

MR. ALEXANDER. Miss Donahue, would you like to comment on the climate in the State from your perspective at the human relations commission with respect to what some of the factors have been?

MS. DONAHUE. You're talking about the source of the conflict and what it is?

MR. ALEXANDER. Yes, from your understanding and the work that you have done.

MS. DONAHUE. Okay. I agree with Mr. Zimiga that part of it is the difference in culture and the failure to recognize and adapt to those differences. I also see greed playing part of the role in the conflict.

MR. ALEXANDER. Could you explain that, please?

MS. DONAHUE. Historically, you know, who the land belongs to, who has rights to it is a source of conflict there.

MR. ALEXANDER. Recognizing that the Federal Government has clearly played a role in this area, and an ambiguous role over the years, certain responsibilities tend to fall on State agencies in terms of the problems that have been created.

Could you, starting with Mr. Zimiga, explain what it is your agency does and how it relates to curing, if you will, any of the fallout from these uncertainties, perhaps from the lack of understanding of Indian people or Indian peoples' lack of understanding of white people, if that may be also true.

MR. ZIMIGA. There is two goals and objectives that I set up when I assumed this position as State coordinator of Indian affairs. And within that office one of the goals was to regain tribal support for the commission. And the other one was to develop communication lines between Indian and non-Indian communities.

MR. ALEXANDER. Specifically what has been done to develop communication lines?

MR. ZIMIGA. What we have been doing is this week, for instance, was at Kadoka, we met with the sheriff there in Kadoka and with Jean Nelson who is the head of consumer affairs. And underneath that is human rights division, and so we went there to look at and to see if we could find some way and solution and maybe presenting some of these problems and maybe getting—just get some dialogue for ourselves to be educated how people think that we could best serve them. So we found that some communities were willing and some had some good discussion and misunderstandings about one another and started to, in a sense, to—for example, in Martin they were going to form a committee, human relations committee, and they wanted to have some dialogue with tribal officials. So we stopped at Pine Ridge and discussed that with the tribal chairman and with the superintendent and proceeded to go into like Fall River County surrounding just that reservation, those border towns.

MR. ALEXANDER. So you basically see yourself in an education function and a facilitating function?

MR. ZIMIGA. Yes. I think that before that, you know, many of these cases can get there, but then maybe someone files discrimination charges specifically for some area. I think maybe if we could sit down and discuss it and maybe have an understanding about one another and where we are going or how people in the community are affected by one another; I think that would be—that is a good start instead of not having communications at all.

MR. ALEXANDER. Thank you.

Mr. Janklow, last week at the State jurisdiction conference, I believe sponsored by the University of South Dakota, there seemed to be significant emphasis from yourself and quite a few other State officials and local county officials on the need to negotiate out some of the issues that could potentially be negotiated. Could you explain to us exactly what the existing State mechanisms are in terms of State negotiating committee and so on as to what statutorily this State can do in relation to negotiations with Indian tribes?

MR. JANKLOW. We basically, by our law, have two things set up in terms of intercommunication. Absent lawsuits, and lawsuits obviously is one way to communicate, but I have never met a happy loser to a friendly lawsuit yet. They all call them friendly, but they are not when they are over. As far as strictly talking and negotiating, our State has a unique—and I am sure it's unique nationwide—committee that was set up by our legislature called the State negotiating committee. It is a successor agency to what originally was known as the State Indian task force, which again was unique in America, that consisted of legislative representatives from our government, executive representatives from our government, and representatives—or the tribal president or his or her designee from the nine tribes in South Dakota.

It worked well, in my opinion, but the tribal presidents voted to ask the State to have that cease to exist and so it was terminated by legislative action. And in its place came the negotiating committee and the negotiating committee is set up by statute. It consists of appointees of the leading Republican and Democratic legislators in both the House and the Senate, appointees by the Governor which include the lieutenant governor, whoever he or she may be. The attorney general provides them legal counsel and they are the committee that negotiates on behalf of the State.

I have only—in one instance I have seen legislation come as a result of these kinds of discussions. At the request of one of the tribes, the committee was convened and there were discussions pertaining to extradition, and, as a result of the meetings, legislation was put together, drafted, and submitted to the legislature and passed unanimously in one house and with one dissenting vote in the other house, the procedural mechanisms for working out extradition problems. The tribes have not seen fit to want to carry the matter any further, which is perfectly their right. And if they want to, the mechanism, the statutory authorization is now on our statute books for doing that kind of thing.

We have had discussions with game and fish departments in the tribes that have resulted in agreements and agreements that have worked well. We have had sales tax agreements where the State collects sales tax for the tribes, if their own sales tax laws are the same as ours, and rebates the money back to the tribal governments and it's worked well.

The one other thing that we have that I am aware of in the statutes is under figures 1024 of the South Dakota Compiled Laws, we have the Joint Powers Act which allows governments and the State and its political subdivisions all the way down to the lowest level to enter into agreements. Wherever you have two or more agencies of government, each of which have the right to do something individually, our statutes authorize them to join together by contract to do it either one or the other or both together.

In 1974, I believe it was, our law was changed to include the word "Indian tribes" under the definition of public agencies with whom the State and its political subdivisions can contract. We do have some experimental contracts going on under that now. I don't know whether it's operative yet, but the social services up in the Sisseton area is going to be virtually turned over to the tribal people through a pilot project to see if that works, but that is generally the statutory mechanisms that I am aware of.

MR. ALEXANDER. Thank you.

Dr. Dahlin, could you explain what your office does, please, how it relates?

MR. DAHLIN. Well, we have several divisions within the department of public safety and, of course, the highway patrol has principal traffic law enforcement responsibility in the State. And the highway patrol, through its training program, tries to ensure the officers coming on to patrol understand, at least in part, some of the cultural differences between Indians and non-Indians in the State. We have tried, informally at least, to work with the reservations that have wanted to and with Cheyenne River and Rosebud have had a very good working relationship over the years. We also have, within the department, the division of law enforcement assistance which is the LEAA [Law Enforcement Assistance Administration] program in South Dakota. And the way that that program is structured nationally, it is the responsibility of the division and of the criminal justice commission for the State to formulate a plan, which includes planned expenditures for tribal criminal justice improvement efforts. And over the years the criminal justice commission, I think, has tried to be responsive to needs that have been identified in the planning process by the reservations for their criminal justice planning process.

MR. ALEXANDER. One of the issues that was raised this morning and again yesterday involves, in a sense, a fallout from *Olyphant* or perhaps it was an issue previously, the issue of non-Indians within the State who commit what is generally termed a "victimless crime" on a reser-

vation area within Indian country. And many different situations were outlined, some of them cooperative between local counties and Indian reservations, others not cooperative in terms of recognizing cross-deputization agreements and also in recognizing each other's tickets.

The State highway patrol, does it have a role in relation to the victimless crimes? Will it accept a referral from a tribal police source and so on? That is under your jurisdiction.

MR. DAHLIN. That's correct, but not at the present time. We have, going back to 1974 at least, the Bureau of Indian Affairs did cross-deputize all highway patrolmen, and that authority still remains in effect, although there are arguments about how extensive the authority that is conferred by that action, and we have—in effect the patrol has been recognized, I am not sure whether it's formally or informally, by both the Cheyenne River and the Rosebud Sioux Tribe when Indians are arrested. But we, up until about a year ago, did not think that we had any authority to in turn cross-deputize Indian law enforcement officials. And then about a year ago we thought possibly under the Joint Powers Act that we could enter into such an agreement, and we made some efforts in that direction, particularly with the Sisseton Tribe. But, ultimately, after consulting with the attorney general, it was his conclusion that we did not have the authority under the Joint Powers Act. And so no agreement was reached.

MR. ALEXANDER. Mr. Janklow, without going into the detail, necessarily, unless you feel it's necessary, explain what it is about the Joint Powers Act that would preclude the State agency from entering into such an agreement.

MR. JANKLOW. Well, it's got nothing to do with jurisdiction at all. If I as a citizen, forgetting any official position, or you as a citizen complained to a highway patrolman that I have been speeding, he can't arrest me. In South Dakota for misdemeanors, you can only arrest when the law enforcement officer has seen the offense committed. And as a result, a tribal—there is no way that they can accept the word of another police officer and make the arrest. A highway patrolman can't accept the word of a local deputy sheriff in that instance. So that is the first problem that you have to encounter. It's got nothing to do with jurisdiction. It's the way that our State constitution has been construed with respect to probable cause to make arrests.

The second area where there is a problem that the highway patrol does not have power to make arrests absent cross-deputization on an Indian reservation over Indians. They do over non-Indians or over white people or anyone but a tribal member or an Indian. And I don't feel that that fits within the purview of the Joint Powers Act because they don't have that authority that they can confer.

The third thing is that I think it would be suicide for State officials to try to cross-deputize when the backbone of the law enforcement function in South Dakota is carried out on a local government level. That is where those decisions ought to be made and, as you know and

I assume have heard in testimony, in Marshall County in some areas that it is being done. But to have some bureaucrat or elected official in Pierre tell a local area that they are deputizing a lot of people, you would find out what a war really is because nobody's going to accept that.

MR. ALEXANDER. Mr. Tobin, the State's attorney from Tripp-Todd Counties, testified this morning that he had some issues as to whether or not he had the authority to accept citations from tribal police officers and what he could do with them and that he had requested your view on that but as of yet had not heard. Is that an accurate representation?

MR. JANKLOW. Not to my knowledge.

MR. ALEXANDER. You have not gotten a request from Mr. Tobin?

MR. JANKLOW. Whether or not he can cross-deputize?

MR. ALEXANDER. No, whether he can accept citations from tribal police officers.

MR. JANKLOW. I have not been asked by Tobin, but the State officials or county officials can't accept them. They are not State law enforcement officers, and you run into that hearsay type problem with a misdemeanor I just told you about. I have never been asked by him, but if I was that would be my answer. He can't do it. But he has the power locally there through himself, the county commissioners, and his sheriff to cross-deputize—to make anybody a deputy, not just Indians, anybody.

MR. ALEXANDER. You don't see any issues within the current State statutes that would preclude such cross-deputization agreements?

MR. JANKLOW. Absolutely not. It exists now. I have the authority to do it. I can create agents and assistants with law enforcement power. They can locally also. I don't see the problem.

MR. ALEXANDER. Okay. Does the attorney general's office have a defined role in relation to the local State's attorneys? You indicated that it is a very strong local government State.

MR. JANKLOW. They are locally elected like I am, statewide elected. They are elected on partisan ballots in South Dakota. The vast majority of the criminal justice work in the State is done by State's attorneys. However, under the law, 1111 of the South Dakota Code, the attorney general has the right to exercise control—I can't remember the exact language. The attorney general can advise, consult, and exercise supervision over the several State's attorneys. I think that that gives the attorney general supervisory powers if he should—he or she chooses to use it over the State's attorneys.

MR. ALEXANDER. In a situation where a local State's attorney or a local sheriff's department, take them both separately, is refusing to prosecute crimes involving non-Indians exclusively within Indian country, what is your role there?

MR. JANKLOW. Okay, two things. And I have to back up to another question you asked and I will be brief.

Prior to 1974, the way we operate now is exactly like we operated for 100 years in this State until 1974. *Oliphant* did not bring any changes in South Dakota.

Prior to 1974, no Indian tribe in this State arrested anyone except tribal members or other Indian people. So nobody should get the impression that it's changed 100 years of precedent in this State. It's not done that. One.

Two, and during the whole *Oliphant* fight there were a lot of tribes in this State that didn't try to arrest non-Indian people. All right? The second thing and the key thing about *Oliphant* is that beginning way back when the *Oliphant* fight was going on, and on four occasions I have personally written letters to the chief of—or to the president or the chairman, depending on what their title is, of every Indian tribe in the State, laying out very specifically how they should treat non-Indians who break the law in their government; i.e., make a complaint to the local sheriff, the municipal authorities, or the State's attorney. I said in my letter every time, because I sent the same letter, in the event that that matter is not pursued locally they can call me or write me. I included my phone number and tell them where I can be reached 24 hours a day, 7 days a week, 365 days a year. If I am contacted and they tell me the local authorities have done nothing, I guarantee them that I will personally see to it that the case is investigated, and I will exercise my discretion as to whether or not the matter ought to be prosecuted.

On several occasions they have taken use of that, the letter that I have written. In every instance I have had the matter investigated, and because I felt there was probable cause in every instance, I have had my office from the attorney general's office pursue the prosecution. In no instance have I turned down—I reserved the right to do it, but I have not done it. In every instance I have pursued the prosecution that has been requested.

MR. ALEXANDER. It becomes a very important issue, because this morning the United States attorney for this district announced that the Department of Justice has taken the position now that victimless crimes on Indian reservations committed by non-Indians are a matter of State jurisdiction. As you may know, there has been some dispute within the Federal bureaucracy as to what their—

MR. JANKLOW. I understand, but it is my position that there is no one in the State of South Dakota, be they black, yellow, red, or white or a mixture, who is above the law and has the right to bother people, bother other people's property, or be a public menace or danger in violation of laws. And as a result, I couldn't care less what the color of their skin is or where they are at. If they are breaking the law, they are accountable to some governmental entity. So if the Feds don't pursue them we will. Our position is, with respect to white people, that if the Feds do pursue them on a reservation we still maintain the right to pursue them. We don't have that right with respect to Indian people.

MR. ALEXANDER. Miss Donahue, your agency is specifically in the business, the agency you left a short while ago, specifically in the business of dealing with complaints of discrimination; is that correct?

MS. DONAHUE. Yes.

MR. ALEXANDER. You, I understand, have prepared a statement which indicates the types of allegations that you have received and some of the statistics that you have compiled. With your permission, I would like to have this introduced into the record.

CHAIRMAN FLEMMING. Without objection it will be entered into the record at this point.

MR. ALEXANDER. In general terms, the complaint load of your agency, how did it break down in terms of complaints from Indians, women, black people, white people and so on?

MS. DONAHUE. Well, in South Dakota the two largest complaint groups are women, and they make up about 50 percent of the complaints, and the other large group is racial complaints, about 40 percent, slightly over 40 percent, and by far the largest group of them are filed by Native Americans.

MR. ALEXANDER. What areas do these tend to focus in?

MS. DONAHUE. The Native American complaints tend to focus more in public accommodations, public services. And that is any service performed by a local, county, or State government.

MR. ALEXANDER. That would include police services?

MS. DONAHUE. Yes. And housing is another large area. This is in contrast to the women who tend to file for more in the area of employment and education.

MR. ALEXANDER. What is your agency able to do? I understand you are a full EEOC referral agency; is that correct?

MS. DONAHUE. Yes.

MR. ALEXANDER. And have similar types of powers. In terms of the police complaints we have heard—and I don't know the truth of any particular allegation—a number of complaints about police practices in border towns—

MS. DONAHUE. Yes.

MR. ALEXANDER. Assuming that someone would know about your availability, what would happen to such a situation that a police officer was acting with excess force in a patterned way against Indian youth and no one else—that is the hypothetical. What happens then? What do you do?

MS. DONAHUE. They can file a complaint with the agency. It is investigated. We have two investigators or did have two investigators on the staff.

MR. ALEXANDER. For the entire State?

MS. DONAHUE. Right.

The cases take—well, at least when I left—take 2.7 months to resolve, which I believe is very low for agencies like that. And a decision of cause or no cause is rendered. And as with most other agen-

cies, most of them are no cause. We have had some relating to arrest patterns and there is one, for example, in Melette County that is being conciliated. If the conciliation attempt fails, it goes to a public hearing before the State commission on human rights. A difficulty with that kind of complaint, however, of course is the remedy that could be fashioned.

MR. ALEXANDER. What type of remedies are you limited to?

MS. DONAHUE. Well, the statute has specified remedies relating to putting people back in the position they would have been had they not been discriminated against rather than any kind of penalty by fines or something.

MR. ALEXANDER. We have heard testimony in several communities about attempts to establish human relations type commissions to work on a very local level to provide mechanisms for discussion for resolving particularized problems. Does your agency have any role in the establishment of such or technical assistance or mediation or what have you?

MS. DONAHUE. Yes.

MR. ALEXANDER. Several of them seem to be quite bogged down.

MS. DONAHUE. There are two local agencies that are operating at the present time, one in Rapid City and one in Sioux Falls. The one in Rapid City does not have full-time staff people which really, I believe, impedes its ability to operate. And they also act on complaints.

I think that most South Dakota towns, and this is my own opinion, are too small and too—where people know each other too well—for a local agency to actually handle complaints. One thing that we even ran into in Rapid City is that the members of the commission, say there were 10 or 12 or however many there are, they would know one of the parties well enough so that they believed that that relationship would hamper their objectivity, and this is true all over the State. And so I see that local human relations agencies can better function as liaison people in that kind of function. And we have offered and been called upon to provide technical assistance in other communities.

MR. ALEXANDER. Did your agency or does it currently have the resources sufficient to deal with any—

MS. DONAHUE. Funny you should bring that up. As I mentioned earlier, there were two investigators on the staff, the director, and two secretarial people, which does indicate that there is a very limited staff. And while the legislature and—you know, this is one of the problems that I see in human rights in South Dakota. That is that I think that the law is—after it was reviewed by the sunset committee and they decided to keep it on the books, that an area of attack is in its budget. So that the only thing that we are able to do is handle cases.

MR. ALEXANDER. Mr. Janklow, are there currently issues that are still extant, in your view, as to confusing jurisdictional Federal policies that need to be resolved?



MR. JANKLOW. I think there are several of them. I think a perfect example is the one that you cited, the U.S. attorney's present position, and which I assume has come from Washington—

MR. ALEXANDER. Yes, it has.

MR. JANKLOW. —which is in disagreement with the positions that have been taken in other areas of the country in official Interior Department memoranda that I have seen since *Oliphant*. It's that kind of thing that is driving everybody nuts in this State because they can sit back there and do that, but we're stuck with the results.

But in the civil area I can see—I think, as far as geographical boundaries or reservations are concerned, it is settled for every tribe in this State, and now I am giving you my own opinion, but I think it's settled for every tribe in this case but the Standing Rock and Cheyenne River area which would be Corson, Ziebach, and Dewey Counties. Those three areas—as a matter of fact, at the present time we have in Corson County, South Dakota, a decision from the United States Court of Appeals on the Eighth Circuit, a more recent decision from the Federal district judge for the Western Division of South Dakota, and a decision from the South Dakota Supreme Court, a unanimous decision, all three being different on whether or not that is a reservation and if so how much of it. That is the kind of thing. But those two reservations are still a problem as far as geography.

I think that the next question that you have to address yourself to, that has to be resolved in this State, is who exercises what jurisdiction within the boundaries of the reservation. Now, the criminal one has been settled as far as trial. There is a dispute going on right now as far as whether or not there is the power to arrest, so that is going to be either resolved by legislation, by negotiation, or litigation. There is no other way.

The second area you have to deal with the whole criminal area, who exercises what civil jurisdiction over who. Do the tribes, for example, have the right to regulate the commerce of all the people on the reservation, or is it just for their tribal members subjecting the others to jurisdiction under the Indian trader's law? There is just a whole realm of those kinds of problems, but I don't think we have accomplished much in the civil area. But remember, your Commission and everybody who comes to testify talks about our problem areas. There is a heck of a lot of areas in this State where we don't have problems and have never had problems. And when they creep up they work them out. You don't need an outside agent from Pierre or an agency locally or one from Washington to resolve it or a lawsuit. A lot of people's problems get solved by people on a local level on a day-to-day basis.

MR. ALEXANDER. In terms of these jurisdictional issues, for example, you mention the dispute as to whether or not tribes retain arrest powers in light of the *Oliphant* decision. Is there any negotiation going on to resolve that? You mentioned that is one of the three possibilities.

I am aware there has been some litigation in that. Is there any ongoing negotiations between your office and the Cheyenne River Sioux Tribe?

MR. JANKLOW. At the present time no, there is litigation going on between our office and the Cheyenne River Sioux Tribe.

See, it depends. All tribes aren't the same. There are some tribes who don't want it and don't try to exert it and never have over people other than their members or other Indian people. And there are other tribes. You have got to treat them like different countries or states. You can't lump all the tribes into a package of nine, and there are other tribes that take the position they exercise jurisdiction over everybody, *Oliphant* notwithstanding. And then we have got everything in between. In a couple of tribes it's not a problem.

MR. ALEXANDER. Well, the fact that you're in litigation itself does not necessarily preclude negotiations?

MR. JANKLOW. We have had negotiating sessions, if that is what you mean, but there is no formalized negotiation going on. Understand, our legislature only meets 30 days one year and 45 days the next. I am not the diety. I can't change the law or write law in South Dakota, and so, there is no agreement I could reach anyhow that would affect the law of this State. The most I could do is propose legislation to the legislature either through the negotiating committee, myself, or with other interested citizens or legislators to try and put into effect any agreement that is reached with a tribe.

If it were to be cross-deputization, and I think most tribes, all the tribes but one, would go for that kind of arrangement; that is my guess. That could be effectuated without legislative action. But it would necessarily involve the local communities being involved. It would take no change in the State law to cross-deputize everybody in this State. It could be done now under our existing law, but for the State to give jurisdiction to a tribe to try non-Indians or, on the other hand, for a tribe to give it to the State would take a lot of remedies other than negotiations.

MR. ALEXANDER. For sure. And in all the discussions between the local communities and the tribes that have gone on in the past 2 days, most of the discussion focused on cross-deputization and not transfers of jurisdiction.

MR. JANKLOW. Right. I think the key position that people take, at least the president of the Cheyenne River Sioux Tribe, which is what I reiterated to you today, nobody should be allowed to break the law and it doesn't make any sense whether it happens to be Mary Sue, myself, you, or Matthew Warbonnet on the reservation. If they break the law and they place property or people in jeopardy, they ought to be held accountable for it. And the mechanics are the only thing that ought to, have to be worked out.

MR. ALEXANDER. Art Zimiga mentioned earlier that there is a great deal of misunderstanding in his perception from being around the State amongst the general community about Indian tribes and Indian people.

In your own view, do you see Indian tribes as permanent political institutions in the State and country?

MR. JANKLOW. I see them as that, but I—with respect, I disagree with the conclusion he reached. I think when people have lived together in towns of 500 and 600 for 50 years they don't have very many stereotype problems, and if they do, they are not on the basis of color of skin, they are on the basis of what side of the tracks you may have happened to come from or what your economic status is or things of that nature. I don't think it's on the basis of color of skin. I happen to respectfully disagree with that position of his.

MR. ALEXANDER. Mr. Zimiga, do you wish to comment?

MR. ZIMIGA. I don't believe that discrimination started in 1972 or '74. I think it existed long before that. I was born on Pine Ridge Reservation. I lived off the reservation. I lived within this State. I was educated in this State and I think that the general non-Indian to understand the culture of Lakota people—he doesn't understand it. And to him, when he lives there it's foreign. But in the practice of traditional religion, which was outlawed at one time by the United States Government and then now is in practice again, people down from those areas—a lot of them consider it being barbaric and they voice their opinions in the papers. I think you can see some of those reactions that come out within local papers and some things on Indian people.

I just think presently that things can be better in the sense that through the office of human rights and those issues that people get down to, start communicating together, and you know, economically, reservations support a great percentage of the economic growth of the State of South Dakota. That without Indian people three-quarters of a million people in this State—you know how much revenue is derived from Indian people? And I just wonder within myself how we are going to sit there and say that discrimination doesn't exist within a little town or community. And I just came from Hot Springs, and a man that had been running a business there, that is a county commissioner says, "If someone comes from Pine Ridge," he said, "I wouldn't accept his check because he was from Pine Ridge because I didn't think that I could collect on that if it went bad."

Now in the same sense, I don't see the same sense of people at Pine Ridge saying, "If you have a checking account then go down to Pine Ridge," and Pine Ridge people say, "We're not going to accept your check because you are from Hot Springs." And that happens here in Rapid City.

I directed the Title I program on Pine Ridge Reservation, and I brought up people that were on school boards for meetings up here and they couldn't even cash checks in some of the places where they were staying. And I don't know what you call that, you know, is that discrimination or what is it? But to me that is what it is. So I don't agree with the attorney general at all on that point.