribe contracted the police services from the BIA.

MR. BACA. Mr. Chairman, I have no further questions at this time.

CHAIRMAN FLEMMING. Mr. Brown, I notice that you are the director of the community action program. Could you describe for the Commission the nature of that program?

MR. BROWN. We coordinate all efforts of the different programs going on, Federal and tribal programs, within the district. We are only part of the CAP program on the reservation. There are nine coordinators. They each take care of the programs within their districts.

CHAIRMAN FLEMMING. Nine others?

MR. BROWN. There are eight others. Nine of us altogether.

CHAIRMAN FLEMMING. Your program is one of nine.

MR. BROWN. Yes, sir.

CHAIRMAN FLEMMING. How do you go about the coordination process?

MR. BROWN. We find out what each person and each program is supposed to be doing and find out if there is any overlap in services or if there is any duplication of effort. We try to minimize this.

CHAIRMAN FLEMMING. It is kind of a management job to try to avoid duplication?

MR. BROWN. Yes, sir.

CHAIRMAN FLEMMING. Thank you. Commissioner?

COMMISSIONER FREEMAN. Mr. Whirlwind Horse, you indicated that the tribal courts have always been open to non-Indians. Will you state what provisions of the tribal code defines the jurisdiction of the tribal court?

MR. WHIRLWIND HORSE. I can't do that, ma'am.

MR. HOGEN. Ma'am, I have a copy of the tribal constitution that might assist you.

COMMISSIONER FREEMAN. Could you answer that, Mr. Hogen?

MR. HOGEN. Article 5, section 2, entitled the "Articles of Judicial Powers," states, "Judicial power shall extend to all cases involving only members of the tribe rising under the constitution, bylaws, or ordinances of the tribe and to others in which all parties consent to jurisdiction."

COMMISSIONER FREEMAN. The question then is, has the tribe announced or have you advertised or made known the information about the availability of the fact the courts are open to the merchants in the various communities?

MR. WHIRLWIND HORSE. Not since I have been in office. It has been only about 3 or 4 months.

COMMISSIONER FREEMAN. Is it possible then the fact that the merchants have not used the tribal courts is because they were unaware of its availability?

MR. WHIRLWIND HORSE. Perhaps, yes.

COMMISSIONER FREEMAN. Mr. Hogen, you as an attorney, you have indicated now that you know that the courts are open, that this is an area that you could use in representing your clients?

MR. HOGEN. I have been familiar with this provision for some time, and the experience that I was familiar with in tribal court was it was not utilized for various reasons. All the parties that come into that court either have to be members of the tribe or have to consent to the jurisdiction of the tribe. I think there might be some merchants that would be reluctant to consent to jurisdiction of the tribe.

COMMISSIONER FREEMAN. If the merchant would at least file a petition in the court, would that not itself be consent to jurisdiction?

MR. HOGEN. It certainly would, but then I think they might be concerned. Based on some of the reasoning you find in the *Olipphant* decision, they would then be in court wherein they, if they were a non-Indian, would be denied to have members of their race sitting on the jury, for example.

COMMISSIONER FREEMAN. Of course, this has been a problem of minorities in American jurisprudence at all times.

MR. HOGEN. It certainly has. In this case, the off-reservation majority would find itself in the minority, I guess, when it went into the tribal court.

COMMISSIONER FREEMAN. The off-reservation majority?

MR. HOGEN. The non-Indian.

COMMISSIONER FREEMAN. Meaning the white?

MR. HOGEN. Right.

COMMISSIONER FREEMAN. The white merchant would find itself in a minority. It would hesitate to seek the jurisdiction of a court in which it would be a minority?

MR. HOGEN. I'm saying that is a possible reason why a merchant might not consent to go into tribal court. I'm not saying that would be everybody's position or that is not the reason why everybody that I represented hasn't done that. I have heard that concern expressed.

COMMISSIONER FREEMAN. If a contract—if the credit contract is a fair contract, then would not the merchant then receive the same kind of treatment in the tribal court that he would receive in any other court?

MR. HOGEN. I would certainly hope so. The report the Chairman referred to earlier, when he was interrogating Judge McMurchie, referred to the jury selection process in State court. There was in that report suggestions that you could not get a fair and impartial trial if you were an Indian in South Dakota because of the exclusion of Indians from juries or jury panels. I think that kind of thinking might also be present regardless whether you thought you had a fair contract or not. If you go into the court, and you see the jury has no members of your race, you are going to have a question.

COMMISSIONER FREEMAN. Certainly, there are many cases that have proven the minorities have not gotten a fair and impartial trial because of the exclusion of the minority from the jury system. This is very well established in many, many cases.

The next point that I wanted to pursue is with Mr. Whirlwind Horse, with respect to a statement you made that a person who has been arrested then is brought in for a hearing to determine whether that person is an Indian or not. Will you explain or describe for this Commission how you make that determination?

MR. WHIRLWIND HORSE. By the census rolls and enrollment.

COMMISSIONER FREEMAN. The census of the tribe?

MR. WHIRLWIND HORSE. Yes. The enrollments.

COMMISSIONER FREEMAN. If the person is enrolled, then that individual will be determined to be an Indian?

MR. WHIRLWIND HORSE. Yes.

COMMISSIONER FREEMAN. If that person is not enrolled, whether that person is Indian or not, he will not be determined to be an Indian?

MR. WHIRLWIND HORSE. Yes.

COMMISSIONER FREEMAN. Thank you.

CHAIRMAN FLEMMING. Anything further?

MR. NUNEZ. Mr. Whirlwind Horse, you are the head of the Pine Ridge Reservation, the elected head of the Oglala Sioux Tribe. Is that correct?

MR. WHIRLWIND HORSE. Yes, sir.

MR. NUNEZ. The Pine Ridge Reservation has been in the news over the last few years as a place of great violence and confrontation between the police authority and the tribe. In the last year have you

been able to ascertain whether that situation is correct or is it just an imagination of the media or has the situation been alleviated? Has it calmed down? What would be your opinion on that at this point in time?

MR. WHIRLWIND HORSE. Well, my opinion is that the number of violent crimes has decreased. The atmosphere on the reservation is a lot better and it is improving. We are getting to a point of unifying the people. It is a slow process, but we are working on it very hard, and I think those efforts by other leaders in other districts—also the law enforcement picture being changed. I think it leaves less violence.

CHAIRMAN FLEMMING. What specific steps were taken, in your opinion, to lessen the tensions and alleviate the violence that occurred several years ago?

MR. WHIRLWIND HORSE. Well, the Federal Government has been a little more attentive to some of our demands, to some of our needs, and I think probably some of the changes in the political scene have contributed to this factor too.

You have a good set of leaders now—I'm talking about the tribal council, the people in the different districts. They have a different look at things. I think there is a mood on behalf of the Indian to become unified. The individual himself is trying to be united.

MR. NUNEZ. You feel that the tribal police is now doing an effective job and doesn't really require that much assistance from the Federal police, the FBI, the Bureau of Indian Affairs police? You think that your own internal police system has the capability of doing the job right now or in the future?

MR. WHIRLWIND HORSE. Well, there is room for improvement, but I think the morale of the patrolmen out in the districts is a lot better. I feel that we have more police officers—at times at Wanblee we went 2 or 3 years without a police officer. We didn't have any relationship with the police and law enforcement agencies, but we now have more police officers and a better attitude. We do lack some investigative capabilities and probably some administrative capabilities, but I'm sure we can rectify those shortly.

MR. NUNEZ. Thank you.

CHAIRMAN FLEMMING. First of all, may I ask this question? Is the presiding officer of your tribal court now a lawyer or a person with legal training?

MR. WHIRLWIND HORSE. Yes.

CHAIRMAN FLEMMING. You heard the discussion that I had with the previous panel relative to Indian representation on trial juries. As a leader in the Indian community, what is your feeling relative to that particular issue? Do you feel that Indians do or do not have adequate opportunity to serve as members of trial juries?

MR. WHIRLWIND HORSE. I feel they don't have the equal opportunity to serve as jurors.

CHAIRMAN FLEMMING. Mr. Hogen, I would be very glad to have your comment. You listened to that discussion.

MR. HOGEN. Yes, sir, I do have a point of view on that.

With respect to Jackson County, the population is largely non-Indian. Ninety percent or more would be non-Indian, and the other would be Indian population. As Mr. Whirlwind Horse indicated earlier, most of the larger trade centers around the reservation are off the reservation. Kadoka is one of those trade centers. Consequently, Indian people necessarily come to Kadoka to do business, etc., and offenses occur there. They occur in the trade centers that wouldn't occur on the reservation.

When we have an offense involving an Indian, he is going to be tried within Jackson County where the population is 90 percent non-Indian. Consequently, the jury panel he's going to get is 90 percent non-Indian. In the last general election, the voters of Jackson and Washabaugh Counties voted to merge the two counties in one area. That would mean Jackson and Washabaugh would then be one county from which a jury panel would then be drawn. This would completely change the makeup, the racial makeup of the jury panel, so in the future, after January 1, 1979, a jury would no longer be drawn from a jury panel 90 percent non-Indian and 10 percent Indian. It would rather be made up of that large Indian population of Washabaugh County mixed in with the Jackson County population.

So I think when we hear about all-white juries trying Indians, one of the reasons is that the Indian necessarily has to travel to a geographical area that is a political unit, where there isn't a large concentration of Indians. I don't think it would be consistent with our system of jurisprudence to go out of the political subdivision to select jurors or jury panel members. I think perhaps broadening the units of government, such as has been done in Jackson and Washabaugh Counties, is a step to solve some of these problems.

The other objection that I have heard is that jurors or members of jury panels are drawn from voter registration lists. Now, I think that is the way it should be done. I think that is a good policy. I do not know where else you might look. In Washabaugh County, for example, prior to what is known as the *Little Thunder* decision, people in Washabaugh County could not vote for county officials that served them, that being because they were in an unorganized county. That case, the *Little Thunder* case, ruled that that was a constitutional denial of their right to vote. So consequently, now people in Washabaugh County can and do vote for county officials.

I think that fact will increase the interest that people in Washabaugh County would have in becoming a registered voter. Consequently, I think we will see a larger Indian representation, at least in the Washabaugh County area, on the voter registration list because they can now vote for local as well as State and national offices.

I think it would be fair to say that while it was approved by the voters and the Governor of South Dakota issued the proclamation it would take effect, an action is pending in Federal court brought by the

Oglala Sioux Tribe to enjoin that merger. I do think at least locally, if the merger is successful, we will better deal with the problem of avoiding an all-white jury.

MR. BACA. In that regard, Mr. Whirlwind Horse, can you tell us the basis for the objection of the tribe to the merger?

MR. WHIRLWIND HORSE. Yes. It is our opinion that the Jackson-Washabaugh County merger is the biggest farce ever pulled off on the Indian people. I personally fought it and continue to fight it and so will the tribe. I said there are a lot of good white people, but this little bunch of people that keep picking away at us are responsible for this farce. We were not represented on any of these boards. The Indian input was not solicited. We were against it from the start. Like the man said, there is 90 percent of the people in Jackson County are white. When they vote on it, regardless if we had 100 percent of our Indian vote against it, it still would have carried. I think it is a farce. I know it is a farce.

MR. BACA. When you say a farce, I'm not sure exactly what you mean. Do you mean it was represented to be something that it is not?

MR. WHIRLWIND HORSE. Right. They say we had Indian representation. We didn't have representation. The meetings were held in Kadoka. Several members of the tribe were asked to be on the committee. I was one of them. I refused to be on that committee, but it went through anyway. We didn't want it on the ballot or anything else, but it was put on there. I suppose by outward appearance, it looks like we have been involved in it, but we haven't.

MR. BACA. The basis of the tribe's objection then is the lack of involvement by the tribe or by Indians within the county?

MR. WHIRLWIND HORSE. By the tribe and by Indians within the county.

MR. BACA. Mr. Hogen, I just want to follow up one thing with you. I know the city of Kadoka has a human relations commission. Is that correct?

MR. HOGEN. Yes, sir, I know that pursuant to my status as attorney for the city of Kadoka. I was involved in the drafting of the ordinance.

MR. BACA. Can you tell us what led to the creation of the commission and what some of its activities have been?

MR. HOGEN. I think the thing that led to it was generally awareness, not only in Kadoka but throughout the State of South Dakota, of the fact that there were problems, racial problems and social problems, and commissions were being created elsewhere and Kadoka requested and received a copy of the ordinance that Rapid City, South Dakota, had enacted. I think the thing that precipitated that enactment—we did have a law enforcement incident—an incident wherein a group of non-Indians attacked some Indian victims. There was a lot of publicity and animosity related to that incident. These individuals, the non-Indians, were subsequently charged and sentenced. But because of the strong feelings that surrounded that incident, there was an urgency felt within the city government that something like this should be done.

The ordinance was adopted, and hopefully it will help to address problems like that, and the commission could convene should a similar situation occur to just clear the air.

MR. BACA. Do you have a copy of the ordinance with you?

MR. HOGEN. Yes, I do.

MR. BACA. Could we have that for the record?

MR. HOGEN. Yes, I would be happy to.

MR. BACA. Mr. Chairman, I would like that entered into the record with the appropriate number.

CHAIRMAN FLEMMING. Without objection, it will be marked as Exhibit No. 7.

MR. BACA. You say, Mr. Hogen, the commission could be called into action or something like that. Does it not exist as an ongoing commission?

MR. HOGEN. Yes, members have been appointed, but one of the functions it would serve would be to meet in response to any emergencies that might exist as well.

MR. BACA. As sort of conflict resolution?

MR. HOGEN. Yes.

MR. BACA. Does it accept complaints of discrimination?

MR. HOGEN. Yes, and that would not be only in regard to race but anything within the human relations area.

MR. BACA. Has it received such complaints?

MR. HOGEN. Not to my knowledge. I'm not a member of the commission, but it has not come to my attention.

MR. BACA. Can you tell us how many members there are?

MR. HOGEN. The resolution—the ordinance says that it shall be composed of six members: four members would be legal residents of the city who serve without pay, shall be appointed pursuant to section 3. Minority races should be represented to the extent of not less than the percent of population, such group reflected by the most recent census of the city.

MR. BACA. Ten percent?

MR. HOGEN. I believe that would be close, but I don't know the exact figures.

MR. BACA. So that out of the four?

MR. HOGEN. There are six, and four have to reside within Kadoka. Someone from Wanblee could become a member of the commission.

CHAIRMAN FLEMMING. Have the members of the commission been appointed?

MR. HOGEN. Yes, I do not know who all they are. I have heard, but I can't recall who they are.

CHAIRMAN FLEMMING. Are there members of the Indian community on the commission?

MR. HOGEN. Yes, there are.

MR. BACA. To the best of your knowledge, have they engaged in prosecution of any complaints of discrimination?

MR. HOGEN. Not that I know of.

MR. BACA. Have they assisted in the resolution of any conflicts?

MR. HOGEN. Not that I know of. I do not know of any conflicts or any emergencies that have arisen since the creation of the commission.

MR. BACA. Were they active during the development of the merger concept?

MR. HOGEN. No.

MR. BACA. I have no further questions.

CHAIRMAN FLEMMING. Mr. Whirlwind Horse, I would like to go back to this merger. Let's assume that it goes into effect. I understand you have got a court proceeding which might result in its not going into effect. Assume it goes into effect, would the members of your tribe become active participants in terms of voting for local offices?

MR. WHIRLWIND HORSE. I don't think so. He mentioned Indians on this board. We don't even know about it.

CHAIRMAN FLEMMING. The human relations commission?

MR. WHIRLWIND HORSE. Right. This board he is talking about, the commission.

CHAIRMAN FLEMMING. You haven't heard of any Indians being appointed?

MR. WHIRLWIND HORSE. No. Art works there on a daily basis and is involved with every aspect in the district and still doesn't know who those people are.

MR. HORACEK. Mr. Chairman, I have been asked to serve on this board. I'm not trying to contradict or make anyone look bad here, but I know they have contacted two or three people in Wanblee to try to get them to serve. They want the thing to work, so I know they have contacted people. But they were hesitant for things that have happened in the past down there, they didn't want to be the guy, you know, to get downgraded or anything else. It is probably in the situation of a state of limbo at this particular time, but I was asked to serve on it. I told them that I would. I do not know what the balance of the committee is made up at this time or where it stands. I would also like to say one other thing in reply to Mr. Whirlwind Horse here.

Very definitely, I served on the voting board at the last election that was held. There were several people, Indian people, that live in town, but they did not exercise their opportunity to vote. This is how juries are made up. If they want to be on juries if the thing takes place, they are going to have to take part in other things whether they dislike them or not. Voting is one of the ways.

It is a shame to feel if I don't vote I don't get to serve on the jury, but that is exactly the way the jury lists are made up. They do have to take part in some of these things and become part of the community. I realize there is a great deal of bitterness in the situation. I don't understand all the things that took place way back. I do know this commission is being set up. They are trying to get at least two people from Wanblee to serve. I think it can work.

You can't do it with the idea it is not going to work. I think there is a place for it, and it can be made to work.

CHAIRMAN FLEMMING. In other words, there are probably some offers out but not accepted yet, as far as the minority community is concerned.

MR. HORACEK. I would feel that, yes.

CHAIRMAN FLEMMING. All right.

Well, we certainly have been helped by this testimony. We appreciate the way in which you have responded to our questions and the kind of information that you have brought here. We have a much better understanding of the situation than we could possibly obtain in any other way. Thank you very, very much, all of you.

Counsel will call the next witnesses.

MS. HUBER. Lorelei Means, Alice Flye, Bruce Hodson, Harold Larson.

[Ms. Flye, Mr. Hodson, Mr. Larson, and Ms. Means were sworn.]

**TESTIMONY OF ALICE FLYE, COMMUNITY SERVICE REPRESENTATIVE,
OGLALA SIOUX TRIBE; BRUCE HODSON, BANKER; HAROLD LARSON,
BENNETT COUNTY COMMISSIONER; AND LORELEI MEANS, AMERICAN
INDIAN MOVEMENT SURVIVAL SCHOOL**

CHAIRMAN FLEMMING. Thank you. We appreciate your being here.

MS. HUBER. Beginning on the left with Mr. Hodson, would each of you please state your name and address and occupation?

MR. HODSON. Bruce Hodson, banker, Martin, South Dakota.

MS. HUBER. What is the name of your bank?

MR. HODSON. Blackpipe State Bank.

MS. HUBER. Mr. Larson?

MR. LARSON. My name is Harold Larson, county commissioner, Bennett County, Martin, South Dakota.

MS. HUBER. Yes, ma'am?

MS. MEANS. Lorelei Means, Porcupine, South Dakota. I'm with the AIM Survival School.

MS. HUBER. Yes, ma'am?

MS. FLYE. Alice Flye, I'm the community service representative from the CAP office of the La Creek District of the Oglala Sioux Tribe in Martin.

MS. HUBER. All right. Ms. Flye, please tell us where you live in Martin?

MS. FLYE. Sunrise Lakota Housing in Martin.

MS. HUBER. Could you tell us a little bit about what the housing is?

MS. FLYE. It is cluster housing located about a mile and a half east of the city of Martin. There is 35 families living in that housing area.

MS. HUBER. Indians or non-Indians?

MS. FLYE. Indians.

MS. HUBER. What kind of land is the housing located on?

MS. FLYE. On tribal land.

MS. HUBER. Is it correct that Bennett is checkerboarded and that tribal land is interspersed with land under State jurisdiction?

Ms. FLYE. Yes, that is correct.

Ms. HUBER. The city of Martin is under State jurisdiction, but the land where the Lakota Housing project—

Ms. FLYE. Is tribal.

Ms. HUBER. Tribal jurisdiction. For those Indian families living in the Sunrise Lakota project, where would they go to buy groceries or other necessary items or to transact business?

Ms. FLYE. To Martin.

Ms. HUBER. Can you tell us a bit about your duties working for the La Creek District of the tribe?

Ms. FLYE. I go and make home visits to the district people, tribal members, and I find out their needs and their wants and we try to help them.

Ms. HUBER. In the course of your duties on your job, have you become familiar with the situation of people in the Indian community in Bennett County?

Ms. FLYE. Yes, sir.

Ms. HUBER. Have you talked to many members of that community?

Ms. FLYE. Yes.

Ms. HUBER. Can you tell us, in your perception and in the perception of the members of the Indian community that you deal with, how are Indians treated in Martin's commercial establishments when they go into Martin?

Ms. FLYE. I think the general opinion of the Indian people is that there is some discrimination from some of the merchants.

Ms. HUBER. Can you tell us more about what the Indians see as discrimination?

Ms. FLYE. Well, for instance, it happens more to the older people who sometimes don't speak fluent English. They might go into a store and some of the clerks might talk down to them as they would talk to a child. I have noticed that on several occasions. I have seen it happen.

And my family and I went to a cafe one time. We sat there for a good half-hour waiting to be waited on. The waitress was busy, it was during the noon hour, but she ignored us. Then a family of white people came in and sat down at the table next to us. She was there right now, waiting to take their order.

Ms. HUBER. Have you heard of any other similar kind of incidents from other Indian people?

Ms. FLYE. Yes, there have been some complaints.

Ms. HUBER. Ms. Means, you live in Porcupine, South Dakota?

Ms. MEANS. Yes, I do.

Ms. HUBER. Approximately how many miles or how long a drive is that from Porcupine to Martin?

Ms. MEANS. About 40 miles.

Ms. HUBER. For what reasons would Indians who live in Porcupine travel to Martin?

MS. MEANS. Well, where we get our electric service is located in Martin, La Creek Electric.

MS. HUBER. Can you get electric service out of the Pine Ridge Reservation?

MS. MEANS. No, we go through Martin.

MS. HUBER. Is there a company on Pine Ridge you could use instead?

MS. MEANS. No.

MS. HUBER. For what other reasons?

MS. MEANS. Shopping, the bank. We bank at Martin, at Blackpipe.

MS. HUBER. Is there a bank on the Pine Ridge Reservation?

MS. MEANS. No.

MS. HUBER. Can you shop for most items on the Pine Ridge Reservation?

MS. MEANS. Not really like you could in Martin or any off-reservation town, although the prices—there is a big difference in prices on and off the reservation.

MS. HUBER. What is the difference?

MS. MEANS. Prices are a little lower off the reservation than you find on the reservation.

MS. HUBER. So that Indians in Porcupine, for economic reasons, see a need to go to Martin on occasion?

MS. MEANS. There is a better variety of whatever you can buy.

MS. HUBER. In your perception and from what you have heard from other members of your community, how are Indians from Porcupine treated in Martin commercial establishments when they travel to Martin to conduct their business?

MS. MEANS. From my own experience, there is discrimination, I feel—a feeling of hostility when you would walk into an establishment in Martin. I feel it myself.

MS. HUBER. Can you tell us some examples to give us some feeling for what experiences you have had?

MS. MEANS. When I go into a store in Martin, usually I'm followed around. It looks like they think I'm going to be stealing or whatever they are afraid of. If a non-Indian walked in at the same time I did, that non-Indian would be free to go throughout the store and the clerk wouldn't be following that person around like I would be getting followed around in a store. That makes me feel I'm being discriminated against.

MS. MEANS. Ms. Flye, how in general would you characterize the relations between the Indians and the non-Indians living in Bennett County?

MS. FLYE. Well, there are a lot of white people who don't discriminate. I have a lot of white friends myself. But there is still some discrimination.

MS. HUBER. I know we are talking about subtle things like attitudes and sometimes that is hard to explain. Can you give us some idea of what you have on your mind when you say that?

Ms. FLYE. Can you ask me again, I forgot?

Ms. HUBER. You said that with many white people that are your friends you don't have a feeling of discrimination, but you think in some cases there is discrimination. Can you tell us what makes you think this attitude exists?

Ms. FLYE. Well, you can go in a store and the clerk might frown when she is talking to the Indian, she might frown. The white person next to the Indians, she will smile at them and talk, visit with them. It is just little things that you can't really put your finger on it.

Ms. HUBER. Do Indians and non-Indians who live in Bennett County as a general rule socialize with each other, visit in each other's homes?

Ms. FLYE. No.

Ms. HUBER. I think you mentioned to one of our staff members in an interview customs as to funerals in Martin. Could you tell us about that?

Ms. FLYE. When a white person dies, most of the businesses close for the funeral. That is standard practice. But when an Indian dies, business goes on as usual. They don't close up or anything.

Ms. HUBER. What can you tell us about how the Indian community believes they are treated by law enforcement, by the county sheriff's office?

Ms. FLYE. There is bad feelings between the Indian community and the law enforcement people because of the way the deputy sheriffs act towards the Indian people. It is a thing of attitude. They never smile at the Indians. They laugh and talk with the white people but not the Indians.

Mr. HUBER. Can you tell us anything else about how the Indians in Martin feel about the law enforcement in the county?

Ms. FLYE. We feel that we are more closely watched by the sheriff and his deputies. It seems that way because every week when you pick up the local paper you will see most of those people's names in there are Indians.

Ms. HUBER. The names of people who have gone through the court?

Ms. FLYE. Through the court. And the white people that are picked up are mostly for speeding and they are mostly from out of town, even out of State.

Ms. HUBER. How does reading these statistics in the paper make the people in the Indian community feel?

Ms. FLYE. Well, it makes us feel we are being treated differently.

Ms. HUBER. How about the young Indian people who live at the Sunrise Housing? What is their relationship with the law enforcement system in Bennett County?

Ms. FLYE. They don't get along with them at all.

Ms. HUBER. How so? In what way they don't get along?

Ms. FLYE. They have a defiant attitude towards the law enforcement authority. They would rather not have anything to do with them.

Ms. HUBER. Do you know why that is?

Ms. FLYE. I think it is because of the way they treat them, treat us.

Ms. HUBER. What sort of treatment are you talking about, specifically, in relationship to the teenagers?

Ms. FLYE. They watch them closer.

I have seen the police watch kids riding on bicycles to see what they are doing, and it is just—they watch them more.

Ms. HUBER. Do you have any specific instances in regard to your own family that you would like to share with us?

Ms. FLYE. Yes.

This happened in, I think in March about 1 o'clock, my son came home from uptown and he told me he had just gotten out of jail. I asked him what for. He said one of the deputies stopped him and called him over because he wanted to talk to him, but my son got scared; instead of going over there, he ran away from him. So the deputy got out of the cop car and he chased him and, when he caught him, he grapped him by the hair, threw him down on the sidewalk and, in the process of grabbing him, he jerked out a bunch of his hair from his head.

Then they took him to the jail. My son was 14 at the time. He took him to the jail and kind of threatened him. It was in connection with a break-in at one of the bars, and they threatened him with a jail term if he didn't confess to this break-in. So he confessed. When he came home and told me about it, I asked him if he did break in. He said, no, he didn't. I said, "What did you confess for then?" He said, "Because I was scared of them."

Ms. HUBER. Do the young people in Martin have any different attitude toward the tribal police than they do for the sheriff?

Ms. FLYE. Yes, they have a much better attitude toward the tribal police.

Ms. HUBER. Why is that?

Ms. FLYE. It is because the police in our district know the younger people. They respect their feelings. They might chew them out, but they don't make them feel like they don't amount to anything. They have respect for them, and so in return they have respect for the police, too.

Ms. HUBER. Ms. Means, is there anything you want to add to what Ms. Flye said about law enforcement in Bennett County, in the perception of the Indians from Porcupine who travel to Martin?

Ms. MEANS. I am not an Oglala Sioux. I am Winnebago, but I moved to the reservation after I was married in '73. The first thing I noticed going through Martin was the fact that Indian people, especially those who had long hair, were stopped by the deputy sheriff. I have seen that happen where going right behind somebody driving a car that had long hair would be non-Indian with a couple of rifles in the back of his pickup. I do not know what the reason for the deputy sheriff stopping the Indian, but what it looked to me was that he had pulled them over because they had long hair or for whatever reason, but a non-Indian going by with a couple rifles also in his back window with a rifle rack,

to me that looked like outright discrimination. I have experienced it. I have been stopped on several occasions in Martin.

I believe, I really agree with her, discrimination exists with the law enforcement agency in Martin, Bennett County.

MS. HUBER. Mr. Hodson, we understand that you have lived in Bennett County all your life. Is that right?

MR. HODSON. No; that is not quite correct. True, I lived on the Rosebud Reservation for the first 15 years of my life.

MS. HUBER. Since you were a teenager you have lived in Bennett County?

MR. HODSON. Yes.

MS. HUBER. You manage the bank in Bennett County which was founded by your father?

MR. HODSON. That is correct.

MS. HUBER. Is it fair to say you have a pretty deep knowledge of Bennett County through your own and your family ties?

MR. HODSON. It is possible.

MS. HUBER. Based on your knowledge of the community, from being there, how would you characterize the relations between Indians and non-Indians in Bennett County in an earlier period than we have now, for example, in the 1960s and earlier?

MR. HODSON. I think it was considerably better then than now. I would agree with the girls that it is not as good as it should be or as good as maybe it used to be.

MS. HUBER. Could you tell us how it was at that time?

MR. HODSON. Well, there was a time when there was considerable emphasis on assimilation, and the color line wasn't drawn by the Government as strictly as it is today.

What I'm saying, the Government didn't start institutionalizing them with hospitals of their own, schools of their own, community projects, movements more or less directed—probably it was well intended, I don't know—promoting or repromoting or re-creating the ethnic thinking of the American Indian. But in doing so, you see, what they have done is communitize them, move them into their own sections, their own groups, surrounded with their own culture almost day and night, their own government, their own police, and their society was more or less legislated or dictated by economics and by Government edict.

I think that the communication between any two groups of people is directly related to their association on the social level. And when you eliminate, when you start segregating, as the Government is doing, their educational system, starting from the youngest children in the BIA schools, and the contact that they have is limited to the people of their own group, it wouldn't be unusual with any separated ethnic group of people.

If the Government decided to separate in any city a school system directed only at any particular people, the Lower Slobovians, for example, separated in New York, if it wasn't a good thing to intermix

them on that level, which is the most formative level, why is the Government busing people back and forth all over the United States except the reservation? You have got to get communication going between people. The Government is the worst offender.

MS. HUBER. How do you think the Government is fostering this?

MR. HODSON. A white Indian rancher farmer can live across the road from one of the finest Indian schools in the reservation and must farm his children out to a public school elsewhere. That's too bad, because they are living as next-door neighbors. The children should start associating with each other at that level.

MS. HUBER. So, as I understand what you are saying, a growing tendency toward Indians moving to a separate ethnic culture as opposed to an assimilationist posture has affected the relations between Indians and non-Indians as you see it in Bennett County?

MR. HODSON. True. Look at the housing. They built the housing, but they—I do not know who is they—I guess it is the Government—seem to think it is best they build separated housing; then you wonder why the lack of association. Why anybody you don't know, you don't meet on a social level, becomes a stranger. I would feel ill at ease with a Frenchman, because I don't assimilate, I don't socialize—

If this was more possible, and more of a daily event—we found that during the war, troops placed side by side with natives didn't have any great problem, after they began to socialize, of communicating with each other.

MS. HUBER. Ms. Flye and Ms. Means, I believe you told our staff that last year some Indians in Martin and on Pine Ridge called for a boycott of some businesses in Martin. Could either or both of you tell us what concerns led to that, what that was all about?

MS. FLYE. It was a feeling of, I would say, bitterness on the part of the Indians toward some of these shopkeepers. Some of them that were boycotted were because Indians worked there, and this one service station, this Indian boy worked at the service station, and when an Indian pulled up to have his gas tank filled, whatever, the people inside the service station would make fun of him before they went out to wait on him. It was things like this, little things that led to this boycotting.

MS. HUBER. Ms. Means, can you add to that from the perspective of Indians from Porcupine or Pine Ridge who travel to Martin?

MS. MEANS. Well, it is my personal belief, and I lived on Winnebago Reservation and then living here on the Pine Ridge Reservation, that in order to bring social change, create change for Indian people in a off-reservation town, the only way you are going to bring somebody in to see that change is needed is to hit them in the pocket because—I don't care—it has been my experience, as an Indian person, to bring a non-Indian around that is living off the reservation, like an off-reservation town, you got to directly hit them in the pocket to make them open their eyes.

We did a similar boycott on our reservation with an off-reservation town, Knobb Hill, Nebraska. With full tribal backing we pulled off a successful boycott where the citizens of Knobb Hill, Nebraska, came around and created a human relations board. There was better treatment of Indian people in the businesses. The law enforcement people straightened up their act. This was brought about by an economic boycott.

MS. HUBER. What came of the boycott that was called of some of the businesses in Martin?

MS. FLYE. Well, not much because it wasn't too well organized. It went for a little while, but it sort of fizzled out.

MS. HUBER. Mr. Larson, you are one of the county commissioners in Bennett County?

MR. LARSON. That is right.

MS. HUBER. You formerly owned the Coast to Coast Store in Martin before your retirement?

MR. LARSON. Thirty-one years.

MS. HUBER. So you are well familiar with the Martin business community as well?

MR. LARSON. I think I am.

MS. HUBER. What was the response of the business community in Martin when they heard about this boycott?

MR. LARSON. Well, that was after I had retired. I can't tell you too much about it, but to highlight it is like Alice said, nothing much come of it. They just couldn't get themselves coordinated, and I might add this, many thought they could go elsewhere to get credit and there was no credit for them. I think that is one of the reasons it broke up.

MS. HUBER. There was no credit in other off-reservation towns either?

MR. LARSON. That is what I believe.

MS. FLYE. I will correct Mr. Larson on that. We did get credit down at Allen at the May's Grocery Store.

MS. HUBER. Mr. Larson, did you or your fellow businessmen or former businessmen think there was any merit to the allegations of the boycott that there was unfair treatment of Indians in the Martin businesses?

MR. LARSON. I do not know what their feeling was, but in this meeting we had with the Indian people in February 28, I believe—

MS. HUBER. That was some months after the boycott?

MR. LARSON. I do not know. I think probably about that time.

The allegations were at this meeting they weren't being given credit and they weren't treated properly in town. I don't believe it was any justification to that whatsoever.

MS. HUBER. If there was no justification, what do you think led to some Indians calling for the boycott?

MR. LARSON. They just don't want to have law and order anywhere. It is a group of people that are a minority of the minority. I don't think I have to go any farther than that. I won't.

MS. HUBER. Would you care to comment on that, Mr. Hodson?

MR. HODSON. We seem to have gotten into this field of credit. I have been at it 41 years and don't know anything about it, but I'm saying it is news to me that there is an availability of the tribal court system to off-reservation creditors. I heard the last panel. I have a file of considerable number of letters that I have directed over the last many years to every official that I could reach, pleading this problem as being a potential danger and a potential personality clash between the groups if it wasn't worked out and offered to meet at any time with any panel we could work up to try to solve it.

MS. HUBER. When did you make this offer?

MR. HODSON. Oh, over the last 10 years.

MS. HUBER. How did you communicate this offer and to whom?

MR. HODSON. Writing, I have written Washington.

MS. HUBER. Who did you write in Washington?

MR. HODSON. If you had indicated you needed the file on that, I would have brought it along to give you dates and names.

MS. HUBER. Can you tell me what agencies? Washington is quite a broad range—

MR. HODSON. To the FDIC [Federal Deposit Insurance Corporation], Federal Reserve System, to the BIA. I have written to tribal chairmen, tribal judge, tribal council.

MS. HUBER. In essence, what was it you were seeking?

MR. HODSON. Well, I was pleading the case that we were going to have to approach this problem.

MS. HUBER. The problem of credit?

MR. HODSON. Of credit, because everybody needs credit. There are times when anybody and everybody feels the need for credit, whether at the local bank or the legitimate lending agencies, whatever. So this was good news to me that the tribe had worked out something.

At the time we are speaking of here, our business people were giving and continue to give a considerable amount of credit to the Indian and white alike.

You have got to assume, you see, here, the wisdom of Solomon. When you stop to think about it, available to them in their court, in there, they do have an enrollment system, they do have their membership immediately available to them. You see, the shopkeeper and the business person off the reservation are at quite a loss to say to a person, "Are you or are you not an enrolled tribal member?" I think it is an illegal question under the new law of lending. Yet, there was an awful lot of credit given, still is, by our business people.

MS. HUBER. In view of what you have said, why do you think that some Indians called for a boycott of some businesses in Martin? Why do you think that happened at this particular time?

MR. HODSON. Well, I'm just really not sure. I wasn't one of the businesses they thought they should boycott. We are proud of that fact.

I'm sure that if you would check into the filling station matter, it could be—

Ms. HUBER. We would just as soon not get into the names of specific businesses here. We are talking about the situation in general.

Mr. HODSON. We had about a 25 percent Indian population in town. About the same ratio of business places in town are people of Indian enrollment, so some of those people work at white outlets. Yes, I want to clear up the fact that the boycott, it wasn't a boycott from Indians to white, because some of the business people on the boycott list were people of enrolled tribal status membership.

Ms. HUBER. Ms. Means, we have heard also that last year there was a caravan of members of the Indian community who traveled from the Pine Ridge Reservation, from Porcupine to Martin to register some concerns with the officials of Bennett County. Is that right?

Ms. MEANS. Yes, it is.

Ms. HUBER. Would you tell us about that caravan that happened in February '78 and what concerns people in the Indian community had that they wanted to bring Martin?

Ms. MEANS. What spearheaded that was the initial boycott that was started in Martin by a man I have a lot of respect for, Mr. Ron Two Bulls. At the time of the caravan he was incarcerated in the Bennett County Jail. We had been getting reports, we received letters from him of his treatment while in the Bennett County Jail. We were concerned about this kind of treatment he was receiving. He was an Indian. We felt we could go and meet with the Bennett County commissioners to try to bring out some type of change for this type of situation for Indians in general in the Bennett County Jail and living in Bennett County.

Ms. HUBER. What issues in addition to law enforcement issues were of concern to your group in taking this action?

Ms. MEANS. The treatment of youth, like Ms. Flye was saying here, juveniles in the Bennett County Jail. Treatment of Indian people in stores in Bennett County, law enforcement treatment of Indian people in Bennett County in general, and specifically, Mr. Two Bulls' case.

Ms. HUBER. What did you want to do with those concerns? What sort of discussion did you want to have and with whom?

Ms. MEANS. We hoped to have a meeting with different representatives of our group with the Bennett County commissioners. That meeting did take place once the caravan arrived in Martin.

Ms. HUBER. Could you tell us about that meeting?

Ms. MEANS. Okay. I wasn't in the meeting myself, personally. I was outside with the majority of the people in the caravan, but we had different people that were in the meeting who would come out at different times while the meeting was taking place to inform us what was just said in the meeting and what was going on. But I didn't feel too good about the meeting myself personally because, where I was parked outside of the building where the meeting was going on, it was a cold day, and we went to Martin feeling that sitting down over the table and talking with the commissioners and trying to figure out a way to work out these problems, it was our reason for going there. Right

across the street from the building where the meeting was taking place there was a church, a Christian church. Inside that church was full of police officers with riot gear, hidden out of view.

MS. HUBER. How did you and the other people outside the meeting feel when you saw that?

MS. MEANS. We felt Bennett County apparently wanted a confrontation or were hoping for one, so they had their law enforcement people ready.

MS. HUBER. Did any sort of confrontation take place?

MS. MEANS. No, it didn't.

MS. HUBER. Mr. Larson, you were a county commissioner at the time of this incident, were you not?

MR. LARSON. Yes.

MS. HUBER. Did you participate in this meeting?

MR. LARSON. Yes, I did.

MS. HUBER. Could you tell us about that meeting from your perspective, please?

MR. LARSON. Well, there were two or three people, I believe one was Mr. Yellow Bird and Mr. Means. They were the main spokesmen for the group. Mr. Means was very—he was a real gentleman, surprised me. I will say that. He spoke real low. He wasn't excited. He didn't make any demands. He didn't get mean or—he was demanding, I will say that.

MS. HUBER. What sort of demands were raised or what were these people bringing to your attention?

MR. LARSON. Just the fact they felt they weren't being recognized as people. That was my feeling about it. And of course, then when we started—

MS. HUBER. What was your reaction to hearing that?

MR. LARSON. Well, I didn't go along with it. I never did feel that way about people as a whole. You can't do that.

MS. HUBER. I understand that coming out of this meeting there was some discussion of forming a human relations commission?

MR. LARSON. May I read this letter that I have with me? This pertains to this particular thing.

MS. HUBER. Could you summarize it and introduce it in our record? Is that the letter from the State's attorney?

MR. LARSON. Yes. I asked him if he would summarize the meeting, because he was to head this group.

CHAIRMAN FLEMMING. If it isn't too long—

MS. HUBER. Very well.

MR. LARSON. I will read. It is to be presented for your minutes anyway. I read it the other day to the other group down in Martin.

CHAIRMAN FLEMMING. Without objection we will accept the full text of it for the record and mark it as Exhibit No. 8. But if you would like at this time to give us at least the high points of the letter, we would appreciate it very much.

MR. LARSON. It had to do with forming a group like Mr. Hogen was talking about. We had offered to have a group like this. There were to be seven Indian people and seven non-Indian people. And Mr. Baptiste Dubray, Alice Flye, Bob Yellow Bird, Charlie Bettleyoun, and Al Trimble were the individuals representing the local Indian community. They were to pick seven people. Our people were to have seven people. There were supposed to seven people from the opposite side. And Mr. Dubray was supposed to pick up the copies, and of course, it is still in the making here.

Alice, you are aware of this, aren't you?

[Ms. Flye indicates no.]

MR. LARSON. I read it at the other meeting.

MS. HUBER. Mrs. Flye, what is your understanding as to the current status of any discussions for the forming of a human relations committee?

MS. FLYE. It is still in the discussion stage, I guess. We didn't hear anything more after that first meeting.

MS. HUBER. Last February?

MS. FLYE. That one meeting, yes.

MR. LARSON. May I read this paragraph here:

It appears to me that there is a substantial degree of interest from the Indian community in organizing some type of human relations commission. The city council representatives that I have discussed the matter with seem to be generally favorably inclined with regards to considering such an ordinance.

Now, they are waiting to get a copy of the ordinance from Kadoka and from Rapid City. They are to coordinate this with this group. So far as the State attorney's office is concerned that is as much progress as I am aware of.

I hope this letter will answer your question regarding the current status of the development of our human relations commission for Martin, South Dakota. If there are other questions, I will certainly be available to answer them.

He has set up a meeting sometime after the first of August because he is on a vacation. This has been set up already.

MS. HUBER. Very well. Mr. Chairman, may we receive the letter from the State's attorney in our record?

I have no further questions at this time.

CHAIRMAN FLEMMING. I have already noted it as being received as an exhibit to be inserted at this point in the record.

MS. HUBER. Yes, sir.

COMMISSIONER FREEMAN. Mr. Larson, with respect to the proposed human relations commission, am I correct then that the status is that the attorney has recommended that it would be an appropriate action to take when the city council approves it?

MR. LARSON. I don't believe it read that way, did it?

COMMISSIONER FREEMAN. There is not now in existence a human relations commission. Is that correct?

MR. LARSON. It said—wait a minute.

It appears to me there is a substantial degree of interest from the Indian community commission and the city council representatives that I have discussed the matter with seem to be generally favorably inclined with regard to considering such an ordinance.

In the context before this, it says they are waiting for a copy of the Kadoka proposition and the Rapid City proposition. They would like to work something out in the—

COMMISSIONER FREEMAN. They are favorably inclined to consider it?

MR. LARSON. Well, I can't speak for the city council.

COMMISSIONER FREEMAN. The question that I asked was that it is not now in existence.

MR. LARSON. They are working at it. They are working at it.

COMMISSIONER FREEMAN. They are working at it, but it is not now in existence?

MR. LARSON. Not yet.

COMMISSIONER FREEMAN. Mr. Larson and Mr. Hodson, first of all, did you state that during the time you were in business, you are retired now, did your company extend credit to Indians?

MR. LARSON. Very much so.

COMMISSIONER FREEMAN. Was that during the entire time that your business was in operation?

MR. LARSON. Yes.

COMMISSIONER FREEMAN. You were not one of the merchants that refused credit. Is that correct?

MR. LARSON. There are very few people that can come to me and say that I never granted them credit—white or Indian or black or anything else. If I thought they were considered good people, honest people, they got credit.

COMMISSIONER FREEMAN. Then your answer is yes, you did extend credit?

MR. LARSON. You bet I did.

COMMISSIONER FREEMAN. Mr. Hodson, did your bank extend credit? Does your bank now extend credit to Indians?

MR. HODSON. Always have.

COMMISSIONER FREEMAN. You always have? So that you expressed some concern concerning the fact that the tribal court is open for the collection of bad debts. I understood you to say that when you heard that today that was your first information about it. Is that correct?

MR. HODSON. That is correct.

COMMISSIONER FREEMAN. Does your bank have bad debts?

MR. HODSON. You bet.

COMMISSIONER FREEMAN. In the past, how have you handled the collection of bad debts?

MR. HODSON. If they are a resident of Bennett County, which is off the reservation, we go into the small loans court and seek to receive a small loans judgment. If it is larger than that, we go through the State attorney's office, the usual legal collection procedures.

If it is out of Bennett County and on the reservation area, that is a tough question.

COMMISSIONER FREEMAN. Has the bank been represented by counsel during any of these proceedings?

MR. HODSON. Oh, yes.

COMMISSIONER FREEMAN. Does the fact the bank did not know indicate the counsel did not advise you the court was open or the attorney didn't know it either?

MR. HODSON. We used both local attorneys we have. I am certain neither are aware of the statement, that fact.

COMMISSIONER FREEMAN. How did the bank handle these debts? You did not pursue a remedy that was available to you because you say you did not know about it. How did you handle the bad debts?

MR. HODSON. Write them off.

COMMISSIONER FREEMAN. You wrote them off. So actually you took them off as a tax benefit?

MR. HODSON. You got to make money before you can take it off.

COMMISSIONER FREEMAN. Thank you. I have no further questions.

MR. NUNEZ. Mr. Hodson, you are a long-time resident of the area. I understand you have some familiarity with the history of the Sioux Tribe. I was wondering, the question I raised previously, how you would characterize the recent violence and its lessening in the last several years? Have you reviewed this whole situation and thought about it and feel that things are straightening themselves out in the area of violence on the Pine Ridge Reservation?

MR. HODSON. Everything always works its way out, both civil or world wars, they always do. But I think if it hasn't been made a point here it should be; a considerable portion of the violence is Indian to Indian. I don't want this group to get the impression that everytime there is a confrontation you have got cowboys and Indians chasing each other over the hills again or vice versa. That is really not the situation.

In our town, there is considerable intermarrying. I would say that at least 25 percent of our people are of some degree of Indian blood. I think our relationship on that basis really is quite good. Business people up and down the street are about the same proportion.

MR. NUNEZ. You would characterize the relationships as improving?

MR. HODSON. It always gets better. Every day has to get better. It is still here. You can try it.

MR. NUNEZ. Ms. Means and Ms. Flye testified just a little while ago they didn't feel things were getting better. There seems to be a major difference of opinion.

MR. HODSON. The fact we are all sitting here together discussing it would indicate it is getting better, wouldn't it?

COMMISSIONER FREEMAN. Of course, you are under subpoena.

MR. NUNEZ. No further questions. Thank you.

DR. WITT. Mr. Hodson, I have a question for you with the respect of something you mentioned earlier. It is my understanding that you felt that a polarization was developing between non-Indian and Indian populations brought about in part, perhaps in large part, by the Federal Government in developing programs on the reservation. Then would you suggest that the reservation system itself is a mistake? Should it be done away with in your observation?

MR. HODSON. No. I think the reservation is fine. I don't quarrel with that at all. I'm saying whenever in history you have people with dual citizenship, whether they have French citizenship and American citizenship, for instance, you are going to have a mixed emotion, you are going to have a mixed problem. If today that person who wants to be looked at as a Frenchman finds himself in the company of non-Frenchmen, and chooses to say, "Look, it is a conflict of my citizenship elsewhere," I think it has to be ironed out so that they fully have the right to govern themselves if they like.

I have no quarrel really with that, but I think they are going to have to know if it is a sovereignty. The problem of the sovereignty—how can you move back and forth between the two sovereignty points of view when you have two entirely different societies writing two different sets of laws, writing two different sets of enforcements of those laws, and you have an almost totally dominated government society on one side and a rather free and open society on the other, it is bound to cause conflicts—mentally, emotionally, financially, physically.

DR. WITT. It comes to mind we also have citizenship in State as well as national government. Is that another kind of analogy you might use as opposed to French and American?

MR. HODSON. No. I don't think so, because if you were to put on your hat and cross the boundary from a State to a State, you immediately assume that your membership in your home State doesn't give you any special immunity from the rules and regulations of the State you are traveling in.

DR. WITT. My question now is for Ms. Means.

In your observation, what is the nature of the Federal Bureau of Investigation's activity in the Porcupine area of the Pine Ridge Reservation?

MS. MEANS. My personal view of the Federal Bureau of Investigations is, on the reservation, on the part of the reservation where I live in Porcupine, I look at the FBI as snakes. That is my personal view.

A couple weeks ago, your staff member was doing investigations on the reservation and was in my home when they came down. We run a project of the American Indian Movement, a survival group home. There is a rumor floating around in the community constantly that the FBI is questioning, what are we doing down there?

It is a group of people educating each other, a survival school for young people.

One time last winter they came down and were accusing us of rustling cattle. At the time your staff member, Thelma Stiffarm, was in my home, I was going to take her around in the community so she could interview people for this hearing. The FBI was trying to go into the survival group home. They had a helicopter and three suburban vehicles with about seven FBI agents going to go in a home of kids, alleging that we were hiding some criminal down in the school. That is a common thing at home.

DR. WITT. How frequent would you say that is?

MS. MEANS. We have gone through it four or five times since we moved down to Porcupine, since the school itself moved out of Rapid City to Porcupine last fall. They terrorize, they will go to a home. People really don't know what to do when an FBI agent comes to your home and says he wants to talk to you, because they are afraid. They pull up in the back with a vehicle and in the front with a vehicle and they come on like the riot squad. That is how they come on to Indian people that really don't know that you don't have to talk to FBI agents, because they are trained to take anything that is said, even in smiling at you, and use it as evidence. As a member of the American Indian Movement, we have had people—members of the American Indian Movement have been murdered, and because they are AIM people, the FBI does little or a show of an investigation towards the people that committed the murder, but there is never any convictions made, or only a few. There are deaths that are unsolved on the reservation because of different people that are known members of the American Indian Movement, but if an AIM member is alleged to have committed a crime against somebody or whatever, the the FBI will go out and just break itself trying to convict an Indian person, especially if you have long hair in South Dakota.

DR. WITT. When these visits occur, are subpoenas brought forward?

MS. MEANS. I'm pretty sure the U.S. marshals issue subpoenas on the reservation, but last winter, an Indian women answered the door and FBI agents came through with rifles, knocked her aside, came in there, and took her son out of the home, with rifles on a 70-year-old Indian woman. We called the marshals to find out what was going on, why.

They didn't even let them see an arrest warrant. They just took him right out of there. I know this has got to be documented in this final report. You people have interviewed the family itself, but we called the U.S. marshal service to find out why he was arrested, and the people didn't even know where they were taking him. The marshals didn't know nothing about it. The FBI had made the arrest. We assumed and hoped that they would eventually get him to Rapid City because he is a known AIM member and the FBI have been known to commit whatever.

DR. WITT. Thank you.

MS. HUBER. Ms. Flye, Mr. Nunez mentioned earlier the current situation in regard to the enforcement on the Pine Ridge Reservation.