

We understand there is a new tribal police force system for the Oglala Sioux Tribe.

What is your viewpoint of how that is working out in the La Creek District in Martin, where you live?

MS. FLYE. As compared to a few years back when the BIA had the law and order system, it is a lot better in that when the law and order was under the BIA, most of the policemen were stationed in Pine Ridge. That is about 50 miles away from Martin. Any time we needed the help of the law, we had to call over to Pine Ridge; sometimes it was 2 hours, 3 hours and sometimes they never showed up. It was bad back then.

MS. HUBER. How it now?

MS. FLYE. It is a lot improved.

MS. HUBER. Why?

MS. FLYE. Because the police are right there, right in the community. They are right down the street when you need them.

MS. HUBER. Ms. Means, would you like to comment on how the tribal police system is working out in the Porcupine District?

MS. MEANS. Well, it is my personal view again after seeing when it was under the Bureau, the Bureau has the civil service, you know, and they use that too in hiring and firing people, and it is almost impossible to get somebody known to be a real pig fired. The Bureau usually transferred them to another reservation.

MS. HUBER. How is this system now?

MS. MEANS. Now, the tribal police, we get along with them good at Porcupine. We have a community police review board. If there is any trouble, they have a way to view the complaint and the grievances and the people on the police force, we know them and get along very well.

CHAIRMAN FLEMMING. Thank you very, very much for being with us, providing us with this testimony. We appreciate it.

Counsel will call the next panel of witnesses.

MS. HUBER. Could we have Sheriff Ed Cummings, Sheriff Bruce Madsen, Lt. Lee H. Antelope, and Lt. Ellsworth Brown, would you please come forward.

[Lieutenants Antelope and Brown and Sheriffs Cummings and Madsen were sworn.]

**TESTIMONY OF LEE H. ANTELOPE, LIEUTENANT, OGLALA SIOUX TRIBAL POLICE, LA CREEK DISTRICT; ELLSWORTH C. BROWN, SR., POLICE LIEUTENANT, EAGLE NEST DISTRICT; ED CUMMINGS, SHERIFF, MARTIN, BENNETT COUNTY; AND ARNOLD BRUCE MADSEN, SHERIFF, JACKSON-WASHABAUGH COUNTY**

CHAIRMAN FLEMMING. Thank you. We appreciate your being here.

MS. HUBER. We would like to begin by getting some background information. Sheriff Cummings, could you begin by identifying yourself and describing your position and the geographical area within your law enforcement jurisdiction?

MR. CUMMINGS. My name is Ed Cummings, Bennett County sheriff, Martin. And I am responsible for all the deeded or nontrust areas in Bennett County.

MS. HUBER. And how many square miles would that be?

MR. CUMMINGS. I have no idea. I don't know.

MS. HUBER. How many deputies or patrol officers do you have working under you?

MR. CUMMINGS. I have four deputies.

MS. HUBER. Could you briefly summarize the nature of your experience and training as a law enforcement officer?

MR. CUMMINGS. I have been involved in law enforcement in Bennett County since January of 1975. I spent 5 weeks at the criminal justice training center in Pierre for the law enforcement training sessions and a couple of kind of job-related training sessions.

MS. HUBER. So you have been a law enforcement officer essentially for 3 years?

MR. CUMMINGS. Yes, since 1975, January of '75.

MS. HUBER. You are an enrolled member of the Oglala Sioux Tribe; is that correct?

MR. CUMMINGS. That's correct.

MS. HUBER. Lieutenant Antelope, could you state your full name and position and the geographical area you cover?

MR. ANTELOPE. My name is Lee Antelope. I am a lieutenant of the La Creek District of the Oglala Sioux Tribal Police in Martin, and my responsibility is trust area in Bennett County at this time.

MS. HUBER. Is it fair to say that your responsibilities are for those areas that are not Sheriff Cumming's responsibility, with the checker-board jurisdiction?

MR. ANTELOPE. Right.

MS. HUBER. And could you tell us briefly the nature of your experience and training as a law enforcement officer?

MS. HUBER. I have been in law enforcement just about 8 years. I worked for several sheriff's departments in New Mexico. I worked for the Bureau of Indian Affairs police in Rosebud, for the tribal police in Pine Ridge right now.

MS. HUBER. And when did you start working for the Oglala Sioux Tribe?

MR. ANTELOPE. Twenty-fifth of April, last year.

MS. HUBER. Have you had any kind of specialized investigative training?

MR. ANTELOPE. Altogether I have about 280 hours, mostly training from the FBI in investigative techniques and related training to investigation.

MS. HUBER. That is criminal investigation?

MR. ANTELOPE. Yes.

MS. HUBER. Are you a member of the Oglala Sioux Tribe?

MR. ANTELOPE. No, I am not.

MS. HUBER. What tribe are you a member of?

MR. ANTELOPE. Rosebud.

MS. HUBER. Lieutenant Brown, will you tell us your name and your position, please?

MR. BROWN. My name is Ellsworth C. Brown, Sr.

MS. HUBER. And your position?

MR. BROWN. I am a lieutenant from Eagle Nest District.

MS. HUBER. Is that on the Pine Ridge Reservation?

MR. BROWN. Yes, that is on the Pine Ridge Reservation in Wanblee.

MS. HUBER. Is that the area that Mr. Whirlwind Horse and Mr. Brown were discussing earlier?

MR. BROWN. Yes, it is.

MS. HUBER. How many patrol officers do you have working under you in the Eagle Nest District?

MR. BROWN. Well, I have two.

MS. HUBER. And could you tell us your experience and training as a law enforcement officer?

MR. BROWN. Well, after I got out of the service in '64, I worked for the Cheyenne River Sioux Tribal Police. And I quit there and it's been a number of years and then I come to Pine Ridge and I work on the tribal police force now. I have had about 5 years altogether.

MS. HUBER. And what kind of formal training have you had in law enforcement and investigative techniques?

MR. BROWN. Well, in the training, like Lieutenant Antelope said, we got 280 hours in investigation and supervision.

MS. HUBER. Sheriff Madsen, could you tell us your name and position, please?

MR. MADSEN. Arnold B. Madsen, Jackson-Washabaugh County Sheriff. And as far as law enforcement, I have been in it approximately 3-1/2 years now.

MS. HUBER. Was that when you were elected sheriff?

MR. MADSEN. Yes, it was.

MS. HUBER. What area do you cover?

MR. MADSEN. We have Jackson County and the non-Indians in Washabaugh County.

MS. HUBER. Is that the jurisdictional situation that Mr. Hogen described earlier with the organized and unorganized counties?

MR. MADSEN. Yes, it would be.

MS. HUBER. What formal training have you had as a law enforcement officer?

MR. MADSEN. I went for the 3 weeks certification school at DCI.

MS. HUBER. Tell us what DCI is?

MR. MADSEN. Division of Criminal Investigation in Pierre plus another week of orientation before I took over as sheriff. And we do take numerous courses in such—some college courses in criminal justice. And they have special courses anywhere from 1 and 2 days up to 1 week or 2 weeks that a fellow can take. Some of it's offered through the FBI to the DCI.

MS. HUBER. Have you taken any courses?

MR. MADSEN. None here lately, no.

MS. HUBER. And how many deputies do you have working for you?

MR. MADSEN. I have two of them working for me.

MS. HUBER. We have been discussing the recent decision in the *Oliphant* case as to the handling of non-Indian offenders who may commit offenses on reservation or trust land.

Lieutenant Brown, could you tell us how it's handled if you or one of your officers observe a non-Indian committing some sort of offense within Washabaugh County on the Pine Ridge Reservation?

MR. BROWN. Well, the one thing that happened was that about 8 months ago one of my officers went and stopped a vehicle for a DWI and when we turned it over to Sheriff Madsen—well, the State's attorney went and had my officer go ahead and make a citizen's arrest and then went to court up there in Kadoka and the person got convicted.

MS. HUBER. Did your officer testify in the State court?

MR. BROWN. Yes, he did.

MS. HUBER. Is this the usual way that it would be handled if one of your officers observes a non-Indian committing an offense?

MR. BROWN. Well, yes, that is what I and Sheriff Madsen was talking about. That is the way we worked it out. We didn't talk to anybody else but that is—

MS. HUBER. That is what you would do?

MR. BROWN. Yes.

MS. HUBER. What happens if, for example, you would stop an intoxicated driver who turns out to be a non-Indian? How do you handle that in terms of detaining the person?

MR. BROWN. Well, I would call Sheriff Madsen over and have him take the matter. Until he makes the arrest, I will be the one that signs the complaint.

MS. HUBER. What will you do with the driver in the meantime until Sheriff Madsen gets there?

MR. BROWN. Well, I will hold him right where we're at. We have a substation down there where we keep them. And it's just a matter of minutes before Sheriff Madsen can get there.

MS. HUBER. Would you like to comment on what Lieutenant Brown said as far as handling of non-Indian offenders, Sheriff Madsen?

MR. MADSEN. Yes. In our area, that is the way it works. And like I said, it's working real well between the tribal officers and myself.

MS. HUBER. Lieutenant Antelope, how does it work in Bennett County if you or one of your officers observe a non-Indian committing an offense on Indian trust land?

MR. ANTELOPE. Well, up until now we have arrested the person and produced them at the sheriff's office at which time we sign a complaint and incarcerate them if it was a jailable offense.

MS. HUBER. What happens to the case in court?

MR. ANTELOPE. We take them to the county court or State court or whatever or the magistrate, see the magistrate for that matter and dispose of it that way.



Ms. HUBER. Does the State's attorney accept your arrest as a citizen's arrest and take the offender to court?

MR. ANTELOPE. Yes, he does.

Ms. HUBER. Are you satisfied with the system for handling of non-Indian offenders, the way it's working out in Bennett County?

MR. ANTELOPE. In Bennett County, it's all right. I have a little trouble with Shannon County which is the reservation itself. I have to go to Hot Springs to sign a complaint. I think I had one person pending on the court action for about 5 months. It was a simple speeding ticket. I never got it to court yet.

Ms. HUBER. It's not working as fast there.

Sheriff Cummings, would you like to comment on how it's working between you and Lieutenant Antelope as to non-Indian offenders arrested on trust land?

MR. CUMMINGS. I think it's about like Lee says, until now we have worked pretty well. Lately, we have been working pretty well together. I don't know of any single instance that the State's attorney has refused to accept a complaint from one of the tribal officers.

Ms. HUBER. Thank you.

Sheriff Madsen, would you describe the nature of the working relationship you have with the Oglala Sioux tribal police officers in Washabaugh County?

MR. MADSEN. Yes, I would say that we have a very good working relationship. We have had instances just in the past 2 or 3 weeks where we have had problems on State jurisdiction and subjects have gone back across the reservation line, and we just contact the tribal substation there in Kyle and they dispatch officers and they will come across on the State jurisdiction and give us a hand there if necessary.

So we just kind of work back and forth and, if Lieutenant Brown calls and needs some assistance I go down there and give him a hand in any way he needs it too.

Ms. HUBER. How are you in contact with each other?

MR. MADSEN. We have a radio. Our radio communication isn't the best, but like I say, we go through my dispatcher and she will contact the substation and they will get hold of him on the air in the radio system if we cannot get through your State system.

Ms. HUBER. Do you think it's desirable for your county sheriff's department to have a close working relationship with the tribal police?

MR. MADSEN. Definitely it is.

Ms. HUBER. Why is that?

MR. MADSEN. Kadoka is the county seat, and we are only about 7 miles from the reservation border and we have a little town, 25,035 population, 30 miles to the southwest of us. And that is only about 2-1/2 miles from the reservation line. Most of their trade comes in off the reservation, I would say. And like I said, there we can have problems because they have no law enforcement, and myself and my two deputies take care of both counties as far as law enforcement.

Ms. HUBER. So you have got a lot to do with the a small staff; is that right?

Mr. MADSEN. Yes, we do at times. Like I said, it's very important that we have the close relationship with the tribal officers that we do have now.

Ms. HUBER. Why is it important?

Mr. MADSEN. Well, we have had burglaries and such, break-ins, and we might get a suspect vehicle. Like I said, here in April we had a situation where some parties in Interior had seen the suspect vehicle and they give us a description and said it was headed south. We contacted the tribal officer in Kyle, their substation, and they in turn dispatched their officers and arrested the subjects for us. And they even brought them back across into State jurisdiction for us and we prosecuted them.

Ms. HUBER. Lieutenant Brown, would you like to comment on your views on the relationship between your district and Sheriff Madsen's department?

Mr. BROWN. Well, there is times that I call for help and Sheriff Madsen is the first one there besides Lieutenant Antelope here. They both respond just about the same. The only thing is one of them is a few miles further than the other one, so I imagine they are breaking the speed limit a little bit, but they get there and give me a hand.

Ms. HUBER. Are you satisfied with the relationship you have with each other?

Mr. BROWN. Yes, I am.

Ms. HUBER. Lieutenant Antelope, could you tell us about the relationship that your office has with the Bennett County sheriff, both in the past as to any problems you may have had and how things are working out at the present time?

Mr. ANTELOPE. Well, in the past we had several personality problems. Some of my officers couldn't get along with some deputy sheriffs. There was a lot of nitpicking going on—nothing very important. The last maybe 2 months we have been working a lot closer together. We worked a couple good cases together and it seems to be working out real good now.

Ms. HUBER. During the times that your deputies and his deputies weren't getting along, did this create any law enforcement difficulties as opposed to personal difficulties?

Mr. ANTELOPE. Not as much law enforcement. There was no difficulties there because we really didn't work that close together up until then. There was no communication for about a couple months, I guess.

Ms. HUBER. Sheriff Cummings, what do you have to say about the relationship of your sheriff's department with the tribal police both in the past and how it is now?

Mr. CUMMINGS. Well, it goes back to what Mrs. Flye was saying a little while ago. They didn't have any police officers in La Creek Dis-

tract. I think this led to a lot of our problems when the tribe contracted the law enforcement. For years Bennett County had one law enforcement agency as we are combined and there is no city police in Martin. The sheriff's department does both the city and the county. I think this might have been some of our problem and that is what created the problem when the tribal police came in. I think, like Lee said, a personality conflict.

MS. HUBER. Is it fair to say perhaps a feeling arose in your department that you had been the only law in the county for a while, and what is this new operation doing?

MR. CUMMINGS. I believe that was probably a lot of it, yes. And like Lee said, in the last couple—3 months—he's eliminated a few and I've eliminated a few, and I think the two departments now can, with a few more changes from both sides, I think we can get along good in terms of law enforcement in Bennett County.

MS. HUBER. Do you see a need or an advantage for close working relationships between the sheriff's office and the tribal police?

MR. CUMMINGS. There is a definite need. Like I say, I have got four officers and Lee's got three or four officers at a time. There are situations when the one or two officers that are immediately available cannot handle the situation. I feel now for certain that if I call Lee here in town that Lee would come, and that if Lee needed some help in the county we would go help him. I think we have a good working relationship between the two.

MS. HUBER. Sheriff Cummings, I believe you were here earlier this afternoon. Indian representatives from the Pine Ridge Reservation and also from Martin expressed their views that the Bennett County Sheriff's Office does not always treat Indians fairly in its law enforcement practices? Do you see any validity to these allegations?

MR. CUMMINGS. No, I don't. Myself and my deputies and any law enforcement officer is sworn to uphold the law no matter who or what color. If we see a violation—I am sure Lee and Ellsworth and Sheriff Madsen—if there is a violation being committed, there is an arrest made. I don't believe we discriminate in who is arrested.

MS. HUBER. If there is no truth to these allegations, why do you think that some people in the Indian community nevertheless have the feeling or have the perception that the Bennett County sheriff isn't fair to Indians?

MR. CUMMINGS. There seems to have been, probably in the past 2 years, a hostility toward the Bennett County Sheriff's Office. Up to about 2 years ago we spent a lot of time in the Martin housing area, not particularly patrolling for whatever, giving people rides to town and give them rides home from town. About 2 years ago, several threats were made concerning our vehicles and our deputies about going into the housing project.

MS. HUBER. The housing project is on tribal land; is that right?

MR. CUMMINGS. That is right, under tribal jurisdiction. Since that time, I don't believe one of my vehicles has been in the housing project for approximately 2 years. There is still a lot of people in there. We still get calls from people, but we are unable to help them for the simple reason we don't have the jurisdiction. We refer them to Lee and Lee takes care of their problems.

MS. HUBER. If a member of the Indian community or for that matter if a member of the non-Indian community has a complaint to make about the conduct of one of your deputies, how would that be handled? Where would they take that complaint?

MR. CUMMINGS. Either to myself or to the State's attorney.

MS. HUBER. And what would happen then?

MR. CUMMINGS. Then whoever gets it is the one that does the checking. I think most of the complaints from the Indian people go to the State's attorney. Very few of them come to me. I hear about them through the State's attorney.

MS. HUBER. Do you know if there is any record kept of the number and disposition of any such complaints?

MR. CUMMINGS. I know of none, no record, no, unless the State's attorney has it.

MS. HUBER. It's handled more or less on an informal basis?

MR. CUMMINGS. Yes.

MS. HUBER. Would you see any advantage in terms of how the community views the sheriff's department for a more formalized complaint procedure, for example, through a human relations commission?

MR. CUMMINGS. I believe it would have its merits, yes.

MS. HUBER. Lieutenant Antelope, would you care to comment as to why some members of the Indian community believe that there is unfair law enforcement by the Bennett County Sheriff's Office?

MR. ANTELOPE. Well, I think it's more the attitude of some law enforcement officers towards some people. I don't think it has anything to do with getting down on somebody. I think it's more that somebody just chose the wrong attitude, and I think attitude has a lot to do with police work. If you are going to go up to somebody and poke them in the chest and ask him what the hell he thinks he is doing, you're making a mistake. Ninety percent of the people you can talk them out of doing something silly before they do it anyway.

MS. HUBER. Sheriff Madsen, could you comment on, if you can, what percentage of the offenses that you deal with are in some way related to alcohol?

MR. MADSEN. Well, I would have to say that the biggest share of the offenses that we deal with as far as arrests and stuff, I would say in the area of 90 to 95 percent of them are alcohol related.

MS. HUBER. And how in general do you handle a case of someone being intoxicated and on the street, that sort of conduct?

MR. MADSEN. In that case, since they done away with our public intoxication law here a few years back, if we run into a situation of an

intoxicated person, we will go and pick them up and we will put them in our jail for a period of 8 to 12 hours, as we call it, for protective custody and then they are released.

MS. HUBER. What is your view of using statutes like disturbing the peace or disorderly conduct to deal with alcohol-related conduct?

MR. MADSEN. Well, those statutes would have their places in some instances but not for just any situation. If you were going to maybe incarcerate a party or put him in jail for protective custody and he got belligerent or violent with you, then you would have a charge, but normally there aren't that many of them charged with disorderly conduct in our office.

MS. HUBER. Is that a matter of policy on your part?

MR. MADSEN. Well, I don't know if it's a matter of policy. I guess you would have to say yes, that is just pretty much the way we handle that.

MS. HUBER. What is your thinking of that? Why do you use your discretion that way?

MR. MADSEN. Most of the time people in that situation need help, and it's not to be thrown in jail for 30 days or whatever for drying out. They need more help than that.

MS. HUBER. Mr. Chairman, I have no further questions at this time.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. No questions.

CHAIRMAN FLEMMING. Mr. Nunez?

MR. NUNEZ. Lieutenant Antelope and Lieutenant Brown, I would like you to respond to this question.

It's apparent among many differing opinions that many of the witnesses this afternoon have felt that the police situation has improved on the Pine Ridge Reservation. And just to confirm this, it's my understanding that previously the Bureau of Indian Affairs were the police on the reservation and now they have established the tribal police in the last year or so. I assume you gentlemen are both members of this new force. I am curious, aside from changing the organizational pattern, how do you attribute the lessening of the tensions and the better relationships with the community?

MR. ANTELOPE. Well, I think there is more policemen over a bigger area in the communities. Each community, we just about know the people there and how they are going to react, and we are available. I mean, there is no such thing as having to wait for officers for 2 or 3 hours like you had before.

MR. NUNEZ. You're divided into districts?

MR. ANTELOPE. Yes, we are divided into nine districts.

MR. NUNEZ. And how does that compare with the past organization?

MR. ANTELOPE. In the past, most of the police officers were stationed in Pine Ridge or in Kyle. And from Pine Ridge to Martin it took them at least 45 minutes to get there if they had a call. And we got our response time on a call down to about 7 minutes.

MR. NUNEZ. In other words, you decentralized the police force and you put them in smaller units?

MR. ANTELOPE. Small detachments all over the reservation for the community and for each district.

MR. NUNEZ. There was one other question in this area. I understand you have also set up a police review board. How does that work?

MR. ANTELOPE. Well, the police review board is responsible for hiring the officers.

MR. NUNEZ. For hiring them?

MR. ANTELOPE. Yes, sir. If you want a job as a policeman in a certain district, you should be a resident of the district to start with. You should live there, and you apply to your review board for a job. The review board follows guidelines as to how they can hire you. If you do get hired, it has to be approved through headquarters in Pine Ridge, and all the paperwork is done there and fingerprinting and everything else is taken care of. A record and background check is made by the FBI for the officer, and it takes maybe 2 or 3 days to get somebody to work.

MR. NUNEZ. You are a supervisor of a police unit in an interesting system of hiring policemen, in that, basically, they are being hired by community people. Do you feel the system works out well?

MR. ANTELOPE. When I first heard of this review board idea, I felt that policemen can't work for the board, that was my idea. And in about 2 months after I seen the operation and was part of it, I changed my idea. It can be done and it's working this way. If a community member has a complaint against a police officer, he writes a statement to the review board. The chairman gives it to me. I investigate the allegation and turn it back to the review board. They make the decision.

MR. NUNEZ. Lieutenant Brown, do you concur with Lieutenant Antelope's feelings about this new system?

MR. BROWN. Yes, I do.

MR. NUNEZ. Do you have anything further to add to the workings of this new system?

MR. BROWN. Yes. The review board members, if they were required to go ahead and to have their backgrounds checked too, because there is one that I know on the board that I felt that wasn't qualified on the last review board. And in these situations here, it wasn't me that was griping. It was the officers that was griping because they said, "Why should we have our backgrounds checked when the review board members who are our bosses don't have theirs checked?"

So anyway, it's kind of a touchy situation there, but the only thing, we still can go ahead and work together if the board members will go ahead and meet with the officers and go over the penal codes and the regulations that we have so everybody will understand what is going on.

MR. NUNEZ. No further questions. Thank you.

CHAIRMAN FLEMMING. Dr. Witt?

DR. WITT. None.

CHAIRMAN FLEMMING. Counsel has a couple of additional questions.

Ms. HUBER. I would like to ask Lieutenant Antelope and Lieutenant Brown some questions about how the investigation of major crimes offenses are handled.

Lieutenant Antelope, if an offense occurred in your district that falls under one of the 14 major crimes and it comes to your or one of your officer's attention, how is the matter handled?

MR. ANTELOPE. Well, we start making a decision or an appraisal if it is one of the 14 major crimes and call the Federal Bureau of Investigation as soon as possible and advise them of the situation. Then we do a preliminary investigation and try to get as much work done as we possibly can before they get there.

Ms. HUBER. Where is the FBI? Are they on the reservation?

MR. ANTELOPE. No, they are stationed here in Rapid City.

Ms. HUBER. So they have to come from Rapid City to Martin?

MR. ANTELOPE. Yes.

Ms. HUBER. You say you do a preliminary investigation; what would that consist of?

MR. ANTELOPE. Protecting the crime scene, collecting any evidence I can collect.

Ms. HUBER. What might that be?

MR. ANTELOPE. Anything. If it's a violent crime, we try to find the weapon, try to find who it belongs to, round up witnesses, start taking statements from people, try to develop a suspect as soon as possible, and try to make an arrest.

Ms. HUBER. And you say you want to do as much of that as possible before the FBI can get to Martin from Rapid City?

MR. ANTELOPE. Right.

Ms. HUBER. Why is that?

MR. ANTELOPE. Well, if you waste too much time doing anything, people like to get lost. They don't want to be involved. And evidence likes to get lost. I feel like I owe it to the agents when they come to have as much information as I possibly can have for them when they get there.

Ms. HUBER. Once they get there, what do they do in relation to the investigation that you have already undertaken?

MR. ANTELOPE. They probably interview witnesses that I produce for them, or they collect additional evidence, take photographs, or whatever they have to do, take sketches, fingerprints.

Ms. HUBER. Are you trained to take photographs and lift fingerprints?

MR. ANTELOPE. Yes.

Ms. HUBER. What, if anything, do you think the FBI adds to what you already do or are able to do being right there?

MR. ANTELOPE. Well, their equipment is a lot better than mine. That is about it.

Ms. HUBER. Lieutenant Brown, what do you have to say about that? If a major crime occurs up in your district, how do you handle it?

MR. BROWN. Well, we have the preliminary thing, like Lieutenant Antelope said, we contact the FBI. So far we have been pretty lucky in that we have all the witnesses there, and it isn't so hard for the FBI to go ahead and go from house to house. Because the population there in the community are a little bit leery of the FBIs because the way they went and represented themselves before.

MS. HUBER. Why is that? What is it about the FBI agents that creates this response?

MR. BROWN. Well, before they usually come in there and they pack weapons and surround the house and all that stuff, and this is the image that they went and made for themselves. But so far now lately, well, we go over there and there is no weapons showing or anything like that, and even some of the agents are invited into the house and they do their interviewing right there. And the relationship between us and the special agents with the community is getting better. I think they are being accepted a little bit more. That isn't all the community, but, you know, it's the ones that they go visit—well, they are not afraid of the FBI anymore.

MS. HUBER. Do you feel that you have sufficient experience and training to be able to handle the investigation of a serious felony offense, a crime of violence?

MR. BROWN. Oh, yes, I think I do.

MS. HUBER. And when the FBI responds, what do they do with the investigation that you have already initiated?

MR. BROWN. Well, they take the evidence that I collect and they take some of the photos or they go ahead and take the photos themselves and all the sketches that they make there. So far they have commented that we done a good job of getting all the evidence and all that stuff. It's making their job easier.

MS. HUBER. What do you feel that their efforts add to what you do or you have already done?

MR. BROWN. Well, for the things that we have missed are the things that they are teaching us when they go and do their investigation. The officers I have sent out with them, well, then they go right ahead and help them take the fingerprints and photographs. They are learning right along with them. That is, the new men I have on the force.

MS. HUBER. The FBI is assisting in training your men in investigative techniques?

MR. BROWN. Yes.

MS. HUBER. As you may know, the FBI is cutting the number of its agents in its Rapid City office. Do you have any fears that you and your officers won't be able to take up the slack with the reduced force of the FBI?

MR. BROWN. Well, I think we can handle the situation. The only thing that we need would be some technical advice as to how to go ahead and dispose of the person that we have in custody at the time.



MS. HUBER. Lieutenant Antelope, how do you feel about that as far as being able to take over any slack that might come up with the FBI reduction in staff?

MR. ANTELOPE. I don't think it really makes that much difference anymore. I personally feel that maybe 2, 3 years from now we should be in good enough shape to take a felony case for one of the 14 major crimes directly to the United States attorney office.

MS. HUBER. Do you think it would be a desirable procedure as opposed to having the FBI involved?

MR. ANTELOPE. Every time you have a middleman involved somewhere you are not getting the credit sometimes that you really want.

MS. HUBER. Do you think that you have any advantage as a result of being in the community as far as being able to get information or be able to have people talk to you who might have information about a crime?

MR. ANTELOPE. People are a lot more open to you if they know you. If you are going to go in a community and nobody's seen you before and you come from 40 miles away, they are going to look you over for about 2 days before they are going to start talking to you. And I think, based in the community, there is more communication than there ever was before.

MS. HUBER. Lieutenant Brown, up in the Wanblee area are there many Indians who still speak the Lakota language?

MR. BROWN. Yes, they do. And I think that is one advantage I have over Lieutenant Antelope because I can speak the language fluently and I can communicate with anyone of the people there that speak the Lakota language.

MS. HUBER. And how does that assist you in your law enforcement duties?

MR. BROWN. Well, it helps me out good because I can go ahead and talk to people there, and they tell me in Indian and I have to translate in my reports. Because I sent in a couple of reports where the form said put down the words exactly like they said it, so I put down the Indian language and I sent the report in and I caught heck for it because they couldn't read it.

[Laughter]

MS. HUBER. I have no further questions.

CHAIRMAN FLEMMING. We are very appreciative of your coming in and giving us these insights, and we get the feeling that this new operation has taken hold. We appreciate the evidence that has come both from those who have direct responsibility and from the sheriffs that have got the overall responsibility and that you're working so closely. Thank you very, very much.

Counsel will call the next two witnesses.

MR. ALEXANDER. Marion Schulz and Jack Freeman, please come up.

[Messrs. Freeman and Schulz were sworn.]

TESTIMONY OF JACK FREEMAN, BUSINESSMAN, ZIEBACH COUNTY,  
SOUTH DAKOTA; AND MARION SCHULZ, FARMER, BATESLAND  
AREA, SOUTH DAKOTA

CHAIRMAN FLEMMING. Appreciate your being here.

MR. ALEXANDER. Could each of you gentlemen identify yourselves for the record, indicating your names, where you reside in the State, and what your current occupations are, starting with Mr. Freeman?

MR. FREEMAN. My name is Jack Freeman. I have been a resident of the State of South Dakota since the fall of 1949. I have been actively engaged in ranching, fast food business, and mobile home courts, real estate to date.

MR. ALEXANDER. In what area of the State?

MR. FREEMAN. In Ziebach County, State of South Dakota. The open portion of the Cheyenne River Sioux Tribe Reservation.

MR. ALEXANDER. Thank you.

Mr. Schulz?

MR. SCHULZ. My name is Marion Schulz. I was born and raised in the Batesland area, went to school in that area, did go to high school in Nebraska, educated in South Dakota, and farm a ranch there today.

MR. ALEXANDER. In the Batesland area?

MR. SCHULZ. You bet.

MR. ALEXANDER. In interviews with our staff both of you indicated that you were very active in the formation period of the South Dakotans for Civil Liberties. Is that correct essentially, Mr. Freeman?

MR. FREEMAN. It's correct from my point of view.

MR. ALEXANDER. Could you explain to us what factors or events led up to your participation in this organization?

MR. FREEMAN. My interpretation was that the Federal Government had embarked upon an accelerated policy of inverse discrimination among the residents of the State, based upon the race of the various people involved.

MR. ALEXANDER. Would you specifically translate that to an action that perhaps occurred, or tell us what were the components of this Federal policy?

MR. FREEMAN. Well, there were certain shelters from law that were available to individuals of one particular race in one instance that were not available to the citizens of another race in the same instance. And I couldn't reconcile this with the Supreme Court decision that separate but equal is not equal. And I felt that it was time that, even though my views might be unorthodox, they be made public and some consideration given them.

MR. ALEXANDER. When I spoke with you earlier, you indicated that a non-Indian within the exterior boundaries of the Cheyenne River Reservation was arrested by the Cheyenne River Tribe and prosecution was to proceed in tribal court. Did that incident create any activity on your part?

MR. FREEMAN. You might say that was the focus point. Your statement as to the exterior boundary of the Cheyenne Indian Reservation would be the point of dispute. The present contention of the nonenrolled citizen was that reservation boundaries was diminished since the Homestead Act opened it, and clearly the Federal Government was no longer defending that opinion or that philosophy.

The people that had taken up homestead and land ownership in this area were left disenfranchised from a judicial remedy in which they had a voice. And it was time that it be considered deeper.

MR. ALEXANDER. The issue of, for jurisdictional purposes, what is the exterior boundary of the Cheyenne River Reservation is one issue. What about the issue of criminal jurisdiction or civil jurisdiction over non-Indians as exercised by the tribal government in your area? Is that a serious concern to you?

MR. FREEMAN. Yes, inasmuch as it is a separatist form of government. And I think much of the conversation here this afternoon has endorsed that as a solution to the unrest or the instability of community life within the reservations. I think it's premature that people accept this as a solution. It is a near-term solution, but in the long term you have a lot of congressional and constitutional armor to be penetrated, and we will suffer for it in a later generation.

MR. ALEXANDER. Mr. Schulz, what led up to your involvement in the interstate congress?

MR. SCHULZ. Well, initially it was because of the problem at Wounded Knee. At that particular point in time, our Governor said, "Good luck, people, you're on your own." Our attorney general had the same opinion. It was at that point in time that our deputy sheriff moved back out of the county into Fall River and there we sat.

MR. ALEXANDER. What do you mean, "Good luck, people, you're on your own"?

MR. SCHULZ. Well, we all went into Bennett County the day that the Wounded Knee incident occurred. There was a roadblock and their officer, at that particular point in time, said, "From here on you're on your own, you're out of our jurisdiction. You live there, you're on your own, fellows." We called in the Governor at that particular point in time and he affirmed that. So, at that particular point, we formed an organization locally called Tri-County Protective Association which was simply a defensive organization which was there for one of our people, one of its members. And incidentally, there were tribal members who were also members of this organization. If they had a problem, they would call a neighbor and they would come and try to hold the situation together until you could get someone there.

From that then grew the State organization through a series of meetings we called here in Rapid City with the Governor, etc. From there grew what was called the South Dakotans for Civil Liberties. From there we joined with other States and then formed the Interstate Congress for Equal Rights and Responsibilities.

MR. ALEXANDER. This tricounty group that you mentioned initially, you said that was a defense group?

MR. SCHULZ. Strictly all it was, if I had a problem on my place, I could call a neighbor, make one phone call and I could get some help from a neighbor because we didn't have any law enforcement that we could call. The Federal marshals who were there said, "We are not there to help you guys." So we were sitting there with absolutely nothing.

MR. ALEXANDER. Is this an organization that essentially involved being able to call each other and people individually with their own rifles or other weapons would come over to a neighbor's home if necessary?

MR. SCHULZ. That is right. We contacted the attorney general and had his opinion to what point, you know, what actions could we take as individuals to protect ourselves. And it was upon his advice that we based our—you know, to what degree we would act.

MR. ALEXANDER. Was there ever any violence that you responded to with this organization?

MR. SCHULZ. There was one call that an individual made and some of the neighbors responded. They did not go into his yard; all they did was come up onto the hill above it. The people causing the problem got back into their car—who were members of the Indian tribe—whether or not they were local people we do not know. And that was the only case that anyone's ever been called on.

MR. ALEXANDER. In the years since Wounded Knee, that's been the one confrontation?

MR. SCHULZ. That would be the one confrontation, if you want to call that a confrontation. The only problem we have ever had.

MR. ALEXANDER. What are the current goals of the interstate congress? What is your solution, Mr. Freeman? Mr. Freeman mentioned he didn't necessarily agree with some of the solutions being proposed today. I would like both of you gentlemen to tell me what you think your solutions are.

MR. SCHULZ. Well, ultimately, you know, we are all citizens of this country, we are citizens of the State of South Dakota. We have all had a voice in the formation of the laws we live under. And I think that ultimately that we have got to have one set of laws for all of us. We have all got to have equal application of this law. Anything short of that, I think, is going to have some pitfalls and there is going to be some real problems developing.

MR. ALEXANDER. Mr. Freeman?

MR. FREEMAN. I would like to back up a little bit to background material for my suggestion.

I was born and raised in the State of Texas. When I was 15 years old, I migrated to Colorado. I spent 15 years there with a heavy density of Spanish American residents for neighbors. I came to South Dakota to the Indian reservation with the heavy density of American

Indian people for neighbors. I had 2 years of service with the United States Army in the occupied area of Germany, French sector, where we were in charge of over 3,000 German nationals in Marshall plan operations reconstructing Germany.

We had to deal on a daily basis with the German nationals who were subject to our authority. They were further subject to Lithuanian service battalions who were security people for the United States Army.

And from this various learning, however not academic in nature, I feel I have gained an ability to see from their mistakes some of the mistakes that are being proposed today and the general public being asked to accept compromise situations that are valid for 6 months, a year, and do not lend themselves to directly facing the problem.

MR. ALEXANDER. That is fairly general. What does "directly facing the problem" mean?

MR. FREEMAN. Equality before the law without race as a prerequisite for the judicial remedy.

MR. ALEXANDER. Does that, in your view, mean termination of any political power of an Indian tribe?

MR. FREEMAN. Ultimately, however it might be, it is not the termination of political power of the individuals collectively. If they so desire to organize and vote in a block, that freedom to express themselves is still available to them. The freedom to exercise this power in a block backed by the force of the United States Government is the disparity that I feel is inappropriate for the expression of my point of view.

MR. ALEXANDER. Mr. Schulz, would you agree with that point of view?

MR. SCHULZ. Basically, I would have to say yes, that there are points that we perhaps may not agree completely on, but in the general sense we, Jack and I, agree.

MR. ALEXANDER. Since the Interstate Congress was formed and South Dakotans for Civil Liberties, the Supreme Court of the United States has had several decisions which have diminished reservations in the State of South Dakota and which have determined that tribal court justice systems do not have criminal jurisdiction over non-Indians for prosecution purposes. Do these decisions, in some sense, go to some of the initial concerns that you gentlemen had? Does that alleviate the problem that you sought to address?

MR. SCHULZ. I think it has started in that direction. There are still some problems. As was mentioned, a case in Shannon County which is still pending. I happen to be familiar with it because this particular case actually happened in Bennett County. And it happened on a State road and the officer knew that the individual was not a tribal member and, in light of the *Oliphant* decision, etc., we felt that that officer had no authority, and there are some other cases—there are some other points of the case that I would just as soon not go into.

MR. ALEXANDER. Well, what is the legitimate interest of a tribe in your view? Let's talk about the facts of the Cheyenne River case for

a brief moment. In a general sense, a main street of town, public school, tribal hospital, BIA officers, tribal officers. Someone's speeding down that road. Does the tribe have a legitimate interest to prevent speeders from doing such?

MR. SCHULZ. I think that, yes, there has got to be law enforcement. I am not questioning that fact. The fact that I am questioning is in light of some statements that the tribe has made, if an officer felt that they would like to incarcerate an individual, they can for 8 to 12 hours and then decide if that individual is a non-Indian. I don't think that that is quite the procedure to follow. I think there is a lot of misunderstanding among the people just exactly to what extent the tribe does have jurisdiction over people or where. And I think the fear of it has gone on and there has been some instances where there have been arrests made and threats made or threats of arrest made. And I think that more than anything else it's lack of communication. I think somewhere along the line, from listening to the officers today, it sounds like they are trying to work out some of their problems. But I think they are going to have to take these solutions and let the people know what they are working on, because a lot of people don't understand that.

MR. ALEXANDER. In interview reports with members of my staff, it's indicated that you would not stop for a tribal police officer on Pine Ridge; is that accurate?

MR. SCHULZ. Okay. I have made that statement and I would like to qualify that if I could. Because, there has been times where individuals living in this town of Batesland and other places have witnessed some of these tribal officers, I don't know if they are still on the force or not, drinking on duty, etc.

There was a case in Fall River County where one of the officers arrested a tribal officer going to work in a state of which he should have been dead, according to a breath analyzer test. Okay. Now, whether or not this man was actually out on duty I really doubt, but I am saying these are the stories that come out.

Okay. We have instances where guys have stopped an individual, if there was some beer and they took it. Later on they saw these same individuals drinking said beer just a matter of a short time later. I am not going to say it's the same beer, but they were drinking on duty.

All right. If you take my wife going down the road at night sometime, who is to say if maybe one of these officers who will stop the individual has not been drinking, who is to say exactly what he would do? If she is not home at an appointed hour, I begin to wonder where she is at. If I can't find out—

MR. ALEXANDER. Do white police officers drink in this State?

MR. SCHULZ. I would imagine some of them do. I am just saying, you asked me on my particular reservation and I'm just answering that particular question. Therefore, in view of the *Oliphant* decision, in view of the lack of communication of whether or not they have a

working agreement with the county, I feel that these individuals do not have the authority to stop me.

MR. ALEXANDER. Are you in Bennett County?

MR. SCHULZ. No, I am in Shannon County.

MR. ALEXANDER. If Shannon County were to enter into a cross-deputization agreement with the Oglala Sioux Tribe, would you have any problem being issued an arrest citation, assuming it's appropriate, by a tribal police officer?

MR. SCHULZ. No problem whatsoever. I think they have got very qualified officers. I am not saying that. I am just saying that in instances that you hear—now these may be fabricated stories—all I am saying is this is what I have heard and this is what I have advised my wife to do.

MR. ALEXANDER. Does your organization try to verify these stories that seem to create some apprehension, at least on your part?

MR. SCHULZ. On two occasions, yes, we did. And we verified both of them.

MR. ALEXANDER. Did you bring that to the attention of the Oglala Sioux Tribal Police?

MR. SCHULZ. No, I did not.

MR. ALEXANDER. Do you think it would be an appropriate thing to do?

MR. SCHULZ. Perhaps it should have been. At that particular time it was not done. At this point in time, there is very little communication. I hope with the new tribal administration I think we're seeing the beginning of some more communications between the non-Indian and the Indian factions there. And I think eventually we're going to work out some of these problems. But under the previous administration, there was none. They absolutely refused to even recognize any authority whatsoever outside of their own. And I think that once you have an action there is an equal and opposite reaction, and I think, in this respect as to the law enforcement officers, this is where some of this has come from.

MR. ALEXANDER. Mr. Freeman, would you have a problem with a cross-deputization agreement in your county with the Cheyenne River Sioux Tribe? Would you have any problem being issued a citation?

MR. FREEMAN. Yes, I have considered it and it's been recommended over 3 years and tried over various periods of time with the proviso that each party can sever the agreement with 30-days notice, 12-hours notice, or in case of intoxication with no substantial—

MR. ALEXANDER. What would your problem be?

MR. FREEMAN. Well, many. One, that I compromise my American heritage of judicial remedy before a representative form of government inasmuch as the people that enter into a bargain with a purely racist form of government have diluted my voice in the government by giving these citizens a representative voice plus a tribal voice.

MR. ALEXANDER. Well, I would be curious. This morning Chief Fools Crow talked about the treaties the United States had made with the Sioux Nation, a series of treaties and the promises that were made in terms of land and government and so on. What you're essentially speaking about is treaty abrogation. Do you have any problem with abrogating the promises that the United States entered into with the various Sioux Nations in exchange for vast amounts of land on this continent?

MR. FREEMAN. I think the people that are involved in public dialogue surrounding the issues presently in South Dakota limit their history from 1868 to date. My study of history indicates that the Sioux crossed the Missouri River in the early 1800, decimated the Mandans—

MR. ALEXANDER. What is the pertinence of that?

MR. FREEMAN. The brutality that mankind shows to his brother is not limited to a white-Indian relationship.

MR. ALEXANDER. Yes, but the question, sir, was the United States entered into treaties with the Sioux Nation and with some of the individual bands a series of treaties, and tribe's governmental powers are recognized in them. The Supreme Court within the last month in a case after *Oliphant* clearly recognized tribal authority at least in terms of its own membership. Some of the other issues are open. What you propose and what your organization has proposed in its literature suggests as an appropriate remedy that Indian tribes be terminated and be at best a social collection—am I reflecting your view correctly?

MR. FREEMAN. I think you are right, inasmuch as you have eliminated the tribal vehicle that provides them a shelter that is not available to the balance of the United States citizens. Now we are not going to insist or even suppose that any form of government or resident go down and kick down the houses of the Pueblos that are the oldest continually inhabited residences in the United States.

MR. ALEXANDER. But do you think the Taos Pueblo should have governmental powers?

MR. FREEMAN. The freedom of choice must be made available to those citizens of Indian ancestry whether they want to belong to the tribe or whether they want to depart from it. And that is where my concern is based, that these people are not afforded the opportunity to exercise freedom of choice. There is a halo or aura of intimidation that prevails as long as the United States Government underwrites the expenditure of tribal government at the balance of society's expense.

MR. ALEXANDER. Again, those were obligations, as it's been stated, that were entered into by the United States. You're recommending that the United States not fulfill those obligations; is that correct?

MR. FREEMAN. I am basing this proposal, and this is purely an individual opinion which I am entitled to, upon certain Supreme Court decisions, particularly *Lone Wolf versus Hitchcock* and again it is set down in *Rosebud versus Kneip* that the United States Government and



Congress has the authority to abrogate the treaties, any or all part, at any time they desire and that they begin piecemeal to abrogate these treaties and try to bring these individual citizens into the mainstream of society as painlessly as possible.

MR. ALEXANDER. Without discussing Congress' power or the extent of Congress' power under the cases that you cite, it is a policy issue whether it is a wise thing for Congress to do, and Justice Frankfurter said, "Great men and great nations should keep their word." There was a very strong statement earlier this morning that our people all around the State continue to hear: that these are obligations of the United States to support and sustain these governments. And I just wanted to be somewhat clear that in fact what you're recommending is that these governments be terminated.

MR. FREEMAN. I think that it is more important that the Government of the United States keep its agreement with the total population of the continent, equal protection before the law, than it is to honor an outdated treaty that has already been compromised on many occasions for the general welfare of the people involved, as in *Lone Wolf versus Hitchcock*.

MR. ALEXANDER. Why is the treaty outdated?

MR. FREEMAN. It was made under a time duress for the Indian peoples. It was made by the War Department rather than Congress, authorized by the War Department to enter into the treaty. The treaty was a save-face situation for the defeated, fatigued, demoralized tribes.

MR. ALEXANDER. Would you be in favor of the President appointing a new treaty commission to negotiate a new set of treaties at this point?

MR. FREEMAN. I think this would run counter to the President's present inclination. His inclination seems to be to desist from interpretation of old treaties, citing the Panama Canal issue. And quite frankly, when we are viewing it from an international perspective, the negotiators that would be involved in negotiating the treaty would not necessarily have the best interests of myself and my neighbor of Indian ancestry at heart so that we might survive in the economic circus of today.

MR. ALEXANDER. The Cheyenne River Sioux Tribe has been steadily encouraging Indian ranching upon the reservation in the last 10 or 20 years. You're also a rancher in that area. One of the recommendations that we heard at an earlier hearing was that a person such as yourself and perhaps Mr. Schulz who were ranchers within—leaving aside the reservation boundary issue for a minute—within Indian county, should be bought out by the United States and lands be returned in a solid fashion to Indian tribes so it would be an enclave only for Indian people. What would your response to that sort of thing be?

MR. FREEMAN. Objectionable for several reasons. Incidentally, I offered my ranch in a block with three other ranchers for sale to the Indian tribes. I thought, if this is your attitude, and I being of a

nomadic instinct anyway, possibly more of an American Indian by nature than by blood having moved up and down the Great Plains three times, it isn't objectionable for me to move again. I find that it's exhilarating. So I said, "Well, we'll sell if this is your proposal. I don't want to live where I am not accorded a representative voice in the government that has no jurisdictional powers."

The BIA rushes in with four-wheel drive vehicles and appraisers. I said, "Well, what is the advantage of the appraiser?" I said, "The price is on the land. I am willing to sell at a fair market value. I established the selling price." "Well, we are unable to buy unless it's appraised at that." "Well, it isn't appraised at your price or isn't available for sale at your price. I am in control."

They priced it; the BIA would loan the tribe the money to buy it under FHA contracts, but the tribes said the cost of the acquisition is prohibitive, that it won't support itself. So the tribal council said, "We do not want to buy it even though the funds are available."

MR. ALEXANDER. Assuming the administrative problems could be solved, you would be willing to leave the reservation area if you could get a fair market value for your ranch; is that essentially correct?

MR. FREEMAN. Not necessarily on a day-to-day basis. One day your emotions are negative and one day positive. But to test the mettle of the philosophy and prove it in default, I exercised that option and proved it in default.

MR. ALEXANDER. Mr. Schulz, what is your view on the land reacquisition question that I asked of Mr. Freeman?

MR. SCHULZ. Okay. I think perhaps maybe a little background on how the non-Indians actually came onto this reservation. I talked to a guy who entered the reservation in 1907 and he ran a small store for a while and sold some things. He gave me in a capsule, you know, really how this whole thing came about. I realize I was supposed to have let you know ahead of time, but I would like to have this entered.

MR. ALEXANDER. Certainly we will take it for the record. Mr. Chairman?

CHAIRMAN FLEMMING. We will be very happy to accept it as an exhibit to be entered in the record at this point.

MR. SCHULZ. It is signed and notarized. But anyway it goes into briefly how they were encouraged to come into these areas. I have talked to some older people who moved into this area and they said they remembered seeing ads in some papers, something to the effect that, "We have got the land, you bring the plow," encouraging white farmers to come to these areas and utilize the land. There was problems. There was submarginal land where these people couldn't—that they come in and bought this land; how the Indians was given patents on his land. But like I said, this is covered in this short statement.

Getting on with that, we are here, we bought and paid for this land in good faith. I, like Jack, think that on a voluntary basis, if we de-

cided we wanted to sell the land, I think that the tribe should have an option to come in—or an opportunity, not an option, but an opportunity to come in, in the marketplace and try to buy it. I don't think—and what I would balk at is having the Government come in and say, "You shall." I think anytime anybody comes in and tells me "You will," I am going to start wondering why. But basically, no, I wouldn't have any objections to the tribe buying the land, but I think that under a sale of this nature if they agreed that fair market value was the only area in which you can talk. As far as I am concerned, you can't talk about the price that this land was purchased because economic conditions have changed tremendously since then. This again is discussed in this statement. But I would have no problem, no.

MR. ALEXANDER. One final hypothetical question for both of you.

Assuming you live next to an Indian reservation in another part of the country that was solely owned by the tribe and almost exclusively inhabited by Indian people and any non-Indian person on the reservation was probably there at the sufferance of the tribe, you drove through that reservation and you were speeding. Would you have trouble with that tribe exercising jurisdiction over you?

MR. SÉHLÜZ. You're talking about a simple speeding ticket?

MR. ALEXANDER. Simple speeding ticket. Well, I didn't want to infer that you would perhaps do anything else, but you can extend it if you will.

MR. FREEMAN. You would like a response from—

MR. ALEXANDER. From both of you gentlemen.

MR. FREEMAN. You stated the question was hypothetical and I hope the answer will be taken in the same vein. And I think it is an area that we must discuss in view of the *Oliphant* decision.

There is a difference between an opinion or conclusion based on the need for social morality and one for representative form of government. And this has been a strong point of contention in any public gathering. The individual that is the perpetrator, the speeder, is cited. He can be cited through citizen's arrest or tribal arrest. Now if he agrees to tribal jurisdiction of his violation, he has agreed to a remedy that is not necessarily a representative government inasmuch as it excludes all nonmembers from a voice in the government. That is the point of grievance that I would refer to at this point.

Now should this government develop a program whereby all of the residents of the particular community without regard to race were allowed a voice, then you have a true representative form of government and an option and a just right to jurisdiction of the—

MR. ALEXANDER. Okay. Mr. Freeman, I believe my hypothetical involved a reservation exclusively inhabited or almost exclusively inhabited by Indian people. In Montana, and you're going to California and you drive through it and you go too fast, should that tribe be able to do anything? Should it have governmental powers? Is it different than speeding in Idaho when you live in the State of South Dakota?

MR. FREEMAN. Yes, because it is a racist form of government. It excludes all other citizens from a voice.

MR. ALEXANDER. Mr. Schulz?

MR. SCHULZ. Well, if I knew it was a reservation I would probably go around it. But basically, I think when you travel through another State you realize that all the people have a voice and most States have very similar types of speeding violations or fees or fines, etc. You know that the court system is very similar. Under the court system, as I understand it, of the Oglalas any fines collected, etc., go into a general fund supposedly for the benefit of all the people. Therefore, those administering funds have a direct interest there in fines levied and/or collected.

MR. ALEXANDER. That is not an uncommon circumstance, is it?

MR. SCHULZ. Well, most of it goes, in other than State courts, goes in to finance the operation of the system there, not into the general fund and this is one of my points of contention. And otherwise if I knew that it was the law and that if I had a system of appeal, if I felt that I was wrongly arrested and fined, that it would go into the State's appellant system, that I could be fairly tried, then no, I wouldn't have any objection.

MR. ALEXANDER. Do you think you could be fairly tried in an Indian court?

MR. SCHULZ. At the present time in Pine Ridge, I don't believe I could.

MR. ALEXANDER. Could you be fairly treated bringing civil litigation in a debt collection procedure in an Indian court?

MR. SCHULZ. At the present time, no. And I will back that up. Our family owns a clothing business in Gordon, Nebraska, and there have been Indian people that work there. My sister manages it for us and we have had some problems with collections. And they had previously made a phone call, this was the previous administration, on this particular point and they have refused to do it. And I see that from some testimony in Rapid City here a couple of days ago, some 60 cases of welfare fraud have been presented to different tribal courts with no action. And I talked to bankers in Gordon, Nebraska, in fact my banker, and he has indicated problems of, you know, this type of collection.

MR. ALEXANDER. But you have never been in the court yourself?

MR. SCHULZ. No, I haven't. And at the present time it's very doubtful that I would go under the stipulation that I have no voice in that government and I don't think I should be subject to those laws.

MR. ALEXANDER. Thank you. I have no further questions at this time.

CHAIRMAN FLEMMING. Ms. Freeman?

COMMISSIONER FREEMAN. Nothing.

CHAIRMAN FLEMMING. Mr. Nunez?

MR. NUNEZ. Nothing further.

CHAIRMAN FLEMMING. Dr. Witt?

DR. WITT. Mr. Schulz, you indicated that your organization has had but one semiconfrontation since, I guess, 1974. What does your self-defense organization do with the rest of its time?

MR. SCHULZ. We just go around in the business of trying to make a living, pay our bills.

DR. WITT. The organization itself does that?

MR. SCHULZ. The people in it because the people are the organization. We have had a couple of meetings to discuss problems and current events and the issues that are in the problem areas so that people are aware of what is going on in the country, not only in our local area, but as well as other areas of the country, so people are aware of what is happening, what the tribes are doing or attempting to do in court cases, so people are aware or at least hopefully aware of what is happening.

DR. WITT. So you have regular meetings; it's not just a matter of anticipating a confrontation situation that you get together?

MR. SCHULZ. Technically, we haven't had a meeting for probably a year and a half or something. It's been quite a while since we have actually called a regular meeting. As the thing, as Wounded Knee has quieted down so people's emotions have quieted down and the organization is still there, but it's practically, you know, at this particular point in time it doesn't really function. We don't have regular meetings per se. If something comes up that we feel should be discussed whether it be a court case or whatever, we will call a meeting and people will come that are interested in it and we will discuss it.

DR. WITT. It must be difficult to hold membership if you haven't had a meeting in a year and half time, for instance?

MR. SCHULZ. It is. Most of the people are local people, like I said, and like human nature as things die down peoples' memories fade and so does their participation, etc.

We had a little deal here a short while back with our fire department that got people a little excited again. So the participation came right back up and we called a meeting about the thing. So basically you are right. It's a very loose-knit organization, just people that are farmers and ranchers in that area and people that are concerned about their lives, their families, and their property.

DR. WITT. Would you care to tell us about the fire department incident?

MR. SCHULZ. Well, we have a local fire department that is a county-wide department in Shannon County. I believe it's 1.3 million acres. According to State law, their duty is to serve that entire area. Also in that reservation the Bureau of Indian Affairs has some firefighting units. In the past they have been somewhat ineffective. I know at one time they had 12 units and only 1 was running.

We respond to calls all over the reservation. It's a volunteer department. We have received county funds because only about 14 percent of it is taxable and at one particular point in time I think our payment,

if you want to call it, or fee from the county was only \$1,200, and that doesn't go very far when you talk about insurance and bills that the fire department runs into.

So therefore we have a firemen's feed, a fund-raising event. We sell tickets and we give half of it back. We have some drinks or some beer if they would like a beer or coffee or whatever they would like to drink. If the guys want to sit down and play some cards, they sit down. It's more of a social event, and proceeds go to the fire department. In the past we have raised \$1,000 sometimes and this goes a long way to paying some bills and making repairs on fire department. And this has been an annual thing.

So at any rate when this particular deal happened, the tribe came in and they were going to raid it. It was claimed first that it was a fund raising for one of the other candidates, then it was a fund raising for our interstate group, and there was an attempt made to come in and take names, etc., I think that, you know, without any explanation of what was going on. And I kind of got a sneaking suspicion that that may perhaps violate one's civil rights.

So therefore it proceeded on. We called our attorney general and he indicated he would come down and kind of check it out and see what was going on. They wanted to confiscate all the beer so they took it out. We took it back in, said we felt there should be a search warrant and an explanation of what was going on.

So in the interim they did take a couple empty kegs of beer and went ahead up, about a third of a gallon or about a third full, it was, and that was about the size of it. And then there was going to be prosecutions and the United States attorney refused to prosecute because he felt that it was essentially a fund raising for a volunteer fire department. He recognized the fact that volunteer fire departments all over the country have these types of functions to raise money and not only fire departments but other types of fraternal organizations. Basically, nothing has come of it, but the threat was there. In my opinion it was a real poor move on the part of the tribe because it is the Indian people perhaps in the tribal land that received by far the greatest benefit from that fire department. So it's—I felt it was really a very poor move. It was, in my opinion, a form of harassment. I just think it was very, very uncalled for under the circumstances. It would really tend to hinder relations between Indians and non-Indians.

I am not saying that there was only non-Indians who are members of the fire department because we have quite a few members of the fire department who are also tribal members. There were a sizable number of tribal members who were there helping to support the fire department.

DR. WITT. I guess I didn't pick up on the reason the so-called raid was made or what was the reasoning on the part of the tribal officials?

MR. SCHULZ. Okay. First of all they claimed it was a fund-raising event for another tribal president candidate. And then it came out that

it was a fund-raising event for our interstate group, both of which were erroneous. The basis for their contention was it is illegal to have beer on the reservation.

DR. WITT. Is it?

MR. SCHULZ. Technically, probably you're right, yes, it is. But if that is the case, beer in your home is a violation, and I got a sneaking suspicion that if you go to most of the homes, whether they be Indian or non-Indian, you're going to find a six-pack of beer sitting around in the home. If that is the case, beer at brandings—because that is a tradition all over the western part of the country. You invite your neighbors in and help you brand and furnish the beer. If that is the case, that is in violation. So technically, yes, it is in violation.

DR. WITT. It was a violation of the ordinance, I see.

MR. FREEMAN, clarification on something you said early on in our discussion this afternoon. I think I missed the point and I wonder if you would clarify it for me.

You were discussing your background in Texas and your opportunity to know and work with Mexican Americans. You spoke of your time in World War II, I guess it was, in the French sector of Germany dealing with German citizens; am I right so far?

MR. FREEMAN. Yes.

DR. WITT. And I think you were drawing a point from your description of your personal experience and I think particularly that derived out of your German experience. I think I failed to pick up on it and I wonder if you would clarify it for us?

MR. FREEMAN. I think the point I was trying to make that the difference between humans, the variation, you know, in approach, comprehension, preference, is greater within the race then it is between the races. We have a saying in the livestock industry that this gentleman prefers Angus cattle, and I prefer Hereford, he prefers Limousin. But when you take the whole thing and analyze it, there is more difference within the Limousin breed, there is more difference within the Angus breed and the Hereford breed than there is between the breeds.

Now if we place this analogy alongside that of human behavior, then there is a wider variation of preference within the Indian race of people and within the German race and the Spanish American and the Caucasians than there is between us.

DR. WITT. And so your next point would be what?

MR. FREEMAN. That our controversy should not necessarily always be based on races or race identity. Our needs in this area should deviate from identifying everyone as to race prior to making the recommendation for remedy. And thus far no one will discuss the problem until you draw the line and identify your race.

DR. WITT. Thank you for helping me.

MR. FREEMAN. Now, to further clarify—

CHAIRMAN FLEMMING. I think that is in response to the question that was addressed to you. Unless you feel that it's necessary to amplify—I mean, in my point of view that does round out the record in responses to that question.

MR. FREEMAN. If the Chairman would allow me, I felt that I was denied the opportunity to respond to the gentleman's question regarding the enclave theory. I said I had—

CHAIRMAN FLEMMING. Counsel's question?

MR. FREEMAN. Yes. There were many objections and I was allowed to express only one objection based on testing the mettle of a proposal that was denied, and I think there is a very important issue of inverse discrimination here that will surface if I am permitted to respond either presently or later.

CHAIRMAN FLEMMING. Well, I was going to suggest that if you feel that you do want to make a more complete response to counsel's question along that particular line, we would be very happy to have you provide us with a memorandum along those lines and we would be very glad to make it a part of the record at this particular point, and the Commission would be very happy to consider it if that is satisfactory from your point of view.

MR. FREEMAN. In what fashion will I be accorded this privilege? I mean via registered mail or vocally?

CHAIRMAN FLEMMING. No, you can develop a memorandum and transmit it to the Commission. You can address it to me as Chairman of the Commission and I will see to it that it is made a part of the record of the hearing at this particular point and that it is in response to the question that was addressed to you by counsel, if that is satisfactory.

MR. FREEMAN. Thank you for the courtesy.

CHAIRMAN FLEMMING. I was about to say that I feel both Mr. Schulz and Mr. Freeman in responding to the questions addressed to them by counsel have set forth their position on the issues that confront us in a clear manner, and we appreciate your being here and being willing to present your point of view in response to the questions addressed to you by counsel.

Thank you very, very much.

This hearing will be in recess until tomorrow morning at 8:30.

[The hearing was recessed at 5:50 p.m.]

#### **Morning Session, July 28, 1978**

---

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

MR. LEVIS. Would John King, Beatrice McLean, Stan Smith, and Walter Schamm please come forward?



[Ms. McLean, Mr. Schramm, and Mr. Smith were sworn.]

**TESTIMONY OF BEATRICE McLEAN, FORMER COMMUNITY HEALTH REPRESENTATIVE, WINNER, SOUTH DAKOTA; WALTER SCHRAMM, BUSINESSMAN, WINNER; AND STAN SMITH, MAYOR, WINNER**

CHAIRMAN FLEMMING. Appreciate your being with us.

MR. LEVIS. Starting with Mrs. McLean, would each of you please state your name, your address, and your occupation?

MS. McLEAN. Beatrice McLean, I live in Winner, South Dakota, in the trailer court, and I am a housewife right now.

MR. LEVIS. Mr. Schramm?

MR. SCHRAMM. My name is Walter Schramm. I am in the retail furniture business. I live in Winner, South Dakota.

MR. SMITH. My name is Stan Smith. I'm from Winner, South Dakota, and I am in the restaurant business.

MR. LEVIS. Thank you.

Mrs. McLean, how long have you lived in Winner?

MS. McLEAN. Well, I was born and raised there, but we moved to Dallas, Texas, in 1965 and we stayed there until 1973.

MR. LEVIS. And did you move back to Winner at that time?

MS. McLEAN. Yes, we did.

MR. LEVIS. When you came back to Winner did you work at that time?

MS. McLEAN. Yes, I did. I was a community health representative.

MR. LEVIS. And how long were you a community health representative?

MS. McLEAN. From 1974 up until April of this year.

MR. LEVIS. What exactly does a community health representative or a CHR do?

MS. McLEAN. We make rounds in the community and if someone is sick or needs to be hospitalized or something, we take them to Rosebud Hospital. We provided transportation and take them there, see what is wrong with them.

MR. LEVIS. Were you a CHR then for the tribe?

MS. McLEAN. Yes.

MR. LEVIS. In your position as a CHR did you have an opportunity to visit the homes of the Indian members of the Winner community?

MS. McLEAN. Yes, every week I had to make a home visit on every Saturday.

MR. LEVIS. Mrs. McLean, in making the rounds of homes in Winner, do the members of the Indian community live all around Winner or do most of them live in one section of the community?

MS. McLEAN. We mostly live in one section of the community. There is very few families that live in other parts of the town.

MR. LEVIS. Could you describe where this is and what the housing conditions are like?

MS. MCLEAN. Well, everybody calls it Indiantown. And it's the north side of Winner, and the housing there is very terrible. There is no sewer in two streets in the town, and there is some trailer courts where they are trying to make them move, seems like to me all the Indians anyway, and the trailers are really terrible. I was making rounds last summer there and some of the sewer backup and the sewer gas was getting all the children sick and the water is really terrible there and some of the trailers don't have water right now.

MR. LEVIS. Are these trailer courts in what you call Indiantown?

MS. MCLEAN. Yes.

MR. LEVIS. And how large of a community is Indiantown in relation to the rest of Winner?

MS. MCLEAN. Maybe it's about like about a third or something of the whole town.

MR. LEVIS. So most of the Indians that live there own or do they rent?

MS. MCLEAN. They rent and for the conditions of the housing I don't see how they can get rent out of them. Like \$150 they are charging for trailers that don't even have the sewer working or the water is bad, it's always leaking, and I hear that in one trailer court that this lady told me that the mayor had her water shut off because it was leaking all the time and the people who owned it wouldn't fix it. So they just completely shut the water off there.

MR. LEVIS. Have the members of the Indian community gone to the city or the landlords to improve these conditions?

MS. MCLEAN. Well, we try and they—most of them say, "Well, we'll fix it," and they say, "Well, we're not going to pay the rent until you fix it." But they never do. And they still get their rent. So it just seems hopeless. And the only thing that I am really happy about now is that we're getting housing finally. Southeast of town there, we're getting some houses built for the Indians. And I hope it's a lot better than that we have been paying the rent for what we are living in right now.

MR. LEVIS. Is this housing within the city limits?

MS. MCLEAN. It's outside the city limits.

MR. LEVIS. Who provides this housing?

MS. MCLEAN. Let me see. HUD is providing the houses to the tribe and the tribe makes a selection of the people who live there, but they have to meet certain requirements.

MR. LEVIS. So the housing is then on tribal land?

MS. MCLEAN. Yes.

MR. LEVIS. You indicated that most of the Indian members of the community live in the northwest section of town.

MS. MCLEAN. Yes.

MR. LEVIS. Why is that?

MS. MCLEAN. Well, most of the other people, non-Indian people live sort of south of town in the newer housing project like, and they buy their own homes, and it seems like they make it impossible for Indian

people to try to buy a home by how high the house costs. And the Indian people—just seems like they don't want us there. So we just live where we can get a house.

MR. LEVIS. Have you or anyone you have known ever experienced any difficulty in trying to get housing in these sections or even some of the trailer courts?

MS. MCLEAN. Yes, it's—we have to have—we bought a trailer in one of the trailer courts there, and we had to have the owner talk to the owner of the trailer court. He really had to talk to him just to let us leave a trailer there and live there.

Then just about 2 weeks ago they doubled the rent on an Indian lady living there and they forced her to move out because she couldn't pay that rent. We were paying \$30 a month for parking space, and they raised hers to \$60 a month and she was paying \$150 rent for the trailer in the first place and she just couldn't afford it. So she just had to move out; she's staying with relatives right now.

MR. LEVIS. To the best of your knowledge is there any organization in the city that you can go to when you have these problems?

MS. MCLEAN. No, I don't know of any.

MR. LEVIS. Thank you. Mr. Schramm and Mr. Smith, both of you have been mayor and, Mr. Smith, you presently are mayor of Winner now. Is there anything being done to improve some of the conditions or any attempts that have been made to improve some of the conditions that exist in Indiantown?

MR. SCHRAMM. At the moment there is a request into the project to put in curbs and gutters, sewer, water, sidewalks in that section of town. I don't refer to it as Indianville, but the northwest corner of town.

MR. LEVIS. Mr. Smith, is that application still before HUD or has some action been taken?

MR. SMITH. It's still before HUD. I heard it's been turned down, but we never received any confirmation of it.

MR. LEVIS. If it's been turned down, did HUD give you any indication at all why it had been turned down?

MR. SMITH. No.

MR. LEVIS. Was this the first application that was submitted by the city to HUD for improvement of sewers, gutters in that portion of town? Do you happen to know?

MR. SCHRAMM. In my time, as far as I know, that is the first one when supposedly money would be available to improve such a thing. We were willing and ready to apply for and make any improvements that are possible, anytime.

MR. LEVIS. How is curb and gutter provided in Winner?

MR. SCHRAMM. Curb and gutter is paid for by the property owner.

MR. LEVIS. Do either of you have an opinion on the new housing that is going out southeast of town that has been built by HUD in cooperation with the tribe, what effect this will have on the Indian community and on the community in Winner?

MR. SCHRAMM. I don't really have an opinion on it. They are very nice houses. None of them are occupied. I think they were arranged for—partly at least—during the time I was mayor and we were never contacted nor talked to. They just decided to put them out there and that is the way it is.

MR. LEVIS. Mr. Smith?

MR. SMITH. I don't know anything about it myself. I have drove by them.

MR. LEVIS. Do you think it would be better if the Indian community moved out to the housing outside of town or it would be better if the Indian community remained in the city of Winner?

MR. SMITH. I have no opinion as to that. I am sure they are nicer houses than what they live in now.

MR. LEVIS. Has the city done anything concerning the houses in the northwest section? Anything the city can do as far as housing codes to improve the substandard housing and some of the vacant lots there or the vacant homes that are presently in that section of town?

MR. SMITH. Well, I don't really know that much about law. I don't know if we can or not. We had a man down there the other day from the State sanitation department looking at the trailer court, I guess it's the one she's referring to, and shut the water off. I didn't know anything about it at the time. When I found out about it we turned it back on again right away, and I had him down there and showed him all the water and stuff that is running around in there, and we are going to try to get something done with it to get it straightened out.

MR. LEVIS. Have you ever received any complaints concerning the fact that the Indian community had difficulty in renting or buying homes in other portions of Winner?

MR. SCHRAMM. I think that they are buying homes in other parts of Winner. In fact, I know a number of Indian families that live in the same areas that other people do. However, you know, in order to buy a home in another section, in any place, you have to, like we do, well, somehow get the money to buy the house. If I was selling houses I wouldn't want to sell it, and neither would you, to anybody that didn't have the downpayment or possibly couldn't make the payments. That is normal American procedure, isn't it?

MR. LEVIS. Mrs. McLean?

MS. MCLEAN. I don't know. I really don't believe that, because it is really hard for an Indian to get any kind of credit in Winner for Indians, and as far as there is talking about trying to improve it down there, I don't think they are at all. It's been the same—before I left for Dallas and I came home and it's still the same; in fact, I think it's even worse because of those trailer courts. The kids were getting sores and everything from not having water and that is bad. That shouldn't be that way.

MR. LEVIS. You talked about concerns in getting credit. What type of problems are you talking about?

MS. MCLEAN. I don't think there is too many Indians in Winner that can go anywhere and get any kind of loans or anything. The only way we ever got credit was we always had to have my grandmother sign for us, cosign for us, and that is the only way we ever got any kind of credit in Winner. Otherwise they just refuse it.

MR. LEVIS. What type of credit are you talking about?

MS. MCLEAN. Like through a bank or anything like that, a bank or finance company or even at the stores where you can charge, they won't let you charge at any place.

MR. LEVIS. Have you experienced difficulty in cashing checks?

MS. MCLEAN. Yes, I have. I just almost refused to—I mean after about 2 months of having a checking account and I was in the city of Dallas and I could cash them anywhere, but when I came back to Winner I just about gave up having a checking account because it's so hard to cash checks anywhere. There is only a few places like maybe at a liquor store, an individually owned store in town, a market where I could cash a check. And sometimes if I didn't have any money for the weekend and I couldn't cash a check, well, I was just without money for the whole weekend.

MR. LEVIS. If you need funds then where would you get the money? Is there anyplace at all?

MS. MCLEAN. Not really. We just have to make arrangements ahead of time to have money, you know, on hand.

MR. LEVIS. Mr. Schramm, as I understand you own a furniture store and have since 1946. How do you determine who is going to qualify for credit for a furniture purchase?

MR. SCHRAMM. Anybody who has either a previously established credit rating, regardless, we don't pay any attention to who they are. We ask them questions like where do you work, do you have a job so that you can make your payments. We try to protect ourselves to that we have some chance of getting the money for the items we sell. And just ask them normal questions whether they can pay, and then we have to make the determination whether it's a good risk or not.

MR. LEVIS. Is there any difference between people who live in Tripp County, which is off the reservation, and those who live in Todd County, which is on the reservation?

MR. SCHRAMM. We do business with both of them, both on open accounts and on contracts and regardless of race, color, or whatever.

MR. LEVIS. Do you have loans that are not paid, contracts?

MR. SCHRAMM. Oh, yes, we have some bad contracts.

MR. LEVIS. What do you do in that case?

MR. SCHRAMM. At the moment I have tried to be a very nice fellow and a gentleman and talked to them and hope they will pay. I have never started any court action against anybody and I am not sure whether that is a good or bad procedure.

MR. LEVIS. This is both on the reservation and off the reservation?

MR. SCHRAMM. That is all people.

[Mr. King was sworn.]

TESTIMONY OF JOHN KING, EXECUTIVE SECRETARY OF ROSEBUD SIOUX  
TRIBE, WINNER, SOUTH DAKOTA

MR. LEVIS. Mr. King, would you just state your name, your address, and occupation?

MR. KING. My name is John King. I'm from Winner, South Dakota, and also from the Rosebud Sioux Tribe.

MR. LEVIS. And what is your occupation?

MR. KING. I am executive secretary for the Rosebud Sioux Tribe.

MR. LEVIS. Mr. King, we have been talking a little bit about housing conditions in Winner and also about the availability of credit, being able to live in Winner. And we would first be interested in your views concerning some of the housing conditions in town.

MR. KING. Well, I have been a resident of Winner, South Dakota, for something like 30 some years now. And the section of the town—I brought some slide pictures with me—

MS. MCLEAN. They said we couldn't show them.

MR. KING. That would show you the conditions of some of the houses the people are living in. Renting was one of the serious problems that Indian people have in Winner, South Dakota. Like, for instance, my family moved back there about 5, 6 months ago and they wanted to rent a house. We contacted five white people who had houses for rent, and they have always told us that, "Well, we just had some guy come down, you know, and check it out, so we don't know whether we can rent it to you or not." We call them back about a week later and they still have the house and say somebody's going to come down and check it out and they are still trying to rent it. And you know, I done this in front of witnesses. I made the phone call and I had the witnesses sit there and listen and I said, you know, "You can just watch and see for yourselves." I don't want to name any names of the particular individuals right now, but if you ever go to Winner, South Dakota—several of you maybe have been there—you notice that there are certain portions of the town only the Indian people live there. There is probably only one white family living on the corner of the street; otherwise the houses are inadequate.

I complained to the—what is your street manager? I complained to Turgeon [phonetic] that there was a seed company that completely blocked off the whole street with all kinds of seed. It turns into—I used to work there—it turns into a smelly substance that just completely smells out the whole place where the Indian people live. I turned that in twice and nothing has been done. It's still the same situation. It's still piled up there. He has got a junkyard right in the middle of town where Indian people live, where rats are just hanging around there. What he does is he put out poison, too, also inside of the seed company, and our dogs and our cats go over there and that is the end of it. I had nine pets being poisoned from that seed company, and I have turned this into Ray Turgeon [phonetic], I think his name is, and I asked him if he could clear that road because, if he

doesn't clear that road, all the water stops there and it backs up into the Indian community. And we have to walk through mud, through water, because of this situation.

In 1971, in the fall of 1971 Mr. John Fire, the late Mr. John Fire, sued the city of Winner because of the conditions of the streets. And to this—they reconditioned it around his house, put a couple culverts across his place and one on the corner where he lives. And they put in a couple of hydrants, but if you see the streets today they are worse then what they were when he sued them in 1971.

MR. LEVIS. You indicated that you had some slides concerning the housing conditions in Winner.

MR. KING. Yes, I did, but—

MR. LEVIS. Would you like to submit those for the record?

MR. KING. I would probably, yes, I would because the Federal court has copies of them anyway because those are the ones we showed Judge Boag. Yes, I would.

MR. LEVIS. Do you have those with you today?

MR. KING. Yes, they are—did I bring those over?

MS. McLEAN. Yes.

MR. KING. Okay. We'll get them. Okay.

The situation, renting situation in Winner for the Indian people, there isn't any. There is none to speak of. I think Mr. Tobin here can verify that. As a matter of fact, I got slide pictures to prove it.

And I think one of the other things that when it comes to renting is concerned, my sister, her name is Lavina Antone, sued the trailer court because they wouldn't allow Indians to live there. And she won, she won that case. So you can, you know, by that token you can imagine the situation in Winner, South Dakota. And I imagine when I get back there will be all kinds of police officers there trying to arrest me and the people who are here for what I am saying now, but you know, I will live with that when I get back.

MR. LEVIS. Mr. King, is it your feeling then that Indians are not allowed to live in certain sections of Winner?

MR. KING. I never seen an Indian live across Fourth Street, you know, there is Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, you name it, most of them live around Dakota and Iowa Street and on Liberty Avenue. And I have never seen them live any other place than that, you know, across Fourth Street, across the highway from Second Street. And like I say, today I can't rent a house yet. I have to live where the environment puts me, you know, the people—the way the people think, I have to live there. I could call around for the places that they have for rent and I think one of the tricks they have is you have to call *Winner Advocate* in order to rent a house and, if you have an Indian name like Gray Owl or whatever, then they don't contact you anymore. You don't get to contact the person you want to rent from. It's a bad situation. I don't care what anybody says. These people believe in, you know, generally they say they are Christian and

they have all kinds of churches in town. They believe in the constitutional bylaws of the United States, the 14th amendment, the equal protection of law; you know, they should practice these things. That way these people wouldn't have to live the way they are living.

We are constantly—every day we are met with some kind of a problem and how are we going to solve these problems if we go to—at one time in 1970, I think it was or—yes, '69 and '70—we organized, we called the mayor of the town—I forget who was the mayor at that time—and we sat down and we complained about police brutality. We complained about—we had documented affidavits, and a person by the name of Leo Cardenas from Denver's regional office, works for the human rights division, came down.

MR. LEVIS. Mr. King, are you talking about the Community Relations Service in the Department of Justice?

MR. KING. Yes, that's the one. And he came down and we sat down with the city officials and we demanded a few things. We demanded 12 things. We demanded that the city police officers that were going to be hired—we wanted three Indians on the hiring board and three whites. That's what we wanted. These 12 conditions were never met with. They just—the city of Winner completely forgot about it.

MR. LEVIS. This event that you're talking about, that happened in 1974?

MR. KING. Yes, 1974.

MR. LEVIS. And was there a grievance committee appointed at that time?

MR. KING. We did have—we had a grievance committee composed of 10 people. The grievance committee was composed—we developed it.

MR. LEVIS. When you talk about "we"—

MR. KING. Winner Indian Council group. They developed it because of problems we had in town. We couldn't go in a store without being followed every minute. While they were doing that, you know, the non-Indians were ripping them off. And we finally proved that by putting one of these radar things in there, when you take something you get caught when you come out. We finally proved it by that because they started arresting their own people. Then they took it out.

MR. LEVIS. The 10-member grievance committee that was formed in 1974, who appointed that committee?

MR. KING. The Winner Indian Council along with, I think, the mayor of the town at that time.

MR. LEVIS. And do you happen to remember the composition of that committee, if it was five Indians, five whites?

MR. KING. Yes, it was five Indians and five whites, but I don't remember.

MR. LEVIS. How long was that committee in existence and what were the functions of the committee?



MR. KING. For 1 year—I think it only existed for about a year. It was mostly the function of—it was if you had any problems within the—like for instance family problems—they had so many problems they couldn't handle. We had some problems where the kids were fighting and both of the families couldn't handle it so we brought them in and they talked to them and they solved the problems with them, you know, just problems in general in the society that you live in. And one of the things that, you know, these gentlemen should remember is we had a guy named Bellecourt escape from the Winner County Jail. At that time, I was a prosecutor for the Rosebud-Sioux Tribe and I received the call, and my sister told me that you better come home because they're searching every home in Winner, every Indian house in Winner.

So what I have done was—it takes me an hour and a half to get back to Winner—so I told them to just tell them to stay right there. You have to have a search warrant before they come into your house. I drove back there and, at that time, Tiny Williams was the sheriff—

MR. LEVIS. Mr. King, if you could just give us the overall impressions of Winner, we would appreciate it. We would like to stay away from particular cases.

MR. KING. Okay. Just like any other redneck town, how's that?

MR. LEVIS. You indicated that there was a grievance committee which was formed in 1974 and the Community Relations Service came in in 1974. Did the Community Relations Service make any recommendations such as the formation of the human relations commission in Winner?

MR. KING. Yes, it did.

MR. LEVIS. What happened to that recommendation?

MR. KING. It went as far as the city council and the city council didn't want to take any more action on it. And Mr. Cardenas couldn't force them to take any action on it, so it died there.

MR. LEVIS. Has there been any move since 1974 to create such a commission?

MR. KING. No.

MR. LEVIS. What would such a commission do if it were created?

MR. KING. Well, we hope to establish a communication between us, the police officers, and in general, the white population, the Indian, so that we have a better understanding of what is going on, you know, with the problems that exist.

MR. LEVIS. Mr. Smith and Mr. Schramm, both of you have been and are the mayor. Has anything been done or being done to deal with some of the issues that Mr. King talked about, in particular the creation of either a human rights commission or some kind of committee to deal with police relations?

MR. SMITH. No, not that I know of. I don't believe there is right now, no. We do have an Indian on the police force.

MR. LEVIS. How large is the police force?

MR. SMITH. Seven. Chief and six.

MR. LEVIS. During an interview that we had earlier you communicated to me that you appointed, I think, two other council members to deal with hiring and firing police.

MR. SMITH. That is true.

MR. LEVIS. When was that committee formed?

MR. SMITH. When I took office.

MR. LEVIS. Would they deal with any complaints that would come down from members of the community?

MR. SMITH. Would they?

MR. LEVIS. Yes.

MR. SMITH. Yes, if they were asked.

MR. LEVIS. What is your feeling of the creation of a human relations commission? Do you think it would be a good idea?

MR. SMITH. I really don't have any opinion. No, I'm sure it probably wouldn't hurt anything.

MR. LEVIS. Such a move has not been made since you have been mayor?

MR. SMITH. No.

MR. LEVIS. Mr. Schramm, you were mayor for 2 years, in 1976 and the beginning of 1978. What are your feelings concerning the creation of such a commission?

MR. SCHRAMM. Personally, I feel it would be another committee to meet and argue and end up with the same answers we have got now. The city of Winner, contrary to anything you may have heard, is really not at all like some of the things you hear. The people there are equal as far as I am concerned. The police force in recent time had—I wish there was some way of referring to it other than to say minorities or Indians and so on—but they did have two Indians and a Negro on the police force. No problem at all, all good people. Two of them left because they had better jobs in Sioux Falls; another one was hired. We sent him to school in Pierre for training. The week that he got out of the training he decided not to go to Winner to work. He went to Kadoka. Another one left, and I don't think they know yet why he left. He just left and didn't show up anymore.

But we still have one on the police force and, as far as I am concerned, the police force does a good job. They are not antianyboday. They do what they have to do which is what a police force is for. And I can't believe that a lot of these things are going on that you sometimes hear about.

MR. LEVIS. Has there been any organization—this is to all of you—that has been formed to increase communication between the Indian and non-Indian community in Winner, any formal or even informal organization beside the grievance committee which was working in 1974?

MR. SCHRAMM. I don't know of any committee that has been formed or anybody even mentioning or requesting that it be done. The people are welcome, as far as I am concerned, to come to any council meet-

ing and air their complaints if they have them or whatever. And I am sincere in saying I believe that is true.

MR. LEVIS. Mrs. McLean?

MS. McLEAN. No, I don't think there is anything that [inaudible] help. There is no organization.

MR. LEVIS. Would such an organization help?

MS. McLEAN. I think it would.

MR. LEVIS. How would it help and how would you set it up?

MS. McLEAN. Well, I don't know. I just think that if we had an organization that they would listen to and really care about, well, we could get rid of a lot of problems.

Like right now we have down there in the Indiantown where we have a softball diamond and all the young kids play there every evening and the mosquitoes are so terrible that you can't hardly breathe without breathing some in. And I wish there was some way we could talk to the city of Winner to have them spray down there because they are getting sores from scratching the mosquito bites and all this. I don't know of anybody I could tell that would help.

MR. SCHRAMM. Mosquitoes are also in the south end of town or however you want to classify it, and of course there are certain rules about what you can spray with and that involves—that has nothing to do with it—but there are rules as to what you can or can't use to spray because of laws and toxification. Naturally, mosquitoes come with the wet year, and we are fortunate that we had a wet year last year and this year, and we are all in the same boat, I guess you would say.

MS. McLEAN. In Indiantown, though, there is nothing but swamp down there down by the railroad tracks. The weeds are just taller than I am. It's just nothing but swampland down there.

MR. LEVIS. And you said earlier there was some runoff that goes in that part of town?

MS. McLEAN. Yes.

MR. LEVIS. Is Indiantown the lower section of the community?

MS. McLEAN. Yes.

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

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Mr. Chairman, there is in the record of this morning's hearing a statement by one of the witnesses of concern that he might be subjected to some undue harassment as a result of the testimony. For that reason I would like to repeat for the record and to all the witnesses the statement that was made at the beginning of this hearing of yesterday. And it is as follows: 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 that we consider this to be a very serious matter and we will do all in our

power to protect witnesses who appear at a hearing. If there is any such intimidation, the Commission should be notified by addressing a communication or contacting immediately the Office of the General Counsel of U.S. Commission on Civil Rights, 1121 Vermont Avenue, N.W., Washington, D.C.

The next point, Mr. Chairman, there have been several allegations relating to what this Commission calls "shell case" problems, and I would like to request—in addition to violations of the Fair Housing Act, Mr. Chairman, I would like to request that the staff will forthwith transmit to the Department of Housing and Urban Development all of the allegations contained in this record of this hearing concerning violations of the Fair Housing Act with a request that HUD make an investigation and to determine the extent to which there is a pattern and practice of violating the Fair Housing Act.

In addition to that, the allegations with respect to the conditions concerning the swamp area should be brought to the attention of the Assistant Attorney General of the United States for Civil Rights, Mr. Drew Days, requesting an investigation of the Justice Department of those allegations.

CHAIRMAN FLEMMING. The Chairman rules that those steps should be taken by the members of the staff, and the Commission informed of the results of those actions.

COMMISSIONER FREEMAN. Thank you, Mr. Chairman, I have no questions.

CHAIRMAN FLEMMING. Mr. Nunez?

MR. NUNEZ. I have no questions.

CHAIRMAN FLEMMING. Ms. Witt?

DR. WITT. Mr. Schramm and Mr. Smith, what kind of funding did you have to pave the streets, to make curbing, and develop sewerage for Winner outside of the Indiantown area? And is there a reason why similar funding cannot be made available to Indiantown?

MR. SCHRAMM. Now, I don't recall that there was any funding made available for the other sections of town. At one time, as I recall, if I am correct, curb and gutter was not necessarily a requirement, and many people in all sections of town built homes and lived in them without curb and gutter, which is still true. This certain section of town is not the only section that doesn't have curb and gutter, and the city, to the best of my knowledge, has no ordinance that requires the sections that do not have curb and gutter to put in curb and gutter. As a result, there are sections, as I said, all over town that do not have them.

More recently an ordinance was passed requiring curb and gutter be put in any section of town that is brought in new and the improvement of streets which is being done. Anyone who now brings in a section of town in or a block is required to pay for, on their own, curb and gutter, sewer, pay their own costs. So there is nothing that is requiring that curb and gutter be put in on other peoples' property.

DR. WITT. My question of course included the curb, gutter, sewerage, and paved streets.

MR. SCHRAMM. I think I answered all those, or didn't I?

DR. WITT. I don't recall.

MR. SCHRAMM. Same way. Lots—you put in curb and gutter if you buy a lot, and if you rent from the city you pay for curb and gutter, your portion of the street, your sewer, your water tapping, your property, all of that is paid for by the individual who is building the house or buying the lot.

DR. WITT. It's my understanding that Indiantown is not necessarily owned by the occupants of the housing there but rather by owners who live elsewhere; is that correct?

MR. SCHRAMM. I am sure that there are people who own houses down there that don't live there. Some people make their part of their living or their living by owning rental property.

DR. WITT. And even it would be incumbent upon those owners to provide those things you mentioned?

MR. SCHRAMM. If it's required.

DR. WITT. I see.

MR. SCHRAMM. In the seeking of business, as I am sure you are all aware, you know, if you own a house and you only collect \$30 a month rent, it would be a very poor investment if you also had to put in curb and gutter and pay for it yourself and sewer. Not that there isn't—I think that all of the houses in Winner have sewer and water in them now. If there is a rare exception, maybe, but for the most part every house has sewer hooked up to it and I would say if there is an exception I don't know about it.

DR. WITT. Mrs. McLean?

MS. MCLEAN. No, there isn't. Every house isn't hooked up to sewers. The last two streets in Indiantown, they aren't. There is no sewer there at all. My grandmother lives on Liberty. She had to pay \$500 on her own to get hers hooked up to sewer.

DR. WITT. Does she own that home?

MS. MCLEAN. Yes.

MR. SCHRAMM. That is normal then.

MS. MCLEAN. But the rest of them don't have any. They have to use outdoor bathrooms.

DR. WITT. Mr. Smith and Mr. Schramm, from the descriptions we have heard this morning, it seems clear that Winner has an Indian ghetto. As mayor and as former mayor of Winner, how do you feel about this and, in view of the HUD grant turndown, what do you intend to do about it?

MR. SCHRAMM. I think you're premature in that Mr. Smith said this. He didn't say it was turned down. He said he heard that. He has no official statement. I don't know what the council or the people in the community will do if it is turned down. I thought they were very sincere in applying for it in the first place, trying to get it, and I have no reason why or if it's going to be turned down.

DR. WITT. Do you have any other plans should this one fail?

MR. SMITH. Not at the present, no.

DR. WITT. Thank you.

CHAIRMAN FLEMMING. Either Mr. Smith or Mr. Schramm, under what authority was the HUD application made? Was this the Housing and Community Development program or did you ask for use of funds under that particular program for this purpose?

MR. SMITH. Yes.

MR. SCHRAMM. The fifth district planning commission.

MR. SMITH. It came through the fifth district planning commission out of Pierre.

CHAIRMAN FLEMMING. I see. But you do not have any official notification as yet?

MR. SMITH. No, no.

CHAIRMAN FLEMMING. Regarding that particular application?

MR. SMITH. No.

CHAIRMAN FLEMMING. Mr. King, you are the secretary of the tribe. In that capacity are you familiar with the operating budget, the annual operating budget of the tribe?

MR. KING. Yes, I am.

CHAIRMAN FLEMMING. What is its order of magnitude?

MR. KING. Well, our annual budget varies depending on whether—the tribe sits down every year and we have a budget made up of Federal grants from the Bureau of Indian Affairs, manpower programs, for instance, CETA, as an example, and we also have about \$1 million lease income off our leases that is in our budget. Our budget is generally around \$3 million give or take \$100,000. But the way we figure the budget is we hire an accountant. We hire a computerized system and they work up the budget for us. We categorize entities of the tribe and each entity of the tribe, like for instance the ambulance service. We would find out what their budget was, you know last year, and we go according to what its needs are coming up and, if it doesn't need any, well, we'll go according to that too. Just like any other business, you know, our budget system—we have 84 entities of the tribe. We have probably 84 separate accounts and that is the way it works.

CHAIRMAN FLEMMING. How many persons does the tribe employ as a result of the operations that are financed these various ways?

MR. KING. Well, unemployment rate is 64 percent so I wouldn't know what the exact number of—but your unemployment rating on your reservation is 64 percent.

CHAIRMAN FLEMMING. Your employment—

MR. KING. Our unemployment rating, you know, people that are not working is 64 percent.

CHAIRMAN FLEMMING. Sixty-four percent of the employable persons are now working—

MR. SMITH. Not working.

MR. KING. Are not working.

CHAIRMAN FLEMMING. Are not working. Your unemployment rate is 64 percent?

MR. KING. Yes, the unemployment rate.

CHAIRMAN FLEMMING. At the present time. But as a result of the various grants and contracts that you have received, the tribe does employ directly some persons, I assume?

MR. KING. Yes, they do. Like for instance, the CETA program is a training type of program under HEW and, under this program, we do employ in each community something like 12 people in the larger communities, you know, like for instance, one councilman—I will give you an example. One councilman—like in my community I have two and we have 12 workers so, where there is a community of one councilman there is 6. Where there is a community of five councilmen, you know, where Ms. McLean comes from it's larger. But those HEW monies are received for that purpose, for training programs, and they do get salaries for them.

CHAIRMAN FLEMMING. Does a large part of the purchasing power that is created by this \$3 million budget result in business in the community of Winner?

MR. KING. No, it doesn't. Well, surrounding communities—see Winner, South Dakota, is—there is an ideal community which is an Indian community recognized by the Rosebud Sioux Tribe which is 17 miles north of it, okay? We have CETA workers there. We also have the community of Crow Creek which is 21 miles from Winner and those of us who live in town—okay, the money that we get from CETA workers, that we pay CETA workers, they all spend their money in Winner, and it's getting so that even people from Rosebud don't want to go shop in Winner anymore. So Winner doesn't get very much of the Rosebud business because they are scared to go there.

CHAIRMAN FLEMMING. Mr. Schramm, as a businessman in the community, do you feel the community is dependent to some degree on the income that comes from the tribe to the community?

MR. SCHRAMM. Without a doubt. Plus the fact they are welcome.

CHAIRMAN FLEMMING. Pardon me?

MR. SCHRAMM. They are welcome to come anytime they want as far as I am concerned. We treat them the same as anybody else. I do very nice business with people out there. I have a good relationship with them, exactly the same as the people from the east or the north or the south, makes no difference.

CHAIRMAN FLEMMING. So there is a close relationship between the economy of Winner and the operations of the tribe?

MR. SCHRAMM. I would say that. I wouldn't say it's the majority of our business by any means, but there is a close relationship. The people are—well, they come to Winner and buy all the time. Well, it's not true that people are scared to come to Winner, I assure you that.

MR. KING. There is only one catch to that. We have to cash our check in Rosebud because, when we go to Winner, no one will cash tribal checks.

MR. SCHRAMM. Untrue also. I have cashed them myself.

CHAIRMAN FLEMMING. Mr. Smith, do you care to comment on inter-relationship between the operation of the tribe and the economic life of the community?

MR. SMITH. I'm sure that—I'm in the restaurant business, and this lady here and John both—they both have been in the restaurant. I feel as I—we serve them. We have no quarrels with them. They probably have—oh, I would say a tenth of our business is Indian. We have no problems with them. We welcome them.

CHAIRMAN FLEMMING. Okay. I would like to make one request of your staff and that is before the record is closed on this particular hearing that we determine the nature of the application that was made to HUD and the result of that particular application.

We are very appreciative of your coming here and providing us with this additional testimony. Pardon me just a moment, one thing I did not make clear. There was a discussion on the slides that Mr. King brought, and we would be very happy to accept those slides and make them a part of the record of this hearing. All right, thank you very, very much for coming and providing us with your testimony.

Counsel will call the next witnesses.

MR. LEVIS. Will Mr. Charles Colombe, George Keller, Terry Pechota, Judge Marvin Talbott, and Tom Tobin please come forward?  
[Messrs. Colombe, Pechota, Tobin, and Talbott were sworn.]

**TESTIMONY OF CHARLES COLOMBE, MEMBER, ROSEBUD SIOUX TRIBAL COUNCIL; TERRY PECHOTA, ATTORNEY FOR THE ROSEBUD SIOUX TRIBE, MISSION, SOUTH DAKOTA; TOM TOBIN, STATE'S ATTORNEY FOR TRIPP COUNTY, WINNER, SOUTH DAKOTA; AND MARVIN S. TALBOTT, CIRCUIT JUDGE, WINNER, SOUTH DAKOTA**

MR. LEVIS. Gentlemen, starting with Mr. Pechota, would each of you state your name, your address, and your occupation.

MR. PECHOTA. My name is Terry Pechota, and I am an attorney at Mission, South Dakota, where I reside.

MR. TOBIN. My name is Tom Tobin. I am an attorney in Winner, South Dakota, where I reside.

MR. TALBOTT. My name is Marvin S. Talbott. I live in Winner, South Dakota, and I am an attorney and presently a circuit judge.

MR. COLOMBE. Charles Colombe. I am a member of the Rosebud Sioux Tribal Council. I live at Mission, South Dakota.

MR. LEVIS. Mr. Pechota, as I understand it, you're also the tribal attorney for the Rosebud Sioux Tribe?

MR. PECHOTA. I am one of the attorneys. They have three or four.

MR. LEVIS. Beginning in 1972, it's my understanding that the tribe sued the State in Federal court concerning the boundaries of the Rosebud Reservation. And then in 1977, the Supreme Court ruled that the reservation had been diminished to that of Todd County. I wonder



if you would just give us your views of how that decision affects the tribal government's relationship with neighboring counties and local governments.

MR. PECHOTA. Well, I think, to answer that question, you would have to look at that from the tribe's power and authority over its own members as opposed to the tribe's power and authority over nontribal members. With respect—at the present time, with that area being diminished in those four counties the tribe wouldn't have any governing power except on trust lands in those particular areas. Prior to—had the decision been the other way it would not have made any difference whether you were on trust land or not out in that area. The tribe would have had general power and authority, I guess, in those particular areas. The tribe has communities out in those areas and those communities are represented on the tribal council. And so as far as those functions that are uniquely tribal and don't involve any governmental authority, the tribe can still function out in those areas, but when you get down to talking about governmental authority, then it's been greatly diminished.

MR. LEVIS. Mr. Colombe, could you describe the original reservation and the diminished reservation and how it relates specifically to Todd and Tripp Counties?

MR. COLOMBE. Okay. I think the original reservation would be Todd, Mellette, Tripp, Gregory Counties, and a small portion of Lyman County south of the Big White River. All these counties south of the Big White are directly east of the Pine Ridge Reservation and the former reservation bordered the Missouri River. And today, my understanding of what is the reservation would be all of Todd County and the trust land located outside the Todd County.

MR. LEVIS. Within the original boundaries of the reservation?

MR. COLOMBE. Within the original boundaries of the reservation.

MR. LEVIS. So presently Todd County is a diminished portion of the reservation?

MR. COLOMBE. Would you repeat that?

MR. LEVIS. Well, Todd County is the remaining portion of the reservation. The other parts have been opened as such. The original reservation is Todd County, Tripp County, Mellette County, Lyman County, Gregory County.

MR. COLOMBE. Correct.

MR. LEVIS. Mr. Pechota, what is the relationship between Todd County and Tripp County? As I understand it, Todd County is an unorganized county.

MR. PECHOTA. Todd County is, I think in the words of the statute, an unorganized county attached to Tripp County for governmental and administrative purposes. And prior to the decision in *Little Thunder* the county commissioners elected in Tripp County would make most of the governmental decisions or a great many of the governmental decisions in Todd County. We would not have a sheriff elected out

there or county treasurer or the full panoply of county officers that existed in every other county, but rather the Tripp County officers would govern Todd County and would exercise the powers that those officers would, if they had been elected in Todd County, would perform.

Do you want me to go into after *Little Thunder*?

Basically, except for that court decision, you know, that is still the status of Todd County under State law.

MR. LEVIS. Mr. Tobin, I understand you're the State's attorney for Tripp County?

MR. TOBIN. Yes, I am.

MR. LEVIS. How does that affect Todd County and particularly as far as law enforcement is concerned?

MR. TOBIN. Well, as Mr. Pechota stated, Todd County is attached to Tripp County for that particular function. Because Todd County is an Indian reservation, the State's jurisdiction is limited by court decisions and Federal statutes in Todd County.

Do you want me to describe specific instances where we feel we have jurisdiction and specific instances wherein we feel we don't?

MR. LEVIS. Yes. If you would wait one moment, please.

Mr. Keller is here, Mr. Chairman.

[Mr. Keller was sworn.]

**TESTIMONY OF GEORGE KELLER, SUPERINTENDENT, ROSEBUD  
RESERVATION AGENCY, BUREAU OF INDIAN AFFAIRS**

MR. LEVIS. Before we get back to Mr. Tobin, Mr. Keller, would you please state your name, your address, and occupation and talk into the microphone, please?

MR. KELLER. My name is George Keller. My address is Box 701, Mission, South Dakota, and I work for the Bureau of Indian Affairs. I am a superintendent of the Rosebud agency.

MR. LEVIS. Thank you.

Mr. Tobin, you were talking about the jurisdictional boundaries of the Rosebud Reservation.

MR. TOBIN. The jurisdictional boundaries of the Rosebud Reservation encompass Todd County. And, therefore, Todd County is the Rosebud Reservation and it's my understanding, in general, that Congress has preempted in certain areas State jurisdiction within the reservations, and, therefore, any major crime, what is denoted as a major crime in Federal statutes, by or against an Indian person, is a Federal crime and the State would, therefore, have no jurisdiction.

Any crime major or otherwise involving only non-Indians, the State would have jurisdiction, under a series of cases from the Supreme Court, primarily case law, *U.S. v. McBrattney* onward until the *Oliphant* decision. In misdemeanor situations, victimless crimes, the Court, the Supreme Court this year recently decided in the *Oliphant*

case that tribal courts do not have jurisdiction over non-Indians. They have jurisdiction over Indians, and in my view, it's presently unclear whether the State or the Federal Government would have jurisdiction over victimless crimes involving non-Indians in such instances as driving while intoxicated or speeding or something like that.

I think the Federal Government, the Department of Interior has taken the position that the tribe would have jurisdiction to make arrests if it involved the heart of the tribal community or something and that the Federal Government should do something about it.

MR. LEVIS. Does the sheriff, as I understand, patrol both Todd and Tripp County though?

MR. TOBIN. Yes, he does because there is a substantial number of non-Indians living within Todd County as well as Indians.

MR. LEVIS. How large is the sheriff's department in the two counties?

MR. TOBIN. In Tripp County, we have one sheriff and one deputy sheriff. In Todd County, we have one deputy sheriff who is a member of the tribe.

MR. LEVIS. As I understand it, there is no cross-deputization at this time, and there was a meeting with Mr. Keller, I think, that was in May of this year to discuss cross-deputization and also related areas as a result of the *Oliphant* decision. Why was this meeting held and what were the results of the meeting?

MR. KELLER. The meeting was asked for by my office and was conducted and carried out on I think, it was May 10, because there was a letter sent to the sheriff's department at Tripp County on March 28 asking if we could have this meeting concerning cross-deputization and offering our commissions so we could sit down and come to some agreement. There was no answer to that letter as there is no answer as of this date. So a meeting was called on the 10th. There wasn't much resolved at the meeting other than some points brought up which we just couldn't agree on.

The area office as well as the local agency was represented at that meeting, and we offered to sit down and draw up some sort of agreement with Tripp County in terms of cross-deputization. I don't believe we have in the past offered our Federal commissions to county as well as State officials, law officials. I don't think that there has been a time when the State has cross-deputized. If so, it's been with just one person, the agency's special officer.

MR. LEVIS. What happened on the reservation before the *Oliphant* decision concerning non-Indian offenders and what has happened since that time as far as stopping, arresting non-Indian offenders?

MR. KELLER. As far as the Bureau is concerned, we have been instructed to encourage the tribes to follow the decision of the Supreme Court in that non-Indians are exempt from their court system. We are making—as far as some of the minor victimless crimes, such as speeding and so forth, are stopped and given verbal warnings. Some of the

citations that are issued by the police officers are taken to Tripp County to the magistrate. I, at this time, can't tell you the outcome of some of those that have been taken to Tripp County. We are continuing, of course, to enforce the tribal law as far as enrolled members of the Rosebud Sioux Tribe are concerned on the Rosebud Reservation.

MR. LEVIS. But non-Indians have been stopped and cited into court in Tripp County?

MR. KELLER. Yes, they have. The citation has been issued and presented to the magistrate. I don't know whether there has been any fines collected or any outcome of the citations yet.

MR. LEVIS. Mr. Tobin, you were at the May 10 meeting as I understand.

MR. TOBIN. Yes.

MR. LEVIS. What happened as a result of that meeting and what has happened to the citations Mr. Keller talked about?

MR. TOBIN. In the first instance with respect to the letter to the sheriff, I would presume that the May 10 meeting negated any continuing need for answer to that particular letter. I didn't know about the letter until we had the meeting of May 10.

There are several legal and other problems with cross-deputization. I know that in the State of South Dakota certain areas and certain communities feel that it is necessary and it is a very good thing and they adopt it. Other communities resist it. We have had it in the past, I think, between Tripp County and Todd County in certain instances. It's not a permanent thing. It's somewhat dependent upon the officials that are in office, both tribal and State. We have had, for example, the deputy sheriff in Todd County—although he is a member of the tribe, the tribe has refused to let him be cross-deputized for the past 2 or 3 years. One of the problems by the way—so those are some of the problems involved.

The State statutes, I believe, make the sheriff personally liable for the acts of all of these deputies, so there was some thought that maybe there should be some action by the legislature to take care of the few problems that might arise in a particular arrest situation.

I told Mr. Keller just recently, I think within the last week or 10 days, that there was a question in my mind—that one of the questions that we were talking about with respect to the tickets that had been issued—there was a question in my mind whether an individual in a police car wearing a police uniform, for example, a tribal police officer arresting a non-Indian in a speeding situation could properly be termed a citizen's arrest. Now that is the authority, the only authority which they expect us to act under and that is the authority that we are assuming to act under, and I know that as a result of the question, we believe it was a legal question, whether that would constitute a citizen's arrest or not. We referred the question to the attorney general's office for the attorney general's opinion, and we will take action on that. And I think we have one or two other complaints that

are currently pending for prosecution after we get that opinion from the attorney general's office.

MR. LEVIS. When did you refer that opinion up to the attorney general's office and have you received any response?

MR. TOBIN. We referred the opinion to the attorney general's office, I think, within the week of the meeting, you know, that we had with the tribe and the BIA. And I know at the same time there was a court case pending in which the State was involved and the Cheyenne River Tribe was involved in Federal district court, and I think that, in part, the outcome of that case might be one of the reasons or the pendency of that particular case might be one of the reasons that we haven't received a response back as of yet. But we expect one shortly, and I mentioned it to Mr. Janklow last week, as a matter of fact, 2 weeks ago.

MR. LEVIS. So at the moment what are you doing with the citations that are being transferred?

MR. TOBIN. As far as I know, we had the first—we had one, two—I think we have had only two. The first one we declined to act on because of the circumstances in which it arose. The second one is the one that we have referred to the attorney general's office for an opinion and, as far as I know, we don't have others.

MR. LEVIS. If you received others, what would you do with them?

MR. TOBIN. I won't do anything with them until I receive an opinion from the attorney's office if they arose in a fact situation of a police car and an individual.

MR. LEVIS. So at the moment there is no cross-deputization with the tribal police?

MR. TOBIN. That's correct.

MR. LEVIS. Mr. Pechota, you were at that meeting too, as I understand it, on May 10?

MR. PECHOTA. No, I wasn't at the meeting.

MR. LEVIS. Oh, you weren't at the meeting? You did talk with the attorney general after that meeting?

MR. PECHOTA. I had talked with Mr. Tobin and Mr. Janklow at various times about the problem. And the thing that I was concerned about was that the Federal authorities didn't seem to be willing or desirous of assuming jurisdiction over these misdemeanor crimes that were being committed out there by non-Indians. And on the other hand, the State wasn't willing to assume responsibility for those people that were arrested for the violations. And I also talked with the U.S. attorney about this problem. And I indicated my concern to all of those was that someone had to fill the void because you can't have non-Indians running around there with impunity committing crimes. I am not saying that anyone does that, but there could certainly be situations where that could happen. And the end result of those conversations was an indication by Mr. Janklow that anytime a non-Indian was arrested that we send all the arrest reports, all of the investigative

materials to him and at that time or when he received those—and after reviewing those and he thought it was a prosecutable case and he indicated he would go ahead.

I sent a copy—after talking with him and coming to that understanding with him, I wrote a letter to Captain Long of the police department and indicated that that is what should be done in the interim as long as no one was going to step in and take responsibility for prosecuting those crimes.

MR. LEVIS. So what is the situation now when someone is speeding on the reservation?

MR. PECHOTA. It's in the state of limbo. They are just not being prosecuted.

MR. LEVIS. Mr. Tobin?

MR. TOBIN. One particular thing. *Oliphant* did not—there is a problem, and it's always been a problem, but I don't think it is of the magnitude as some people would like make it out as. Prior to *Oliphant*—there was no question that *Oliphant* only ruled on a situation that had existed 2 or 3 years. Tribal courts asserting jurisdiction over non-Indians was unheard of within the Rosebud Reservation prior to 1971 or '72. So for the past 50 years, it had always been either the city of Mission or whatever officers, State officers, were stationed in the area had always had the responsibility for enforcing State law just as they do today.

Now I think within the Rosebud Reservation the South Dakota Highway Patrol had a reorganization or a location problem that just happened to correspond with the same time that the *Oliphant* decision was handed down. We were one officer short of the three that had been assigned to the Tripp County for the 2 previous years. And as a result of that, the patrolmen that usually patrolled Todd County was busy taking care of the business in the area surrounding Tripp County and at the same time *Oliphant* came down, then there was no highway patrolman in Todd County. So in that respect, you know, while things might yet be in the state of limbo, I think it's attributable to other causes as well.

MR. LEVIS. Mr. Keller?

MR. KELLER. If I may, I would like to point to an instant previous, in fact 2 days ago, where a non-Indian passed a tribal police unit equipped with red lights. The police unit had a radar system in it. The car that passed was exceeding the speed, I don't know, it was well—60, 65 miles an hour. She was cited. The ticket was taken to Winner. The tribal police officer was disallowed even to sign a complaint.

I beg to differ with Mr. Tobin here. About 2 weeks after our meeting, or early part of June there was, I believe, about 10 or 15 citations turned into the police magistrate or the city magistrate, county magistrate in Tripp County, and like I said before, I am not sure just what status they are in now. But we do have a great deal of residents, en-

rolled members as well as non-Indians, breaking the law in terms of traffic violations, especially. Those that are enrolled are subject to fines by the court, by the way which my son just paid \$40 last week. Those that are not enrolled, are non-Indian, have a choice. Some of them have submitted to the tribal council, I am thinking they are part of the community and have gone through and have paid their fines. They have, however, a choice, basically, to go to Tripp County, which I don't know whether anything's done or actually to go scot-free, I suppose.

MR. LEVIS. When I talked to you previously you indicated that you had requested or the BIA area office had requested a meeting with the attorney general to discuss this issue. Has anything happened as a result of that request?

MR. KELLER. We haven't met with him. I talked to Mr. Tobin after the meeting in Pierre last week and had indicated that we would get together soon, that we could possibly resolve the issue of insurance or liability on the part of the tribal officers.

There was other problems that were mentioned at that time such as warrants that were being held from both angles in terms of, you know, serving the warrants on a reservation and reservation warrants served outside the reservation. But I believe the area office assistant special officer has worked out with other agencies and counties some sort of agreements that could work.

MR. LEVIS. We heard about this liability problem. Could you expand on that and what the BIA has offered to do to deal with this problem?

MR. KELLER. In terms of some of the Bureau police officers, of course, were covered by the tort claim situation in terms of insurance, and those tribal officers that would carry our commissions could fall into the same category and I believe this system could be set up with the sheriff's department. Now we did last year, and I have signed 20 commissions, Federal commissions, I think one of which went to the sheriff in Gregory County. I know definitely he had one last year, a Bureau commission, and their commissioners met and offered to issue a commission to one of our tribal officers or Bureau officers whenever we could get a person stationed down there. We do have a portion of the Rosebud or some trust land in Milks Camp area in Gregory County.

MR. LEVIS. Mr. Tobin, at the May 10 meeting was this question of liability brought up and was the BIA proposal discussed?

MR. TOBIN. The question of liability was brought up.

MR. LEVIS. And the BIA reimbursing the sheriff's office for whatever?

MR. TOBIN. Yes, that was brought up. I don't think there were any definite decisions; I think those were things to be explored.

MR. LEVIS. Has there been any research done in this area or any proposal?

MR. TOBIN. Yes, I think Mr. Keller indicated that the tribe had sent some people to talk to some insurance people to find out what the cost of the project would be because we would be talking about cross-deputizing 15 or 20 tribal police officers. And, in that respect, it is, I guess, cross-deputization is a discretionary decision. Mr. Janklow took the position last week, it's a discretionary decision to be made by the sheriff and which must be confirmed by the county commissioners. So when they are satisfied, and I think this will involve a couple of other areas such as extradition and such, and the community is satisfied, I would imagine it could take place.

MR. LEVIS. Is there no extradition agreement at this time?

MR. TOBIN. We have 70 some warrants in Tripp County for members of the Rosebud Sioux Tribe in Todd County that haven't been honored in the last 2 years from all over the State of South Dakota.

MR. LEVIS. Is there any agreement at all though either way?

MR. TOBIN. None.

MR. PECHOTA. There is statutes on the laws in the books of the State of South Dakota providing for extradition to and from Indian reservations between the State and the tribe. The tribe has an extradition law.

Now I don't know if—I don't know if these warrants that Mr. Tobin is referring to have been officially referred to the tribal court or not in the manner that has to be followed under the tribal law.

MR. TOBIN. It's my understanding there is a South Dakota statute that allows local units of government to enter into agreements, and there is no agreement. And these warrants have been, you know, brought to the attention of the tribal court, at least according to our deputy sheriff.

MR. LEVIS. Judge Talbott, you have sort of been ignored this morning. As I understand it, you were the State's attorney in the 1950s and I wonder if you could describe the situation that existed at that time, and I also understand you were on a State Indian task force in the mid-seventies and just some of the recommendations you might have for dealing with some of these problems.

MR. TALBOTT. Yes, I was a State's attorney of Tripp County in the 1950s, and perhaps at that time we were operating in an area of ignorance because during that particular time the general assumption by all people involved was that the Federal Government had exclusive criminal jurisdiction over the 10 majors as they were provided for at that time. And the rest of the general assumption was that the State and the tribe had a kind of cojurisdictional aspect as to the enforcement of laws.

And during the fifties, the courts entertained almost full civil jurisdiction and almost full criminal jurisdiction. And during that period of time, the tribe and its police officers and the various State and county law officials cooperated, and the State did enforce, for instance, the drunk driving statutes of our State with regard to both Indian and non-Indian personnel in Todd County. And the relationship was



understood to be the same as it is, for instance, between our State laws and various municipal ordinances. Sometimes they overlap and sometimes they don't.

But that is the way things were done in the fifties. The arrests were made—if they were made by a tribal officer they were turned over to the deputy sheriff who brought them to Winner for prosecution.

As I say, this was before the court decisions started coming down that delineated the jurisdictional issues.

MR. LEVIS. You also served on a task force during the mid-1970s?

MR. TALBOTT. Yes, in 1975 I was a member of the reservation task force.

MR. LEVIS. Were any recommendations made there or do you have any feeling on any recommendation that should be made, any laws that could be changed to alleviate some of the problems that are occurring?

MR. TALBOTT. You're referring, Mr. Levis, to the cross-deputization issue?

MR. LEVIS. Yes, and the sheriff's liability.

MR. TALBOTT. Yes, Mr. Levis, as you know, I have discussed—it's my opinion that this issue is just not well enough understood. Very briefly, I would like to say that the Federal warrants, I believe they call them—anyway, the authority of appointing a special officer can be given and issued without making any one particular individual or government liable for the acts of that individual. The contrary is true with regard to county sheriffs. The relationships, historically, in South Dakota between the State and the counties is that each county officer is personally responsible for the conduct of his office. And that is also true of the office of the sheriff.

The statute particularly provides that deputy sheriffs are to be appointed by the sheriff with the approval—I believe the statute actually provides that the actual appointment is to be made by the board of county commissioners. This statute is different from that that governs other appointments made by other officers of the county.

The statute provides that the county is liable for any damages that might be recovered by anyone against a sheriff or a deputy. Thus, there is an extremely personal relationship that exists between a deputy and the sheriff. And because of this, it is with considerable reluctance that any sheriff will at random pass out deputy sheriff badges.

The problem of cross-deputization is—I have been practicing law for 28 years and have been in discussion involving this question for at least that long. Yes, Mr. Levis, in the course of the meetings that were held by the reservation task force I did make some recommendations to that group as to what could be done.

MR. LEVIS. What specifically would you recommend?

MR. TALBOTT. I feel it's inappropriate really because of the extent of which this personal relationship between deputy sheriffs and sheriffs is ingrained into our legal system to attempt to change that relation-

ship. But we do have a statute on our books in South Dakota that refers to county constables. It's chapter 7013 of the South Dakota Compiled Laws. I did bring a copy of that with me which I will be glad to leave with the Commission if they so desire to have it.

Now this statute as it presently exists on the books would not in itself solve the problem. It needs amending. But I believe that, at least in my opinion, it would serve as a proper vehicle and could be enlarged to permit some governmental authority, say the county commissioners, to make appointments at random of county constables to serve as peace officers.

MR. LEVIS. So these officers would be in positions similar to that of a deputy sheriff but they would not be called the same thing?

MR. TALBOTT. That's correct.

MR. LEVIS. Would the amendment have to deal with the liability of the sheriff or of the county for false arrests?

MR. TALBOTT. You mean what would their liability be?

MR. LEVIS. Yes.

MR. TALBOTT. Well, in my view certainly there would be personal liability.

MR. LEVIS. Of the constables?

MR. TALBOTT. Of the constable. And it has never been litigated as to what the county's liability might be for a county constable. They are not mentioned in the same law that makes a county liable for judgments obtained against a sheriff for malfeasance of his duties.

MR. LEVIS. Has this statute ever been used in Tripp County to the best of your knowledge?

MR. TALBOTT. It's never been used in Tripp County to the best of my knowledge.

MR. LEVIS. Thank you.

MR. TALBOTT. I beg your pardon. I just wanted to emphasize that in its present form it could not be used to satisfy the requirements of the cross-deputization. It would have to be amended. I only suggest that it's a vehicle that could be used by amendment to provide a remedy. And this was a suggestion I made at the reservation task force.

MR. LEVIS. Four years ago or 3 years ago?

MR. TALBOTT. In 1975.

MR. LEVIS. Mr. Colombe, as I understand it you are the chairman of the resource development committee of the Rosebud Sioux Tribe?

MR. COLOMBE. Yes, sir.

MR. LEVIS. What does your committee do, if you could just describe it briefly, and how does this relate to just the Todd-Tripp situation, if at all?

MR. COLOMBE. The committee has some real basic responsibilities that are outlined by the tribal council, and like the name says, resource development, we are into that area and that deals with the—I think our primary function would be the purchase of lands with the use of FHA loan monies for the tribe from individual members.

MR. LEVIS. Do you purchase land both within Todd County and outside Todd County?

MR. COLOMBE. Yes, we do. We purchase land in Todd County, Melette County, Tripp, and Gregory and I am not positive about Lyman.

MR. LEVIS. What happens to the land after you purchase it as far as its status?

MR. COLOMBE. It then is under the ownership of the tribe. Now as far as you could go, it probably wouldn't change. That is on a maybe a competitive basis for leasing.

MR. LEVIS. As I understand it, Todd County has approximately 880,000 or 890,000 acres. How many or how much of that land is owned by the tribe and how much of the land is within the original boundaries of the reservations owned by the tribe?

MR. COLOMBE. Okay. How much land is owned by the tribe? That would mean—

MR. LEVIS. Or in trust status.

MR. COLOMBE. Okay, trust status. In Todd County probably 550,000 or 555,000 acres.

MR. LEVIS. In Tripp County?

MR. COLOMBE. In Tripp I think 72,000 or 73,000 acres.

MR. LEVIS. And do you happen to know how big Tripp County is?

MR. COLOMBE. I don't. I think one of these gentlemen could answer that.

MR. TALBOTT. In rough figures it's about 1,100,000 acres.

MR. LEVIS. As I understand it, Todd County is attached to Tripp County. Does this affect any of the services or anything your committee has to do?

MR. COLOMBE. Yes, it does. I can't—well, maybe a lot of—it's just our lack of knowledge in how to work the system, but it does affect us. It definitely does.

MR. LEVIS. As I understand it, the County of Tripp sued the State to deal with the unorganized county statute to get essentially Todd either removed from Tripp or at least have declared the unorganized statute to be unconstitutional. Did that affect the relationship of your committee at all?

MR. COLOMBE. It affects us in our dealings with the government and certainly with the Farmers Home Administration in one way that is easy to explain. They wouldn't at one time allow us to purchase land outside of Todd County. Now we have got that worked out since September 1977 that we can buy land from our individual members in Tripp County, but prior to that, for 2 or 3 years the tribe was unable to buy. And of course I think all of this should be looked at. Most of the time the land we are buying are fractionated interests and divided interests.

MR. LEVIS. Mr. Tobin, as I understand it, you now work with the National Association of Counties or NACO, and they had their na-

tional convention in Atlanta either last week or 2 weeks ago. Did that organization at that time pass any resolutions or deal with the issue of Indians at all?

MR. TOBIN. I don't work with the National Association of County Governments. I have appeared before them on several panels relating to State and tribal and county matters, but I don't represent the national association.

They did pass a resolution indicating that there were several areas of concern especially, I think, with the majority report of the American Indian Policy Review Commission that tribal governments become the primary governing bodies within Indian reservations whereas some of these particular counties also exist in the same areas with substantial portions that are non-Indian.

They passed a series of resolutions the thrust of which, I believe, is that they think it's time for Congress to have some hearings and decide what is going to be the policy of Congress in certain directions. I don't have that resolution with me here today, but I can forward it to the Commission if you would like.

MR. LEVIS. We would appreciate it.

Did you have any role at all in the passage of that resolution or did you advocate that resolution?

MR. TOBIN. No, as I understand it, that particular resolution was adopted the day before I got there.

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

CHAIRMAN FLEMMING. Mr. Talbott, I was very much interested in the recommendation that you made to the task force on which you served relative to the possible role of constables contrasted with the deputy sheriffs. Was your recommendation accepted by the task force? Did it become a part of their report? If so, what is the present status of that report?

MR. TALBOTT. It did become, Mr. Chairman, a part of their report. And the report of all the task forces was filed with the State legislature. I am not aware of any effort being made at the present time to implement that particular thing. I really believe though that it could be done and, Mr. Chairman, by your leave may I make a comment? I have a feeling you're about ready to wind up.

Some of the things that are mentioned here are little bits and pieces out of a whole and they are true. We have been presented with traffic tickets. To get this whole thing rolling will take some cooperation from a lot of people, and I believe that it can be put together within the existing framework of our laws and perhaps with some few amendments. But there is going to have to be a lot of togetherness to get it done. For example, the tickets that have been presented are traffic tickets issued by, well, with the name of the Rosebud tribal court printed on them. Well, it's basic law that any defendant is entitled to know by the summons or other citation he gets to know which court

he is coming to. And I mention this, Mr. Chairman, only to point up the need not only to amend a few laws, perhaps, but the need to have some togetherness and some training and, for instance, furnish the tribal officers with the proper kind of State tickets and the proper information so they will know how to handle them.

Similarly, I believe that the motor patrol and the other county officers that might be cross-deputized, if you will sir, also be given information as to how their court system works and how their tickets should be handled. It will take more, Mr. Chairman, then just to amend the chapter that I mentioned.

CHAIRMAN FLEMMING. I appreciate your comments and I was about to comment on the fact that the issue that has been the issue that has dominated the questioning of the panel is one that has been called to our attention a number of times. And I feel that the dialogue that has taken place here this morning has been particularly helpful to me at least in attempting to get a clear picture of the issue and possible approaches to the issue.

Judge Talbott, I would like to move away from that issue for just a few moments and discuss with you one or two other issues that have been called to our attention.

As you know, our State Advisory Committee did conduct an investigation in this whole area, did hold some hearings, and did file a report, which of course this Commission has considered very carefully, and one of the issues identified by the Advisory Committee was the issue of the participation or nonparticipation of members of the Indian community as members of trial juries. And I was just wondering whether or not, growing out of your experience both as an attorney and judge, you would like to comment on that issue.

MR. TALBOTT. I have read the report of the Advisory Committee. One of the statements made therein was that it was extremely rare when an American Indian served on a jury panel, and I, from my own experience, would have to take issue with that kind of a statement. The South Dakota jury selection procedure was changed approximately 5 years ago. The general pool is now made up of the list of registered voters, in other words, very similar to the Federal system. As a matter of fact, the identical same list that is supplied to the Federal court system is also the same list that is furnished to the clerk of courts for our jury selection procedures. Mr. Chairman, we do have American Indians on our jury panels. They do serve on our juries, and just last week a young Indian lady was foreman on one of my juries. They do serve, sir.

CHAIRMAN FLEMMING. All right. Appreciate your comment on that.

Then another issue that was called to our attention was the fact that allegedly a large percentage of cases do not actually go to trial but are settled as a result of what I guess is rather loosely referred to as plea bargaining. That encompasses a fairly wide area, and we would certainly appreciate your comments and observations on that particular issue.

MR. TALBOTT. I think the Advisory Committee's comments about there being relatively few trials as to the number of arrests that are made is very true. Many people just admit their guilt and plead guilty. There are plea negotiations in some cases but not all.

MR. Chairman, I have never had an opportunity to compare the figures that were compiled by the Advisory Committee with any of the figures that are available for comparing arrests with trials on a national level. But I have had the general feeling that they would be within the same kind of range. As was pointed out in one of the comments in the Committee report, the backbone of the court system would be indeed broken if we had to try all of them.

CHAIRMAN FLEMMING. Right. Tied in with that was a reference to what is allegedly a practice of overcharging initially. Do you have any observations on that?

MR. TALBOTT. Going back quite a few years, Mr. Chairman, I did know of an instance where a prosecutor regularly engaged in that kind of a practice in all of his cases. But that has been quite a few years ago.

MR. Chairman, in my experience as a judge—and it's been more than 20 years now—I have not had occasion to be concerned about a need for myself as a judge, for instance, to worry about or be overly concerned about whether or not a man was, as you say, overly charged. Because I am aware of a personal situation where I knew this to exist a good many years ago, I have no question but that it might exist again sometime. But in my own experience, sir, I have had no reason to be concerned about this possibility.

CHAIRMAN FLEMMING. Mr. Tobin, do you care to comment on any of these issues I have been discussing with the judge growing out of your present experience?

MR. TOBIN. Well, the one comment that I would like to make is the action and inaction of the Federal Government by enacting statutes and vacillating in its Federal Indian policy have put the State of South Dakota and the tribal governments at odds within the last 4 or 5 years on two very different issues to resolve by negotiation, namely, the exact location of reservation boundaries and, secondly, whether the tribal governments do have any jurisdiction over non-Indians. I think that those two issues have been resolved by the Supreme Court, that there exist a number of other minor areas, such as cross-deputization and the problems that really affect local governments working with other local governments, or community problems that the communities are probably both willing and will be able to resolve within the next 2 or 3 years, hopefully so.

CHAIRMAN FLEMMING. Do any of the other members of the panel care to comment on any of the issues that I was discussing with Judge Talbott?

MR. KELLER. Mr. Chairman, if I may, unlike other gentlemen here, I suppose I feel somewhat more responsible in that law and order is

my major objective on the reservation. I have authority over the Bureau people that are in the law enforcement as well as supervising the tribal people. It's a 24-hour-a-day problem that we are faced with right at the reservation level, and if I may quote just a few statistics that I would like to enter into the picture. Since January first of this year, and I find these—I haven't checked them completely, but the people working on them—I would probably guarantee them 90, 95 percent accurate.

There were a total of five non-Indians who were issued warning tickets for driving without a license. Two of them were male; three were female. A total of 32 warning tickets for speeding, 9 female, 23 male. These are all non-Indians by the way, sir.

CHAIRMAN FLEMMING. What area is this? What territory?

MR. KELLER. This is on the reservation in Todd County that were issued by the tribal police officers. There are a total of 23 male, non-Indian, warning tickets for speeding. We had a total of 34 non-Indian traffic citations issued; 6 were female and 28 were male. These citations that are issued at the top state, "State of South Dakota Uniform Traffic Ticket" of which I have a copy I would like to present the board with it, if you wish.

And the person here, the one I referred to as of yesterday was cited, "The County of Todd, City of Winner, South Dakota, in the circuit-court." This was not accepted.

I don't like to make an issue of these things, but I am in fact continually faced with them every day and night, and I am pushing to try to get some agreement set up. We are willing to meet in every respect with the State and try to get something worked out and with the tribe too. We are caught somewhat in the middle. The tribe did pass a resolution indicating they would like to have a Federal magistrate stationed at Rosebud, which in effect would answer a lot of these questions. And that resolution has been approved and submitted on to the area office and I am sure has passed the area office.

CHAIRMAN FLEMMING. Thank you very much.

Ms. Freeman?

COMMISSIONER FREEMAN. No.

CHAIRMAN FLEMMING. Mr. Nunez?

MR. NUNEZ. Yes, I have one question. I want to clarify an issue.

Mr. Tobin, you indicated that you had asked for an opinion from the attorney general concerning the matter of citizen's arrest. Was that—I assume you did that because you personally felt that there was something contrary to current law to have tribal or BIA police using this statute to carry on to arrest non-Indians on the reservation?

MR. TOBIN. Well, at the time that we requested the opinion I was aware of a fact situation that existed in the Cheyenne River Reservation area involving a tribal police officer, I think, also with the radar gun. And it was pending in the Federal district court, and I said in my own mind that there was a further consideration as to whether or not

that particular situation came within the purview of our statutes or our case law on citizen's arrest, yes. And for that reason, I indicated that as a State's attorney that we would be—we would feel comfortable proceeding with the prosecution after we had an attorney general's opinion.

Now, ordinarily Mr. Janklow's office is very good in getting out attorney general's opinions. They used to get them out in 3 weeks. In this particular instance, I think part of the delay for the opinion was the existence of this matter in Federal court which, as I understand it, as of a week ago has been now resolved. So perhaps I can answer in that respect.

CHAIRMAN FLEMMING. Thank you. We appreciate very, very much your being with us and sharing your experiences and your insights with us in connection with these very important issues. Thank you very, very much.

MR. TALBOTT. Thank you for the opportunity to come.

CHAIRMAN FLEMMING. Counsel will call the next witnesses.

MS. HUBER. Will Henry Gayton, Walter Plumage, and Captain Two Bulls please come forward?

[Messrs. Gayton, Plumage, and Two Bulls were sworn.]

**TESTIMONY OF HENRY GAYTON, SPECIAL OFFICER, BIA, STANDING ROCK, FORT YATES, NORTH DAKOTA; WALTER V. PLUMAGE, SPECIAL OFFICER, BIA, ABERDEEN, SOUTH DAKOTA; AND FRED TWO BULLS, CAPTAIN, PINE RIDGE RESERVATION POLICE DEPARTMENT**

CHAIRMAN FLEMMING. Thank you. We appreciate your being here.

MS. HUBER. Would you gentlemen begin by identifying yourself, stating your official position, beginning with Mr. Plumage?

MR. PLUMAGE. My name is Walter V. Plumage. I am the area special officer for the Aberdeen office, stationed at Aberdeen, South Dakota, for the Bureau of Indian Affairs.

MR. GAYTON. Henry Gayton. I'm the agency special officer at Standing Rock, Fort Yates, North Dakota.

MR. TWO BULLS. I'm Fred Two Bulls. I'm the captain of the Pine Ridge Police Department, Pine Ridge Reservation.

MS. HUBER. Thank you.

MR. PLUMAGE, could you just tell us briefly the nature of your duties as area special officer of the Aberdeen area of the BIA?

MR. PLUMAGE. I'm stationed in Aberdeen, South Dakota. We have the responsibility for the States of North Dakota, South Dakota, and a portion of Nebraska. We work basically with training, setting up training for the people in the field as well as working with them, our own people, in the field for law and order code for the tribes. We work with the budget. We also work with ordering equipment for each reservation within our area. We are also available for any type of technical assistance that the tribe would request pertaining to law enforcement matters.



Ms. HUBER. Could you describe briefly the duties that an agency special officer would have?

Mr. PLUMAGE. The agency special officer's primary duties is supervisory responsibility for the law enforcement program which includes the budget, also the supervision of the uniform police department, the supervision of the jail operation, and also, he handles the investigation of the 14 major crimes on the reservation, initial investigation along with the FBI.

Ms. HUBER. All right. Mr. Plumage, does the agency special officer, such as Mr. Gayton, report directly to you or does he report to his agency supervisor?

Mr. PLUMAGE. He reports directly to the superintendent of the agency; that's his immediate supervisor.

Ms. HUBER. Mr. Gayton, you are the agency special officer at Standing Rock as I understand?

Mr. GAYTON. Yes.

Ms. HUBER. Could you describe briefly the nature of your experience and training as a law enforcement officer?

Mr. GAYTON. In a couple weeks I will have my 23rd year completed. I started at Standing Rock, transferred over to the Sisseton agency, then up to Turtle Mountain, North Dakota, then back to Standing Rock, my home.

Ms. HUBER. That is within the Bureau of Indian Affairs?

Mr. GAYTON. Yes.

Ms. HUBER. Are you a member of the Standing Rock Tribe?

Mr. GAYTON. Yes.

Ms. HUBER. What training have you had as a criminal investigator?

Mr. GAYTON. I have had many inservice training put on by the FBI, Oklahoma University, places like that, for seminars.

Ms. HUBER. Could you tell us how major crime investigations are handled on the Standing Rock Reservation? What is the usual procedure?

Mr. GAYTON. Well, usually one of our police officers are the first to arrive at the scene, then they—quickly they call the police station, usually by radio, state there has been a major crime committed. Either myself or the criminal investigators go out, start procedures to investigate the scene.

Ms. HUBER. What would those procedures be?

Mr. GAYTON. We secure the crime scene, secure any evidence that might be available. If there is any of the witnesses there, get the names and, if the subject happens to be there, probably arrest him.

Ms. HUBER. What about the role of the Federal Bureau of Investigation?

Mr. GAYTON. We then call it, after we establish there has been a crime committed that falls into the category of going to Federal court, we notify our—one of our agents. In Standing Rock, we are both in North and South Dakota. Whichever side of the State line this happens will be notified, the agents in Bismarck or Aberdeen.

Ms. HUBER. How far is Bismarck from the Standing Rock Reservation?

Mr. GAYTON. About 75 miles.

Ms. HUBER. How far is Aberdeen from—

Mr. GAYTON. About 150.

Ms. HUBER. Ordinarily, how long will it take an FBI agent to respond to the reservation after you or your investigator calls?

Mr. GAYTON. It depends on the type of case. If it is a, say a murder, something like that, they usually respond immediately.

Ms. HUBER. Immediately would be, in terms of time, how long?

Mr. GAYTON. The quickest could be about an hour and a half. Aberdeen probably about 2-1/2 hours to 3, if they got started immediately when we called them.

Ms. HUBER. How about other kinds of major crimes, offenses not involving a homicide? How long generally is the response time?

Mr. GAYTON. It can run up to 2 weeks to 10 days, somewhere in there.

Ms. HUBER. What will the FBI agents do once they do respond in regard to the investigation?

Mr. GAYTON. They usually—we usually have our case report, at least the interviews all typed. They usually take those. Then many times they reinterview some of the subjects.

Ms. HUBER. Do you think the FBI's involvement as a general rule adds anything to the investigation you have already done?

Mr. GAYTON. Not normally.

Ms. HUBER. Captain Two Bulls, could you explain how, as a matter of procedure, major crime investigations are handled on the Pine Ridge Reservation?

Mr. TWO BULLS. It is pretty much like Mr. Gayton said here, but it is our officers that do the initial investigation, the preliminary investigation. We secure the crime scene and interview and we call the FBI to establish if there is a homicide, whatever, or a more serious crime.

Ms. HUBER. What is the nature of your training and experience as a law enforcement officer?

Mr. TWO BULLS. My experience is about—pretty close to 20 years. I have been to the University of Idaho in a management school; I have been to the Bureau of Indian Affairs criminal investigation course in Roswell, New Mexico. I have numerous inservice training.

Ms. HUBER. In what capacity did you work at the Pine Ridge Reservation prior to the tribe taking over its own law enforcement from the Bureau of Indian Affairs?

Mr. TWO BULLS. I have worked from the bottom clear to the top.

Ms. HUBER. For the Bureau?

Mr. TWO BULLS. For the tribe and the Bureau.

Ms. HUBER. Have your lieutenants, your senior officers, had any specialized training in the investigative—

Mr. TWO BULLS. Some of them have.

MS. HUBER. Could you describe the nature of that training?

MR. TWO BULLS. They went through investigator's courses that we present right there on the reservation. Some of them have been to the Bureau academy.

MS. HUBER. Are there FBI agents stationed on the Pine Ridge Reservation?

MR. TWO BULLS. No.

MS. HUBER. From where does the FBI respond if a major crime occurs?

MR. TWO BULLS. Usually from Rapid City or one of the border towns in Nebraska where they stay when they aren't working the reservation.

MS. HUBER. As a general matter how long does it take the FBI to respond to Pine Ridge?

MR. TWO BULLS. On a serious crime it takes about an hour and a half, or sometimes later. It all depends on what season it is in; due to weather conditions, sometimes they are late.

MS. HUBER. All right. What do they do once they respond? What role do they take in regard to the investigation you or your officers have undertaken?

MR. TWO BULLS. They take what we have written up and they take it from there.

MS. HUBER. What do you think the FBI in general adds to the investigation that you or your officers have already done?

MR. TWO BULLS. Well, the time element is the only thing. They are more trained in that field right now. Our department is just a young department yet. We are trying to get our officers to work with the agents so they can learn from them.

MS. HUBER. All right.

MR. PLUMAGE, the procedure for handling of major crimes has been described by Mr. Gayton and Captain Two Bulls. Is that pretty much the same situation for the other reservations in South Dakota?

MR. PLUMAGE. Yes, it is.

MS. HUBER. Mr. Gayton, based on your experience as a criminal investigator, would you favor the tribal police or the BIA taking over primary responsibility for investigation of major crimes offenses and presentations to the U.S. attorney?

MR. GAYTON. Yes, I think it should be phased in as quickly as possible.

MS. HUBER. Why is that your opinion?

MR. GAYTON. Like Mr. Trotter testified yesterday, I think they have a closer personal relationship with the citizens of the particular reservation and they know what the pressures are, as Mr. Trotter said yesterday. I think, probably, it would be a quicker way of getting the people that commit violent crimes before the court system.

MS. HUBER. Do you feel that you and the criminal investigators on the Standing Rock Reservation are sufficiently qualified and able to handle investigation of serious felony offenses?

MR. GAYTON. I think we are, yes.

MS. HUBER. Do you think your membership in the tribe, your presence on the reservation in any way adds to your ability to conduct an investigation?

MR. GAYTON. Yes, I believe it does, yes.

MS. HUBER. How so?

MR. GAYTON. We have had instances where—I'm sure Mr. Two Bulls has too—where people of the community have wanted to talk to one of us rather than somebody that is not living there.

MS. HUBER. Captain Two Bulls, could you comment on that aspect from the perspective of the Pine Ridge Reservation?

MR. TWO BULLS. Yes. There is many times when this happens. The people just would not communicate with someone that isn't from there. It helps a lot to be bilingual in this line of duty on the reservation, to some of the people. They do speak English but not to a point where they can really express themselves or make you understand what they really want. In their own language they feel more comfortable.

MS. HUBER. Are you and some of your other officers bilingual in Lakota?

MR. TWO BULLS. I would say over half of them are bilingual.

MS. HUBER. Mr. Plumage, from your perspective as area special officer, would you favor BIA investigators taking over primary investigative responsibility for major crimes investigation?

MR. PLUMAGE. I would have to agree with what Mr. Gayton and Mr. Two Bulls said. The fact—I feel that our people are there on the scene, they are there all the time. They know the people on the reservation. A lot of our criminal investigators now are of Indian descent which has a big effect. The fact—and I don't like to use the term—but a non-Indian, sometimes they run into problems as far as talking to the subjects. It is a different matter, like I say, our people live there, they know the people; they know their customs. I feel that they make the initial investigation, and a lot of times, like Henry says, they make the full investigation. I feel the FBI does a real good job when they are there, but it's just a fact that they have got other duties. I don't feel that—we are there on the scene, I think we do probably—our investigators would do just as good a job.

MS. HUBER. Captain Two Bulls, you said yours is a young department. Do you have as a goal your department's taking over primary responsibility for investigation of major crimes?

MR. TWO BULLS. Yes, that is what we are striving to do right now, make it this way. In taking over the investigation, we'd feel more professional. Like what we are doing now, we feel like we are just a figurehead between the crime and the FBI there, that at times we don't get any credit for what we have done in some of the investigations.

MS. HUBER. How do you think it would affect the residents of the reservation if your department took over their primary investigative authority?

MR. TWO BULLS. Well, I imagine it would be some that would disagree with it; some will like it.

MS. HUBER. How do you think it would affect the attitude of the residents of the reservation toward your departments?

MR. TWO BULLS. I think they would give us a second look. They know that we are investigating and we mean business. This would give us more prestige.

MS. HUBER. Thank you.

Captain Two Bulls, you have served as a police officer at Pine Ridge for many years; is that correct? And you were one of the senior officers under the BIA police system prior to the tribe taking over; is that correct?

MR. TWO BULLS. Yes.

MS. HUBER. From your perspective, how does law enforcement at Pine Ridge under the new Oglala Sioux tribal police system differ from the BIA system you worked under before?

MR. TWO BULLS. Under there, we enforced the same laws and everything, but the difference is we have better coverage, there is more men in there. We are still lacking communications, telephones in some areas are not existent. There is a lot of things that go unreported. A good communication system on the reservation—I think we can do an even better job than what we are doing now.

MS. HUBER. Do you feel you are doing a good job now?

MR. TWO BULLS. Yes.

MS. HUBER. Captain Two Bulls, the Department of Justice in 1975 issued a task force report regarding the Department's role in Indian affairs, including law and order. There was a comment on the conditions at Pine Ridge back in 1975. The report said, "Conditions at Pine Ridge have deteriorated since the occupation of Wounded Knee so that today there is a total breakdown of law and order on that reservation. Murders and other incidents of violence and violations of civil rights occur regularly." It goes on to say, "Many reservation residents are armed, and few have the courage to travel the roads at night. Vigilante groups have appeared and the last vestiges of community confidence in a system of laws has vanished."

It is 1978 now. Is this an accurate description of how the Pine Ridge Reservation is in terms of law and order at the present time?

MR. TWO BULLS. That is the aftermath of the siege, during the siege and after, but it isn't like that anymore.

MS. HUBER. How is it now?

MR. TWO BULLS. It is pretty peaceful. People are getting—they are getting to understand each other better; they are trusting each other again. It is getting to a point where you feel pretty comfortable.

MS. HUBER. As you may have heard, the FBI is reducing the number of its staff at its Rapid City office. If the FBI reduces its staff, do you feel that your police force will be able to continue to keep the peace and fulfill any additional responsibilities?

MR. TWO BULLS. Yes.

Ms. HUBER. Could you briefly describe what the role of the FBI has been in the training of the new Oglala Sioux tribal police force?

Mr. TWO BULLS. They have been of great help to us down there. Instead of sending our boys away off to school for 10 to 12 weeks, we try to keep them as near home as possible so we have developed a training course—a basic training course for our officers for 6 weeks. We have all kinds of instructors come in there—the FBI, the highway patrol—State highway patrol, Bureau of Indian Affairs officers.

Ms. HUBER. Do you think that the FBI's providing training to your officers is an appropriate role for the FBI?

Mr. TWO BULLS. Yes, ma'am.

Ms. HUBER. Mr. Plumage, we understand that the U.S. attorney for South Dakota has guidelines for what sort of major crimes offenses will be accepted for prosecution in the Federal court and that ordinarily theft offenses where the loss of property is less than \$500 are not accepted. Is that correct?

Mr. PLUMAGE. Yes.

Ms. HUBER. Could you comment on that guideline and to what extent you think it serves or does not serve the residents of Indian reservations in South Dakota?

Mr. PLUMAGE. Well, the guideline was drawn up with—we had our input into it as well as the FBI, U.S. attorney's office. We hold quarterly meetings with the FBI and U.S. attorney in Aberdeen as well as Federal agencies. We discuss problems we have mutually. We agreed upon it, on these guidelines, and of course they are not set guidelines. They are open for change of its meaning.

So far we have had some comments where they feel that the amount should be lowered because of the fact \$500 is a large amount to an Indian family. Maybe \$100 would be like \$1,000 to somebody else. We have had some minor problems there, but I feel that overall that it is working. The guidelines are working. Like I say, they are open for changes that we feel is needed, that they are not hard set, they are open for discussion.

Ms. HUBER. Captain Two Bulls, in discussions that I had with you earlier you had some advice on the \$500 limit. Would you care to tell us your views as to how that applies to the Pine Ridge Reservation?

Mr. TWO BULLS. We feel about the same way; it is a little too high.

Ms. HUBER. Why is it too high?

Mr. TWO BULLS. Because the people, like Mr. Plumage says, \$100 is like a \$1,000 to other people. That is set for upper-middle-class families, we feel, and somebody took \$500 worth of household items from these Indian people, they would clean the whole house out.

Ms. HUBER. Thank you.

Mr. Plumage, I take it that you have been involved in discussions of the procedures for handling of non-Indian offenders on reservation areas following the *Oliphant* decision. Is that correct?

Mr. PLUMAGE. Yes, I have.

MS. HUBER. Are there any areas in South Dakota where difficulties exist as to the handling of non-Indian offenders?

MR. PLUMAGE. I think that is a pretty well-known fact now—it is just in the Rosebud area where we are having our major problems.

MS. HUBER. Could you tell us what the effect is of lack of cooperation between the State and tribal officials in the handling of offenses committed by non-Indians? What effect does that have on law and order on the reservation?

MR. PLUMAGE. I think if I might elaborate a little bit—I had planned on holding this for the comment section—but I was sitting in the room when Judge Talbott made some comments I feel I would have to disagree with. I also served on the task force for the Bureau of Indian Affairs for the State of South Dakota.

In regard to our cross-deputization cards, these deputy officers' cards are Federal commissions. They are issued under the authority of the area director who in turn delegates that authority down to each superintendent at the reservation level. Before these cards are given to officers, they have to fill out an application. Also, there is a background check made on each individual before these cards are issued. They are not handed out as random as it was made to sound. They are handed out to enforcement officers. They are there strictly to be used for the enforcement of tribal and Federal law on the Indian reservation. Basically, the card is issued for the protection of the officers as well as the Indian people.

I believe that the comment was also made that nobody stands behind the card which is not true. The card is a Federal commission and, therefore, the Federal Government stands behind the card for events of liabilities. If the officer is not doing his job, he is sued. If the case warrants it, it is handled by the U.S. attorney's office. At the same time the card is issued, the officer has to be doing the job, he has to be enforcing Federal or tribal law. We do not issue these cards to just anyone.

And to add a little more to it, I also worked the State of North Dakota with our enforcement officers in North Dakota. We have got no problems in North Dakota. We have all of our officers there commissioned with deputy sheriff commission cards. We have four reservations in North Dakota. I feel that I do agree with him that there is some problems as far as liability and stuff, but I think these are problems that can and should be worked out.

Right now, only, I think, to get into the question you asked that—like I say, we at the area level, we generally do not get involved unless it is requested. We had the local Sisseton agency try to work out an agreement with the County of Roberts as far as prosecution of non-Indians, because they were not being prosecuted. So, therefore, we stepped in, in an attempt to set up a meeting with officials at the county. We did set up the meeting. We had two meetings in fact. Nothing was resolved from the meetings. Like I say, we as a Bureau

feel like it is our responsibility that when the life of Indian people are involved, there is a possibility they are going to be hurt or somebody is going to be killed, then it is our responsibility to move in and see if we can get things going in the right direction.

We also had the same incident down at Rosebud where we had a meeting with the officials down there; of course it was the same thing. We went, our hands open for an agreement. When we tried to work an agreement out, we did not get any results with it. We also attempted—I talked to the area director about this, and I expressed to him my concerns, if we didn't get something going or done, there were going to be problems. We attempted to set up a meeting with the State's attorney general. In June we extended a letter to him, inviting him to come to Aberdeen for a meeting with the area, the Bureau of Indians, other tribal officials, which we never did receive a response.

Ms. HUBER. Mr. Plumage, in situations as you described, where efforts to work out a cooperative arrangement between the State and tribal officials, where these efforts have failed, at least at the present time, what do you think the role of the Federal Government should be to ensure law and order on Indian reservations?

Mr. PLUMAGE. I feel—like I say, I felt it was our responsibility first. I feel now we have done all we can do. We have attempted to set up meetings. I have talked to the U.S. attorney's office about it. I feel now that, if we can't do anything, then the U.S. attorney's office should attempt to enforce the assimilated crimes law or attempt to set up a Federal magistrate.

I realize they can't do it at the local level. I feel now the responsibility, if we can't work it out—I would sooner see us work it out locally. If we can't, I feel it should be done at the Washington level, at the Department of Justice. The Attorney General has the authority to look into these matters.

I feel as a last resort that, if we cannot work out an agreement where non-Indians are prosecuted by the State and taken care of through their courts and that justice is served, then we have no resort but to look toward a magistrate system where the Federal Government would assume enforcement over all the people on the reservation, including non-Indians. The State would just be left out of it. But I wouldn't want to see this happen. But I feel, unless we can start getting meetings with the State where we can sit down, work out problems that we have, we have no resort but to seek this. This was told to the Sisseton people and also to the people of Rosebud. We want it to work; we want an agreement worked out. We are willing to sit down and listen. This is why I hate—one of the gentleman made the comments that it is a dual role. Everybody has to cooperate. I agree with that. I feel in my own mind that we as a Bureau, also as a tribe, have attempted to work out an agreement. We are not getting the response of the State's attorney, local sheriffs, also the State of South Dakota attorney general's office. They don't want to work out an agreement.



If they do, they are not coming forward and showing they want to do this. We want—we feel everybody should be protected on Indian reservations regardless of whether you are Indian, whatever you are. You are entitled to protection.

Ms. HUBER. Thank you.

Mr. Chairman, I have no further questions.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Gentlemen, I have noted that you, each of you has extensive law enforcement experience. In fact, Mr. Plumage with his 18 years of law enforcement experience has less than any one of you—Mr. Gayton with 31 years and Captain Two Bulls with 24 years.

I would like to ask you if you can indicate whether you have any records to show the number of cases in which there has been a delay in prosecution because of the FBI. You indicated that where there is a major crime that the FBI responds in about 1-1/2 hours, but that in other cases there is probably a 2-week delay. Do you have records to reflect those cases?

Maybe I will ask you my second question: if you have such records, would you then make those records available to this Commission for inclusion in the record, Mr. Chairman, at this point?

Do you know whether you have such records? Some have indicated a number of warnings—I'm going to go to the other point. With respect to where there has been a delay, do you have records where there has been a delay?

CHAIRMAN FLEMMING. Over the span of the last 2, 3 years—

MR. GAYTON. It would be hard to—of course we have a record of all our cases, but I would have to see if we can pinpoint the times, especially as to burglaries, as to when they got there. We just go ahead, do our case, write it up, send it on in.

COMMISSIONER FREEMAN. Let me further pursue it. You have completed your investigation. You have requested the FBI to come in. In some instances, you have processed them. In other instances, they have not been processed or referred to the prosecutor because you are waiting on the FBI. Would your files reflect that?

MR. GAYTON. When we complete a case, we just send it right on to the FBI. Usually the delay is in—for the grand jury to meet, see, these non—except for the murder and the real serious rape cases, most are presented to the next term of the grand jury. That is usually—

COMMISSIONER FREEMAN. Who is the one who makes the presentation to the grand jury?

MR. GAYTON. The FBI agents.

COMMISSIONER FREEMAN. The FBI. If the FBI agent is 2 weeks late getting the case or arriving to get the information or continue an investigation, the FBI agent may make a determination. He uses his discretion whether to present it or not. Is that correct?

MR. GAYTON. No.

COMMISSIONER FREEMAN. What is the procedure?

MR. GAYTON. He presents all the cases to the U.S. attorney at one time or another.

COMMISSIONER FREEMAN. Does he make a recommendation to the U.S. attorney?

MR. GAYTON. I think they probably do, yes.

COMMISSIONER FREEMAN. Do your records indicate what happened to these cases?

MR. GAYTON. Well, if they are declined, yes, the U.S. attorney's office will let us know, if they have been declined for prosecution, yes.

COMMISSIONER FREEMAN. Then do you have the information concerning the cases where the U.S. Attorney General's office has declined?

MR. GAYTON. Yes.

COMMISSIONER FREEMAN. Would you provide that information to this Commission for the record at this point?

MR. GAYTON. Yes.

COMMISSIONER FREEMAN. Mr. Chairman, I would like—

CHAIRMAN FLEMMING. Without objection, it will be held open. That information will be inserted in the record at this point.

COMMISSIONER FREEMAN. Will each of you indicate whether there have been cases that have not been prosecuted because of a delay in referral or an action by the FBI. Would you have an opinion as to how many such cases there are?

MR. TWO BULLS. I don't know of any.

COMMISSIONER FREEMAN. Do you have an opinion as to whether there is a duplication of effort on the part of your officers and that of the FBI?

MR. PLUMAGE. I can probably comment on that. In fact, when I worked in the State of North Dakota I would say yes, there is duplication. Sometimes we make the initial investigation. We may handle the full case before the FBI can become available due to other commitment. Sometimes when they come in they get our reports, interview the same people, which is the end result in the same thing.

COMMISSIONER FREEMAN. Do you consider this a duplication?

MR. PLUMAGE. Yes, I would.

COMMISSIONER FREEMAN. That is an unnecessary expenditure of taxpayer money.

MR. PLUMAGE. I wouldn't necessarily say that. I would say it is a duplication.

COMMISSIONER FREEMAN. You have a comment, Mr. Gayton?

MR. GAYTON. I feel many times there is duplication, yes.

COMMISSIONER FREEMAN. Have you or do you have the procedures for referring any opinions that you have concerning duplication of effort to the Justice Department with a recommendation for change? Have you initiated any recommendations?

MR. PLUMAGE. I can say the comment has been made, and I feel now that we are moving that way because of the fact that the com-

ment was made where the FBI is reducing their officers in Rapid City and also Pierre. Their time is going to be limited as far as investigation. Now our criminal investigators are being called upon to do more of the investigation. So I feel the FBI is going to be held for major crimes like a murder, something like this. Of course, if they are available for the lesser crimes then they will be out there.

COMMISSIONER FREEMAN. You are saying that the changes that you consider to be necessary are being considered, are being planned, and will become operative soon?

MR. PLUMAGE. I do not know whether they will be operative, but I know they have been discussed. We have discussed them with the FBI, the U.S. attorney's office, and I feel something will be worked out, right.

COMMISSIONER FREEMAN. With respect to those cases involving offenses by non-Indians in which a warning has been issued, does your office, and I mean this to each of you, do you have a record with respect to the warnings and the description of the offense that has been given to non-Indians during the past 2 years?

MR. PLUMAGE. We recently started to tabulate offenses since the *Olyphant* decision of crimes committed by non-Indians on the reservation as far as misdemeanors go.

COMMISSIONER FREEMAN. Would you make that tabulation available to this Commission for inclusion in the record at this time?

MR. PLUMAGE. Yes, ma'am.

COMMISSIONER FREEMAN. May it be received?

CHAIRMAN FLEMMING. Without objection, it will be inserted into the record at this point.

COMMISSIONER FREEMAN. I might just add we have received some testimony about five individuals who had been warned, given a warning for driving without a license. I had to at least remember that Leon Spinks of St. Louis would have appreciated a warning.

No further questions.

MR. NUNEZ. Mr. Plumage or Mr. Gayton, I still am rather confused as to the relationship that the Bureau of Indian Affairs police has with the FBI. Do you have a written procedure as to when they come into a case or don't come into the case?

MR. PLUMAGE. The basic responsibility for the investigation for 14 major crimes in Indian country lies with the FBI. It is their major responsibility. But being the fact, like we say, we are there, we have investigators who are trained to do the same thing, we usually initiate the initial investigation. From there, when the FBI is notified, we worked jointly on a case until it is taken to Federal court and eventually prosecuted.

MR. NUNEZ. That is a formal agreement, as you indicated.

But even the secondary, when the reality of the situation is that you are there, they are not there, they have to come from Rapid City or one of the other communities where they reside in—you haven't

worked that out any other way aside from just calling them and they come when they can?

MR. PLUMAGE. Where we ask for an FBI agent on the reservation?

MR. NUNEZ. Yes.

MR. PLUMAGE. We never formally made the proposal, no.

MR. NUNEZ. You think it might be useful to lay out some kind of—say it was a murder, they would be expected to come within a day; if a less serious crime, you would hope they could come, work something out?

MR. PLUMAGE. I feel now that we are starting to work in this direction. The fact, like I say, their agencies are being reduced within our area. The fact that they are calling on us to do more of the investigation on the lesser major crimes that we would handle ourselves.

MR. NUNEZ. So this problem would work itself out?

MR. PLUMAGE. I think it is, yes.

MR. NUNEZ. No further questions.

CHAIRMAN FLEMMING. Right on the point that has just been raised, we have taken note of the fact that there are apparently plans for the FBI to reduce the force that has been serving the reservations. Is it your understanding that some shift is going to be made in terms of their basic responsibility for investigation of these 14 crimes?

MR. PLUMAGE. I do not know whether there is going on an official shift or not. But through mutual discussion, it's been stated that we would start handling more of the investigation of the lesser offenses.

CHAIRMAN FLEMMING. But when you say more of the investigation of lesser offenses, you are still talking about the 14?

MR. PLUMAGE. Right.

CHAIRMAN FLEMMING. As far as some of the 14 are concerned, you feel this will result in your doing most of the work on those 14?

MR. PLUMAGE. Yes, sir.

CHAIRMAN FLEMMING. Now, when you have completed the work, it will—the results of your work will still be referred to the FBI, am I correct, for presentation to the U.S. attorney?

MR. PLUMAGE. I'm not too clear on that part. I feel probably—I may be speaking out of turn, but the U.S. attorney will be following me, so I'm sure he will correct me if I am wrong. I feel that on some of these cases in which they would be put together, we would probably be presenting them to the U.S. attorney and maybe the grand jury. But this would be at the discretion of the U.S. attorney.

CHAIRMAN FLEMMING. Let's assume that on a gradual basis there is a shift of responsibilities so that you carry more of the responsibility for the investigation of some of these major crimes. Would you still want to be in a position in connection with some of those investigations where you could call on the FBI for assistance?

MR. PLUMAGE. Definitely. Right. We would almost—they have a laboratory. They have got real fine agents. Serious crimes, murders, things like this, where we may have to interview a subject in New

York or somewhere. They have got agents there. I feel we always have to work together as a mutual agency with one another.

CHAIRMAN FLEMMING. Right. Okay. We appreciate very much your—

MR. PLUMAGE. Mr. Chairman, could I make one more comment?

CHAIRMAN FLEMMING. You certainly may.

MR. PLUMAGE. I would like to add a little bit more as far as the training of our police officers. I think that the comment was made, the way I interpret it myself, is the fact if our police officers were trained that they would probably be considered for cross-deputization. Our officers are trained. Our Indian police officers are probably some of the finest trained officers in the world. When they go into the Bureau, they go to our Indian police academy down in Brigham City, which is probably about a 600-hours course. Through the years after that, they are given 40 to 80 hours of inservice training by our department as well as the FBI. So they come in and train our officers. They are proficient in firearms. I really resent a comment like that. Our officers are probably better trained than officers within the State of South Dakota. I can't see how they could use that as the fact we have to have our officers, better trained. Not only for our Bureau officers for our tribal officers—they also go to our training services, like we had training down at Pine Ridge which the FBI assisted. The State was involved in there.

But I would just like to make a comment myself. I feel really that if the people would just take the time—we have our Indian people, our Bureau people, our State people, if they would just sit down, start talking, taking one another seriously, I feel things could be worked out on a local level. But at the same time, I feel really that, like I say, the people that are being hurt right now are the Indian people. And this is the reason why we feel something has to be done as far as non-Indian crimes on the reservation—whether a minor crime or whatever, it is still a crime.

Thank you.

CHAIRMAN FLEMMING. Thank you. Thank all three of you for giving us the benefit of your experience and the insights you have gained from that experience. Thank you very, very much.

Counsel will call the next witnesses.

MR. ALEXANDER. David Vrooman, U. S. attorney for the District of South Dakota, Mr. David Brumble, agent-in-charge, Minneapolis area office, FBI, Thomas H. Greene, senior agent-in-charge, Rapid City office, FBI.

[Messrs. Brumble, Greene, and Vrooman were sworn.]

**TESTIMONY OF DAVID BRUMBLE, AGENT-IN-CHARGE, FBI, MINNEAPOLIS, MINNESOTA; THOMAS H. GREENE, SENIOR AGENT-IN-CHARGE, FBI, RAPID**

CITY, SOUTH DAKOTA; AND DAVID VROOMAN, U.S. ATTORNEY FOR THE  
DISTRICT OF SOUTH DAKOTA, SIOUX FALLS

CHAIRMAN FLEMMING. We appreciate your being here.

MR. ALEXANDER. Starting with Mr. Greene, would each of you identify yourself, your name, your city of residence, and your position with the Federal Government for the record, please.

MR. GREENE. Yes. My name is Thomas H. Greene; I'm a special agent with the Federal Bureau of Investigation, assigned to Rapid City, South Dakota.

MR. VROOMAN. David Vrooman, United States attorney for the District of South Dakota, Sioux Falls.

MR. BRUMBLE. David Brumble, special agent-in-charge, Minneapolis Division of the FBI.

MR. ALEXANDER. Mr. Vrooman, we will start with you. Could you briefly give us a description of the U.S. attorney's responsibilities for Federal criminal law enforcement within Indian country?

MR. VROOMAN. There are two basic statutes—1152, 1153—plus some special statutes dealing with intoxicants, hunting, and fishing. The problem in 1153 is the statutes which we call "the major crimes."

Judge Talbott was talking about 10 major crimes. It is now up to 14. In the area—the major crimes—if an Indian commits one of those crimes upon an Indian or non-Indian, my office has jurisdiction. As far as non-Indians are concerned, we have jurisdiction under 1152, Assimilative Crimes Act, or if a specific statute of Federal law is broken, and we have an Indian victim or the property of an Indian victim. That's our primary area of responsibility for some special statutes. And, of course, all the Federal laws apply—postal violations, firearm violations, they apply on and off the reservation as anywhere in the United States.

MR. ALEXANDER. You have been in office now how long?

MR. VROOMAN. Sixteen months. It seems like 5 years, but I have only got 5 weeks to go.

MR. ALEXANDER. In previous discussions, you indicated that when you assumed your current position that there was a very significant backlog of pending cases. Is that accurate?

MR. VROOMAN. That is more than accurate, yes, sir. There were 266 felony cases pending in the district of South Dakota when I took office, with two Federal judges.

MR. ALEXANDER. Approximately how many of those would have been under the major crimes act and the other statutes you've just discussed?

MR. VROOMAN. I didn't take statistics at that time. I did go back—we are down to 130 cases. We are more current now than we have been for a long time. The breakdown this week was 67 crimes involving Indians, 63 involving non-Indians. Only one of those crimes involving a non-Indian was on the reservation. It is 51 percent, would be the answer.

MR. ALEXANDER. Did you establish prosecutorial guidelines in response to the backlog or other reasons?

MR. VROOMAN. The backlog was part of it. I have taken some criticism and maybe rightly so as far as the guidelines are concerned. I have had guidelines off the reservation and insofar as bank embezzlements are concerned. I have had guidelines insofar as if there is a \$50 theft from an interstate shipment, the Milwaukee railroad, we are no longer spending \$1,000 worth of government time trying to solve that. I have a \$750 level there. Primarily, the thing that people talk to me about are, of course, the guidelines on the reservations.

I inherited 266 cases. The seven cases that were tried before Judge Bogue immediately prior to the time I took office, seven jury cases involving Indians off the reservation, all seven resulted in acquittals. Now there is something wrong. Either there is too many cases, we aren't using right kinds of cases, or there is too much delay. Any one of the three is fatal. I don't think one office should get to the point where we win 100 percent of our cases. If we are doing that, we are being way too selective. But no U.S. attorney's office or any prosecutor should be losing seven out of seven.

I haven't kept track, but we are winning about 90 percent of our cases. Yes, I did implement guidelines, but I would like to make one correction for the record. Burglaries under \$500 are being investigated, but they are being investigated by the BIA special officers or by the tribe.

I tried to do two things. I tried to get the Federal courts back so that we could use them, get people in, get them tried, which we are doing. By the same token, we were training tribal judges; we were training tribal investigators and tribal policemen. So I was trying to send cases back for them to work on.

At Pine Ridge, for example, 87 burglary cases were declined by my office because in the first 6 months—because of the \$500 guideline. The tribe followed up on 80 of those 89. The other nine, somehow they lost the paperwork. They followed up on 80. Fifteen of those resulted in convictions in tribal court. Those cases—and some are still being investigated. So there is not a place where there is no investigation, no enforcement. I used the example, and this is what my guidelines were based on.

On a Friday night, on the Indian reservation, two guys are having a drink and they get mad and one guy hits the other guy in the head with a beer bottle. In the prior administration, that person was indicted for assault with a dangerous weapon. He was hauled from Pine Ridge or Rosebud, wherever it might be, to Sioux Falls or Aberdeen where he was arraigned. He was given a lawyer.

They discover—they went around 6 months, and finally they plea bargain the case down. They were given 90 days probation on simple assault. It cost the Government thousands of dollars. The defendant beat the rap, so to speak, because the probation officer wasn't going to do anything for 90 days.

Those cases now, and I think properly so—the same thing would happen in Sioux Falls—would not go into circuit court but Sioux Falls municipal court. Those cases are now going in next week into tribal court. Yes, technically that's an assault with a deadly weapon. But unless there is serious bodily injury, we don't take them. That's just how my guidelines work.

MR. ALEXANDER. Are your guidelines similar to or different from those applied by other U.S. attorneys in other parts of the country where there are Indian reservations?

MR. VROOMAN. As I understand, the U.S. attorney in North Dakota adopted mine. I had no others before me. I have since seen some guidelines by the U.S. attorney in Phoenix. They are similar.

MR. ALEXANDER. Is there any central policy of the Department of Justice on the issue of guidelines and what crimes should be prosecuted by your office and which crimes should be deferred to tribal justice systems?

MR. VROOMAN. There are guidelines throughout the Department of Justice regarding guidelines and crimes. However, there are no guidelines in the Department of Justice in so far as the enforcement of the Major Crimes Act are concerned.

MR. ALEXANDER. So each U.S. attorney is within his or her own level of discretion in this area?

MR. VROOMAN. That has been true historically, yes.

MR. ALEXANDER. The declination rate generally under the Major Crimes Act, as I understand it, covers somewhere between 80 and 90 percent?

MR. VROOMAN. I think that is a fair figure, yes.

MR. ALEXANDER. Is that fair for your office too?

MR. VROOMAN. I think so.

MR. ALEXANDER. Is that distinctly different from your declination rate in other areas of responsibility?

MR. VROOMAN. No. I would think—no. About the same.

MR. ALEXANDER. In your role as a Federal prosecutor, as opposed to a local prosecutor, if you were a State's attorney, hypothetically, would you be running the same kind of declination rate for, let's say, a county in Sioux Falls for major crimes, or does a local type of prosecutorial operation tend to have a different declination rate than the U.S. attorneys do?

MR. VROOMAN. I think that it may be somewhat different. I'm not sure. I'm not privy to that kind of information. I have friends who are State's attorneys. I have never been one. I would think that maybe there are some differences. For example, if I prosecuted every social security violation that came into my office, which I get a lot of them—79-year-old guy that said he didn't have any money and they find he has \$2,000—I don't take him through the process. But I don't turn down every social security violation.



I recently prosecuted a fox-hunting violation, but we don't take every one of them. The role of the Federal Government—there are 63 different investigative bodies—63 that I know of—bringing cases into my office. The BIA just happens to be one, and the FBI happens to be the second one. But there is a lot of them. So we use discretion every day. I delegate it down to my assistants who I have utmost faith in. I'd like to make clear that if anybody doesn't like a decision or a declination, either the FBI or the BIA, through their channels can come to see me personally, and I will review the cases, which I have done in a couple of cases.

MR. ALEXANDER. Mr. Chairman, while we are discussing the guidelines, I have a copy of the guidelines; I would like to have them submitted as an exhibit at this point.

CHAIRMAN FLEMMING. Without objection, they will be entered at this point.

MR. ALEXANDER. Are you familiar with the Department of Justice task force report on Indian affairs?

MR. VROOMAN. Three or four years ago?

MR. ALEXANDER. Yes?

MR. VROOMAN. I've browsed it; I can't say I'm familiar with it, but I've browsed it. If I read everything the Department of Justice gave to me, I couldn't have gotten the job done. But I am familiar with it, yes.

MR. ALEXANDER. It involved 11 different sections of the Department of Justice, all of whom have some responsibility touching on Indian affairs. Their conclusion was that U.S. attorneys tend to treat offenses on Indian reservations in the same manner as they would treat other types of criminal cases. It was also their conclusion that that overlooked the special Federal responsibility in that area. I would like you to comment on that viewpoint.

MR. VROOMAN. I don't think that is a fair criticism, at least of my staff. My office here in Rapid City spends 90 percent of their time, and I'm conservative in that, on Pine Ridge. That is what they do. Our responsibility is different. For example, if we had a kidnapping from Minnesota to South Dakota, we have three different sovereigns who could prosecute—Minnesota, South Dakota, we have three different sovereigns.

It has always been my policy to defer to State prosecution, unless there is some reason. I recently prosecuted a Mann Act, believe it or not, in Pierre, South Dakota. The only reason we did it, because I'm not going to be the policeman for the State of South Dakota if the local prosecutor doesn't want to do it. That is his businesses or gamble. What happened is they had an evidentiary problem. They called me up and we took it. We were successful. So we take our responsibility on the reservation more seriously because it is ours. There is nobody else to go to. But we work more closely off the reservation and defer probably more often to local prosecution. So there is a difference, yes.

MR. ALEXANDER. In relation to deferrals to Indian justice systems, do you have any recommendations with respect, for example, to the Indian Civil Rights Act in terms of the limitations on tribal court justice systems to \$500 and 6 months? If you are going to be referring more and more cases to these local justice systems, doesn't the Federal Government need to upgrade the penalties that these justice systems can impose?

MR. VROOMAN. Of course, it's more of a legislative problem. My opinion is yes. It ought to be comparable to State court, \$1,000, 1 year, or both or comparable to a magistrate's jurisdiction.

You do have the problem about facilities where you can incarcerate somebody. I wouldn't want somebody incarcerated in a facility for a year that wasn't a top-grade facility, and of course, South Dakota right now—presently the State is in a very serious jail reform effort, as you know. The State bar just recently supported that. We have some rather poor facilities both off and on the reservation. I don't want to spend the night in any of them, but there certainly aren't very many of them I would want to spend the night in.

MR. ALEXANDER. Moving to a slightly different area, there's been, I believe you heard some of the testimony this morning, some considerable concern around the State in terms of non-Indians committing what is known as "victimless crimes." Who has jurisdiction and what happens when the local communities cannot work out some solution?

MR. VROOMAN. I was interested in Walt Plumage's comments. I have a lot of regard for Walt, but he overlooks the basic legal problem, *Oliphant*; that is, it isn't up to the Attorney General of the United States to wave a wand and say we have jurisdiction. Jurisdiction is based on constitutional law, based on Federal law; it is not something that the Attorney General can say, "From now on, I'm going to take jurisdiction."

*U.S. v. Dodge*, Eighth Circuit Court of Appeals about 5 years ago, a Wounded Knee case, said, if it is a non-Indian on a non-Indian, then it is State jurisdiction. A non-Indian on an Indian or an Indian committing the crime, we have it under 1152 or 1153. They did not address the so-called "victimless crimes."

The Solicitor for the Department of the Interior took a rather strong stand. He wrote an opinion, sent it to the Attorney General, Griffin Bell. Ben Civiletti was primarily the one they talked to.

The Department of Justice concluded about 3 weeks ago that they do not have Federal jurisdiction over victimless crimes.

MR. ALEXANDER. Is that an official policy statement of the Department of Justice?

MR. VROOMAN. Yes, and I was authorized, because I told them I was going to be quizzed on that, I was authorized by the Department of Justice to announce it was their official stand.

MR. ALEXANDER. Now the Department of Justice—this has been in question since *Oliphant*?

MR. VROOMAN. Right.

MR. ALEXANDER. Since the Department of Justice has now decided it does not have the jurisdiction, what is the alternative?

MR. VROOMAN. I might say I don't think the Department has made an opinion yet as to whether the tribal officers have the right to arrest and turn over to the States. My personal opinion is that based on the Treaty of 1889, that based on my understanding of case law which has developed for 100 years, and also based on the dissent in *Oliphant* which I thought very well made the point, I think they do have the right to arrest non-Indians. Judge Bogue agrees with me because he so ruled in Cheyenne River very recently. I do not know the answer. I think, ordinarily when we think of jurisdiction, it is a grant by one sovereign to the other. I think in the unique field of Indian law that the Congress of the United States probably could come back in or step in and say where the jurisdiction is on Indian reservations. I think it is unique in the Constitution; it's probably the only kind of jurisdiction that is granted that way.

In the meantime, I have one case being investigated at Sisseton, and I'm disturbed by the Sisseton situation, probably more than any other area in South Dakota. We've devoted some time to it. I know the BIA, Harley Zephier, and Walt Plumage and Gene Trottier spent a lot of hours trying to get that thing ironed out. We are presently investigating—I won't divulge the details—a civil rights violation over there. It is my feeling at the present time that if the cities or the counties refuse to do their duties—and I might point out, everybody seems to think I'm the attorney general of South Dakota; I'm not, I'm the United States attorney—if the State's attorneys aren't doing their job, then Bill Janklow is the one to tell them to do it. And Bill, so far, has said that he would be willing to do it. He sent us a memo, and I have no reason to believe that he wouldn't. But, if they refuse to do their job, then I think we ought to go in under the Civil Rights Act, civil rights violations and say, "Charge them either by enjoining them or by criminal violations for not doing their job and take them into Federal court." At least we will get their attention if nothing else. I really believe that that's the only avenue open to us right now. I'm in the process of exploring one. I put my first assistant, Bob Hyden [phonetic], in charge of that after September 9. He's still going to be here. It won't be swept under the rug.

MR. ALEXANDER. Mr. Brumble, could you briefly describe what your responsibilities are at the Minneapolis office?

MR. BRUMBLE. I am in charge of all the supervision of investigations in Minnesota, North Dakota, and South Dakota.

MR. ALEXANDER. From interviews we have had with FBI personnel, we understand that the FBI uses a three-point classification system for its work or one, two, three priority system. Is that accurate?

MR. BRUMBLE. That is right.

MR. ALEXANDER. Major crimes activity is classified as what?

MR. BRUMBLE. It would be classified as a personal crime which would be a priority two matter.

MR. ALEXANDER. Does that affect in any way, shape, or form the number of resources made available to you in major crimes' investigation?

MR. BRUMBLE. Let me—I guess I have to explain what the program is. Under the management by objective concept which was implemented by an Executive order in 1972, we have to establish priorities and goals in every agency in the Federal Government. The goals that are set down in the FBI are set down by the Director of the FBI in concert with the Attorney General and the oversight committees in Congress. Those priorities, category one, white-collar crime and organized crime. Then depending upon the crimes of violence, personal crimes are in the category two, along with much of the other work.

However, in the Minneapolis division, my priorities are not the same as the national priorities. In other words, I may have situations here that I categorize as more important than they do in Washington. In the Minneapolis division, these crimes are the second major problem that I have in my division.

MR. ALEXANDER. The first being?

MR. BRUMBLE. White-collar crime.

MR. ALEXANDER. We have heard a number of speakers mention that the FBI is reducing the number of agents in and about the Rapid City area. Is that accurate?

MR. BRUMBLE. Yes.

MR. ALEXANDER. Was that your decision?

MR. BRUMBLE. Yes, sir.

MR. ALEXANDER. Could you explain to us what the basis of that was?

MR. BRUMBLE. I discussed this with many officials at the State level, the Federal level, and the local level. I took the opportunity to talk to a number of the people on the reservation itself at Pine Ridge and this area. We have had a strong commitment of manpower here for a long time, and after studying it and the use load and the workloads that were here, it was my opinion we could do the job more effectively, more efficiently, more economically with a reduction in manpower.

MR. ALEXANDER. Would it be fair to say that from your perspective of that at least southwestern South Dakota does not present itself as a crisis situation any longer?

MR. BRUMBLE. No, I would not say that.

MR. ALEXANDER. What would you say?

MR. BRUMBLE. I would say that the background of danger of the agents still working on the Pine Ridge Reservation is a reality. There is still hostility. There is still tension and the threat is as much a reality to the agents today as it was in 1975.

MR. ALEXANDER. This grows out of the killings of the two agents and an Indian person in an incident several years ago?

MR. BRUMBLE. I believe it probably goes back, further back than that, probably back to 1973. I think it is probably a situation that the FBI was placed in and the reservation—following the activities of

Wounded Knee where the Indians have identified the agents as totally responsible for deterioration of the quality of life on the reservation. Frankly the FBI is blamed for just about all conduct and activity of the Federal Government on the reservation. The hostilities started there; I think it has continued. I think it was manifested in the attack of 1975 where the two agents were killed. Hostility today is still continuing in demonstrations, the contacts that the agents have with the people there. They don't like the agents.

MR. ALEXANDER. What procedures were instituted of a special nature by your office after the killings in 1975?

MR. BRUMBLE. There was, of course, an infusion of manpower here. There was a new administrative organization set up here also. There was a minioffice of the FBI created which encompassed Rapid City and Pierre, South Dakota, operations. It was just a greater assignment of manpower to the area.

MR. ALEXANDER. We have heard and from commentary and discussions that we have had previously also it was mentioned the caravan system was going on on the reservation and significant upgrading of weaponry also occurred about that time. Is that accurate?

MR. BRUMBLE. Yes. Are you referring to the caravan, the situation where the Attorney General wanted a 7-day—

MR. ALEXANDER. No. I'm referring to the FBI traveling in two to three vehicles with backup units and so on.

MR. BRUMBLE. Yes, it was—the traveling of the teams to the Pine Ridge Indian Reservation was primarily a response to instructions of the Attorney General to provide immediate 24-hour response, 7 days a week on the reservation. That was a system initially designed. The weaponry was upgraded.

MR. ALEXANDER. To what?

MR. BRUMBLE. To automatic weapons, shoulder weapons.

MR. ALEXANDER. We had some testimony yesterday, and as a matter of fact one of our staff attorneys observed the FBI in the Porcupine area, where they came in several cars, front and back, to a home that ended up—turned out to be occupied by an old woman and a young child. The result that we perceived, at least that person who was there perceived, was a very terrified old woman, very terrified as to what the FBI would do to her and so on. We have talked about your perception of continuing hostility. I'm curious to know how the continuation of that practice—it was also described as a hovering helicopter in addition to the several cars—and the impact on the local Indian people, how that balances off with the agents' safety. You talk about a situation that has continuing crises and tones, and from testimony we have received, it seems that the practice itself continues at least to create some of the tension. I would like you to comment on that.

MR. BRUMBLE. I would have to agree with you.

MR. ALEXANDER. But you maintain that it is still essential to do that for the agents' safety?

MR. BRUMBLE. Yes, I do.

MR. ALEXANDER. At this time?

MR. BRUMBLE. Yes.

MR. ALEXANDER. Is that an issue that will be, on a fairly systematic basis, reviewed on a monthly basis, on a 2-month basis, or what have you?

MR. BRUMBLE. It will be constantly reviewed by my supervisor here, Mr. Greene, as well as myself.

As far as certain of the equipment, I have found some of the equipment may not be essential or necessary here such as the helicopter. There will be—at the present time let me say this. There are only certain areas on the reservation where the hostility remains as critical as it did, let's say, in 1975. It is not true throughout the reservation. It would be very unfair to leave that comment stand. The Porcupine area is an area where the agents must respond in tandem because intelligence information and information we possess on the individuals who reside in that particular area.

MR. ALEXANDER. Your agents that cover the Pine Ridge Reservation would reside where?

MR. BRUMBLE. In Pine Ridge.

MR. ALEXANDER. The agents themselves?

MR. BRUMBLE. I'm sorry. In Rapid City.

MR. ALEXANDER. And they would respond to a call from whom to go onto the reservation?

MR. BRUMBLE. From whatever source a complaint came from.

MR. ALEXANDER. A private citizen?

MR. BRUMBLE. It could come from a private citizen; it may come from an individual in Nebraska who has been on the reservation and has left in fear and called in because they were attacked; it could come from the tribal officers, the Bureau of Indian Affairs service officer, or from David Vrooman. It comes from every quarter of the American public.

MR. ALEXANDER. Do you notify the tribal president or the top of the Oglala Sioux law enforcement structure when you are going onto the reservation?

MR. BRUMBLE. Not necessarily.

MR. ALEXANDER. Do you have some places where you will notify them and others where you won't?

MR. BRUMBLE. It is not a standard policy for the FBI to seek permission or approval to operate or notify the authorities.

MR. ALEXANDER. I didn't ask whether you were seeking approval. I was asking whether you would, just as a standard practice in any situation, notify the tribal police?

MR. BRUMBLE. No. Not as a standard operating procedure. In other words, if we were going to apprehend a fugitive or go down and conduct an investigation that we felt there was no reason for him to be notified, we would not notify him.

MR. ALEXANDER. How do you then determine when you do notify the tribal police?

MR. BRUMBLE. Primarily when we would solicit their help or need their assistance or feel we would be operating in an area where there might be a misunderstanding—misunderstand the presence of the agents at the time they are there.

MR. ALEXANDER. Is that a decision of the individual agent on the case or do they have guidelines from you under which they operate?

MR. BRUMBLE. No, this would be the individual, the case agent, the man, the team leader at the time the situation was occurring.

MR. ALEXANDER. Agent Greene, would you like to comment on the use of what I termed the "caravan procedure"? Do you have any additional comments on the effect it has on your officers, on your ability to function as investigator?

MR. GREENE. No adverse comments. What Mr. Brumble said down the line is correct. We do it because we feel the need for it. We feel that it is an assistance to good law enforcement—not law enforcement—to good investigative techniques. It presently is still necessary.

MR. ALEXANDER. Mr. Brumble, when an FBI agent is assigned to work on an Indian reservation or in an office that has an Indian reservation as part of its major responsibilities, is any particular training provided to that agent?

MR. BRUMBLE. Probably, upon his assignment here for the first several weeks he is here, he will be working with another agent. We would not necessarily make him a team leader or in charge of a two-man team situation. This would be an on-the-job type situation and development. Our agents are not specially trained to work on reservations because we do not feel as investigators that there is any difference in investigating a crime on the reservation, necessarily, than any other type of Federal crime.

MR. ALEXANDER. Could you expand on that? I have a little difficulty in understanding that, that it is not any different than investigating a crime, say, that occurs in Wanblee where many people speak Lakota, for example, than investigating a crime that occurs in the middle of Rapid City.

MR. BRUMBLE. It will be no difference in operating a Polish section of Chicago or the Czechoslovakian center of Florida. We will have our people there who can best understand the situations that are present. In other words, we don't train all of our people. I certainly wish that we had the capability of attracting and recruiting Indians who could speak the language. At the present time, we have a very positive affirmative action program in the FBI. Our successes have not been as good as they should be. We are continuing to try to improve it.

MR. ALEXANDER. Agent Greene, in your experience, I gather that you have worked on a number of Indian reservations over the years. Is that correct?

MR. GREENE. That is correct.

MR. ALEXANDER. Do you discern a difference in going out to interview Indian people in how, when to ask questions, perhaps how one

listens as opposed to interviewing a white insurance agent in Rapid City?

MR. GREENE. Very definitely.

It is the same difference you would encounter in interviewing somebody in Miami, Florida, as you would in town interviewing somebody in Butte, Montana, whether they both be white or any other race or religion or creed.

MR. ALEXANDER. Is the same difference in what sense?

MR. GREENE. There is a difference in every individual you interview in every locale in the United States, whether it be a rural area, a major city, a ghetto, whether it be in a very wealthy section of a community, whether it be in a poor section or underdeveloped section of a community. So your difference, when you interview somebody, when you are conducting an investigation, the area where you are, the people with whom you have to deal, varies from day to day, maybe even from hour to hour. But this does not set aside an investigation on an Indian reservation as totally different than any other investigations the FBI conducts throughout the entire United States.

MR. ALEXANDER. There has been testimony over the last day which tends to take a different point of view than the one you just expressed. Primarily it has come from the tribal police officers, BIA special officers who seem to feel their ability to be tied to the community, to understand perhaps cultural differences, made them more effective in being able to deal with people than perhaps you were. Would you like to respond to that?

MR. GREENE. I couldn't argue with this point of view in individual situations. It depends on the officer himself. You can't just take anybody and say, "You are now a police officer and you do the job better than anybody else because you are from this area and you have a cultural sameness with the individuals who you will investigate or whom you encounter in your investigations." It depends on the training, the attitude, the emotional status of the individual.

This is not my first office in the FBI. I have been throughout the entire—not entire—but throughout many places in the world, not only the United States. You have those cultural differences, but this does not mean to say that because an individual is an Indian, per se, that he is a better investigator or would be a better investigator than a non-Indian. It would be the same analogy as saying that you take an investigator who is black, place him in the investigative status of a black ghetto or a black community anywhere, the possibility that he will do a much better job to assimilate to culture and the people with whom he deals is very definitely true, but again it depends on the individual officer and his ability to function in the job that is given him.

MR. ALEXANDER. Mr. Brumble, could you explain to us in rather specific terms exactly what training every FBI agent gets with respect to work on Indian reservations?

MR. BRUMBLE. In the initial academy curriculum, the agent receives training in basic and interview techniques, crime scene searches —



MR. ALEXANDER. Specifically with respect to work on Indian reservations as opposed to training that is general.

MR. BRUMBLE. He receives instructions on how to work the crimes on the Indian reservations and the major crimes. In other words, this is a very specific block of instruction as far as the law is concerned.

MR. ALEXANDER. Essentially legal instructions?

MR. BRUMBLE. There are legal instructions primarily.

MR. ALEXANDER. Is there anything else?

MR. BRUMBLE. Of course, every aspect of his training has an impact on what his reaction is and how he will do his job, including firearms.

MR. ALEXANDER. I understand your position on that. I wondered if there was anything in addition to the specific legal training for the 14 major crimes that specifically related to an Indian reservation?

MR. BRUMBLE. No.

MR. ALEXANDER. The answer is no.

We have had testimony this morning—I hope you gentlemen were here to hear the panel prior to you—as to the role of the BIA, perhaps the tribal police, in responding to the scene of many offenses, and the notion that oftentimes these gentlemen feel they do a considerable amount of the investigation and that perhaps, not necessarily today, but some day in the future that that responsibility should be deferred either totally or in part to the BIA or tribal police, the responsibility for the investigation of major crimes.

Mr. Brumble, would you care to comment on that?

MR. BRUMBLE. We conduct the investigations on the reservation at the present time because the law requires us to. The Attorney General says we will be—

MR. ALEXANDER. Mr. Vrooman, my understanding is that is a Justice Department policy and that their Federal statutory law does not require any particular agency to investigate.

MR. BRUMBLE. That is true.

MR. ALEXANDER. Mr. Brumble?

MR. VROOMAN. That's the way it is. You bet.

MR. BRUMBLE. It is a matter of policy. We are there because we are required to be there.

MR. ALEXANDER. This Commission will be making recommendations with respect to Federal policy, and we are interested in your view as to whether or not the role of tribal police and the Bureau of Indian Affairs should be significantly expanded in terms of the responsibility of investigating major crimes. What is your view?

MR. BRUMBLE. I would, of course, I would like to see them be able to become a greater or have a greater role in it. To this end, I am committed to as much training as I can possibly provide to both the BIA service officers as well as the tribal police. In earlier comments to you this morning, which I overheard, we are trying to accommodate them by bringing the instructors here from Washington. I believe that where there is much to be exchanged in such a training program, I

have no hesitation, but as long as I am charged with the jurisdiction of the 14 major crimes, I will have to, of course, respond.

MR. ALEXANDER. Mr. Vrooman, as a matter of your office discretion, will you accept a major crimes investigation from a tribal police officer or the BIA agent presently?

MR. VROOMAN. Outside of drug enforcement, no.

I would like to—I'd like to have the floor. As far as the speaking of the Lakota Sioux language, I have talked to hundreds of Indian witnesses as an assistant U.S. attorney. I did work at Sisseton for a good many years; I was formerly a special officer of the Bureau of Indian Affairs, the same job Walt Plumage has got. I have had 20 years more or less practicing law but also working with Indian people. I can't remember over two or three instances, Mr. Alexander, where we had to use an interpreter. I put hundreds of Indian witnesses on the stand. This year I think I might have used an interpreter once or twice. We had put hundreds of witnesses in the court. They speak English. They understand questions. The language barrier has not been a barrier insofar as investigating cases or presenting cases. Quite frankly I'm a little shocked this thing has got out of proportion. I don't believe it is true. At least that is my opinion.

The other thing is about the BIA and the tribal police. I think the presence—I say this as candidly as I can be—I do not believe the Indian tribes have yet recognized the separation of power. As long as the executive is calling the shots, I think it is going to be dangerous to have all crimes investigated on the reservation where, when you have an election, people's jobs are at stake. The FBI, I think at this point, goes in, does not have any local pressure insofar as their investigative techniques are concerned.

Quite frankly, I'm a little bit skeptical at this point in time with the tribal governments—it is not true with all of them—the only place they ever went in caravans was at Pine Ridge. They didn't do it at Rosebud, Crow Creek, or Lower Brule or Yankton or Sisseton or any of the rest of them. The FBI has got along beautifully at Cheyenne River and Standing Rock and those reservations. It's just the one reservation where we are really centering in on here. I think the overall record of the FBI as far as investigation being free from local political pressure, investigative techniques, their reports to my office, I would have to say have been excellent.

One other point. Before we had this beef up of FBI, BIA special officers, when I was an assistant back in the sixties, did appear in front of the Federal grand jury. They did excellent work. They still do excellent work. It is not a duplication. A lot of times we will find something in the BIA or FBI report which will be helpful in a prosecution and quite often helpful to the defendant because they have two views, they're not always the same. I think the FBI has recognized—and I know Mr. Brumble, his assistant, was in Aberdeen at our meeting 3 weeks ago, so they feel that as their presence diminishes on the reser-

vation, but they are going to demand more and more on the BIA special officers. I think we had this situation from '73 to '78; I think it is cooling off. I think the FBI is lowering their presence on the reservation. The BIA, as Mr. Plumage says, is picking up the gap. I think it is going to take care of itself, at least to some extent. And if we continue to upgrade tribal police and tribal courts, they will reach that utopia—I don't know when it's going to be—that they can do it themselves.

MR. ALEXANDER. Do you think it is possible for certain types of crime—I gather you have a problem in terms of the executive influence on the tribal police—that certain types of crimes could be accepted directly in this transitional period from tribal police and the BIA special officers?

MR. VROOMAN. I still think there is family and political pressure put in every type of— You are talking about some reservations of only a couple thousand people, and they are a rather close-knit group. If somebody—Johnny gets charged with a crime, they are certainly going to know somebody, either their councilman, president, or somebody, and they are going to ask for some favoritism and quite frankly, I have run into it. So what crimes—depends upon who commits them, I guess.

MR. ALEXANDER. Mr. Greene, when you spoke with some of our staff, you indicated that much of the negative publicity that the FBI has received in certain investigations could be cleared up if certain FBI policies were not extant, for example, when a case is open, still pending, that no material concerning that case could be released. Is that an accurate reflection of your views? You think you have gotten bad publicity because of your own internal policies?

MR. GREENE. Not necessarily because of our own internal policies. The idea of not being able to divulge information concerning a pending adjudicated case and in some cases which are not pending investigation, there are a myriad of reasons, good reasons, for not divulging this information, the protection of the individuals now under the Freedom of Information and Privacy Acts, a lot of different reasons. Yes, you are accurate in your statement. We have received, in my opinion, a lot of bad publicity not on the Pine Ridge Indian Reservation alone but nationwide, wherein if it was possible to divulge to the public, to the American people, exactly what the facts presented as collected or as known through official investigations, there very definitely would not be the amount of bad publicity given to the FBI.

We are on the defensive constantly and for good reasons. I don't think that should change because there are good reasons for them, but a lot of our bad publicity is not substantiated. There are statements made by different individuals, groups, people, and we are not able to countermand or counteract or reply to these accusations. This is the reason for it. I do agree with you.

MR. ALEXANDER. Mr. Vrooman, there were comments made in the earlier panel about the applicability of Federal law in terms of BIA police officers and tort liability. Would you like to comment on that?

MR. VROOMAN. I do not know what the Solicitor of Interior's opinion is, but I certainly don't agree. As I understand the Federal Tort Claims Act, it covers employees or agents of the United States. Number two, in the course of their official duty, I find it a little hard to stretch that a tribal police officer in the employ of the tribe is an employee of the United States. I find it, even stretching it further, that if he is arresting somebody on a State traffic that we could say he is acting on behalf of the United States. We have a situation at Crow Creek right now where a police officer, an Indian police officer, who was practicing his quick draw, so to speak, killed somebody. The Department of Justice instructed us, number one, to urge the defense he was not a Federal employee, which we did; number two, that even if he was, he was not in his official duties at the time.

So I don't think it is clear cut at this time that if a tribal deputy has a deputy badge, BIA or State deputy, that necessarily he is covered by the Federal Tort Claims Act. I think it is rather naive to start with that assumption. I think the case law and my own personal experience would be that it isn't that simple.

MR. ALEXANDER. You raised an interesting side issue that you raised earlier, too, that the Department of the Interior, which under the Federal trust responsibility is the prime agent for the United States, has taken in the past, and particularly with the jurisdiction over non-Indian, has taken a distinctly different position than the Department of Justice who has the litigating responsibility for the United States. In these discussions that go on between the Bureau of Indian Affairs and the local counties and perhaps the State of South Dakota itself, does your office play any role in that? Are you part of that process?

MR. VROOMAN. We aren't a part of the discussion on the national level. It has been one of my great concerns as a U.S. attorney every time I get there, I think they thank God that he is going to be gone one day. They sit down on the Washington level—they decide *Oliphant*, they decide their policies. I talk to other United States attorneys around the county. We aren't getting any input, those of us who work. I have nine Indian reservations, if I include Flandreau, and our input is nil. As far as local, yes. I talk to Bill Janklow. We talked to the people of Sisseton, my first assistant went up there. Jeff Viking from Rapid City goes down, oh, quite often, to Pine Ridge, talks to the local people. Yes, we do it locally because we are invited. We don't do it nationally because we aren't invited.

MR. ALEXANDER. What is the relationship between the regional solicitor for the Department of Interior and your office in terms of advising Indian police officers, the Bureau of Indian Affairs police officers?

MR. VROOMAN. Wally Dunker in Aberdeen is in contact with somebody in our office on a regular basis. We go to the quarterly meetings. He writes opinions. Sometimes he doesn't agree with us; sometimes he does. We have a very good relationship with the solicitor and with Harley Zephier and Walt Plumage of the BIA. Nothing wrong with the relationship with the BIA—

MR. ALEXANDER. What happens when your agencies take distinctly different positions such as it just has in relation to victimless crimes?

MR. VROOMAN. I guess the answer is quite simply that right now I'm the chief Federal law enforcement officer and Griffin Bell happens to be the chief law enforcement officer in the United States. As Harry Truman said, the buck's got to stop some place. He finally has to listen to all sides. I get the Corps of Engineers fighting with the BIA, Fish and Wildlife fighting with some other agency. Somebody finally has to say, hopefully, they base it on law, not on policy, but Griffin Bell has to call the shots.

MR. ALEXANDER. One step further, the Department of Interior, though, has the prime trust responsibility, but the Department of Justice has the decisionmaking responsibilities on these issues?

MR. VROOMAN. They have the trust responsibility which I well understand. But we are the litigating branch of the Government. We have to be able to go in, in front of a Federal district court, the court of appeals, and the U.S. Supreme Court, and be able to justify our opinion, and quite frankly, I don't take a case into court unless I think I'm right. I don't take one for the sake of taking one and I hope my assistants feel the same way.

MR. ALEXANDER. Mr. Greene, there has been discussion over the last day and a half about the response time of the FBI to occurrences on Indian reservations for violations of major crimes. Could you tell us what factors go into whether or not you get down in an hour or whether you come back next week? How do you decide?

MR. GREENE. This decision is made on the need as it is related to us by the individual furnishing us the information that a crime has been committed which might fall or does fall within our investigative jurisdiction. If, when we get the call, particularly, say from the law enforcement branch, local law enforcement branches on the Indian reservation, and they say, "We have everything handled," or "We can't find any of the witnesses or the subject of the investigation," no matter what the type of crime is, and they may say, "We want you to know about it, could we talk to a couple agents tomorrow morning," or something, then the agents would go in the morning. If they say, "We need your help. We have a major investigation going on. It has been a shooting," a murder, manslaughter, a vicious rape, something of this nature and, "We need agents down here right now," we have a major crime scene search to conduct this type of investigation; we would respond immediately.

MR. ALEXANDER. Who would make the decision?

MR. GREENE. That would be my decision.

MR. ALEXANDER. Do you have guidelines from either Agent Brumble's office or the national Government crimes office in Washington, D.C., as to what requires your immediate presence and what can be postponed?

MR. GREENE. No, I do not.

MR. ALEXANDER. Have you given the BIA and the tribal police any standardized guidelines or indications of when you will be coming, when you will not be coming? Not talking about guidelines cast in concrete but guidelines more in the nature that Mr. Vrooman discussed.

MR. GREENE. No. Definitely not and for a good reason, in view of the fact that each case, each situation must be evaluated on the situation itself and not each murder case as it happened and the pending investigation is the same. Nor is each burglary, larceny, arson, or any other case. So it is a command decision that you must make.

MR. ALEXANDER. Are there generalizations that one can make about murder cases as opposed to thefts of \$12 or something like that?

MR. GREENE. Yes, you can make generalizations. Any violent crime, any violent personal crime more than likely we would respond immediately.

MR. ALEXANDER. I guess what I'm getting at, the local police officer doesn't necessarily know what to expect from you in any standardized procedure. Is that correct? If you would be transferred next week to Wyoming and a new agent came in to take your job, it would be an issue of his discretion. Is that correct?

MR. GREENE. Yes, that is correct. But the discretionary power, even though there are no set, concrete guidelines for me to follow, it is of a general fact there is such a thing as common sense and the ability to evaluate the situation through years of law enforcement experience which will be basically the same with any agent that happens to come into this area.

MR. ALEXANDER. We have talked about transfers a number of times. Is it accurate to state in one's career in the FBI you will move frequently from one part of the country to another part of the country? Is that correct?

MR. GREENE. Not necessarily, no, it is not correct.

MR. ALEXANDER. You have been in how many different assignments?

MR. GREENE. Eleven.

MR. ALEXANDER. Is it possible that someone will come into your office who last served, say, in New York City?

MR. GREENE. Yes, it is a possibility.

MR. ALEXANDER. Has it happened?

MR. GREENE. Yes, it has.

MR. ALEXANDER. Mr. Brumble, is it your view in the FBI that people are transferred from station to station?

MR. BRUMBLE. Yes.

MR. ALEXANDER. Mr. Vrooman, one final question for you. One of the things that has been raised to us several times during the course of interviewing around the State is the notion of someone committing a crime on an Indian reservation, the crime is investigated, then it is someone's decision as to whether or not that individual remains at large in the community or is immediately brought into Federal court. Is that decision made by yourself?

MR. VROOMAN. Yes.

MR. ALEXANDER. How is that decision made? It seems to create some friction.

MR. VROOMAN. I am well aware of that problem. You look at the State of South Dakota—I have seven assistants, four in Sioux Falls, three in Rapid City. We have a big State geographically. We have to indict under the Federal system, under the Constitution, unless it is waived. If we have—if we file a complaint that means that individual is brought in front of a magistrate, at which time I have to take an assistant United States attorney, I have to take witnesses to that magistrate, present the case. Assuming we presented the case, probable cause is established. The magistrate binds that person over to Federal court. We still have to indict. So those cases which have immediate community reaction, those aggravated cases where I feel that that person should be snapped up, put in the system immediately—I have a grand jury every month incidentally—those cases I snap them up. We take them to Rapid City, Sioux Falls, Aberdeen, wherever it might be, and give them a preliminary hearing and the magistrate sets the bond.

On other cases, a burglary where we have a suspect but he doesn't appear to be dangerous, we wait until the grand jury indicts, presents the case, he is apprehended and brought in front. Our bond policy is the same as the national policy. A lot of people criticize our bond policy because our bond policy is one of leniency. It has been my experience that 95 percent, and that's probably low, of the Indian people told to appear in Federal court will do so willingly and will be there when they are supposed to be. It is very seldom that we have to put a heavy bond on them. We do in some of the cases because, if somebody murders somebody and tomorrow if he is back on the reservation, I get reaction.

MR. ALEXANDER. Thank you.

COMMISSIONER FREEMAN. Mr. Chairman—

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Mr. Vrooman, you stated you have seven assistants. How many of them are Indian?

MR. VROOMAN. None. I tried to hire one. In fact he was a witness here, Mr. Pechota. At the last minute he turned me down and I hired Shelly Stump.

COMMISSIONER FREEMAN. Mr. Brumble, will you give the number of FBI agents who are Indian?

MR. BRUMBLE. Throughout the United States?

COMMISSIONER FREEMAN. Well, begin with this area.

MR. BRUMBLE. None.

COMMISSIONER FREEMAN. None.

Mr. Greene?

MR. GREENE. Yes, ma'am?

COMMISSIONER FREEMAN. The answer is none in your area?

MR. GREENE. Yes, Mr. Brumble is correct in his statement.

COMMISSIONER FREEMAN. Will you tell me if either of you, Mr. Brumble or Mr. Greene, whether the curriculum of the academy includes any training in human relations?

MR. BRUMBLE. Yes, it does.

COMMISSIONER FREEMAN. What is the nature of that course, how long?

MR. BRUMBLE. I'm just not familiar with it. With an hour or a day span, it is broken down in such areas as community relations, abnormal human behavior, several areas of psychiatry, relationships; there are just several courses offered during the basic academy training.

COMMISSIONER FREEMAN. Does the academy training curriculum include any courses of sensitivity with respect to multicultural or multiracial?

MR. GREENE. Not necessarily speaking. To be very frank with you, both Mr. Brumble and myself, it has been quite a few years since we were at the academy. We are not familiar with what the curriculum is at this time.

COMMISSIONER FREEMAN. Does the FBI provide for any inservice training of its agents with respect to any law enforcement activities?

MR. BRUMBLE. Yes. In fact, we have specialists that are trained in community relations. In turn, they go out and provide that training to local law enforcement agencies themselves.

COMMISSIONER FREEMAN. Have either of you had occasion to bring in any of those specialists to your offices?

MR. BRUMBLE. No.

MR. GREENE. Yes, I have, here in Rapid City, solely in view of the fact I'm one of them. I went through a concentrated course of applied criminology back at the FBI Academy approximately 4 years ago. I am definitely not an expert, but I have had extra training in—special training in that field. I impart this knowledge to the agents working in Rapid City or any other place that I happen to be assigned.

COMMISSIONER FREEMAN. One of the fundamental concepts of American jurisprudence and administration of justice is that it works most effectively if it is perceived to be inclusive of the community, of the total community, just as a judiciary that is exclusively white will not be perceived by the minorities to be sensitive to—in the administration of law—to any of their concerns. This is why I have raised these questions. I would want to know if you have made—I know the new director, Mr. Webster, has announced that, really given a directive that there should be affirmative action in recruitment. Will you state for this Commission what it is that you have done to assist him in that regard? Both of you.

MR. GREENE. Yes. We have a very definite affirmative action, particularly on the Pine Ridge Indian Reservation, which is the only Indian reservation within our investigative jurisdiction out of Rapid City. We are constantly putting forth the information, what the requirements are to become an FBI agent and asking if there is anybody available.



We are constantly contacting the law enforcement agencies down there regarding this matter, if there are any officers which might possibly now or in the near future meet these requirements, and we are soliciting and recruiting on a constant basis on Pine Ridge.

COMMISSIONER FREEMAN. Do the residents of the reservation—are they aware of this program?

MR. GREENE. You say the residents. You mean 100 percent of the residents? I doubt it.

COMMISSIONER FREEMAN. Do you have an outreach program?

MR. GREENE. No.

MR. BRUMBLE. We do have within our division. I have a man assigned exclusively to this area. Included in this program is the affirmative action program of trying to identify all the minorities that have the basic qualifications to become an FBI agent, regardless of who they are, as long as they have achieved a standard. It is very difficult to identify them, but for instance, in the city of Minneapolis alone, where they had to fire in the neighborhood of 200 school teachers this year, we have started a program to contact each and every one of those. You may say, "Why?" It just happens to be most of those are minorities. We are offering them positions in the FBI.

We at the present time are in conference with Alpha Phi Alpha, which is meeting starting today in Minneapolis. Jordan Young is there. We have one of our agents, the special agents from Alexandria, meeting with those people trying to tell them we mean business, that we want to recruit, we want to employ in that area.

We are working very closely with all the colleges, particularly where Indians have graduated from or attended. We must look at a person who has a 4-year college degree. This reduces the availability of many, many people.

We do teach in the elementary schools. We go into junior high schools. We go to church groups. We try to reach them at the very youngest age. We try to let them know what it is to be an FBI agent, to encourage them to plan their life towards a career vocation as an FBI agent.

COMMISSIONER FREEMAN. Gentlemen, there are other positions with the Federal Bureau of Investigation, other than agents?

MR. BRUMBLE. Yes.

COMMISSIONER FREEMAN. That do not require a college degree?

MR. BRUMBLE. Yes.

COMMISSIONER FREEMAN. How many such positions would there be?

MR. BRUMBLE. In Rapid City proper, I have four.

COMMISSIONER FREEMAN. How many of those positions are held by Indians?

MR. BRUMBLE. None.

MR. GREENE. None.

COMMISSIONER FREEMAN. So there is no Indian employed by the FBI in Rapid City or Minneapolis?

MR. BRUMBLE. No. Excuse me a minute.

Not in Rapid City. I do have in Minneapolis—

COMMISSIONER FREEMAN. How many?

MR. BRUMBLE. Either one or two. I'm sorry. I know I have at least one.

COMMISSIONER FREEMAN. Would you submit for the record, to this Commission, the profile of the employment of the FBI in both offices as to the agents and the other categories, managers, supervisors, clerical, cross-categorized by race and sex?

MR. BRUMBLE. I don't see any reason for it. I have to say, however, that the release of those figures have been controlled by our Washington headquarters.

COMMISSIONER FREEMAN. Mr. Chairman, then I would like to request we ask the Director Webster—

MR. BRUMBLE. I will let him know. If he says okay, I will give it to you.

CHAIRMAN FLEMMING. We will make the record clear. You can indicate to the Director that this is a request from the U.S. Commission on Civil Rights for this information. If there is any difficulty, why, we will address the request directly to the Attorney General.

MR. BRUMBLE. Yes, sir. I do not envision a problem, but the caveats on these figures as I receive them once monthly are restricted. I'm sorry.

COMMISSIONER FREEMAN. Thank you.

MR. NUNEZ. Mr. Greene, you indicated or your record indicates that you have a broad background, have served in many areas of the country. From your own experience you indicated that you felt that working in this area, in the Rapid City area and on the Pine Ridge Reservation, was similar to working in different parts of the country, in ghettos, high income areas, that an agent that is experienced in working in various parts of the country has the flexibility in dealing with different kinds of people. Am I correct in summing up your testimony?

MR. GREENE. Yes, you are.

MR. NUNEZ. Would I be also correct in saying that you view the problems and know that working on an Indian reservation in being similar to dealing with any other type of group in our society?

MR. GREENE. No. They are not similar per se. That is not what I said or intended to say. What I'm saying is the *differences* are similar. The differences in people, the differences in culture, the differences in the size of the population, in the socioeconomic activities of a particular area are dissimilar, totally dissimilar in each and every situation that I have ever been in; therefore, the same goes for Rapid City. It is dissimilar to every other situation. It cannot be compared. The dissimilarity that the agent must necessarily run into in his travels throughout his career gives him what I feel is, again, on an individual basis, an expertise to handle the majority of situations which might be placed before him anywhere that he may be assigned.

MR. NUNEZ. Your role on an Indian reservation is a lot broader than it would be in any other kind of jurisdiction. Am I correct in that?

MR. GREENE. Almost in any other kind of jurisdiction, but not all.

MR. NUNEZ. In other words, I'm getting at another point now—generally the FBI is held to be an investigative body?

MR. GREENE. Yes, sir.

MR. NUNEZ. Would you make a distinction between investigation and normal police work, going out, dealing with the whole range and gamut of crimes?

MR. GREENE. Yes, sir, it is very easy to describe and that description is contained in the 14 major felonies over which we have the primary jurisdiction on Indian reservations. Also, a broader investigative jurisdiction on Government reservations per se, some of them. It is more of what is categorized normally as "police work" instead of investigative work. It can be very definitely be described by just looking at the types of crimes that we do have jurisdiction over on the Indian reservations, which is in addition to all the other jurisdictions we have which would also, would be included on the reservation.

MR. NUNEZ. You have the situation where you have a background of very special Federal laws and case law involving Indian people. You have them in a reservation. You have a slightly, well, fairly major shift in your responsibilities?

MR. GREENE. Yes, sir.

MR. NUNEZ. Police work as well as investigative work?

MR. GREENE. Yes, sir.

MR. NUNEZ. What I'm getting at, you don't perceive that this set of circumstances makes for the average agent—presents a unique situation for the average agent, aside from the ethnic differences, the whole gamut of differences?

MR. GREENE. Yes, sir, temporarily I'm sure it does. I know it did for me the very first time I started working a Government reservation or an Indian reservation, but a matter of common sense and the training which each and every special agent receives when he goes through training school encompasses all these facets of this type of special investigative techniques. Crime scene searches, lifting of fingerprints, the collection of evidence, photography, anything that would involved us, say, in a murder case, arson case, a burglary, a larceny. The general rules of good solid investigation are basically and fundamentally the same in almost any case you would work, whether it be a theft from interstate shipment which all or most agents probably work a number of occasions throughout their career. The techniques of good investigation would not be dissimilar between that type of case and a murder on an Indian reservation.

MR. NUNEZ. You wouldn't feel that perhaps, making the distinction again between police work and investigative work, regular normal police work, that perhaps a local individual, a member of the Bureau of Indian Affairs, special police, tribal police, in that kind of regular

crime that is very much given over to local jurisdictions for handling, perhaps they would be more effective than the FBI in those kinds of cases?

MR. GREENE. May I ask you a question, Mr. Nunez? More effective in what respect or what category?

MR. NUNEZ. In dealing with the people, in resolving the case, in solving the case.

MR. GREENE. Very possibly so, but again, I would like to revert back to my first statement, again it depends on the individual. I have met special agents of FBI who could deal with any situation as well as or better than any other investigator I have ever met; i.e., it goes. I'm sure there are members of the Bureau of Indian Affairs who work on their home reservation or in an adjoining reservation which probably, because of the cultural background, could do a better job than certain special agents.

MR. NUNEZ. My final question to Mr. Brumble and Mr. Greene—I hope you can answer this. Do you feel comfortable with the much broader responsibility?

I understand you have to enforce the law and the 14 major crimes acts, but as professional FBI agents, do you feel that that is an appropriate use of your agents to be involved in all of this local police work?

MR. BRUMBLE. I think the special agent of the FBI is primarily an investigator as opposed to the conventional or standard, meeting the responsibilities of police officers. In our recruitment efforts, in our employment efforts, those people who come to us seek employment are seeking a job as an investigator, not as a police officer to respond to these types of crimes. I do believe in all probability that most agents would rather be investigators than be responsive to meeting these types of crimes.

MR. NUNEZ. Do you care to comment?

MR. GREENE. No.

MR. NUNEZ. You agree?

MR. GREENE. Yes, very definitely. I agree with this. But I would like to clarify, when you say "comfortable"—does not go along with the rest of the statements as far as my answer would be. I know of no special agents that I am presently associated with who feel uncomfortable in this type of work. They are all of them very capable. None of us are uncomfortable. We do feel we know what we are doing and do a good job at it.

DR. WITT. My question is for both Mr. Brumble and Mr. Greene. If a citizen had a complaint against an FBI agent in the course of his duties on a South Dakota reservation, how—what procedure would be followed for lodging that complaint and seeking its resolution?

MR. BRUMBLE. The citizen should, of course, if they feel comfortable, should notify Mr. Greene; if they don't feel comfortable with that, they should notify me in Minneapolis. I am responsible for the conduct

of all the people assigned within my division. After the information is received, I am to forward it to Washington, D.C., to our Office of Professional Responsibility within our organization. They in turn determine whether or not it is a matter which would be handled by the Office of Professional Responsibility in the Department of Justice. They are put on notice.

As far as the investigation, an inquiry is conducted. If they believe the matter is one that I can handle independently, with objectivity, they will tell me to go out and conduct the inquiry. If they feel it is a matter that should best be handled by agents of Washington, D.C., then it is done in that fashion. The results and conclusions of the investigation that is conducted, regardless of the nature of the complaint, is furnished, of course, to the Director as well as to the Office of Professional Responsibility within the Department of Justice.

DR. WITT. Have you received such complaints?

MR. BRUMBLE. Yes.

DR. WITT. Do you maintain a system of records concerning these complaints? Do you keep statistics?

MR. BRUMBLE. No. I don't have statistics on the number of complaints. They are in our record system, however.

DR. WITT. Are they available to the public?

MR. BRUMBLE. They are not here. They are not in the Minneapolis division. I am not positive as to whether the statistics have been made available to the public in Washington. I believe that the Office of Professional Responsibility, the Department of Justice, sometime this spring, released figures, statistics, of some type involving FBI employees. Whether that was done mistakenly or not, I don't know.

DR. WITT. Are the results of the complaints made known to the complainants?

MR. BRUMBLE. I do not believe so. I have never notified a complainant of the results of one.

DR. WITT. Thank you.

MR. ALEXANDER. I want to get that very clear. If someone, let us say, in the tensions of the past 5 to 10 years out here, made a complaint about a specific FBI officer, misconduct or alleged misconduct or whatever, that officer could have been perhaps fired, transferred, demoted? Is that accurate? And that individual who made the complaint and the rest of the community would never know whether any action was taken one way or the other?

MR. BRUMBLE. That is right.

MR. ALEXANDER. Okay.

CHAIRMAN FLEMMING. I would like to try to piece together the testimony that has been given by previous witnesses and testimony that you have given this morning with the idea of looking into the future.

We are dealing here with three resources as I see it: the resources of the FBI, the resources of the Bureau of Indian Affairs, and the law enforcement resources of the various tribes. If I have understood the

testimony, and I will address this to Mr. Brumble, it is your policy at the present time to make available resources which can be utilized for the purpose of training the Bureau of Indian Affairs officers, and also the tribal officers, with the end in view of improving their standards of performance in this area?

MR. BRUMBLE. That is right, sir.

CHAIRMAN FLEMMING. As you look down the road, do you feel that you are going to have additional resources that you can make available for this purpose?

MR. BRUMBLE. In the end result, sir, the oversight committee kind of determines that.

CHAIRMAN FLEMMING. I appreciate that, but I'm just thinking in terms now of the utilization of the resources that are available. Do you—within your particular area, you have some opportunity, as you indicate, of shaping some of your own priorities growing out of the situations that confront you. I am just trying to get the feel as to whether or not you give this a fairly high priority?

MR. BRUMBLE. I give this a very high priority of commitment of manpower, resources, time, and effort, at the present time, and I predict it will be essential to do that for many months ahead.

CHAIRMAN FLEMMING. The second thing that I perceive is that you are reducing—secondly, I know you are reducing your number of persons here. Am I correct in my assumption that one of the factors that you have taken into consideration in reducing your personnel strength here is that you believe that some additional workload can be assumed by the Bureau of Indian Affairs and by the tribal—the resources that are available to the various tribes?

MR. BRUMBLE. Yes, I do.

CHAIRMAN FLEMMING. And that additional workload would relate to these 14 major crimes we have been talking about?

MR. BRUMBLE. Yes, sir, of necessity. I think the practical aspect of this is that the tribal police officers at Pine Ridge generally respond or is on the scene at the time the complaint is received.

CHAIRMAN FLEMMING. Right.

MR. BRUMBLE. It is terribly important for him to preserve that crime scene or to know what to do and what not to do if we ever are going to have successful prosecution, so it is terribly important. This is the area we constantly want to train the men in. It is what they can do immediately to assist the FBI. We also call upon police officers throughout the county in the same vein. There are only so many of us. We cannot, we don't have a response factors of minutes, of half-hours, or 45 minutes. Many times within the past years, we would say we have men who could respond within 1 hour of where a crime was committed. However, with a reduction of monies and cuts in our budgets, etc., etc., we have found that we are going to have slower response time in many areas of work where before we were able to respond immediately.

This is not an Indian matter, but theft from interstate shipments. Used to be we had rules that require the agents be there within the hour if a pair of shoes was stolen off the rear of a truck. We have done away with those kinds of rules now. We just absolutely don't have the personnel to respond. Of course, the oversight committees have said what we will and will not do. I hope I answered your question.

CHAIRMAN FLEMMING. You have. I gather then that your end objective is to have this situation evolve so that more and more the tribal police officers, the Bureau of Indian Affairs officers will in effect be able to complete the case and be in a position to indicate that they have done a complete, thorough, well-rounded type of job which in turn can be passed on to the U.S. attorney.

MR. BRUMBLE. I would like to see that, yes, sir.

CHAIRMAN FLEMMING. May I ask you, Mr. Vrooman, if you would welcome that kind of an evolution as far as the development of the resources of the Bureau of Indian Affairs and the resources that are available to the various tribes?

MR. VROOMAN. Yes, sir, I would, very much so.

CHAIRMAN FLEMMING. As a result of your experience here and your continuing experience here, do you detect that kind of an evolution taking place at the present time?

MR. VROOMAN. I have seen it just within the last 15 months, yes, sir.

CHAIRMAN FLEMMING. Mr. Greene, I don't know whether you would like to comment on that—

MR. GREENE. No. What both gentlemen say is very true. There is a very definite evolution in this direction taking place. I think it is a very healthy evolution.

MR. ALEXANDER. One clarification, one question—

CHAIRMAN FLEMMING. We have just about run out of time.

MR. ALEXANDER. Mr. Brumble, in an interview with Francis X. O'Brien of your Washington office, he indicated that major crimes work had a priority of number three on a scale of one to three. Could we have from you a clarification with that conflicting information after the hearing in writing?

MR. BRUMBLE. Yes. I may be mistaken. I'm trying to recall.

MR. ALEXANDER. I would like to have the record accurate on that point, please.

MR. BRUMBLE. I would not argue that point, sir.

MR. ALEXANDER. Mr. Vrooman—

CHAIRMAN FLEMMING. Could I interrupt you there? I gathered from your response to an earlier question something like that might be the case, but as far as this area is concerned, you personally have got it in the number two category?

MR. BRUMBLE. Let me say this. My immediate priority, from an operating standpoint, is white-collar crimes. That includes on the reser-

vation. The fraud attendant on these reservations is unbelievable. As far as the reservations are involved, they are in that number one priority insofar as Federal funds, etc., etc., are involved. In addition, the crimes of violence are in the second category. Those are my primary objectives to resolve on a long-range plan.

MR. ALEXANDER. That is local though, and we were talking nationally. Mr. Vrooman, you are leaving office?

MR. VROOMAN. Yes.

MR. ALEXANDER. You have had some rather extensive experience in a fairly controversial area where the law has been changing and so on. Are there specific recommendations that you would make to Congress or to the Federal executive to do in this area that have come out of that experience that we have not gotten out of you?

MR. VROOMAN. I had several objectives I started out with. I am glad that you asked me the question.

MR. ALEXANDER. Okay.

MR. VROOMAN. I have had a continuing battle with the Drug Enforcement Agency. I have had the cooperation of the FBI. We have eight virtual islands of drugs on the Indian reservations. The State of South Dakota can't and won't work them because of jurisdictional problems. The FBI doesn't work them unless they come up incidentally to another investigation such as murder, rape; if they happen to get into a drug case, they will present them.

We have two non-Indian DEA agents in Sioux Falls. The first goes in everyday and it doesn't raise any suspicion because they are there working the case. If those two non-Indian drug agents got within 20 miles of the reservation, I think that things would clamp down. I have pleaded—I have written letters to Griffin Bell. I believe that the area of drug law enforcement on Indian reservations is a national disgrace. I sent some statistics, which I will be glad to furnish the Commission, which I've gotten from the Public Health Service to show how many drug overdose cases they have been treating in the last years.

DEA is very, very jealous of their position. The FBI—I don't know what they have done nationally—but I believe that if there is one area of law enforcement in which we have a void—what I have done, I just wrote the Department, the BIA special agent. I said earlier, there is one exception. I finally just said, "BIA special officers bring me a drug case. I'm going to take it"; at Pine Ridge, I told them to find somebody—the head of the tribal police—and I would take the complaints from them. I just couldn't leave that complete void there—we really do have a void. If this Commission could get somebody jarred on that, I think maybe that of my eight criteria that is one I didn't accomplish.

I thank you all for that.

CHAIRMAN FLEMMING. I gather there is one other recommendation you would make. That is when it comes to matters like the *Olipant* decision, the Department in Washington give the U.S. attorneys an opportunity for an input.

MR. VROOMAN. You bet.



CHAIRMAN FLEMMING. Thank you very, very much. We appreciate it. We will recess until 1:35.

### AFTERNOON SESSION

---

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

MR. ALEXANDER. Arthur Zimiga, William Janklow, Mary Sue Donahue, and Donald Dahlin.

CHAIRMAN FLEMMING. Remain standing and raise your right hand, please.

[Ms. Donahue and Messrs. Dahlin, Janklow, and Zimiga were sworn.]

**TESTIMONY OF MARY SUE DONAHUE, FORMER DIRECTOR, STATE DIVISION OF HUMAN RIGHTS; DONALD C. DAHLIN, SECRETARY, STATE DEPARTMENT OF PUBLIC SAFETY; WILLIAM JANKLOW, STATE ATTORNEY GENERAL; AND ARTHUR W. ZIMIGA, STATE COORDINATOR OF INDIAN AFFAIRS**

CHAIRMAN FLEMMING. We appreciate your being here.

MR. ALEXANDER. Starting with Dr. Dahlin, could you each identify yourself and your position with State government for the record?

MR. DAHLIN. My name is Donald C. Dahlin, and I am the secretary of public safety for the State of South Dakota.

MR. ZIMIGA. I am Arthur W. Zimiga. I am the State coordinator of Indian affairs for the State of South Dakota.

MS. DONAHUE. Mary Sue Donahue, former director of the South Dakota Division of Human Rights.

MR. JANKLOW. Bill Janklow, the attorney general of South Dakota.

MR. ALEXANDER. For the past several days and during staff work throughout the State we have, along with other people, clearly heard that there has been a significant amount of conflict in the State concerning Indian issues, and there seems to be some indication, at least in some communities, that that's tapered off somewhat in the last year or two. Starting with Mr. Zimiga, could you tell me what, in your view, are the underlying causes of the conflict and perhaps the change that we have today?

MR. ZIMIGA. I think some of the conflict comes about by the lack of education on behalf of non-Indian people about Indian people and, you know, certain kinds of stereotypes that they live with and relate to Indian people.

We have in the past, in my experiences, going around talking to groups of people just in recent—this week—is that, you know, those things are quite evident and very true in their mind as far as discrimination.

MR. ALEXANDER. Mr. Janklow?

MR. JANKLOW. I think if you have to look at it in a serious analysis you have got to realize there is problems on both sides, not one side. We have problems with some white people with respect to Indian people, and we have just as many problems with respect to Indian people against white people.

I think one of the things that has caused a great deal of problems has been the incredible amount of indecision and decision changing by the Federal Government. We didn't have the problems that we have in the jurisdictional sense up until about 1972 and '74 when the Federal Government—as a matter of fact, since 1972 the Federal Government, with respect to just one of our reservations, have changed their position three different times as to how large the reservation is and what areas there is and isn't jurisdiction. And the same is true, with respect to the jurisdiction, not only as far as geography goes, but jurisdiction over individuals, in personal jurisdiction. And you just can't take people that have lived together or lived in a certain community for 100 years or 80 years or 50 years or 10 years and all of a sudden tell them the rules have changed and expect everybody to wake up with a smile on their faces the next morning.

I think every time there is a change of administration in Washington you have got a change in policy, and I think that change of policy has caused a great deal of conflict away from the Washington area and specifically in places like South Dakota where we have these unique jurisdictional problems. That isn't all of it, but I think it's part of it.

MR. ALEXANDER. Well, in your view with the recent decisions in the two diminishment cases and the *Olipphant* case in relation to jurisdiction over non-Indians, would that have cleared the waters at all and allowed for some of that tension to subside or are we still in a situation of great ambiguity?

MR. JANKLOW. I am aware of more than two diminishment situations. I was aware of several—Sisseton, Rosebud, Pine Ridge, and Standing Rock, which is still in confusion. But as far as the first three go, it put it where it's always been since the turn of the century. A great deal of the problems up in the Sisseton area came as a result of the Federal Government changing its official position in 1972 as to whether or not a reservation existed in that particular area and caused a great deal of problems.

The United States Supreme Court finally resolved that and, since that point in time, there has been a dramatic reduction in the instance of problems in that area, in the racial sense, comparing it to what it was during the 3 years of turmoil. The same is true with respect to the Rosebud Reservation. The United States Supreme Court ruled that Tripp, Gregory, and Mellette Counties were the way everybody had recognized them to be since the turn of the century, and that the changed position of the Federal Government was not accurate that they changed to in 1974. And I think, since that decision was handed down, there has been a dramatic reduction.