

1 OPEN MEETING ON THE ADMINISTRATION OF JUSTICE  
2 AS IT AFFECTS AMERICAN INDIANS  
3 IN OFF RESERVATION AREAS OF ARIZONA  
4 CONDUCTED BY THE ARIZONA ADVISORY COMMITTEE  
5 TO THE  
6 U.S. COMMISSION ON CIVIL RIGHTS  
7 November 17-18, 1975  
8 Flagstaff, Arizona.  
9

10  
11 (The following persons were present during the hearing)  
12 COMMITTEE:

13 Dr. Morrison Warren, Chairperson

14 Ms. Juana Lyon

Mr. Peterson Zah

15 Ms. Rita Madrid

Ms. Maria Molina

16 Ms. Grace McCullah

Ms. Catherine Palmquist

17 Mr. Theodore Williams

18 STAFF:

19 Dr. Shirley Hill Witt, Regional Director

20 Dr. Maria Pares

Mr. William Levis

21 Ms. Phyllis Santangelo

Ms. Esther Johnson

22  
23 THE ABOVE ENTITLED hearing was held in Flagstaff,  
24 Arizona, on November 17 and 18, 1975, and the following  
25 proceedings were had, to wit:

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I N D E X  
Volume I  
November 17, 1975

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PROCEEDINGS

THE CHAIR: Ladies and Gentlemen, this open meeting of the Arizona Advisory Committee to the U.S. Civil -- to the U.S. Commission on Civil Rights will please come to order.

I am Dr. Morrison Warren, Chairperson of the Arizona Advisory Committee. The other members of this committee are Ms. Rita Madrid, Ms. Juana Lyon, Mr. Ted Williams is out, he will return shortly. And Mr. Peterson Zah.

Other members of the committee not present today are Peter McDonald, Grace McCullah, who will be here tomorrow, Dr. Randolph Gerber, Ms. Catherine Palmquist, Ms. Maria Elba, Mr. Edward Guerrero, Senator Manuel Pena, Senator Diane McCarthy and Dr. John Glass.

Also with us today are Dr. Shirley Hill Witt, who is the director of the Mountain States Regional Office, Dr. Maria Pares, who is outside, Mr. Bill Levis, Ms. Becky Marruho (Phonetic), who I see in the audience, Ms. Esther Johnson, and Ms. Phyllis Santangelo, also from the Denver office.

This meeting is being held pursuant to rules applicable to state advisory committees and other requirements promulgated by the U.S. Commission on Civil Rights.

The Commission on Civil Rights is an independent,

1      bipartisan agency of the U.S. Government, established by  
2      Congress in 1957 and authorized by the Civil Rights Acts,  
3      first, to investigate complaints alleging that citizens  
4      are being deprived of their right to vote because of their  
5      race, color, sex, religion or national origins.

6              Secondly, to collect and study information concerning  
7      legal developments which constitute a denial of equal  
8      protection of the laws under the Constitution.

9              Thirdly, to appraise federal laws and policies with  
10     respect to denials of equal protection of the laws.

11             Fourthly, to serve as a national clearing house for  
12     civil rights information. And fifthly, to investigate  
13     allegations of voter fraud in elections.

14             The commission has established 51 state advisory  
15     committees like ours in Arizona, to advise the commission  
16     of relevant information concerning matters within the juris-  
17     diction of the commission and matters of mutual concern  
18     in the preparation of reports of the commission to the  
19     President and Congress.

20             The advisory committee may receive reports, sugges-  
21     tions and recommendations from individuals, public and  
22     private organizations and public officials on matters  
23     pertinent to inquiries conducted by the state committees,  
24     and attend, as observers, any open hearings or conferences  
25     which the commission may hold within the state.

1           This session today is an informal hearing, and not  
2 an adversary proceeding or court of law. Individuals have  
3 been invited to share with the committee information re-  
4 lating to the administration of justice as it affects  
5 American Indians in off-reservation areas. Each person  
6 who will participate has voluntarily agreed to meet with  
7 the committee.

8           During the public meeting today the advisory com-  
9 mittee will explore the, regarding the treatment American  
10 Indians receive during the administration of justice process  
11 in off-reservation areas.

12           We will hear testimony regarding the jury selection  
13 process, arraignments, arrests, bail bond procedures, the  
14 legal rights of American Indian defendants, local jail  
15 conditions and jurisdictional problems. Related issues  
16 such as the availability of local alcoholic reception  
17 centers and other rehabilitative facilities will also be  
18 discussed.

19           Since this is an open hearing, the press, radio  
20 and television stations, as well as individuals, are  
21 welcome. However, no witness shall be televised, filmed  
22 or photographed during the informal hearing nor shall  
23 testimony be recorded for broadcasting if a witness objects.

24           We're very concerned that we bring out all of the  
25 information relating to the matter under inquiry. We're

1 also concerned, however, that no individual be the victim  
2 of slander or libelous statements. As a precaution against  
3 this happening, each person making a statement here today  
4 or answering questions, has been interviewed prior to this  
5 meeting.

6 However, in the unlikely event that such a situation  
7 should develop it will be necessary for me to call this  
8 to the attention of the person making the statement and  
9 request that he or she desist in such action. If any  
10 persons in the audience today have statements or informa-  
11 tion they would like to share with the advisory committee,  
12 both staff and committee members are available to meet  
13 with you individually, particularly Dr. Maria Pares or  
14 Bill Levis.

15 Also, any persons wishing to submit documents into  
16 the record of this open meeting may do so within a 30-day  
17 period.

18 Every effort has been made to invite persons who are  
19 knowledgeable about the problems and progress in this area.  
20 In an effort to present a well-balanced picture of the  
21 problems encountered by Native Americans in the adminis-  
22 tration of justice in off-reservation areas, we have in-  
23 vited panels of law enforcement officials, members of Indian  
24 tribes and nations, city, county and state judges, and other  
25 interested persons.

1           The meeting will provide the basis for a written  
2 report by the advisory committee, containing findings and  
3 recommendations about the issues raised today. As you  
4 see, we have a Court Reporter who records the proceedings  
5 to insure that we receive, accurately, all statements made  
6 by panel participants and witnesses.

7           On behalf of the advisory committee, let me welcome  
8 all of you here today.

9           We've asked Dr. J. Lawrence Walkup, President of  
10 Northern Arizona University, to extend greetings. Dr.  
11 Walkup.

12  
13                           DR. J. LAWRENCE WALKUP  
14

15       A       (By Dr. Walkup) Dr. Warren, after hearing the  
16 assignment that you people have here as the advisory  
17 committee of the U.S. Commission on Civil Rights, I'm  
18 quite impressed with the responsibility and the amount  
19 of information I'm sure will be forthcoming.

20           I want to welcome you and to -- to the campus and  
21 those of you from other parts of the state, to the Northern  
22 Arizona University. And I'm sure that from the information  
23 and from the intense study and the considerations that you  
24 give to each person's problems and points of view, as well  
25 as the description of the historical background of how

1 activities and procedures that justice is carried out  
2 over the years, that I -- I'm sure there will be some  
3 things that will bring about better -- a better and more  
4 just way of doing this.

5 Also, I would like to say to those who have been  
6 involved in trying to carry out the law as it's written  
7 today, and our law enforcement personnel, our public  
8 defenders, our Native Americans and representatives of the  
9 state as a whole, I would like to welcome this group and  
10 I hope that you people will have a -- and I know you will  
11 have a chance to present, as you see this overall in-  
12 volvement and the problems.

13 So this certainly will give a broad communication  
14 to hear from various segments, and I would like to compli-  
15 ment and, as a citizen of Arizona, and thank the advisory  
16 committee for taking this time, taking their time to work  
17 on this problem.

18 Now, my closing comments are, if I can be of, or  
19 we can be here, at the university, of service in bringing  
20 about better communication, helping you in any way, why,  
21 we would like to help and be of assistance to your project  
22 and your responsibilities.

23 Thank you very much.

24 THE CHAIR: Thank you, sir. Thank you very much.

25 We have a further statement by Mr. Peterson Zah.



1 DR. PETERSON ZAH

2  
3 A (By Dr. Zah) Dr. Warren, Dr. Walkup, Ladies and  
4 Gentlemen, Committee Members. The Civil Rights of American  
5 Indians in the southwest have been a great concern to the  
6 United States Commission on Civil Rights in the recent  
7 years. The commission held hearings in 1972 and 1973 on  
8 issues of concern to Indians in Albuquerque, New Mexico,  
9 Phoenix and in Window Rock, Arizona.

10 The southwest Indian report based on the 1972  
11 hearings dealt with the issue of employment, education,  
12 health, water rights and administration of justice. In  
13 1974, the commission's Arizona Advisory Committee con-  
14 ducted a followup investigation of Indian employment prob-  
15 lems. And the New Mexico Advisory Committee held a followup  
16 hearing in Farmington, New Mexico, on civil rights affecting  
17 the Navajo people.

18 The Arizona Advisory Committee has found that the  
19 administration of justice in the areas near the reservation  
20 continues to be an issue of grave and widespread concern  
21 among the American Indians in the states. Statistics from  
22 1970 census demonstrates that Native Americans continue  
23 to be excluded from participation in the sharing of eco-  
24 nomic wealth of this nation.

25 For instance, the 1970 statistics indicates that the

1 median income was \$3,501.00 for Native Americans, men,  
2 compared to a median income of \$6,446.00 for White men,  
3 and \$2,330.00 for White women.

4         Comparable figures for Arizona show the same dis-  
5 parity. The 1970 statistics for Arizona recorded a median  
6 income of \$2,247.00 for Native American men, and \$1,283.00  
7 for Native American women, compared to a median income of  
8 \$9,484.00 for White population.

9         Further comparison shows that in 1970, approximately  
10 62% of the Native American population in the nation  
11 earned less than \$5,000.00 per year, compared to 18% of  
12 the White population. Comparable figures for Arizona re-  
13 veals that 43% of the Native American population earned  
14 less than \$5,000.00, compared to 19% of the White population.

15         The rights of nonreservation Native Americans are  
16 protected by the United States Constitution. And those  
17 off-reservation Native Americans are protected by the  
18 1968 Civil Rights Act. Since 1924, Native Americans have  
19 been a citizen of the United States and the state in which  
20 they reside. This entitles them to the same federal and  
21 state provisions or protections as any other citizens.

22         The Fifth and 14th Amendment to the United States  
23 Constitution guarantees that neither the federal nor the  
24 state government will deprive a person of life, liberty or  
25 property without due process of law.

1           The due process clause requires that the government  
2 act fairly and justly when it directly affects persons  
3 or their property. The Constitution also guarantees that  
4 defendants have a right to an attorney in state and  
5 federal criminal proceedings, and the right to free counsel  
6 if they can not afford one.

7           The police may not question any suspect until the  
8 suspects have been advised of their rights to remain silent  
9 and to have an attorney present. Once arrested for serious  
10 offenses, the accused may be brought before a judge for  
11 arraignment where they are informed of the charges and given  
12 an opportunity to plead guilty or not guilty. The judge  
13 must inform the defendant of their constitutional rights,  
14 including the right to counsel, at this time.

15           The Eighth Amendment to the Constitution guarantees  
16 the right to a reasonable bail except when a defendant is  
17 charged with a crime punishable by death or life imprison-  
18 ment.

19           Most important, in cases affecting minorities, the  
20 14th Amendment to the United States Constitution prohibits  
21 both the state and the federal government from denying any  
22 person equal protection of the laws. Even where a law  
23 appears impartial, and nondiscriminatory, it violates the  
24 Constitution if it is applied in a discriminatory manner.  
25 For instance, only against Native Americans.

1 Arizona courts are bound by all previously dis-  
2 cussed United States Constitution requirements in addi-  
3 tion to state-approved procedural and substance guarantees  
4 within its constitution statutes and rules of criminal  
5 procedures. Once arrested, a suspect must be granted a  
6 hearing before a magistrate within 24 hours or be re-  
7 leased.

8 At the initial appearance the magistrate may identify  
9 the defendant, advise them of the charges, their right to  
10 counsel and their right to remain silent, and appoint free  
11 counsel if necessary. If a complaint is not filed within  
12 48 hours of the initial appearance, the person also must  
13 be released.

14 At the initial appearance, the magistrate must also  
15 determine whether to release a defendant charged with bailable  
16 offenses on their own recognizance or to make them post a  
17 bond.

18 In Arizona, the defendants have the fundamental right  
19 to counsel unless there is no prospect of confinement after  
20 judgment. In addition, counsel must be appointed for  
21 those who can not afford an attorney if punishment may  
22 result in a loss of liberty or if the interests of the  
23 justice requires it. Except in minor traffic cases a judge  
24 will accept guilty pleas only if voluntarily and intelli-  
25 gently made in open court.

1           Before accepting such a plea, the judge must per-  
2           sonally address a defendant in open court, inform them of  
3           their rights and determine if they understand the nature  
4           of the charge, the nature and the range of possible sen-  
5           tences, and the constitutional rights they are waiving,  
6           including the right to counsel and the right to plead  
7           not guilty.

8           In 1972, Arizona decriminalized public drunkenness.  
9           According to the attorney general, the legislature in-  
10          tended, after much research and deliberation, to provide  
11          a means for treatment for alcoholism and alcohol-related  
12          problems outside the criminal justice system. The act  
13          called for the creation of local alcoholism reception  
14          centers for evaluation, treatment and prevention of alco-  
15          holism and intoxicated persons.

16          One area of concern that especially affects Native  
17          Americans is jury selection. Once placed on the jury list  
18          and drawn, a reservation Indian must be subpoenaed to  
19          serve as a juror. To do otherwise would violate the due  
20          process clause of the 14th Amendment to the Constitution,  
21          and federal statutes which makes it illegal to disqualify  
22          a citizen as a juror because of race.

23               THE CHAIR: The procedure that we'll use today,  
24          we have five panels who will appear before the commission,  
25          we'll ask the respective panels to come and to sit, and

1 there are a series of questions that we wish to ask the  
2 panel members.

3 I'd like to reiterate the fact that we are a fact-  
4 finding, data-collecting group, who prepares reports,  
5 advise the U.S. Commission on Civil Rights for further  
6 action in their reports to the President and Congress.

7 With that as background, is Ms. Arlene Tuchawena  
8 and Mr. John Thompson in the audience today?

9 Will you come forward and sit here, please?

10 And Mr. Frank Howard here? Please.

11 For the benefit of Mr. Howard, the first series of  
12 questions will be directed at Ms. Tuchawena.

13 First of all, Ms. Tuchawena, will you pronounce  
14 your name for me, please?

15  
16  
17 MS. ARLENE TUCHAWENA

18  
19 A. (By Ms. Tuchawena) That's right, Tuchawena.

20 Q. (By the Chair) Thank you. Will you please state  
21 your name, your address and your occupation?

22 A. Arelene Tuchawena, my --

23 Q. Address, please?

24 A. Home address is Tuba City Public School Housing,  
25 and I teach at Tuba City Public School.

1 Q Thank you. And public school, elementary school?

2 A Intermediate school.

3 Q Intermediate school, thank you.

4 Ms. Tuchawena, will you please describe your en-  
5 counter with the Flagstaff Police Department? We face a  
6 little problem, too, of being heard, so if you'll throw  
7 your voice we'll appreciate it.

8 A Well, I was driving down, I don't remember what  
9 street it is, it's the turnoff right at the Green Lawn  
10 Mortuary, and, well -- I'm kind of nervous --

11 Q We want you to describe your encounter with the --

12 A Okay. Well, what I did was I ran a stop sign, which  
13 I didn't intend to do, because prior to that there used to  
14 be a yield sign, and I was -- I wasn't fully aware they  
15 had changed to a stop sign. And I just ran it.

16 And just -- just to the right of me there was a  
17 police car and I knew they saw me, so I pulled right over,  
18 and he didn't have to turn on his red lights or anything,  
19 so I stopped and he approached the car and asked for my  
20 driver's license and I gave it to him. And he asked me if  
21 I knew what I had done, and I said I was aware of it. And  
22 he says -- he looked at my driver's license and he said  
23 that I -- he says, well, you're from the reservation. I  
24 said yes. He says, well, you're going to have to go down  
25 to the police station and post bond. And I asked him why?

1 And he says, well, you're from the reservation, so all  
2 reservation Indians, you know, need to go down to post  
3 bond whenever they get caught for something.

4 And I told him well, this is just a traffic viola-  
5 tion. Couldn't I just be issued a citation? And he said  
6 no. And he -- he ordered me to get into the police car.  
7 And I told him I didn't -- I wasn't going to. And, well,  
8 we had a little conversation there, and he started --  
9 well, he says, if you don't get into the car I'm going to  
10 have to force you. And I told him, well, could I follow  
11 you down to the police station? And I was with my -- my  
12 daughter and my niece and a cousin of mine. And I didn't  
13 want to leave them there alone.

14 So I asked him, I said, could I follow you to the  
15 police station? And he says no, you're going to have to  
16 ride in the police car. And I kept insisting that I  
17 wouldn't. And he just opened the door, he says, you know,  
18 do you want me to force you? And I had no choice but to  
19 get out and get to the police car.

20 Q Okay. Let me ask you some specific questions to  
21 help bring out.

22 Could you -- was this quite upsetting to you?

23 A It was.

24 Q Could you identify factors that made it so?

25 A Well, I'm -- I'm teaching and, you know, I don't want --



1 I don't like for my kids to see me in the situation like  
2 that. And it was during the Pow Wow, and, you know, you  
3 expect most of your students or other teachers to be  
4 around. And that's -- that's what I didn't like.

5 Q Can you give us the approximate date, during the  
6 Pow Wow?

7 A It was the day -- I'm not too sure of the date.  
8 July 5th, I think.

9 Q In the neighborhood of July 4th?

10 A Yes.

11 Q Okay. Why did the police officer ask you to post  
12 bond for a minor traffic violation? Was that ever clari-  
13 fied for you?

14 A Well, he said I was a resident of the reservation,  
15 I wasn't a resident of Flagstaff, and I told him, I was  
16 a resident of Flagstaff because at the time I was residing  
17 on campus going to summer school. And I said I live here  
18 on campus. Doesn't that make me a legal resident? And  
19 he said, it doesn't show it on your driver's license. He  
20 says, when you have a change of address you should show it  
21 on your driver's license. And I told him that I'm only  
22 here for the summer, I don't need to -- to get a change  
23 of address on my driver's license. Because my driver's  
24 license showed my Tuba City address.

25 Q Now, were you released?

1 A No, I was taken to the police station.

2 Q You were taken. Now, what was the nature of your  
3 protest or the intensity of your protest? How did you  
4 protest?

5 A Well, I -- I didn't think I --

6 Q Would you describe it?

7 A I didn't think I should have been taken to the  
8 police station. If I -- if I was to go there I would have  
9 gone on my own. I would have followed him, and nothing  
10 would have happened.

11 Q Now, did you post bond?

12 A I posted bond, \$12.00.

13 Q And was that returned to you?

14 A That was returned just about ten minutes after I  
15 paid it.

16 Q Now, are we correct in thinking that a second  
17 police officer intervened in the process of your being --

18 A Yes, after I was putting up a big fuss about being  
19 brought in, and a second policeman came around and he  
20 asked what the commotion was about and I told him. And  
21 then he says that I shouldn't have been brought in, that  
22 I was a resident of Flagstaff and no residents of Flagstaff  
23 should be brought in to post bond, just -- just have a ci-  
24 tation written out.

25 Q Now, the fact that you were grieved, did you follow

1 up with any public official regarding your arrest? Or  
2 were you arrested? That's a form of arrest, I would  
3 suspect.

4 A Yes.

5 Q Did you follow up on the process, complain to any  
6 other official?

7 A I went to Judge Brady? Judge Brady? I went to  
8 see him about it, and he got, I guess he got upset about  
9 it so he went down to Maxwell, Chief of Police Maxwell,  
10 we went down to see him, and I told him what had happened,  
11 and he said he was going to have a talk with the officer.  
12 And I don't know what happened after that.

13 Q (By Mr. Zah) I want to make sure that I understand  
14 this. There is a second policeman that intervenes,  
15 did that happen at the time of your arrest?

16 A No.

17 Q On the road or back at the jail?

18 A At the police station.

19 Q At the police station.

20 Second question is, what happened to the parties  
21 that you were with?

22 A Well, my cousin had just -- she had a driver's  
23 license so they said she could follow us back and she did  
24 follow us to the police station.

25 Q How long did you stay at the jail?

1           A     About 30 minutes.

2           Q     (By the Chair) Has there been any followup, Ms.  
3     Tuchawena, any notification from the police department  
4     in the form of an apology or any statement regarding what  
5     steps will be taken to prevent this kind of practice from  
6     continuing? Has there been any followup at all?

7           A     No. Only -- only Chief of Police Maxwell said that  
8     he would have a talk with the officer and that's the last  
9     I heard of it.

10          Q     And that was the night of the encounter or the  
11     time of the encounter?

12          A     Uh-huh.

13          Q     Now, the next statement can help us kind of con-  
14     ceptualize this whole process, and having been involved,  
15     we'd be very interested in your comments, and that is,  
16     in your opinion, what should be done to prevent similar  
17     type incidents in Flagstaff?

18          A     Well, for one thing, the officer didn't know --  
19     well, he didn't know the rules and regulations of the  
20     department. Because as the other officer said, NAU  
21     residents, whether it be summer or full time resident --  
22     students are legally residents of Flagstaff. And this  
23     officer didn't seem to know that.

24                 THE CHAIR: Fine. Anyone else have any other  
25     questions of Ms. Tuchawena that you wish to raise?

1 MR. LEVIS: I have one or two.

2 Q (By Mr. Levis) Ms. Tuchawena, was there ever any  
3 explanation given to you as to why there is such a dis-  
4 tinction between reservation and nonreservation residents?

5 A Yes, the second officer said it was hard to bring  
6 reservation Indians in for court, that it was better for  
7 them to pay the bond because, you know, they can't go out  
8 to the reservation to bring in the person. Whoever --  
9 had committed an offense.

10 Q Even though residents of the reservation and Tuba  
11 City are also residents of the State of Arizona?

12 A Yes.

13 Q So all reservation Indians must post bond?

14 A Yes.

15 Q And this is not --

16 A That's what I understood.

17 Q Now, why did the officer who intervened release  
18 you without posting bond or refunded your bond?

19 A I don't know. Well, he said that -- that I shouldn't  
20 have been brought in. That I was -- that I should have  
21 just been issued a citation. And not be required to pay  
22 -- to post bond.

23 Q Are you aware of any similar incidents that have  
24 occurred to your friends or anyone else?

25 A No.

1 Q Did you receive a formal apology or --

2 A No.

3 THE CHAIR: Any other questions by any commission  
4 member?

5 If not, thank you very much, Ms. Tuchawena.

6 The next questions will be directed at Mr. Thompson.  
7 Will you please state your name, your address and your  
8 occupation, Mr. John Thompson, please?

9

10 MR. JOHN THOMPSON

11 (Mr. Frank Howard served as interpreter)

12

13 Q (By the Interpreter) My name is John Thompson. My  
14 address is Box 52 Star, Route, Winslow, Arizona.

15 Q (By the Chair) Mr. Thompson, could you describe  
16 your experience of May 3, 1975, with the Flagstaff police?

17 A The incident happened on that date that was mentioned,  
18 he was driving, himself and his wife been driving from the  
19 K-Mart shopping area across the main thoroughfare, was  
20 crossing that to another shopping area which is called  
21 Green Lawn shopping area.

22 He was crossing, going across there when he stopped  
23 before he crossed the main thoroughfare. As he stopped,  
24 there was some traffic going from the west and some coming  
25 from the east. As he noticed that he stopped, there was a

1 patrol car coming from the east side. And then there was  
2 some traffic went through from the west side, then, after  
3 that was, he passed across to Green Lawn shopping area.

4 As he did so, the traffic, patrol car made a  
5 signal, had his spotlight on him, or the blinking lights  
6 over the car to stop. So he had to stop the -- just right  
7 close by that Chinese Cafe in the Green Lawn area shopping  
8 center area. And the policeman stopped him and he walked,  
9 and the policeman walked up to him and told him that he  
10 was driving on the wrong side.

11 So he, the policeman told him to move his -- drove  
12 up about a 100 yards from where he stopped, and so he  
13 did so. He drove up another 100 yards and he stopped.  
14 Then the policeman walked up to him, he left his patrol  
15 car at the place where he stopped him.

16 .....After the officer came to be-  
17 side my pickup, he inquired about my driver's license  
18 and also the pickup's title, the car title. So I produced  
19 the driver's license and also the car, the pickup title,  
20 which I had in the car. So the policeman checked both  
21 of them and he told me that the reason why he stopped  
22 him was he was driving on the wrong side of the road.

23 At that time there was no citation written out,  
24 and the officer told me to produce \$12.00 in order that he  
25 would be let -- let go. So the officer told me to produce

1     \$12.00 so I took my pocketbook out. The only cash I had  
2     was only \$7.00. That was between us two.

3             I showed the \$7.00 to the officer, that's all I  
4     had in my pocket. But the officer insisted that I should  
5     pay him the \$12.00 right that minute. And the officer  
6     said, your wife might have some money. And my wife's  
7     answer was that she don't have any -- any money also. So  
8     the officer stated that within the -- if you don't pro-  
9     duce the \$12.00 within five minutes, I'm going to take  
10    you to the jail. So there was no way that we could pro-  
11    duce the \$12.00, all that we had was \$7.00. So the  
12    officer took me to his patrol car and he locked me in,  
13    inside the patrol car. And he went back to the pickup and  
14    there was some -- some other things behind the pickup in  
15    the back, he throw that in the front seat and locked the  
16    pickup on both sides.

17            So my wife had to go walk back to K-Mart shopping  
18    center, trying to find somebody that he would -- she would  
19    recognize that, where she can borrow some money.

20            It so happens that there was a party there at the  
21    shopping center that she knew. And she went to the party  
22    and requested for some money. To borrow some money in  
23    order to pay the \$12.00 bail. It so happens that the  
24    party didn't have any cash on hand so they had to write  
25    a check for \$5.00. When this check was presented to the



1 officer, the officer said he doesn't want no check, he  
2 wants cash. So if the officer can not take the check,  
3 besides the \$7.00 already on hand, so he was taken to the  
4 -- to jail, to the city jail.

5 So his wife, on his own, had to go on the west side  
6 of town to see her brother, residing on the west side of  
7 town. By the name of John K. Thompson. Together with the  
8 brother they went to the police station where the cash  
9 payment of \$5.00 was made, including the \$7.00 that was  
10 on hand. So he was let go by the policeman after this  
11 was done.

12 THE CHAIR: I have a series of brief questions.

13 A I forgot to mention, I skipped a part of his state-  
14 ment. At the time when the officer came to his pickup  
15 when he was sitting in the pickup, then requesting for  
16 the driver's license and car title, the officer wanted  
17 \$12.00 cash right that minute. When this was not done,  
18 the officer grabbed his left hand, his left wrist, without  
19 any warning the officer opened the door and jerked the  
20 door open and grabbed his wrist and tried to throw him out  
21 bodily. But at the same time he grabbed the steering wheel  
22 and held on.

23 But he had the -- previously injured his left ankle,  
24 so he -- he was only -- he was not wearing a shoe. He  
25 was wearing one of these shoe that -- bedroom slippers, the

1 ones that he's wearing now. He was wearing one of those  
2 at the time. Because of the injury to his knee.

3 So the officer --

4 THE CHAIR: His knee or his foot, Mr. Howard, please?

5 A His left ankle.

6 THE CHAIR: Thank you.

7 A So maybe after several minutes the officer threw  
8 him out of the car to the pavement. So that was where he  
9 reinjured his left injured ankle.

10 So the -- he was in pain, and right at that moment  
11 when he was in pain, while the officer was trying to  
12 drag him toward the patrol car, and right at that time  
13 when he reinjured his left ankle, he called out to the  
14 officer that he -- his ankle was hurting him, that his ankle  
15 was paining him, so right at that time the officer just  
16 stopped, stopped him, dragging him.

17 I skipped that part of his statement.

18 THE CHAIR: Thank you, sir.

19 Peter?

20 Q (By Mr. Zah) I think what I'll do is, you know,  
21 ask the question in English and then ask it again in Navajo  
22 and then you can respond in the English or interpret his  
23 response.

24 What is your occupation? And then did you ever  
25 have any experience with the police like this during your life?

1       A       In response to the two questions that were posed  
2 by Mr. Zah, my job for 25 years that I've been working  
3 for the Santa Fe Railroad just north of Winoma, where  
4 there's a cinder, gravel pit. I've been working there  
5 for at least 25 years. And also at the same time, I've  
6 been a member of the church for at least 28 years, going  
7 on 29. And also I preach in the church to my people.  
8 Within all that years. And never that I have had any  
9 problem or trouble with any policeman in the past, such  
10 as what had happened to me. I never had any problems  
11 with -- previously with any police or law enforcement  
12 officer. So that's the way I'm situated at the present.

13       THE CHAIR: There's a statement that Mr. Zah is  
14 going to check, Mr. Howard, to see if Mr. Thompson is  
15 in agreement with it, and if he has any changes in it and  
16 then this will complete our testimony.

17       MR. ZAH: Dr. Warren, I'm a very slow reader and  
18 you might want to ask some other questions while I go  
19 over this.

20       THE CHAIR: Well, I think they're all included  
21 there.

22       Q       (By Mr. Lewis) Mr. Thompson, do you live on or  
23 off the Navajo reservation?

24       A       Yes, I reside on the Navajo reservation.

25       Q       Was this the reason given to you for a bond of \$12.00

1 by the police officer?

2 A. He never mentioned that.

3 Q. Was the only reason he pulled you over because he  
4 said you were driving left of center of the road?

5 A. What do you mean?

6 Q. Was there any other reason besides driving --  
7 was there any other reason given besides supposedly  
8 driving left of center of the road for the police  
9 officer stopping you?

10 A. There was no other reason besides the alleged  
11 charge of driving on the wrong side of the road. That  
12 was the only reason why he was forcibly thrown out of his  
13 own pickup. But this has come to the judge, there was a  
14 hearing been made on this, on this problem, where myself  
15 and my wife had testified before the judge and also the  
16 officer that made the charge against me also testified  
17 before the judge.

18 .And the judge's ruling at that time was that the  
19 officer was in the wrong, so for that reason, the judge  
20 has dismissed the case on that incident.

21 Q. What was the judge's name?

22 A. He doesn't know the judge's name. He's kind of  
23 elderly person.

24 Q. Does he know if it was justice of the peace court  
25 or city court?

1 A I think it's the city that's --

2 Q (By Mr. Zah) Mr. Thompson and Interpreter Frankie  
3 Howard, I want to show this letter to Mr. Thompson and  
4 see if he can identify the letter and then, you know,  
5 ask him one other question in so far as the content of  
6 the letter.

7 A He's unable to read the letter so he's not very  
8 familiar with it.

9 Yes, he's aware of this letter, and he was given  
10 a carbon copy of it, and he left his copy at home.

11 THE CHAIR: Has it been interpreted to him, Mr.  
12 Howard? Did he know and understand what the contents  
13 of the letter was?

14 A Yes, he understood the letter.

15 Q Was he in substantial agreement with the letter?

16 A Yes, he's in agreement with this letter, but also  
17 there was a return letter made from the officer which  
18 states that the incident happened at night, that was the  
19 officer's statement in the letter that was returned to  
20 the attorney that wrote the letter.

21 Q (By Mr. Zah) Mr. Thompson, that letter contains  
22 everything that you have said, you know, up to now,  
23 except there's one discrepancy. And in that letter it  
24 states that the arresting officer also made some accusation  
25 in so far as you, you know, being intoxicated at the time of,

1 you know, of your arrest. And I would like for you to  
2 make maybe one short comment on that. Did that happen  
3 or did it not happen?

4 A In response to the question, at the time when the  
5 police officer arrested him, the officer has mentioned  
6 or stated to him that he was under the influence of alcohol.  
7 But John's wife stated in answer to the officer that it  
8 may have been so about 28 years ago, my husband used to  
9 use that, but that was long time ago. That was the answer  
10 given back to the officer.

11 THE CHAIR: Mr. Howard, does Mrs. Thompson speak  
12 or understand English?

13 A I believe so.

14 Q (By the Chair) And the question that I'm getting  
15 at, at the time of the encounter between the police  
16 officer and Mr. Thompson, if he does not speak or under-  
17 stand English, how did he know that he was being asked  
18 for \$12.00?

19 A Well, even though he don't have any education at  
20 all, but he understands what -- what the officer was  
21 saying, he knows the meaning of what -- he understood,  
22 but at the time when the hearing was going on before the  
23 judge, he -- he spoke up for himself, even though if --  
24 using his broken English maybe, the judge understood.

25 THE CHAIR: Are there any other questions?

1           MR. ZAH:     One other thing, I think in the trans-  
2           lation the judge asked the same question as you asked, he  
3           says.

4           THE CHAIR:   Any other questions by any other member  
5           of the commission?

6           MR. LEVIS:   Just for the record, Dr. Warren, if we  
7           could have this piece of paper we've been referring to,  
8           marked as Exhibit Number 1 for the record, so anyone who  
9           would like a transcript or like to know what it refers  
10          to, it will be easier for the Court Reporter

11  
12          (Whereupon Exhibit Number 1 was marked for iden-  
13          tification)

14  
15          THE CHAIR:   This concludes your testimony, we want  
16          to thank you, Ms. Tuchawena and Mr. Thompson. Thank you,  
17          very much.

18          Is Mr. Joseph Garcia in the audience?

19          Will you come forward, sir, please?

20          Mr. Garcia, there is a series of questions that we  
21          wish to ask and I think before you came, in the opening  
22          statement, I indicated that we are a fact-finding, data-  
23          gathering group. 51 such groups in America, one from each  
24          state. And we have a responsibility of reporting to the  
25          U.S. Commission on Civil Rights. Which is a bipartisan

1 group who makes recommendations to the President, which is  
2 operationalized in laws regarding the civil rights of  
3 persons in America, particularly minorities and women.

4 And I also, and I wanted to reiterate, this is a  
5 nonadversary enterprise. We also indicated that persons  
6 are here voluntarily, and we're very sensitive to any  
7 comments that you may make to clarify the civil rights,  
8 particularly of Native Americans as it relates to off-  
9 reservation persons in the administration of justice.

10 Will you state your name and your address and your  
11 occupation, please?

12  
13  
14 JUDGE JOSEPH C. GARCIA

15  
16 A (By Mr. Garcia) Okay, Joseph C. Garcia, my  
17 residence is 1708 Northwest Street, Flagstaff. That's my  
18 residence. My office is at Coconino County Courthouse,  
19 I'm a justice of the peace for the Flagstaff Precinct, Coco-  
20 nino County, State of Arizona.

21 Q (By the Chair) Fine. Judge Garcia, will you  
22 identify the types of offenses that your court hears?

23 A Well, we handle just about everything from misde-  
24 meanors, felonies, on the criminal aspect, also traffic,  
25 also civil, what you call small claims court, civil actions.



1 Q Can you tell me what the maximum and the minimum  
2 amount set for bail that you handle in your court?

3 A Well, when you talk about, because you mean on  
4 criminal cases or are you talking misdemeanors or felonies?

5 Q Any, or else you may categorize them and then  
6 specify --

7 A Well, you have guidelines of not only the revised  
8 statutes but also by the supreme court, on misdemeanors  
9 the maximum bail you can set is \$300.00 plus the applicable  
10 surtax, on felonies it depends on the offense and on the  
11 individual accused of the offense. And their ability to  
12 be responsible for appearances in court.

13 If you know they're going to appear, then you're  
14 supposed to release them on their own recognizance. By  
15 the other token, if it's a transient and you have no  
16 guarantee he will stick around for trial, then you can  
17 set an appropriate bond that will meet with his ability  
18 to post the same.

19 Q Now, you've alluded to some criteria that you use  
20 in the determination of bail amounts. Can you specify  
21 for the commission what those criteria are or --

22 A Yes, I did not include -- I said his ability to  
23 appear, if -- it's quite intensive, nothing you can put  
24 down in two words, in fact, we use about three legal-sized  
25 pages of questions from the defendant and from the law

1 enforcement officer also to make a determination as to  
2 what amount of bail you're going to set on this person.  
3 Because bail is not set -- is not used as a punishment,  
4 only to guarantee the appearance of the defendant, which  
5 would mean different bails for different defendants.

6 Q So you have some discretion?

7 A You have to have, yes.

8 Q It's a discretionary thing, okay. And could you  
9 specify again, I'm not quite clear what those criteria  
10 are?

11 A Okay, the guarantee to the court that he will  
12 appear for trial. If he will appear without any bond what-  
13 soever, and you are sure of this --

14 Q Now, are there some questions that you can -- you  
15 raise that helps you to make that determination?

16 A Oh, yes, sir, there's a -- I'd say 35, 40, 50  
17 questions.

18 Q Now, is ethnicity one of those questions?

19 A What?

20 Q What one's ethnic, the fact that a person is a  
21 Navajo?

22 A Oh, no, no. The only thing would be you're unsure  
23 that he will appear and that you will not have any prob-  
24 lems, extradite him, say from another state or from the  
25 reservation or from another country, whatever. It's just --

1 like I say, the purpose of bail is to guarantee appearance.

2 Q And the judgment, after asking the question in  
3 the judgment of the judge, then an equitable amount --

4 A Right, just to guarantee his appearance.

5 Q Fine.

6 Would you please give an estimate of the percentage  
7 of cases you hear which involve Native American defendants?

8 A It would have to be a rough estimate, since I don't  
9 keep any files on how many Mexicans, how many Native  
10 Americans, how many Anglos, to me they're all the same  
11 and we don't keep any segregation as far as records and  
12 files and all this, they're all treated by the same  
13 criteria and we don't keep records for this. You like  
14 just an estimate on my part I think I can give you a  
15 rough estimate.

16 Q Okay. Your rough estimate?

17 A I would say percentage-wise, 20%, if you include  
18 everything, including traffic, criminal, and civil.

19 Q Twenty percent who appear before you. Now, are  
20 there some charges, in this case drunkenness --

21 A There's no law against drunkenness, sir.

22 Q There's no law, okay. As of when?

23 A Oh, over a year ago.

24 Q Decriminalization, okay. Thank you.

25 Can you give an estimate on what percentage of

1 Native Americans appearing before your court are released  
2 on their own recognizance?

3 A Oh, I'd say better than 50%. Roughly.

4 Q Does this differ from the percentage of Anglos or  
5 Spanish-speaking?

6 A I think it's greater.

7 Q Greater release record?

8 A Yes, sir.

9 Q How do you account for that?

10 A Because in our Anglo section, our Anglo population,  
11 lot of them are transients going through, highway I-40,  
12 I-17, whereas in our Native Americans they're mainly  
13 people from the reservation or they live here in, close in,  
14 and therefore your guarantee of appearance will be in  
15 their favor that they have been here a number of years  
16 and you won't have any problem getting them back.

17 Whereas your transient they might be out in New  
18 York, New Jersey, California, places we have to extradite  
19 or we might not even be able to find, so we must have some  
20 guarantee that they will be here.

21 Q And that figure is 50%?

22 A I'd say it was higher in our Native Americans.

23 Q Of Native Americans. Is there jurisdictional  
24 problems related to --

25 A There was at one time, up till efforts were made,

1 particularly by myself, but I did get a backup from Judge  
2 Brady from the city courts and he did accompany me up to  
3 Window Rock, and we met with Chief Roland Dart, we had an  
4 appointment to meet with Chief Justice Allen and some  
5 members from the tribal council which did not even show us  
6 the courtesy to show up. So we just met with Roland Dart.  
7 And after he gave us his guarantee and his assurance of  
8 cooperation, I haven't had any problems whatsoever. If  
9 we do have some all I got to do is call Mr. Dart and he  
10 has helped us in many, many ways. Where I feel that the  
11 problem has been solved and we're very pleased with it,  
12 hope it continues that way.

13 Q Does your court, sir, attempt to extradite Native  
14 Americans from the reservation through tribal officials?

15 A In your major cases, yes, they have to go through  
16 the tribal officials. In your minor cases, like Mr. Dart  
17 said, they will bypass and delay the extradition procedure  
18 and this is another reason we're releasing more on their  
19 own because we're getting cooperation from the police.

20 Q Now, could you discriminate for me the differences  
21 between major and a minor?

22 A Yes, sir, I would say any felony case punishable  
23 by five years in the state penitentiary or more, I would  
24 consider in the major. Any lesser offenses that might  
25 receive a year or less in jail, I would consider fairly minor.

1 Q Yes. Now, can you, for my information, give me the  
2 percentage of cases that relate to Native Americans that  
3 would fall on the major and minor within the last two years?

4 A Well, like I say, I don't keep records by race --

5 Q Well, in your best judgment?

6 A It would just be a rough estimate.

7 Q Handled before your court?

8 A I would say only at the very most 10% in your major  
9 cases would involved Native Americans.

10 Q And the rest are minor cases?

11 A For a lot of reasons. For one reason is that most  
12 of the major crimes that do occur, occur in the reser-  
13 vation, and most of them are Native American against  
14 Native American, the victim and the defendant both being  
15 Native Americans, in this case they go through FBI juris-  
16 diction, do not come through my courts, they go through  
17 federal magistrates and are prosecuted in the federal  
18 courts, not our courts.

19 Q Could you clarify for me or give me a picture of  
20 the nature of the minor offenses that Native Americans may  
21 have committed who appear before you?

22 A Yes, I understand that. I feel that, you know,  
23 anybody without even thinking about it, you're DWI, driving  
24 under the influence would be your major.

25 Q Found driving under the influence?

1           A.     That would be the biggest percentage.

2           Q.     What percentage, roughly?

3           A.     Say probably close to 90%.

4           Q.     Ninety percent. Well, let me restate this, so 90%  
5 of Native Americans who appear before your court, who  
6 constitute probably 20% of persons who appear before you,  
7 are before you because of DWI cases?

8           A.     I would say I'm pretty accurate on that.

9           Q.     And the amount of bond, is there a standard bond  
10 for DWI?

11          A.     No, sir, it isn't because, like I say, there  
12 again you got to go through the individual and how  
13 reliable is he, like this gentleman that just said here,  
14 25 years, same job, I'd release him on his own because  
15 he's not going to go anywhere on a minor charge, he'll  
16 be there tomorrow if you need him, same token if the man  
17 is from Utah or somewhere else, what's to keep him from  
18 fleeing the jurisdiction and then we can't extradite out  
19 of another state on a misdemeanor, so we always have some  
20 kind of a bond probably equivalent to the amount of fine,  
21 this way if he fled the jurisdiction, did not appear  
22 for trial, we forfeit the bond, close the case, and he  
23 would have paid his medium fine, not the maximum, not the  
24 minimum but a medium.

25          Q.     Can you give me some indication of the range of those

1 fines? And I don't want to -- speaking in normal figures --

2 A Well, this is for everybody, though, what I would  
3 say on a bond where you feel the defendant would not show  
4 up for trial and that he's going to wind up forfeiting  
5 the bond and not appearing, \$150.00 for DWI on a first  
6 offense. Which is half-way between the maximum and \$100.00  
7 minimum.

8 Q We're here, Judge Garcia, because of one of the  
9 assumptions that the administration of justice for Native  
10 Americans in urban areas off the reservation can be im-  
11 proved. And we would be interested in your feelings about  
12 the method or recommendations of processes that could be  
13 instituted to improve the administration of justice for  
14 Native Americans and off-reservation, do you have any  
15 suggestions?

16 A Yes, only one, really, because I have received  
17 cooperation since I've taken steps to do something about  
18 it, I've taken trips to Tuba City and Window Rock and always  
19 been treated pretty well, had some good cooperation.

20 The thing I think we lacked that I would like to  
21 see is some sort of an interpretation of programs so that  
22 we make sure of good communication between the defendant  
23 and the court. I run across it sometimes where we have to  
24 use trustees from the jail to interpret or something like  
25 this and they're not really qualified interpreters. So



1 sometimes you have a little bit of a communication problem,  
2 particularly when we put somebody on probation or on  
3 some kind of a program to rehabilitate him or treatment  
4 deal, we sometimes lack the ability --

5 Q Well, let me raise another -- is the assumption  
6 in your court that every person who appears before you  
7 knows and understands English?

8 A No, it's not an assumption, it never is, even if  
9 they start talking to me and I make sure that they do  
10 understand, if there's any doubt or any question at all,  
11 I either try and seek an interpreter, into the jail  
12 division, somewhere, but I will not even go into the case  
13 until I make sure that he knows what it's all about.

14 Q Now, are there funds allocated for that?

15 A No, sir, we have no funds and no means for it,  
16 but they just -- I have to borrow a trustee from the jail.

17 Q Are mechanisms established to get funds in order  
18 to guarantee this basic right of a person who is encoun-  
19 tering the courts?

20 A No. There isn't any. In fact, the last person that  
21 I replaced in my -- in my staff I requested from personnel  
22 department that I would like to have a Navajo girl as a  
23 clerk, and she would serve for many, many purposes, when  
24 she wasn't busy with her work in the office she could be  
25 interpreting for me, but at all times she'd be available

1 this way. The answer was that they couldn't find anybody  
2 qualified so I never got one.

3 Q So, the recommendation of interpreters is a recom-  
4 mendation. Any others, sir? Do you hire -- do you have  
5 any employees in your court?

6 A Yes.

7 Q How many?

8 A We have seven clerks, one probation officer.

9 Q Any Native Americans?

10 A The last one we had when she resigned I tried to  
11 replace her with another one and the personnel department  
12 said they couldn't find anybody that meets the qualifica-  
13 tions to replace her with so at this time I have none.

14 THE CHAIR: Peterson, you have a question, Mr. Zah.

15 Q (By Mr. Zah) Yes, Mr. Garcia, in terms of numbers,  
16 you were saying something about 20% of Native Americans  
17 -- or cases that you handle in your courts are --

18 A This is our whole picture, everything.

19 Q About what number is that, could you give me a  
20 rough idea?

21 A Wow, we average approximately 30 cases per day so  
22 I'll let you figure it out. Say about two out of 30.

23 Q Thirty cases per day?

24 A That includes civil, criminal, traffic, misdemeanors,  
25 felonies, the whole works, whole show.

1 Q And you have seven people working on your staff,  
2 20% of those cases are Native Americans or Navajos?

3 A I'd say roughly, approximately. We don't keep  
4 records as to how many Mexicans, how many Blacks, how many  
5 Indians, how many Anglos, to me they're all defendants,  
6 they're all people, we treat them all the same, we don't  
7 have different guidelines for different people, we do not  
8 keep records by different nationalities or races.

9 THE CHAIR: This is not an adversary setting, if it  
10 was I would challenge you. Maybe after we can talk.

11 A If I could look at my dockets I could say this is  
12 one for the Anglos we had so many, this is the Native  
13 Americans we had so many, we don't keep records like that.

14 Q (By Mr. Zah) The 20%, you know, many of them don't  
15 speak English like I say, or speak very, very little  
16 English like, what do you do with John Thompson?

17 A Well, like I told you, I get an interpreter from  
18 the sheriff down there, either a trustee, they ordinarily  
19 have one.

20 Q How many -- in those 20%, how many of them, let's  
21 say are being -- are being made aware of some of their  
22 rights in Navajo and English?

23 A They're all being made aware of their rights.

24 Q All of them?

25 A Yes, sir. Even on a minor little deal, like dis-

1       turbing the peace or a public nuisance, this is the first  
2       criteria from the supreme court that you got to make sure  
3       that the defendant understands all his legal rights.

4       Q       In Navajo?

5       A       If I have to talk to him in Chinese I will, but  
6       I'm going to see that he understands regardless who he is,  
7       that's the first criteria we have that they must under-  
8       stand their rights. I've got to be convinced they under-  
9       stand. If they say yes, I understand, sometimes I think  
10      well, he really doesn't. So then I say well, I'll see  
11      you later, and I'll make arrangements for an interpreter  
12      or something and have him brought back up again with  
13      the interpreter.

14      Q       (By the Chair) Isn't time a very significant variable?

15      A       Yes, sir, it sure is.

16      Q       In other words, since time is an essential variable  
17      then it means you're forced into some action before you're  
18      able to operationalize the understanding, are you not?  
19      Isn't 24-hour and 48, those increments of time are critical?

20      A       The time is, yes. Well, not really because if  
21      you're talking about your minor, like I say, you know,  
22      most of our Native Americans will be minor offenses either  
23      DWI's or public nuisance, something like this, so you're  
24      not talking about a major crime, so if you would lose one,  
25      you don't lose them, all you got to do is release them on

1       their own if you do not have a hearing within 24 hours,  
2       so you're not talking about letting out a person charged  
3       with murder or something like this, so you're not really --

4       Q       Okay, one of your recommendations was the hiring  
5       of interpreters to guarantee a basic right. Any other  
6       specific recommendations that you would make regarding  
7       the administration of justice to Native Americans?

8       A       Well, we're taking care of most of our own, I don't  
9       know if you'd like to help in the programs we've got  
10      going but like to look into those programs.

11      Q       I was wondering particularly of the modeling impact  
12      that an ethnic person would have, Navajo, Hopi or whoever  
13      lives in this area, someone to relate to personally, the  
14      whole thing?

15      A       I think it would be great and I've tried it and like  
16      I say, our personnel board has claimed that they can't  
17      find anybody applying for the job that would fit in or  
18      was qualified.

19      Q       And those qualifications are clearly --

20      A       Oh, yes, we have them right up on the bulletin  
21      board like type a minimum of 50 words per minute and --

22      Q       I was thinking particularly at the hiring level,  
23      of -- could you identify the kinds of persons that  
24      you hire, the kinds of tasks?

25      A       Well, mainly clerical and bailiffs and probation

1 officers, we even asked for a volunteer probation program  
2 and we've had no response at all from the Native Americans.

3 Q And that's clearly articulated in ethnic media,  
4 newspaper?

5 A Yes, we've had some articles in the paper.

6 Q Tribal council and --

7 A And the response was zero. We had no volunteers.

8 THE CHAIR: Any other questions by any member of  
9 the panel?

10 Q (By Mr. Williams) Mr. Garcia, I heard an impres-  
11 sion earlier that reservation Native Americans posted  
12 bond because of problems --

13 A Not all of them.

14 Q No, before you came up to talk to us, but now you  
15 tell us you think the problem has been solved because of  
16 a relationship you have with Chief Dart. When was this  
17 meeting and when was the problem solved and even if solved,  
18 is there any kind of formal relationship other than per-  
19 sonalities that will keep the system to where it is now?

20 A The problems we were having before, like I say,  
21 you release somebody to their own recognizance, tell them  
22 to appear back, say on the 20th, they would not show up  
23 so you would issue a warrant for failure to appear. You  
24 send the warrant down to Window Rock and the warrant would  
25 come back saying sorry, we will not serve this. So, in

1 order for people not to commit an offense and then not  
2 have to answer for the same, it was either a matter of  
3 some of them, not all of them again, some of them would  
4 have to post a minimum bond that would be equal to the  
5 fine, that way if they didn't show up forfeit their bond  
6 and they have paid their penalty.

7 Q What was it for --

8 A The last time we had any major problems, I say has  
9 been over a year ago, for the last year we have had no  
10 problems.

11 Q (By Mr. Levis) Judge Garcia, this puzzles me because the newspaper  
12 article that appeared in the Arizona Republic, on August  
13 18th of this year, says 90% from reservations skip trial  
14 if on bail, the JP says. And the JP quoted is you.

15 A Yes. Well, that's what I say, they either post  
16 a bond or fail to appear, they forfeit the bond. There  
17 again it would depend on the individual that would post  
18 a bond. Some of them that did not post a bond failed to  
19 appear also.

20 Q But you just indicated to Mr. Williams that the last  
21 year you haven't had any trouble, yet this article was  
22 written three months ago.

23 A That article was completely wrong, I'd like to know  
24 who, in fact I called the people that wrote that article  
25 and asked who did and he said well, I didn't have anything

1 to do with it, I'm just quoting somebody else.

2 Q You're familiar with the article, though?

3 A I called the one from the press --

4 Q This is from the Arizona Republic and it quotes you  
5 on August 18th of this year.

6 A Yes, this is true, but this doesn't state just  
7 for Native Americans, this holds for Anglos too, a lot of  
8 people, they just, when they come to trial they'd just as  
9 soon forfeit their bonds. They just don't come to trial.  
10 Because it's set at the minimum, the bond's set at the  
11 minimum.

12 Q The other question is that we have requested from  
13 Chief Dart and he will testify tomorrow concerning all  
14 of the warrants they received in the last nine months,  
15 and extradition requests. And searching through their  
16 records through September, they indicate they've only  
17 received four such requests this year.

18 A Right. That's why I say, I think what has really  
19 worked is that now when the defendant's up in front of your  
20 bench and you tell him I have a cooperation from the  
21 tribal council and Roland Dart and if you fail to appear,  
22 they're going to get you, and we don't have no problems,  
23 he shows up now.

24 Q Well, I'm still puzzled, but another question is,  
25 you talked about transients and I just wonder how you



1 define a transient?

2 A Well, like I say, we have this questionnaire that  
3 states how long have you lived -- where do you live, you  
4 put down your address, how long have you lived there, two  
5 days. Where'd you live prior to that, give another  
6 address. How long did you live there? Three days. Going  
7 down the line, and establish them whether they're a local  
8 resident, how long they've been, how reliable are they,  
9 how long have they been out of a job, how many times been  
10 arrested and the whole picture, it doesn't -- it's not  
11 as simple as one question, you got to establish the  
12 person as a reliable person, and you feel you'll not have  
13 any problem that he's not going to skip the jurisdiction  
14 because of his family ties, his community ties, his job  
15 ties, whatever. Then you base your bond on that.

16 Q And that would include reservation residents of the  
17 state?

18 A This will include the same on the reservation like  
19 somebody came into the city 20 years you're more likely  
20 to release him on his own than if he's only lived here  
21 a few months and prior to that he lived in Los Angeles  
22 and prior to that in Nevada. If he just moves around all  
23 the time and he doesn't have anything to hold him in the  
24 jurisdiction, what's to keep him from fleeing?

25 Q But if they are reservation residents, Tuba City for

1       20 years they're within the jurisdiction of the State of  
2       Arizona?

3       A     Right, yes, we still have to go through extradition  
4       but we know they're going to be there.

5       Q     What sort of training do you have for the job as  
6       justice of the peace?

7       A     Well, I've had two and a half years through NAU here  
8       on criminal code, legal procedures, court administration,  
9       police, law enforcement, I've also been at the University  
10      of Nevada which is a judicial university, the National  
11      Judicial University through two of their regular judge's  
12      seminars, been to some in Albuquerque, New Mexico.

13      I've been to some in Tempe, and Tucson. And about  
14      20 years in law enforcement.

15      Q     What are your feelings on the requirement that all  
16      JP's be attorneys?

17      A     I think it would lose your people's right at that  
18      time because right now you go on the justice system in  
19      the lower courts, the people's courts, because you're  
20      going to be heard under your merits, under your true  
21      feelings, under what I call justice.

22             You get an attorney there, he's going to weigh the  
23      legal outlook of it, the legal points, the legal techni-  
24      calities, and so you're not -- legal procedure, not going  
25      to be heard as well as you are now by somebody that under-

1 stands you and that wins strictly by legal points of law.

2 Q But aren't you required to follow the Arizona Rules  
3 of Criminal Procedure?

4 A We do follow them.

5 Q Which are drafted for all judges in the state?

6 A We do follow them but those don't apply to your  
7 civil cases, and your family problems and your every day  
8 dealings like that.

9 Q But still all cases that are heard by both JP  
10 courts and magistrate courts are subject to appeal by the  
11 superior courts and finally the Arizona Supreme Court  
12 and possibly the U.S. Supreme Court?

13 A Yes, if you're talking strictly about courtroom  
14 procedure, yes, you're right, but courtroom procedure is  
15 very minute compared to the load that we handle of sit in  
16 your chambers and in your home and on the streets, people  
17 talk to you about little things, you think they'll talk  
18 to an attorney?

19 Q One final question. We've heard some recommendations  
20 that you have made and I just wondered if Coconino County  
21 or you have requested funding from the federal law enforce-  
22 ment assistance administration?

23 A Not to my knowledge, they haven't.

24 Q And you have not requested that either?

25 A No.

1           Q     Just for the record, I'd like to identify the news-  
2 paper article as Exhibit Number 2. And if you have any  
3 response to that, if you want to submit to us in writing,  
4 please do.

5           A     No, like I say, this holds true to everybody, par-  
6 ticularly in traffic cases, most people would rather for-  
7 feit their bond than to come back for trial. It's just  
8 a convenience for them really, they feel they're guilty  
9 so they don't need to come back they just forfeit their  
10 bond. Their bond's paid and it saves them a lot of trouble,  
11 particularly in the outlying districts where they have  
12 to travel long distances and the person feels by the time  
13 he spends all the money coming for trial and the fine's  
14 only \$10.00 and I'll just forfeit the bond because I'm  
15 guilty of speeding anyway so most of them are minor cases  
16 and most people forfeit their bonds after they post them.

17           THE CHAIR: Any other questions by any member of  
18 the commission?

19           MS. LYON: Just one, Dr. Warren.

20           Q     (By Ms. Lyon) Mr. Garcia, you indicated that during  
21 the past year the relationship has been much improved be-  
22 tween your office and the Navajo tribal law enforcement  
23 authorities. Has there been any change in the practices  
24 or policies implemented by your office for Indian defendants?  
25 In other words, have there been any changes in the amount

1 of bail, for instance?

2 A Oh, I'd say to some extent you could say yes, be-  
3 cause with the assurance that if the defendant fails to  
4 appear, that you can get him back because of the coopera-  
5 tion with the reservation authorities, then I might be a  
6 little more lenient as far as allowing some defendants  
7 to be released on their own without a bond because I feel  
8 if they don't show up, I will issue a warrant and the  
9 authorities will bring him in for trial.

10 Whereas in the past it was quite difficult. But  
11 there really never has been a real, real problem, we've  
12 never made an issue of it, just that we had a lot of  
13 people that failed to show up. But there's always just  
14 on minor deals, traffic offenses, minor things. Cer-  
15 tainly on a major crime, a felony, we wouldn't release  
16 anybody that is shakey as far as their ability to appear  
17 or their stability, we wouldn't release anybody regardless  
18 of race, color or creed, without pretty good assurance  
19 that you can get your hands on him, on your major felony  
20 cases. So, as I say, you're talking about little minor  
21 traffic cases, minor --

22 Q But you would say that in general the amount of  
23 bail has been lower than had previously been the case?

24 A No, not particularly. I feel that if I try to  
25 release more on their own without any bail at all.

1 MS. LYON: Thank you.

2 THE CHAIR: Any other questions? If not --

3 Q (By Mr. Zah) I have.

4 Mr. Garcia, justice is very expensive and it's  
5 hard work if you're administering justice and the adminis-  
6 tration of justice. I'm just really bothered by, you know,  
7 you saying that you ask the personnel department for, you  
8 know, some interpreters and they say no, they say no to  
9 you and you --

10 A No, no, you misconstrued it. I said they haven't  
11 been able to find anybody qualified to fill the job in  
12 our Native Americans.

13 Q When you say qualified, what do you mean?

14 A Well, by the standards of the county, I don't know  
15 what kind of test they give them but when I've asked them  
16 this we have to -- see, when we have an opening we turn in  
17 a request for personnel for the personnel department,  
18 and we put down our specifications, they must type so many  
19 words a minute, maybe shorthand, and so forth, so forth,  
20 and then they come up with, we have three applicants, then  
21 I interview the three applicants and I make my final  
22 choosing. So at that time they said they weren't able to  
23 find somebody that would fill the qualifications that was  
24 needed for justice court that was able to speak the Navajo  
25 language.

1 Q How can you judge that?

2 A Pardon me?

3 Q How can you judge that?

4 A I don't, the personnel department, the employment  
5 does.

6 Q Do they have somebody there Navajo that knows how  
7 to speak Navajo?

8 A I just put in my request like I say, and then they  
9 send me the applicant and they said they weren't able to  
10 come up --

11 Q You don't really have any idea what goes on in the  
12 personnel department in terms of seeing that that Navajo  
13 language is adequate?

14 A All I know is the specifications that I give them  
15 like so many words per minute on typing, so many words  
16 per minute on shorthand, and able to speak the Navajo  
17 language, understand it, and they said they haven't been  
18 able to find me somebody.

19 Q What happens, let me give you a hypothetical, if you  
20 get somebody, like I say, John Thompson, and you can not  
21 get an interpreter from the sheriff's office or anywhere,  
22 what would you do in that case?

23 A Well, I haven't had it come up yet because I've  
24 always been able to find somebody. And I don't feel that  
25 I should even think about that because there is always

1 somebody available, either the police department, the  
2 sheriff's office or one of the other inmates or -- but  
3 there's always somebody around. I have never had any  
4 problems in the last 20 years to be able to find an inter-  
5 preter.

6 But it's a voluntary basis, they don't have to do it.

7 Q The other thing that is, you know, I'd like to  
8 mention that the legal things in your American society is  
9 so complex that it's very hard to understand, and just  
10 an average, you know, citizens, they don't really under-  
11 stand many of the legal concepts, and I'm just puzzled  
12 by, you know, just grabbing anybody from the sheriff's  
13 office or some other department and say advise this guy  
14 of his rights and then do you ever feel satisfied that  
15 they're really explaining, you know, in detail, they  
16 really understand what their legal rights are?

17 A No, sir, when somebody interprets for me they do  
18 exactly what the words means, interpret for me, they  
19 don't do the advising. They just interpret, translate  
20 the language for me. They don't give them their legal  
21 rights, I say to them you got the right to remain silent,  
22 go on tell him that, so he tells him that.

23 Q Do you feel satisfied that they are doing what  
24 they're supposed to be doing so that they will really  
25 understand their legal rights?



1       A     Like I say, if I'm not satisfied, then I seek other  
2 means, but it's very, very seldom. We only have a real  
3 small percentage, real small, minor percentage that do  
4 not understand English fairly well. So I don't come  
5 across this problem too often, it does come by once  
6 in a while and we need to get an interpreter.

7           I think you all know yourself that this doesn't  
8 exist any more amongst our Mexican people or Indian people  
9 any more, most of the people talk pretty good English more,  
10 just a few of our old timers maybe, which is those people  
11 don't get in trouble to begin with.

12          So, the ones that you get problems with is this  
13 younger generation and most of them are either in college  
14 or high school so they all understand English. It's just  
15 our old, old people the same way with my Mexican people,  
16 it's just the real old that doesn't understand English.

17          THE CHAIR: Any other questions by any member of  
18 the commission? If not, thank you, Judge Garcia.

19          Will Mr. Ron Wood and Mr. Tom Gonzalez come forward,  
20 please?

21          And would you give your name?

22  
23                               MS. ROSE BENALLY  
24

25       A     (By Ms. Benally) Rose Benally.

1 Q (By Mr. Zah) Initially we're just going to ask  
2 you your name, your address and your occupation, start  
3 with Mr. Wood.

4  
5  
6 MR. RONALD C. WOOD

7  
8 A (By Mr. Wood) Yes, my name is Ronald C. Wood,  
9 Director of the Native Americans for Community Action,  
10 this is an Indian alcoholism and Indian community action  
11 program here in Flagstaff, Arizona.

12 Q Okay, Mr. --

13  
14 MR. TOM GONZALEZ

15  
16 A (By Mr. Gonzalez) I'm Tom Gonzalez, Native  
17 Americans for Community Action, I'm a senior counselor.  
18 Address also?

19 THE CHAIR: Yes.

20 A Two-two-two-one Northeast, here in Flagstaff.

21 A (By Ms. Benally) Rose Benally, I'm also a counselor  
22 at NACA. I live at 3009 North Rose.

23 Q (By Mr. Williams) Mr. Wood, could you give us a  
24 brief description of the goals and activities of NACA and  
25 how they relate to the administration of justice?

1           A       (By Mr. Wood) Yes. NACA is primarily an Indian  
2 alcoholism counseling program. We're funded to assist  
3 Native Americans who have alcoholism-related problems.  
4 Obviously, Native Americans who have alcohol problems  
5 are also going to be involved in the criminal justice  
6 system.

7                   Alcoholism encompasses much more than simply the  
8 abuse of alcohol, it encompasses the entire social, eco-  
9 nomic aspects that cause people to drink.

10          Q       Mr. Wood, can you describe, since you mentioned that  
11 it involves a whole criminal justice system, what kind  
12 of working relationships do you have with the city justice  
13 system and the superior courts, the justice and superior  
14 courts?

15          A       Okay. NACA works with the city courts, we do  
16 court -- we receive court referrals from the city courts,  
17 my two counselors, Tom Gonzalez and Rose Benally work with  
18 the courts on a daily basis and I feel it would be more  
19 appropriate for Tom Gonzalez to answer this question.

20          Q       Okay. Mr. Gonzalez?

21          A       (By Mr. Gonzalez) Yes, we have a good working re-  
22 lationship with the city court, particularly with Judge  
23 Brady and Ray Otero where we are referred clients for  
24 counseling, people that have been arrested for substance  
25 abuse-related crimes, disturbing the peace or DWI, that

1 type of thing. We have worked on occasion with the  
2 justice court and with the superior court, the superior  
3 court we've been able to write letters stating that we'd  
4 be able to accept a referral if a person was put on pro-  
5 bation, they've generally cooperated with us in that  
6 respect.

7 Q Mr. Gonzalez, how is the organization funded or  
8 either one, when I ask one of the questions either one  
9 of you can respond.

10 A It's funded by the National Institute on Alcoholism  
11 and Alcohol Abuse, which is part of the Department of  
12 Health, Education and Welfare, federal funding --

13 Q Have you been able to see any -- able to evaluate  
14 the performance of the organization since its inception?

15 A (By Mr. Wood) I think as far as the problem of  
16 alcoholism it's going to take more than a single alcoholism  
17 counseling agency, I think there's going to have to be  
18 a change in the social-economic system before we start  
19 seeing definite improvement in the alcoholism abuse  
20 problem among Native Americans.

21 Q What has the City of Flagstaff done to implement  
22 the LARC provision of the decriminalization, Arizona  
23 decriminalization of public drunkenness?

24 A Okay, NACA, Native Americans for Community Action,  
25 was the original contract operator of the LARC here in

1 Flagstaff. The law came into effect January, 1974. We  
2 operated the LARC from January, 1974, through mid-October,  
3 1974. The primary reason NACA dropped the LARC contract  
4 was because we had no financial support from the city  
5 or the county.

6 Q Will it be reopened?

7 A Plans are in process now and it appears that the  
8 LARC will open within one to two months under a different  
9 agency.

10 Q Okay, how will it be funded, then, to insure its  
11 continuance?

12 A Okay, LARC funding in the State of Arizona is on  
13 a 50-50 basis with 50% coming from the state government  
14 and 50% cash or in kind match coming from the local com-  
15 munity. The state funding is there, is guaranteed, local  
16 funding, since a new organization is going to assume  
17 operation of the LARC and some city monies is in the amount  
18 of about \$2,500.00 have been made available.

19 Q Okay. How do you expect your organization, how  
20 do you expect your organization to relate to the LARC  
21 when it opens?

22 A Okay, since we are an Indian alcoholism counseling  
23 agency and over 90% of the clients of a LARC will be Native  
24 Americans, we feel an obligation and we will be working  
25 with the new LARC on a daily basis, working with Native

1 American clients.

2 Q What's been done with the public intoxicants since  
3 the closing of the LARC are you taking all of it or just the  
4 Native Americans?

5 A Okay, we gave the LARC up in mid-October, 1974. A  
6 county agency assumed operation of the LARC through June  
7 30, 1975. At that point LARC closed, and since early  
8 July, there has not been a LARC in Flagstaff and public  
9 inebriates have had to find their own shelter.

10 Q Okay, if they have to find their own shelter, are  
11 there -- are the police, do they have any different re-  
12 lation about them, are they being arrested for other  
13 charges then or are they being held if there's no  
14 shelter for them?

15 A There has been a misuse of laws since the public  
16 inebriate can not be arrested for being drunk as such.  
17 They're being arrested for disturb the peace, for loitering,  
18 and I believe you will be -- the Flagstaff chapter of  
19 the Arizona Civil Liberties Union will be testifying  
20 later, and they have detailed, specific information on  
21 what has been happening recently in this regard.

22 Q Okay, any of you give us a general idea of the  
23 problems that the lack of interpreters have caused in the  
24 court system?

25 A (By Mr. Wood) Yes. The lack of interpreters has

1 caused an acute problem in northern Arizona. I have a  
2 statement which I would like to read later which will  
3 address this point. I would like to state that I have  
4 been involved with a former county judge, who was attempting  
5 to get moneys for court, salaried court interpreters. I've  
6 attended meetings of the law enforcement administration  
7 -- assistance administration, at these meetings it was the  
8 prevailing attitude among law enforcement officers that  
9 they should be using these moneys to buy more equipment  
10 and build bigger and better jails, moneys for use of  
11 court interpreters was deemed a low priority item.

12 Q Is this LEAA money?

13 A Yes.

14 Q In your statement you're going to read later, is  
15 that going to also address what your organization is  
16 doing to help this problem or can do to help this problem?

17 A Yes. It might help if I read my statement now, and  
18 my counselors have information that they would like to  
19 state also and from that point you might have some  
20 additional questions.

21 THE CHAIR: How many pages is your statement?

22 A A page and a half.

23 THE CHAIR: Less than five minutes?

24 A Yes. Want me to proceed?

25 Q (By Mr. Williams) Yes.

1       A     Okay. As I stated earlier my name's Ronald C. Wood,  
2     Director of Native Americans for Community Action. Testi-  
3     mony of the Flagstaff chapter of the Arizona Civil Liberties  
4     Union will provide detailed documented evidence concerning  
5     the administration of justice as it affects Arizona  
6     Indians.

7             I want to make some statements based on my personal  
8     experiences and observations. Stereotyping of all races  
9     occurs, but stereotyping of Indians in border towns of  
10    Arizona is more acute than that faced by other minorities.  
11    Contrary to popular opinion, not all Indians have a weakness  
12    for alcohol.

13            THE CHAIR: Will you make that statement again,  
14    please?

15       A     Contrary to popular opinion, not all Indians have  
16    a weakness for alcohol.

17             Unfortunately, this is a common attitude by too  
18    many border town residents. This stereotyped notion is  
19    also held by too many police officers. This is evidenced  
20    by harassment that Indians receive by police in Flagstaff.

21             Indians are routinely stopped for no apparent  
22    reason, and when no alcohol usage is evident, they are re-  
23    leased. The rights of Indians are always violated more  
24    frequently than those of Anglo Flagstaff citizens, simply  
25    because we are Indian and there is less likelihood of any



1       repercussions from violations of our civil rights.

2               There is a great need for court interpreters as  
3 testimony at this hearing will bear out. I feel that too  
4 much priority is put on funding new equipment purchases  
5 and facilities. I feel that there is a greater need to  
6 fund court interpreters and for court interpreters not to  
7 be present in city and county courts is negligent.

8               But what I have stated is nothing new to Native  
9 Americans. We all experience and observe these things  
10 daily, but rarely do we express our feelings to the public  
11 at large, either verbally or in written form. It is un-  
12 fortunate that many Native Americans have come to accept  
13 this treatment as part of our lot of being Indians.

14              The frontier cowboys and Indian days are gone and  
15 this treatment will have to cease.

16              Tom Gonzalez has some additional information con-  
17 cerning the LARC and Rose Benally has a short statement  
18 she would also like to read also.

19              THE CHAIR: How many pages are those statements?

20              Q        (By Mr. Williams) How much is yours?

21              A        (By Mr. Gonzalez) Just the same, page, page and a  
22 half.

23              Okay, I'd just like to quickly stress again that the  
24 interpreter problem, I believe, is the greatest problem in  
25 Flagstaff. I've talked with at least one of the judges in

1 the city and he feels that it is a problem too and has  
2 made efforts, it seems that priorities among the adminis-  
3 trators, among the people that fund these types of pro-  
4 grams, is where the problem really lies.

5 I think that with the number of, particularly  
6 Navajos that go through the court system in Flagstaff  
7 this should have been a priority a long time ago among  
8 the city councilmen and the county board of supervisors.

9 The second thing I would like to say concerns the  
10 lack of LARC. This was touched on by Ron also.

11 Again, I think that this is -- this has been through  
12 the political money hassles also because of lack of  
13 funding, arguments between state, county and city, city  
14 governments as to who should mandate who to do what. The  
15 state set up the law, without proper implementing the LARC  
16 and then asked the city and the county to come through  
17 and fund 50%. Well, the city and the county said who's  
18 the state to mandate for us what to do? So there have  
19 been a lot of hassles. And I'm not sure that the problem  
20 is through yet.

21 It's been on a year to year basis somebody picks  
22 up the LARC and runs it for a year, then nobody's willing  
23 to fund it for another year and these have been the big  
24 hassles and this might happen again next year, after this  
25 new organization, after this organizations funds the new LARC

1 they might face the same hassles next year and have to  
2 drop it.

3 Another thing that I'm going to bring up that Ron  
4 didn't touch upon, is the public defender system in  
5 Flagstaff. I have had some complaints from Native  
6 Americans that some of the people that have been appointed  
7 to them through the, particularly through the superior  
8 court system as public defenders for criminal matters, have  
9 not adequately defended them.

10 I have not -- I have not really been able to sub-  
11 stantiate any exact cases, but I feel that there is a  
12 legal aid agency here in town for civil matters, and I  
13 think that a public defender system in town for criminal  
14 matters is a thing that's much needed.

15 The system as it is now uses judges in private  
16 practice who have other duties in addition to these extra--  
17 these lawyers in practice that do have other duties in  
18 addition to their public defender duties and I think  
19 there are sometimes some conflicts of interest.

20 That's all I have.

21 A. (By Ms. Benally) I'm a counselor for NACA and I  
22 want to voice an opinion that -- it's been disturbing me  
23 for a long time and it's an incident or my statement has  
24 to do with an incident that happened at the LARC when I  
25 was an employee there.

1 I was an employee there July, '74 to June, '75,  
2 and --

3 THE CHAIR: Will you let her have the mic?

4 A. Okay, my main gripe is with the police department.  
5 And during this time I had some contacts with the repre-  
6 sentatives of the Flagstaff Police Department. And they  
7 brought in inebriates or intoxicated clients which they  
8 brought off of the streets, and sometimes these intoxicated  
9 clients would be treated very roughly, which I thought was  
10 very unnecessary.

11 This particular incident was -- had to do with a  
12 client that was dropped off, outside the door, usually the  
13 police bring in the clients and are deposited at the desk  
14 and they usually get the names of the clients, and they  
15 take a receipt and one is given to us.

16 And this day the police -- the one particular  
17 police department -- the police officer didn't do so, and  
18 I refused -- I was on duty and I refused to accept the  
19 client because it was obvious that he was hurting and he  
20 was hurt, he needed medical attention. So I called the  
21 police department again and I told them that I refused to  
22 accept him, and they came back to get the client and he  
23 was seen and he was taken care of, but this was not just  
24 the one time, this was many -- you know, it was a repeated  
25 thing. Clients were brought in hurt and they were, you know,

1 sometimes they were just dumped outside. And I think it's  
2 an example of a typical mistreatment of Indians. And I  
3 believe that they were just, you know, treated that way,  
4 you know, just solely because they were Indians.

5 That's all I have to say.

6 Q (By Mr. Williams) Did you or anybody else in the  
7 administration of the LARC at that point in time discuss that  
8 with the police department?

9 A Yes, I forgot to mention, at the time, every time  
10 an incident happened like this, with the police department,  
11 we typed up a statement, one was sent to the police  
12 department and one was kept on records, so all the records,  
13 you know, were -- were kept on file at the LARC.

14 Q Okay, the LARC though, received other than just  
15 Native Americans. Were you saying that the only people  
16 that experienced this particular kind of abuse were Native  
17 Americans?

18 A Definitely. That's what I'm saying.

19 Q Well, back to Mr. Gonzalez as to one short question.

20 I've got the impression from the three of you that  
21 the interpreters is a problem and that understanding the  
22 rights without an interpreter is somewhat difficult. Would  
23 you say or is your impression that most of the Native  
24 Americans that go into the justice system in this area don't  
25 fully understand their rights? The right not to plead

1 guilty, the right to plead not guilty that is and the  
2 -- what they're really facing in the court system?

3 A (By Mr. Gonzalez). That's kind of a hard question.

4 Q Do you think -- if you feel that they aren't do you  
5 think interpreters would help?

6 A I think this, I think that legalese, legal matters  
7 are very difficult for anyone to understand, I think that  
8 interpreters for the court system would have to be inter-  
9 preters that know what they're doing, that know what's  
10 going on, that know a little bit of -- enough about the  
11 law to be able to adequately explain, explain the legal  
12 proceedings. I think Rose will vouch for this, she's  
13 fluent in Navajo, and Navajo is a very difficult language  
14 to translate literally, and you'd have to have people that  
15 would be able to understand the law, interpret it within  
16 their own minds, and then translate it.

17 Q So you would say that just getting a trustee or  
18 someone sweeping the steps or a clerk that isn't knowledge-  
19 able in legal terms might not really suffice as an inter-  
20 preter for court process?

21 A Right. I -- yes, I would think so. Maybe Rose  
22 could say a little more about the difficulty in interpre-  
23 tation from Navajo to English.

24 A (By Ms. Benally) I think it's true, I think you  
25 need somebody that knows something about the law to get it

1 across to the clients.

2 Q One last question. You mentioned that the problem  
3 with alcoholism really goes back to a socioeconomic  
4 problems, not just -- it's not an easy problem to solve any-  
5 way. Would you advocate legalizing or serving of alcoholic  
6 beverages on reservations?

7 A This is a question for the tribal government to  
8 answer. It is my personal opinion that prohibition of  
9 alcohol on the reservation has not stopped alcohol usage  
10 on the reservation. I think that the Indian tribe is  
11 going to have to recognize this as a problem, and I think  
12 legalization is an inevitable eventuality.

13 THE CHAIR: Any other questions?

14 Q (By Mr. Levis) Do you, Mr. Gonzalez and Ms. Benally,  
15 do you have any other feelings concerning that issue of  
16 alcohol on the reservation? This issue will be discussed  
17 tomorrow by tribal officials by the way.

18 A (By Mr. Gonzalez) Yes, I have some personal feelings,  
19 I -- as Ron stated, I think that the -- for one thing it  
20 would keep a lot of money on the reservation. I think  
21 that's one of the concerns that a lot of people have that  
22 a lot of money is leaving the reservation, that could be  
23 put to good use combatting alcoholism on the reservation.  
24 If alcohol were legalized on the reservation.

25 As Ron states, it seems to be an eventuality. It's

1 just a matter of time.

2 THE CHAIR: Any other questions by anybody?

3 Do you have any feelings, Ms. Benally, about whether  
4 alcohol sale should be legal or not on the reservation?

5 A. (By Ms. Benally) I don't think my personal feelings  
6 would have anything to do with it, if they're going to  
7 legalize liquor on the reservation, they'll do it.

8 Q (By the Chair) We were thinking in view of the  
9 fact that you do deal personally as a counselor with per-  
10 sons who do abuse alcohol, it's conceivable that you would  
11 have some personal feelings about that factor.

12 Maybe, maybe not. But apparently it's a very moot  
13 issue. And certainly being discussed by a number of  
14 people.

15 Are there any other questions by any other member  
16 of the commission?

17 If not, we want to thank you very much for appearing  
18 before us.

19 Is Chief Elmo Maxwell, Chief of Police in Flagstaff  
20 in the audience?

21 We note that Mr. Fred Croxen is here, we'd like to  
22 check with you a minute, sir, we're going to take a five  
23 minute break for the convenience of the Court Reporter  
24 and for an opportunity for you to stand, but only five minutes.  
25 Then we're going to begin again, we'd like to chat with you



1 a minute, sir.

2

3 (Short recess)

4

5 THE CHAIR: Will the meeting please come to order,  
6 please?

7 Mr. Fred Croxen, will you come forward, please?

8 Mr. Croxen is the City Attorney of Flagstaff.

9 Do you have some questions, Ms. Lyon?

10 Q (By Ms. Lyon) For the record, would you state your  
11 name, occupation and address, please?

12

13

14

MR. FRED CROXEN

15

16 A (By Mr. Croxen) My name is Fred Croxen, I am City  
17 Attorney of the City of Flagstaff. My mailing address  
18 is Box 1208, City of Flagstaff.

19 Q Would you describe your duties to us as city  
20 attorney and in what way they relate to the topics which  
21 the committee is studying?

22 A Generally, the duties of city attorney, especially  
23 in my capacity, are many fold. Primarily you might say  
24 they are corporate counsel for the municipal corporation  
25 of Flagstaff, adviser to the various city departments,

1 various individuals within the city and city-related busi-  
2 ness, and of course, prosecutor in the city courts.

3 Q Do you know whether Chief Maxwell intends to be  
4 here either today or tomorrow?

5 A He did not confide in me one way or the other.

6 Q I see. You were present, I believe, Mr. Croxen,  
7 when the first two panels were testifying. Do you have  
8 any knowledge of the practices that were described by the  
9 first two panelists, Mr. Thompson, Ms. Tuchawena, I'm re-  
10 ferring specifically to their description of having been  
11 told by the police officer that they would be forcibly re-  
12 moved from their vehicle and in the case of Mr. Thompson,  
13 he was, according to his statement, removed from his  
14 vehicle. Do you have any knowledge of whether this is a  
15 standard practice by the Flagstaff Police Department?

16 A I have no personal knowledge. For the record, let  
17 me state that I do not believe I heard Ms. Tuchawena's  
18 testimony. However I am familiar with the Thompson matter.

19 Q I see.

20 A In a trial court level for the charges for which he  
21 was cited at that time.

22 Q Would you have any comment on Mr. Thompson's state-  
23 ment, whether, in your opinion, his statement was correct,  
24 would you have any response or any comments from the point  
25 of view of your position?

1           A     The matters that he described, I came in while he  
2 was giving his statements. I think primarily from having  
3 talked, cross examined Mr. Thompson at the trial, that  
4 primarily the question of linguistic difficulties was the  
5 basis for the entire problem.

6           Q     Would you then conclude that the fact that he was  
7 forcibly removed from his vehicle was also due to linguistic  
8 difficulty?

9           A     Conceivably, yes.

10          Q     Do you know whether that practice is considered a  
11 legal procedure or legal practice?

12          A     I -- not knowing the specifics of what did transpire  
13 there, just on the face of it, I would say that this is  
14 not standard practice.

15          Q     I see. What about the testimony we have heard also  
16 from Mr. Thompson that he was asked to pay the sum of  
17 \$12.00 right at the scene where he was stopped by the police  
18 officer, is that customary practice, to your knowledge?

19          A     No, and I think that those are not the facts, cer-  
20 tainly from the officer's point of view. Having talked  
21 with the officer concerning this matter, knowing this  
22 officer, I can certainly avow to this panel that this  
23 is not standard practice, either on the part of that indi-  
24 vidual or on the part of police officers generally.

25               I think again that this might be traced to the ethnic,

1 linguistic problems involved. I think there was an inves-  
2 tigation of this matter on the part of the police department,  
3 I know when the accusation was called to my attention I  
4 was quite concerned and urged that there be a full inves-  
5 tigation of the matter. Because this sort of conduct as it  
6 appeared, if it were what was accused, would not be a  
7 tolerable situation at all under any circumstances.

8 Q I see. Then you would say that if this type of  
9 occurrence were brought to the attention of the chief of  
10 police, he would take remedial action?

11 A If the facts were that he -- the officer was  
12 attempting to be on the take, this would result, I am  
13 positive, in immediate dismissal after a full investigation.

14 Q I see. To your knowledge, has the police depart-  
15 ment or the City of Flagstaff, received any complaints  
16 alleging mistreatment by the police during the last two  
17 years, that is regarding Indian persons?

18 A I can't -- I can't think of any that have come  
19 directly and formally to the City of Flagstaff. I'm sure  
20 that they would be called to my attention. Those that  
21 were directed specifically to the police department and  
22 its public relations apparatus. I'm not aware of those.

23 Q I see. Do you -- would you happen to know roughly  
24 what percentage of arrests made by the police in Flagstaff  
25 are of Indian people?

1           A     I do not know.

2           Q     Do you ever get involved in the procedure which has  
3 to be used when requesting the Navajo Police Department  
4 to serve arrest warrants?

5           A     Either by rendition or extradition? No, I --

6           Q     You do not. I see.

7           A     I'm sure that this would not take place on a mis-  
8 demeanor level, however.

9           Q     I see. You have, I believe, heard the testimony  
10 on the alcoholism problems in the Flagstaff area as far  
11 as Indian people are concerned, do you believe that some  
12 positive benefits could be provided by an alcohol reception  
13 center in Flagstaff?

14          A     Undoubtedly. If I might elaborate, I think that  
15 especially where Native American individuals are concerned,  
16 that a very high percentage of the problems stems from  
17 alcohol, either alcohol in use or alcohol abuse in Flag-  
18 staff, and that, as I believe the previous panel pointed  
19 out, various reasons for this on the socioeconomic level,  
20 cultural transition, things of this nature.

21                I do feel that they had a very valid point when  
22 they thought perhaps the alcohol problem conceivably could  
23 be alleviated to some extent where peripheral cities are  
24 concerned, if alcohol were legalized perhaps on a gradient  
25 basis on the reservation, such as it has been in other

1 reservations. I think the Apache reservation would be an  
2 excellent study area for this.

3 Q You're talking about the Fort Apache Reservation?

4 A Yes, in the White Mountain area.

5 Q Right. You feel, then, that individual residents  
6 of the reservation, if they were able to obtain alcoholic  
7 beverages at home, wouldn't have to go to the neighboring  
8 cities to obtain it?

9 A Yes, and conceivably under the control of their  
10 ethnic and cultural peers, that they would be able to  
11 moderate the use or even develop cultural sanctions within  
12 their own social structure that would preclude excessive  
13 use. Certainly it would not push the extremes of the  
14 problem into the hands of peripheral cities.

15 Q Mr. Croxen, have you ever been involved in a dis-  
16 cussion or establishment of rates of bonds for Indian  
17 people?

18 A No, I have not.

19 Q You have no dealings with that.

20 Do you have any knowledge of assistance received by  
21 the Flagstaff Police Department from the Navajo and Hopi  
22 Police during the Pow Wow?

23 A I believe that in the past that this has been a  
24 practice. Certainly from my own experience, the first  
25 Pow Wow I attended in 19 -- summer of 1936, there was con-

1       siderable enforcement assistance came from the Navajo  
2       Nation in this regard, this extended, I think up to within  
3       the past few years, but the last two Pow Wows, I believe  
4       this has not been the case.

5       Q       What is your response to the remarks we have heard  
6       that it's very difficult to obtain or employ qualified  
7       Indian people, for instance to work in the justice of the  
8       peace office or in any law enforcement offices?

9       A       I have some ideas, I have no personal experience  
10      with trying to employ Native Americans, either -- of any  
11      of the Indian nations represented in northern Arizona. I  
12      think when a person with an ethnic cultural background,  
13      especially in Native American cultures, reaches a point  
14      where they are able to qualify, fully for a position,  
15      then the positions that we're talking about here, they can  
16      go beyond that certainly, they would be sought after in  
17      other areas. Recruited rather vigorously.

18      Q       In other words, you would feel that any positions  
19      which the judicial or law enforcement systems might have  
20      in Flagstaff would not be attractive enough for such Indian  
21      people?

22      A       Well, we don't know at the moment. We don't have  
23      any job descriptions of interpreters or anything of this  
24      sort, conceivably this might be the case.

25      Q       Would you personally consider it beneficial if there

1 were a permanent Navajo language interpreter available to  
2 the courts and to the police department?

3 A. Of course.

4 Q. Do you have any suggestions how the police problems  
5 in the Flagstaff area regarding Indian people and their  
6 encounters with law enforcement personnel could be im-  
7 proved?

8 A. Well, of course, additional assistance from the  
9 various nations involved in perhaps, as we've already  
10 discussed, not forcing the recognized alcohol problem of  
11 some individuals on to peripheral areas, that would be  
12 certainly an assistance. I think the interpreter, if we  
13 could find necessary interpreters, that this could be  
14 assistance, no question about that. I think additional  
15 cultural exposure that is -- we are experiencing now, cer-  
16 tainly any observer in this area who has been here any  
17 length of time, can sense a great improvement in these re-  
18 lations, when you are able to contact persons who are  
19 educated and asserting Indian sensitivities, there's in-  
20 creasing awareness of this through, certainly the university,  
21 its various programs and the BIA dormitory program pursuant  
22 to the mandates of the various treaties, especially 1868.

23 The general awareness in ethnic and minority areas  
24 is, I think, a tremendous help. Popularity of fashion,  
25 Indian jewelry, the efforts of NACA, have been, I would say



1 very productive in this awareness feature, increased  
2 awareness of all facets of society to the sensitivities  
3 of each group.

4 Q Do you feel that the community of Flagstaff would  
5 be responsive to this type of effort?

6 A Specifically which type of effort?

7 Q The promotion of sensitivity to Indian characteristics  
8 and attitudes, culture?

9 A Yes, very much so. It has always been sensitive  
10 in certain areas to the Indian culture, by reason of the  
11 fact that the Museum of Northern Arizona and with its  
12 staff, very articulate persons out there, that are able  
13 to have programs and have in general, awareness areas.

14 MS. LYON: Thank you, Mr. Croxen.

15 Do any of the committee members have questions for  
16 Mr. Croxen? Bill, do you?

17 Q (By Mr. Levis) Mr. Croxen, you indicated that the  
18 assistance from the Navajo Police was discontinued several  
19 years ago. Do you know why it was discontinued during  
20 the Pow Wow?

21 A Conceivably on a liability exposure basis for one  
22 thing, the --

23 Q Do you mean insurance reason, is that --

24 A Yes, insurance and other liability.

25 Q Are there any American Indians employed to the best

1 of your knowledge, on the Flagstaff Police Department?

2 A There have been from time to time, I don't believe  
3 there are any now, perhaps one.

4 Q Are you aware of any recruitment effort in this  
5 area?

6 A There's a constant active program to recruit members  
7 of all minorities.

8 Q Concerning the city courts, at what point does the  
9 city attorney get involved, is it initial appearances or  
10 only when the case --

11 A On the trial court level, counsel. On the prose-  
12 cution level for the most part.

13 Q How many other full time attorneys are there on the  
14 city attorney's staff?

15 A As of one month ago, there's one other attorney.

16 Q Now, as you're aware under the supreme court case,  
17 I think it's Arverson or -- the cities and states are  
18 obligated to provide counsel if requested for an indigent  
19 if there's a possibility of --

20 A Incarceration.

21 Q -- incarceration. How much money or what type of  
22 system does the City of Flagstaff have for public defenders?

23 A We have no public defender system as such, however  
24 counsel are appointed from time to time by the court  
25 following a screening process to determine indigency and other

1       pertinent factors.

2       Q     Is there any amount of money that's set aside  
3       by the city council, to the best of your knowledge, for  
4       this?

5       A     There has been an increase in the budget, speci-  
6       fically how much, I'm not aware.

7       Q     Concerning the Thompson incident, why was that case  
8       dismissed?

9       A     Well, obviously the court found, had reasonable  
10      doubt to believe that the offense had been committed. The  
11      court, of course, the state, the burden is upon the state  
12      to prove beyond a shadow of a doubt, a rather heavy  
13      burden upon the state and the state did not carry this  
14      burden in this case, that's --

15      Q     Was that before Judge Brady or Judge Brown, do you  
16      know?

17      A     Judge Brown, I believe.

18      Q     Do you have any information concerning that case  
19      that you'd like to submit into the record or would it be  
20      best to just write for that information just to get it  
21      clarified?

22      A     I can answer any questions on the case that the  
23      panel might have.

24      Q     It's my understanding that as, in answer to this  
25      letter which Mr. Thompson identified, which has been re-

1       ferred to just for this record, it's no legal expense,  
2       as Exhibit 1, that, you may want to give that to the city  
3       attorney just so he has the letter, that the chief of  
4       police wrote a letter back indicating that it is the  
5       policy of the City of Flagstaff to require bond of all  
6       reservation Indians. In traffic cases. Is this still the  
7       policy of the City of Flagstaff?

8       A     I believe there have been significant changes since  
9       that was policy, sir.

10      Q     What is the policy of the city right now concerning  
11      posting of bond?

12      A     It's basically, you've got to determine whether or  
13      not you're talking about minor traffic offenses, if you're  
14      not talking about minor traffic offenses then of course  
15      Rule 7, I believe, of the Rules of Civil Procedure obtain,  
16      and there is a discretionary feature in the magistrate to  
17      either release the person on his own recognizance or to  
18      require bail.

19      Q     But isn't it also true that in order to release a  
20      person on bail, this has to be shown by the preponderance  
21      of the evidence according to Rule 7?

22      A     I don't know that preponderance of the evidence is  
23      the burden required, I think it might be useful to view  
24      the rule, counsel.

25      Q     I think the prosecution, I think it's clearly

1 specified under the rule, has to -- the burden is re-  
2 quired by the preponderance, but again I think we could  
3 probably spend a lot of time on this, I don't want to burden  
4 everyone else's time.

5 A Well, I think it's very short, perhaps -- bearing  
6 in mind that this does not obtain in minor traffic offenses,  
7 any person charged with offense, bailable as a matter of  
8 right shall be released pending or during trial on his own  
9 recognizance unless the court determines in its discretion  
10 that such release will not reasonably assure his appearance  
11 as required.

12 If such a determination is made, the court may  
13 impose the least onerous conditions or conditions con-  
14 tained in Rule 73 B, which will reasonably assure his  
15 appearance.

16 I don't think that the legislature has placed any  
17 burden upon the magistrate to determine the preponderance  
18 of facts one way or the other.

19 MR. LEVISTON Well, without spending too much  
20 time, I think it is indicated, but -- I have no further  
21 questions.

22 Q (By Mr. Zah) I have one other question, Mr. Croxen,  
23 you indicated that possibility does exist that there's  
24 only one Native American employed in the police department.  
25 I want -- you know, to know exactly or if you don't know

1 maybe a guess, in terms of how many people are working  
2 in the police department?

3 A. Commissioned officers, Mr. Zah?

4 Q. Yes.

5 A. I think it's around 43. Now, I haven't had any  
6 contact recently with the personnel lists of the police  
7 department, conceivably I could be in error on that.

8 Q. What about Blacks?

9 A. I think there is a Black officer, has been on two  
10 or three weeks. I haven't met him.

11 MR. LEVIS: Dr. Warren, I'll just point out I have  
12 found it, it's Rule 7.2C which says issues under Rule 7.2A  
13 and B shall be determined by the preponderance of the  
14 evidence, and that the prosecutor shall bear that burden.

15 A. You are right.

16 THE CHAIR: Any other questions of Mr. Croxen by  
17 any member of the commission?

18 MS. LYON: No further questions.

19 Thank you, Mr. Croxen.

20 A. Thank you, Mr. Chairman.

21 THE CHAIR: Is Ms. Nancy Hicks here? Will you come  
22 forward, please?

23 Mr. Thomas Carr? Mr. Robert Gaylord? And Mr. Bryan  
24 Short.

25 Peterson, you want to start?

1       Q       (By Mr. Zah) Could you please state your name,  
2 address and occupation for the record and we'll start  
3 with Ms. Hicks.  
4

5  
6                   MS. NANCY HICKS  
7

8       A       (By Ms. Hicks) My name is Nancy Hicks, I'm the  
9 Executive Director of the Arizona Civil Liberties Union,  
10 my home address is 2822 East Osborn Road in Phoenix,  
11 and the office address is 1429 North First Street in  
12 Phoenix.  
13

14                   MR. THOMAS CARR  
15

16       A       (By Mr. Carr) My name is Tom Carr, I'm a rehabili-  
17 tation counselor, my address is Box 2422 in Prescott.  
18

19  
20                   MR. ROBERT GAYLORD  
21

22       A       (By Mr. Gaylord) Name is Bob Gaylord, I'm an  
23 attorney in Flagstaff, my address is 1614 North Kutch,  
24 K-u-t-c-h, in Flagstaff.  
25

1 MR. BRYAN SHORT

2  
3 A (By Mr. Short) My name is Bryan Short, that's  
4 B-r-y-a-n, Short, I live at 3508 South Cocoma Drive in  
5 Flagstaff, I'm a teacher.

6 Q Mr. Carr, could you explain the function or the  
7 purpose of ACLU and then relate that to your northern  
8 chapter?

9 A (By Mr. Carr) Well, I think Nancy, Ms. Hicks, is  
10 the primary spokesman as far as the ACLU goes, since she  
11 is the staff person in the State of Arizona, perhaps  
12 that would be better answered by her.

13 Q Okay.

14 A (By Ms. Hicks) I think I could describe the pur-  
15 poses fairly well, and I think the other gentlemen can  
16 lead in quite easily from that.

17 The purpose of the ACLU is to defend the Bill of  
18 Rights of the United States Constitution, particularly the  
19 First Amendment, the freedoms of speech, press, religion,  
20 and association, the Fifth, and Sixth and Eighth Amendments,  
21 the right of due process, right to counsel, right to  
22 reasonable bail, and the 14th Amendment, application of  
23 the first ten amendments to the states. I think, as will  
24 come out in the report on the municipal court pro-  
25 ceedings, the major focus of our activities here in Flagstaff



1 has been the concern with lack of due process of Native  
2 American Indians off the reservation.

3 Q I really haven't, you know, read the report yet  
4 but I understand there was a report made by the group and  
5 I was just wondering, what prompted the -- your group to  
6 study the situation and why the City of Flagstaff?

7 A (By Mr. Short) Perhaps I can answer that.

8 Our report was born during the 1974 Pow Wow with the  
9 cooperation of the City of Flagstaff, and I would like to  
10 commend, incidentally, the City of Flagstaff for being  
11 extremely cooperative at every stage of the gathering of  
12 information for this report.

13 We organized an extensive observation project to  
14 observe the process of justice during the Pow Wow. As  
15 part of that, in the Flagstaff municipal court, Attorney  
16 Arano (Phonetic) of Phoenix, Attorney Alice Bendheim of  
17 Phoenix, Attorney Harold Fedder of Phoenix, Attorney Phil  
18 Morgan of Phoenix, Attorney Bob Gaylord of Flagstaff,  
19 Attorney Doug Mickeljohn (Phonetic) of Flagstaff, myself,  
20 Mr. Carr, and Ms. Eileen McIntosh all observed proceedings  
21 in the Flagstaff municipal court. We observed well over  
22 100 arraignments during that Pow Wow week end, and the  
23 observation team concluded that the rules of criminal  
24 procedure were being routinely violated in ways that  
25 amounted to infringements of citizens' rights.

1           Two questions arose, whether this was a problem  
2 based on the intense pressure that the system undergoes  
3 during the Pow Wow or whether it was a problem at other  
4 times, and what recommendations we ought to make.

5           After talking the matter over with Councilman Weby  
6 (Phonetic) and with the mayor at that time, we decided  
7 that more evidence was necessary. The sporadic observation  
8 during the year 1974-75, by Mr. Carr, Ms. McIntosh and  
9 others convinced us that the problem still existed, so  
10 the Arizona Civil Liberties Foundation sponsored a project  
11 during this past summer, it sponsored Mr. John Kammer,  
12 (Phonetic), who is a first-year law student and who had  
13 worked as a police officer part time during summers.

14           Incidentally, we felt that Mr. Kammer was quite  
15 well-qualified for this position, that his first year of  
16 law school represented more formal legal training than  
17 either of the magistrates that he was observing had, and  
18 consequently that he was a good candidate. Furthermore,  
19 we prepared him extensively through consultation with  
20 attorneys Gaylord, Mickeljohn and Steve Lee in Phoenix,  
21 and others to make sure that he understood the rules of  
22 criminal procedure, and understood what it was that he  
23 was supposed to do.

24           I think we mandated to him that what we wanted out  
25 of him was an observation of the facts, what went on,

1 specific cases, to get that basic information. He sat  
2 in on the Flagstaff Municipal Court from June 23rd to  
3 July 31, 1975, and observed 379 in custody arraignments and  
4 25 trials. These figures I think are extremely important,  
5 because what they show is that over 90% of the people  
6 coming before that court pled guilty. In only a handful  
7 was counsel present. The report that we prepared is  
8 concerned not with those people that hire lawyers, but what  
9 happens to the person who doesn't hire a lawyer, who comes  
10 into the Flagstaff Municipal Court without a lawyer helping  
11 him. With no counsel.

12 It's interesting that under that circumstance,  
13 there is then no attorney present in the Flagstaff Municipal  
14 Court, because the city attorney, as he stated, appears  
15 as the prosecutor only when there's a trial and a trial  
16 comes up only when somebody pleads not guilty, so that  
17 for a majority, a vast majority of the proceedings there  
18 is no counsel available. No defense counsel to insure  
19 that the rights of the defendant are not being traduced.

20 I think that this is one of the things that we  
21 would like to focus on in this report, the lack of  
22 accountability, the lack of knowledge about these court  
23 proceedings on the part of those trained attorneys who  
24 would be able to defend, stick up for defendants' rights.  
25 I think it also goes to show why perhaps members of the

1 legal community in Flagstaff have not said more than they  
2 have about this problem, and that is that they are apt to  
3 go into the court only when they have a defendant, and  
4 when you have a defendant, you go into court to defend  
5 him, then you will insure that his rights are going to be  
6 upheld.

7 Consequently, an awful lot of the court proceedings  
8 are going on with no accountability to a defense attorney  
9 or to an attorney.

10 Well, from his observations, Mr. Kammer prepared a  
11 first draft of this report, which, out of the sense of fair-  
12 ness, we submitted to Judges Brady and Brown for their  
13 comments.

14 Judge Brady talked with Mr. Gaylord, submitted to  
15 us a letter giving his comments and also submitted letters  
16 from Mr. Clemmens, who was associate under Fred Croxen,  
17 from Asby, Watkins and Deesel (Phonetic), who are public  
18 defenders in the superior court, and from Ron Lee, who was  
19 doing some public defense work in the municipal court at  
20 the time. These letters tended to question the conclusions  
21 that Mr. Kammer drew rather than the specific cases and  
22 facts that were presented and so on this basis, we rewrote  
23 the report almost entirely. Making sure that all of the  
24 conclusions were in it that were in it were conclusions that  
25 we ourselves felt on the basis of additional observation,

1 could be maintained and supported.

2 The report was also expanded to include other  
3 observations in other areas that Mr. Kammer was not con-  
4 cerned with. Consequently I think what we would like  
5 the panel to know is that the report that we prepared,  
6 which is 66 pages long and cites 71 specific cases, repre-  
7 sents the work of a number of people between 1974, the  
8 Pow Wow of 1974 and the present.

9 Q Mr. Short, excuse me for interrupting. For the  
10 record, would you explain Pow Wow, what it means to say  
11 the city of --

12 A Excuse me?

13 Q Could you explain Pow Wow? You made reference to  
14 Pow Wows and I think for the record we ought to tell you  
15 know, in your own words, what that is.

16 A Well, the Flagstaff all-Indian Pow Wow is a tra-  
17 ditional celebration over 4th of July week end that has  
18 been held for, oh, quite a number of years, I don't know  
19 exactly how many, 30-odd years, perhaps, in Flagstaff,  
20 with the exception of one year. It's generally a cele-  
21 bration of the 4th of July and a celebration of, I  
22 suppose you'd say the aspects of Indian culture that we  
23 are so close to in town.

24 The reason why we became concerned with the Pow Wow  
25 is because large numbers of Native Americans do come to

1 town during Pow Wow week end, and the problems that have  
2 been mentioned in earlier panels, the problems of the  
3 treatment of Native Americans, the treatment of intoxicated  
4 Native Americans are exacerbated during the Pow Wow simply  
5 on the basis of numbers.

6 THE CHAIR: You spoke of tradition. Could you  
7 identify the party, traditon for whom?

8 A I'm not sure I can say, that I can answer that.

9 Q (By Mr. Zah) What about the city, you know, in  
10 terms of, maybe Mr. Gaylord or someone can answer, what  
11 about the city, were they aware of the study as it was  
12 going on and then when it was finished, what was the  
13 attitude and the comments that you were getting from,  
14 let's say the city officials, the mayor, the police  
15 department and others?

16 A (By Mr. Gaylord) They were aware of our observation  
17 during the '74 Pow Wow, initially when Mr. Kammer went in  
18 to observe he did not advise them of what his purpose was,  
19 subsequently he did advise them that he was observing on  
20 behalf of the ACLU, and we did not note any change in the  
21 procedures. They continued to be cooperative and helpful  
22 and informative and gave him access to all the files  
23 after he advised them that he was working for the ACLU.

24 We did this specifically so that we could note if  
25 there was any change of procedure and first could observe

1 the procedures anonymously so the court would not be  
2 aware that the ACLU was in there.

3 Q In your statement, Mr. Short, you made the remark  
4 that only a very small percentage, you know, in those  
5 cases, you know, was there a lawyer. And I was wondering,  
6 could you take a rough guess what you mean by small per-  
7 centage?

8 A (By Mr. Short) Oh, I would say significantly less  
9 than 10%. I think that perhaps Judge Brady would be  
10 better able to give an answer to that one.

11 Q Less than 10%?

12 A Well, more than -- roughly 93% of the cases observed  
13 by Mr. Kammer, a plea of guilty was entered, so there was  
14 no not guilty plea, there was no request for counsel, I  
15 think that perhaps Judge Brady might give a more specific  
16 figure on that, certainly an overwhelming majority.

17 Q You mentioned that the study had to be redrafted?

18 A Yes.

19 Q And I was just wondering, you know, what reasons  
20 did you do that?

21 A Well, I think that we wanted first to give the  
22 judges a chance to respond to it and to see whether or  
23 not they had substantive revisions which they suggest and  
24 I think that we probably did take out quite a bit of  
25 material to which they objected, I think we also felt that

1       there were issues not touched on and that what we had  
2       presented was essentially a rough draft, that is Mr.  
3       Kammer was operating as a researcher for us. He gathered  
4       quite a bit of information, presented it with some ten-  
5       tative conclusions, and then we reworked it completely.  
6       I think this is something that one would do with any report  
7       that one produced.

8       Q.     So you made the report, you know, about let's say  
9       the judicial system or court procedure or whathaveyou,  
10      you presented it to the people whowere affected and in-  
11      volved in that system, they made their remarks and then  
12      they told you in so many words that what they want excluded  
13      from that report?

14      A.     They made some comments. They made some specific  
15      comments. They also made general criticisms of the report  
16      which I think will become obvious probably in later  
17      testimony today.

18      Q.     What were some of the areas, you know, problem  
19      areas that was --

20      A.     Well, Mr. Kammer had included, I think, quite a  
21      bit of his own opinions concerning the attitude of the  
22      judges toward defendants, concerning legal issues which  
23      perhaps he was not completely qualified to deal with, con-  
24      cerning things that we felt not particularly relevant to the  
25      major function of the report.



1           There was a lot of -- a lot of revision that had  
2 to go on. We're not -- you know, we're not ashamed of  
3 this fact.

4           Q     Would one of you care to, let's say summarize  
5 what's in the meat of the conclusion of that report?

6           A     I think I'm probably prepared to do that if you don't  
7 mind my taking --

8           MR. LEVIS: Excuse me, just for the record, if we  
9 can identify this also just for the Court Reporter, I  
10 think as Exhibit 3. That is the report that has been  
11 submitted to the committee which I think you're referring  
12 to, if this is the same report.

13          A     Yes. Incidentally, the date on this report is  
14 November 10th of this year, consequently although it's  
15 been submitted to the city council, nobody's had a chance  
16 to really respond to it yet. The report, as divided into  
17 three parts, the first one summarizes the judicial process  
18 faced by defendants, the second deals with three primary  
19 concerns, the language barrier, the problem of right to  
20 counsel and the question of non-attorney judges and the  
21 third gives specific recommendations to the City of  
22 Flagstaff.

23                As far as part one, the judicial process, we  
24 start at the beginning and we noted that in terms of the  
25 arrest, problems occurred in respect to two charges, the

1 first was the loitering charge, which cases did come up  
2 in which the loitering charge was clearly in contradiction  
3 to the LARC law used to arrest people whose situation  
4 was being publicly intoxicated.

5 I can give you police reports citing one of those  
6 cases, while on patrol this officer was radio-dispatched  
7 to Sprouse-Reitz store to remove a passed out subject off  
8 the sidewalk. Upon arrival I noticed the subject was un-  
9 conscious and had a strong intoxicant odor from his mouth.  
10 The subject was also sprawled out across the sidewalk in such  
11 a way that the other pedestrians happened to walk around  
12 him.

13 This officer then arrested him. I then transported  
14 him to the county jail where he was incarcerated. No  
15 further action taken.

16 Q (By Mr. Levis) Excuse me, Mr. Short, again just to  
17 explain to the committee and to the audience, could you  
18 briefly or someone on the panel, explain the provisions  
19 under the LARC law that makes such an arrest, in your  
20 opinion, legal?

21 A I think Mr. Gaylord can probably do that.

22 Q We're sort of going into areas that are specific --

23 A (By Mr. Gaylord) I can't cite the statute. When  
24 the LARC law came into effect, they also abolished the  
25 offense of public drunkenness. Previously, if somebody was

1 intoxicated and out on the streets, the police could pick  
2 them up and incarcerate them, the justification was more  
3 or less it was protective custody for the -- as much  
4 for the protection of the inebriate as for anything else.  
5 This law was abolished, the LARC law was instituted and the  
6 purpose was to provide facilities where inebriates could  
7 be placed without incarceration.

8 Because of the quarrels with the various government  
9 authorities, the funding has never been provided, at  
10 least established funding, in Flagstaff, it's been on and  
11 off. It's our feeling, from many of the cases cited there,  
12 that in fact these are public intoxicants that the officers  
13 wished to take into protective custody, and notwithstanding  
14 the fact that perhaps at least in some of those cases  
15 their intentions are well-meaning, we feel that it's un-  
16 constitutional.

17 Q Thank you.

18 A (By Mr. Short) The other charge where arrest might  
19 cause a problem was a disturbing the peace charge, the --  
20 one of the judges of the court was reported to have said  
21 to our investigator on June 30th, the police are working  
22 the hell out of this DTP charge, they investigate a phone  
23 complaint, take some guy downtown for investigation, the  
24 guy says something out of the way in the car so the police  
25 end up by being the complainants. In a disturbing the peace

1 charge, the question is whose peace is being disturbed,  
2 if it's the peace of another citizen then ideally that  
3 citizen would be the complainant. If it's the peace of  
4 the police officer, then the police officer can be the  
5 complainant. According to the observer in the majority  
6 of DTP charges in Flagstaff, the police officer was the  
7 complainant.

8 Now, there have been supreme court rulings to the  
9 effect that a police officer must be expected to show  
10 extraordinary restraint, since he has publicly hired for  
11 the purpose of keeping the peace, for someone simply to  
12 curse at him in the way you would to an ordinary citizen  
13 this should not constitute disturbing the peace, and yet  
14 cases were noted where it appeared the main complaint of  
15 the police of the police officer was that somebody had  
16 demonstrated a belligerent attitude or had cursed at him  
17 and this was used as grounds for arrest.

18 After arrest and before arraignment a complaint  
19 must either be sworn to the judge or certified by the  
20 arresting officer as to containing reasonable grounds to  
21 believe that the offense was committed by the individual  
22 charged.

23 There are situations, however, in which this is not  
24 followed in the Flagstaff Municipal Court, one complaint  
25 for example, was brought before the court and rather than

1 being certified by the arresting officer it was certified  
2 by the bailiff. Now, the bailiffs a member of the police  
3 force but he's not the arresting officer, he has no  
4 knowledge of what went on, he can not be expected to cer-  
5 tify that there were reasonable grounds for the arrest  
6 and on being asked the bailiff was reported to have said,  
7 I sign them all, I sign them that way all the time.

8 We feel that there's an affirmative responsibility  
9 on the part of the judge to oversee these charges and to  
10 dismiss them where they are improper and we furthermore  
11 think that the accountability problem comes in here, too,  
12 that if the city attorney were reviewing the charges or  
13 if the city council had a representative observing the  
14 procedures on a much more regular basis, then whenever a  
15 situation appeared where the charges might possibly be  
16 defective, they could be dismissed and this problem could  
17 be brought before the police.

18 But we don't feel that this is going on. Once  
19 the defendant gets in court, he is read his rights en  
20 masse, that is all the defendants being arraigned for that  
21 particular day are read a statement of their rights. There  
22 are two problems with this, first is that that statement  
23 may contain statements which encourage a guilty plea on the  
24 part of the defendant.

25 For example, on June 23rd one of the judges told the

1 assembled defendants that, a plea of guilty is, quote,  
2 a more expedient way to handle your case. You know if  
3 you're guilty.

4 On June 25th, of course if you enter a plea of  
5 guilty there will be no need for all this falderal of a  
6 trial. On July

7 On July 12th, if you plead guilty there will be no  
8 need for a trial, summoning witnesses, so actually it's  
9 the most expeditious way to handle your case, but it's  
10 your decision and the court will not influence you in any  
11 way.

12 On July 4th a defendant pled not guilty to a charge  
13 of loitering, and the judge said to the interpreter, if  
14 he enters a plea of not guilty that means he's going to  
15 have to stand trial, post bond. If he wants to change his  
16 plea to guilty we can dispose of this right now, other-  
17 wise he'll have to come to trial.

18 The second problem that occurs with the en masse  
19 advisement of rights, is that if a defendant doesn't under-  
20 stand English, he doesn't understand the rights, which  
21 are read to him, and here I think this is something that  
22 this hearing should be quite concerned with. Because this  
23 en masse advisement of rights is literally the only sig-  
24 nificant statement of rights that many defendants get in  
25 the Flagstaff Municipal Court.

1           After the reading of rights, the -- and it's not  
2 translated into Navajo or wasn't in more than, say maybe  
3 there were one or two cases during the Pow Wow of '75  
4 when there was a NACA interpreter present who did trans-  
5 late these but otherwise, they were not. He comes before  
6 the judge and the charge is read, sometimes the charge is  
7 only named and he's asked for a plea. If he pleads guilty  
8 it is at that point that he is asked to sign the guilty  
9 plea and waiver of counsel forms.

10           Now, this is, I think, one of the most important  
11 things that we discovered, and is a very important issue  
12 because as a matter of fact, it came up only last Monday  
13 in a habeus corpus hearing that was brought before the  
14 Superior Court in Coconino County, which I think Mr. Gaylord  
15 can perhaps comment on.

16       A     (By Mr. Gaylord) We brought a habeus corpus action  
17 on behalf of Sara Begay, specifically she was incarcerated  
18 for a period of ten days and we felt that she hadn't  
19 been properly advised of her rights, hadn't properly  
20 waived her rights.

21           In response at the hearing, at which Judge Brown  
22 presided at the trial of Ms. Begay or this was at the  
23 arraignment, at which time she entered a guilty plea and  
24 she signed the two standard forms which are signed by  
25 every defendant who wishes to plead guilty before the courts.

1           One is a waiver of the right to counsel and the  
2 other one is waiver of the specific constitutional rights,  
3 they're both standard forms that are set forth in the  
4 Arizona Rules of Criminal Procedure and the appendix to  
5 that. To the rules.

6           The court released Ms. Begay, and the conclusion  
7 was that because she had no opportunity to read these  
8 documents, in fact it was just a ritual, that there was no  
9 intelligent waiver of her right to counsel and her other  
10 constitutional rights, therefore she was released. The  
11 guilty plea was not properly taken.

12           I think the interesting aspect at the habeus corpus  
13 hearing was the testimony provided by Judge Brown, was  
14 that this case was absolutely normal in every respect,  
15 that this is the way it's done every day.

16           Q     (By Mr. Levis) What is done to insure such a pro-  
17 cedure will not happen in the future?

18           A     I understand the procedure -- well, first we should  
19 say that this specifically applied to Judge Brown. I  
20 know that Judge Brady does question the defendants more  
21 when he speaks to them individually. I understand, just  
22 from talking to Mr. Otero, the bailiff in the city court,  
23 that Judge Brown's procedures have also been changed since  
24 our habeus corpus hearing.

25           A     (By Mr. Short) Incidentally, I have here a copy of



1 the guilty plea form from that hearing, and it shows a  
2 number of specific rights that are to be read to the  
3 defendant, and then initialed by the judge. And it's  
4 quite easy to see that what the judge has done is simply  
5 run a series of squiggles and his signature all along  
6 the side of the page, and this indicates the rapidity  
7 with which this form went through the court.

8 I think it was estimated, wasn't it, that it took  
9 something like roughly one minute between the time that  
10 Sara Began pled guilty and the time that she went back  
11 to sit down? And then, under this kind of pressure of  
12 time and this kind of casualness in regard to these forms,  
13 that the plea and the waiver of counsel are not volun-  
14 tary and intelligent.

15 Incidentally, the observer did observe, in the  
16 Phoenix Municipal Court, and observed a procedure there  
17 which I think we would like to recommend, that is the  
18 waiver of counsel and request -- the waiver of counsel  
19 and the guilty plea forms after the defendant indicated  
20 a desire to plead guilty, he was given the forms, told to  
21 go and sit down and read them, when he finished reading  
22 them he came back before the judge and the judge asked  
23 him, do you still want to plead guilty. And if the  
24 defendant indicated that he still wanted to plead guilty,  
25 then the judge read, individually, each one of the rights,

1 looking at the defendant and if he felt that the defendant  
2 didn't understand any one of those particular rights, he  
3 went over it and tried to explain it in simple language.

4 I think that this is the kind of thing that makes  
5 sure that people do understand the right to -- that they  
6 give up when they plead guilty and the waiver of counsel.

7 Q (By Mr. Zah) What about in so far as, you know,  
8 the right to a jury trial? You know, things like that, is  
9 that all on that piece of paper? All of those basic  
10 rights of an individual?

11 A (By Mr. Gaylord) This is the standard form, it's  
12 two forms that all defendants who wish to enter a plea  
13 are asked to sign, one of these is the waiver of counsel,  
14 and the other is the waiver of rights. They're both quite  
15 lengthy forms and the point was saying that from the time  
16 Ms. Begay announced that she wished to enter a plea of  
17 guilty until she returned back, was, she was also asked  
18 to read those documents and she was sentenced during that  
19 period. She did not have adequate time to read the docu-  
20 ments, they're quite long.

21 A (By Mr. Short) If a defendant pleads guilty he  
22 gets time in which to get the fine together. If he does not  
23 plead guilty, if he pleads not guilty, he is faced with  
24 the problem of coming up with bond which has been discussed  
25 here, so often. We feel that the problem exists in the

1 court with the difficulty of obtaining release, OR, on one's  
2 own recognizance and this leads to situations, like the  
3 following.

4 A defendant from Tuba City, Arizona, came before  
5 the court on a charge of drinking in public, do you under-  
6 stand the charge? Yes. How do you wish to plead? Not  
7 guilty. You want to enter a plea of not guilty? Very  
8 well, the court accepts the plea of not guilty, bond is  
9 set at \$120.00. At this point the defendant returned to  
10 his seat among the other defendants, several of them  
11 turned around, leaned forward and whispered excitedly  
12 to him.

13 After the arraignments he came back to the bailiff  
14 and said I want to change my plea to guilty so I can go  
15 home.

16 We feel that until the presumption OR is fully  
17 recognized by the court, in other words, if a defendant is  
18 not granted release on his own recognizance, those facts  
19 should be stated in the report, and should be individually  
20 determined.

21 A problem further occurs in that the right to be  
22 released on one's own recognizance is apparently not  
23 always mentioned in the en masse advisement. We have  
24 23 included in our report which were tape recorded by our  
25 observer, and it doesn't -- it isn't included in either

1 one of those, and then it tends to have to be asked for  
2 by the defendant, and if the defendant speaks no English,  
3 it's very difficult for him to ask to be released on his  
4 own recognizance on the basis of specific circumstances.

5 A couple of comments, brief comments on part two  
6 of our report. The language barrier we found out the  
7 kinds of things that everybody I think has been saying  
8 here today, and that everybody agrees on, that the rights  
9 can not be regarded as being understood if they're not  
10 translated into Navajo, that under such cases where the  
11 charges and the proceedings are translated the translation  
12 is done by another defendant or by a friend of the  
13 defendant whose competence as a translator is surely under  
14 question.

15 The communication between judge and defendant,  
16 when the defendants are specifically Navajo Indians who  
17 don't speak English or don't speak it very well, is a  
18 real problem in the court. As far as the right to counsel  
19 issue, according to our figures, the budget for indigent  
20 defense for the Flagstaff Municipal Court was \$2,000.00  
21 a year as opposed to \$60,000.00 a year in the superior  
22 court, and the budget for jury trials was \$700.00. Where  
23 did you get those figures, Bob?

24 A (By Mr. Gaylord) Judge Brady.

25 A (By Mr. Short) Judge Brady. And we feel, of course,

1 this is absurd, that the City of Flagstaff has a very  
2 definite responsibility to put more of its money into  
3 the court, to the effective running of the court to pro-  
4 vide translation and to provide right to counsel.

5 Furthermore, under certain circumstances such as  
6 Pow Wow week end, the public defender may not be in town,  
7 and consequently a defendant who wants to apply for  
8 counsel may face a situation in which he will have to  
9 wait longer than his sentence would be in order to talk  
10 to the attorney for which he is applying. We feel that  
11 unless this counsel is made available on a regular basis,  
12 and also made available during arraignments, these  
13 guilty pleas are not going to be knowing, are not going  
14 to be voluntary and intelligent.

15 The third area that we talk about is that of non-  
16 attorney judges, it's been recognized by the Supreme Court  
17 of the State of California and also by the Cities of  
18 Phoenix and Tucson, that judges should be attorneys and  
19 we feel that there's no reason why Flagstaff might not  
20 recognize a similar -- similar need.

21 The final section involves our recommendations to  
22 the City of Flagstaff, a -- I'd like to read about a page  
23 and a half of these recommendations.

24 The court must be staffed by two full time attorney  
25 magistrates. Two full time magistrates are needed so that

1 arraignments, many will not be heard and so the defendant  
2 who pleads not guilty can be tried within reasonable  
3 time after their arraignments.

4 The magistrates must be attorneys because that's  
5 the only way to insure that defendants will receive complete  
6 and adequate arraignments, fair trials and proper sentences.

7 The court must provide trained and independent  
8 translators who will be at all arraignments and when needed.

9 Court-appointed counsel must also be present and  
10 available at all arraignments and on call during the day.

11 The indifference of the city council and the city  
12 attorney's office towards the court must cease. Both are  
13 directly responsible for the conduct of the court. But  
14 neither has made any significant effort to correct the  
15 problems of the court which have been brought to their  
16 attention.

17 The city attorney's office should screen the com-  
18 plaints filed in the court and instruct the judges in the  
19 law. The council must supervise the judges whom it  
20 appoints. There is money available to improve the court  
21 and provide needed services from the federal Law Enforcement  
22 Assistance Administration and other agencies and the council  
23 and the city attorney's office should try to obtain it.

24 Then, as far as proceedings, the judges must not  
25 regard a police report as an indication of a defendant's

1 guilt before the plea has been entered, and must refuse  
2 to accept complaints which are incomplete, vague or not  
3 been certified properly. They must make every attempt to  
4 make sure that non-English-speaking defendants understand  
5 their rights, their choices of action, their results of a  
6 plea, and the processes through which they are going.

7 The judges must protect the presumption of innocence  
8 by not encouraging the guilty plea, not accepting pleas  
9 where no factual basis exists. He must live up to the  
10 legal guaranteed presumption that defendants be released  
11 OR unless specific facts dictate against such a release.  
12 They must make the facts a matter of record. They must  
13 make sure defendants understand their rights to reasonable  
14 length of time for the paying of fines.

15 This occurred several times, the non-English-speaking  
16 defendant didn't understand that he could be allowed a  
17 month or two months to pay his fine. The judges must in-  
18 sure that the loitering statutes and the disturbing the  
19 peace statutes are being used as determined by the law.

20 So that's the substance of the report.

21 Q (By Mr. Zah) I have one other question. You found  
22 all of these things out and you documented it and you  
23 turned it into a report and I was just wondering, what is  
24 the group, you know, planning on doing with the report so  
25 that a positive result or response might be, you know,

1 given by the City of Flagstaff? And I'd like to ask Ms.  
2 Hicks that.

3 A. (By Ms. Hicks) We were just discussing that at lunch  
4 today. I don't think we can say at such an early time,  
5 and perhaps other members of the panel would like to dis-  
6 cuss it too, I think since it only came out this week, there  
7 should be a chance for the city to respond. It's quite  
8 clear that there is a need for financial commitment, it  
9 may be through the city and also through LEAA to provide  
10 funding for interpreters for public defender, for regular  
11 public defenders, for jury fees, this -- the notion of  
12 \$700.00 for jury fees is absurd.

13 After -- if there's no response, then I'm -- I'm  
14 the state coordinator and I'd like to see what the -- you  
15 know, I'm responsible for the entire state, and most of  
16 the solid ideas come from local areas such as the northern  
17 chapter, so I --

18 A. (By Mr. Short) I think that our first step has  
19 been to try to open this up as a matter of public debate,  
20 I think it's quite possible that there are other people  
21 in town who have other points of view and other information  
22 to add, that would help in solving this problem or other  
23 recommendations to make.

24 Bringing this report here and presenting it is a  
25 first step. Then, of course, we will be bringing it to the



1 city council and to see what kind of action they are willing  
2 to take and so I think we just want to try to make people  
3 aware of the situation and get those people who are concerned  
4 to get their heads together and working together for a  
5 solution.

6 We're not interested in an adversary proceedings  
7 either, we've found out what we think is information that's  
8 important to our concerns and we want it to be taken under  
9 consideration by those people who can do something about it.

10 MR. ZAH: I don't have any question, other members  
11 may want to ask.

12 Q (By Mr. Levis) I'd like to follow up on a few  
13 questions, if I could.

14 Do you mind if we keep these documents and just --

15 A No.

16 Q -- concerning the Sarah Begay case, I think we'll  
17 just refer to the waiver of counsel document as Exhibit  
18 4, and the guilty plea as Exhibit 5.

19 Are there any other documents that you could send  
20 us concerning this case from the superior court or --

21 A The only other thing in the file, other than our  
22 habeas corpus petition, was the minute entry of the court.  
23 I could perhaps send a copy of the petition.

24 Q I would appreciate that.

25 To back up and discuss a few -- it's my understanding

1 from reading the report that you talk about the arraignment  
2 proceeding, but in looking at the rules, this is also the  
3 initial appearance, is it not?

4 A Yes. A point to be emphasized, this is a proceeding  
5 in which attorneys don't appear. Even if -- if the person  
6 has the assets normally if they're going to go out and  
7 hire an attorney, for example, if one of my clients calls  
8 me up from the city jail, I can go down usually and get  
9 him released that night by talking with the police officers,  
10 or if not, I can speak to the court in the morning and get  
11 him released. I don't go through the normal arraignment  
12 proceedings when you have the en masse advisements and  
13 everything.

14 And then the second part which you're asking, yes,  
15 the arraignment is also the initial appearance.

16 Q And this is also the time at which I think you  
17 stated 90% of the defendants plead guilty so this all  
18 has to be done within 24 hours of the arrest?

19 A Yes.

20 Q Under Arizona law.

21 Now, you indicated that to the best of the observer's  
22 knowledge, the only time the rights were read was at the  
23 time that the defendants are brought before the judge,  
24 right at the beginning, that they are not read individually  
25 before a person is informed of his right to plead not guilty

1 and the waiver, and that this has been in a sense over-  
2 turned by the superior court in your habeus corpus pro-  
3 ceeding involving Judge Brown or not --

4 A Excuse me, that's not quite true. The court,  
5 during the en masse advisement, and the judges do have more  
6 or less a standard form which they read, and it's quite  
7 comprehensive, I think for the most part it's quite a  
8 good advisement, we question whether this is sufficient  
9 in view of the fact that rule 17 says the defendant per-  
10 sonally appeared before me and that's also a part of the  
11 affidavit which the judge signs there when he accepts the  
12 guilty plea. However, the court accepted the en masse  
13 advisement as an adequate advising of their rights, the  
14 question was, then, whether they understood them.

15 The court's under some obligation to determine this,  
16 and they felt that simply handing them the form and having  
17 them sign wasn't sufficient.

18 Q What bothers me is under rule 17.2 it says before  
19 accepting a plea, the court shall address the defendant  
20 personally and what does -- you know, what is your view of  
21 the word personally, I think is what it gets down to.

22 A Well, at our habeus corpus proceedings the court  
23 accepted the en masse advisement as sufficient.

24 Q That's not when the person is --

25 A That wasn't the basis of his ruling.

1 Q But if you read -- you could read the rules, I take  
2 it I think very easily to say that a person has to first  
3 be advised of their rights and then when they're asked to  
4 enter a plea, they have to be advised of their rights  
5 again.

6 A I think you're right. I don't know if the court  
7 would accept my interpretation.

8 Q Now, I don't know if it was discussed, when you  
9 went through the review, but there was a discussion in the  
10 report of dollars versus days in sentencing. I wondered  
11 if you could just go into that a little bit? What -- what  
12 that procedure is? And what the ACLU found as far as  
13 dollars versus days in sentencing?

14 A It's still a common practice for the court to give  
15 dollars or days, in other words, 30 days or a fine of  
16 \$330.00. It's common practice. The supreme court requires  
17 that -- the United States Supreme Court requires that if a  
18 person is assessed a fine or a dollars or days sentence  
19 that they are to be given an opportunity to, a reasonable  
20 opportunity to pay their fine. In some of the cases which  
21 we observed, and these had particularly to do with Judge  
22 Brown, in these cases Judge Brown would neglect to mention  
23 to the defendant his opportunity to pay a fine.

24 A (By Mr. Short) To have time to pay a fine.

25 A (By Mr. Gaylord) To have time to pay it. In other

1 words, you either go to jail or come up with your money  
2 right now. Was, I think the alternative as the defendant  
3 received it.

4 A (By Mr. Short) I think that was a very important  
5 concern of the team at the '74 Pow Wow, but I think that  
6 the team did feel that in Judge Brady's court, a significant  
7 and valid effort was made thereafter to make sure that the  
8 defendants did understand that they had that amount of time  
9 to pay their fine so that the procedure was really cleaned  
10 up in Judge Brady's court.

11 Q The other issue that concerns me is I've talked to  
12 Judge Brady concerning the release of a person on his or  
13 her own recognizance, and he indicated to me that a person  
14 has not been arrested before or has not abused the privi-  
15 lege before, that he will release anyone from the reserva-  
16 tion on their own recognizance. Is that correct?

17 That is that they will, in a minor case, they'll  
18 appear for trial. Yet your statistics seem to indicate  
19 that 90% of those who appear at the initial appearance plead  
20 guilty. And there seems to be an inconsistent set of  
21 facts there that I don't really understand.

22 A (By Mr. Gaylord) Of course, as to the 90%, that  
23 doesn't directly tie into the question of release OR.  
24 What we're saying is that, it is our feeling that the threat,  
25 the requirement of a bond was one of the factors that went

1 into encouraging people to enter a guilty plea, perhaps  
2 they --

3 A (By Mr. Short) And that perhaps the circumstances  
4 under which OR release could be expected by a defendant  
5 were not made clear to him before the plea and it's quite  
6 possible that defendants who might have been released by  
7 the court OR pled guilty because they just didn't under-  
8 stand what was going on, where I'm speaking primarily of  
9 those who don't speak English.

10 Q This gets back to the other question, we've talked  
11 about interpreters, and the fact that I think representa-  
12 tives from NACA said not only do you need interpreters  
13 who can translate the law, or the statements from English  
14 into Navajo and then back again, but you need people who  
15 are conversant in legal words. What are your recommenda-  
16 tions in this area and what can be done to deal with this  
17 problem because, you know, all-- well, what does own  
18 recognizance mean? Start right there.

19 A My feeling is that if they pay a translator enough  
20 money they can probably find somebody qualified to fill  
21 the job. I think that if one goes through a bureaucracy  
22 in terms of applying to have this person with certain  
23 qualifications fill a job, from all of our experience,  
24 the results aren't often what you want. I think that if  
25 the -- if the city decided that this was as important a

1 thing as we feel it is, that they could find somebody that  
2 could be trained in the procedures enough to be able to  
3 do it quite well.

4 Q Should there be a public defender there at all  
5 times? Let's say in a big city court, of course you have  
6 other problems there, there probably are public defenders  
7 who are at the initial appearance or at the arraignment to  
8 deal with some of these problems. Is Flagstaff, do you  
9 feel --

10 A I think that if, perhaps before the en masse advise-  
11 ment of rights or sometime in conjunction with it, if the  
12 defendant were given the guilty plea form, the waiver of  
13 counsel form, and the request for appointment of counsel  
14 form, in other words, if he were given these far enough  
15 ahead of time to be able to study them and to see what  
16 these forms dictate in terms of the requirements, in terms  
17 of the availability of counsel, so that he might make a  
18 decision on the basis of the possible availability of  
19 counsel before he came up before the judge to enter a plea.

20 I think that under those circumstances, then those  
21 people who felt that they hadn't -- that they were not  
22 guilty could feel, would feel more comfortable about the  
23 possibility of having a counsel or court-appointed counsel  
24 and of course that counsel would have to be immediately  
25 available.

1 Q Should this also not be done in Navajo, possibly  
2 Hopi and then also have an OR form too? Because I think  
3 those are the four forms in looking through the rules of  
4 criminal procedure that seem to be the most critical.

5 A Yes. The release questionnaire is fairly compli-  
6 cated and I think if it's going to be meaningful, the  
7 defendant probably needs help with that.

8 Q Because my understanding there's two parts to that,  
9 there's first the officer part where I think you indicate  
10 in some cases they ask a question and the officer didn't  
11 answer it except say yes, no --

12 A All right.

13 Q -- and then there's the other three forms you men-  
14 tioned.

15 One final question. I think it was in yesterday's  
16 paper or the day before there was, at least in the Denver  
17 paper, there's been a study done by a department or a  
18 division within the Department of Justice concerning indigent  
19 right to counsel, where it was indicated that this guarantee  
20 as protected by the Constitution, ruled on by the Supreme  
21 Court three years ago is not being adhered to in any courts  
22 that were studied. I think there were 19 cities.

23 A Yes, I think that we would like to stress the fact  
24 that we are not accusing Flagstaff court of being worse  
25 than other local courts, in fact there may be many circum-



1 stances under which the Municipal Court of Flagstaff is  
2 far better than many of the justice courts throughout  
3 rural areas of Arizona or smaller towns in Arizona, and  
4 that there is a tremendous problem when you ask a justice  
5 court in a very small town under a very limited budget to  
6 provide this kind of help for a defendant.

7 Our feeling is that Flagstaff has the funds, that  
8 Flagstaff is a town in which law enforcement takes quite  
9 a bit of money and consequently we should be -- not be  
10 holding ourselves up to standards of rural justice courts  
11 but up to standards comparable with those in Phoenix and  
12 Tucson where these things are more readily provided.

13 Q Will the information that's found in this study  
14 also be sent to the state legislature? Because a lot  
15 of this money I suppose has to be allocated by them, at  
16 least as far as public defender system, it's my understanding  
17 that by state law only Maricopa County and Pima County  
18 have to provide such a service because they have over  
19 a 100,000 people.

20 A Well, certainly if I'm right this is a law that  
21 we -- the ACLU on the state level has been concerned with.  
22 In other words, we would like to see this made more  
23 general and lobby to that effect.

24 Nancy, do you have anything to add?

25 A (By Ms. Hicks) Just that it will be distributed to

1 several members of the legislature and hope that the  
2 right to counsel could be facilitated in Flagstaff

3 THE CHAIR: Any other questions?

4 If not, we want to thank you for appearing.

5 Is Judge William Brady in the audience?

6 Will you come forward, sir, please?

7 Q (By Ms. Lyon) For the record, sir, would you please  
8 state your name, address and occupation?

9  
10  
11 JUDGE WILLIAM BRADY

12  
13 A (By Judge Brady) My name is William C. Brady, I'm  
14 the Chief Magistrate for the City of Flagstaff, and I  
15 live at 3134 Mount Eldon Drive.

16 Q Thank you.

17 We want to apologize to you for running behind  
18 schedule, but as you were able to observe we had some  
19 very worthwhile testimony presented to us and thank you  
20 for your patience.

21 A That's perfectly all right, I enjoyed it.

22 Q Would you please describe for the record the  
23 Flagstaff Magistrate Court, your specific responsibilities  
24 and qualifications?

25 A I am the Chief Magistrate, I am responsible for the

1 administration of the City of Flagstaff Municipal Court.  
2 I sit in the court, I'm responsible for the office, for  
3 the actions of the personnel and my associate magistrate,  
4 Judge Brown.

5 Q Could you tell us at this point whether you have  
6 any Indian employees?

7 A I don't have any Indian employees at this time.

8 Q Do you anticipate starting any recruitment for  
9 Indian staff?

10 A I tried to get the money to get a full time bailiff  
11 to assist in keeping court records and also to serve as  
12 interpreter, but the money that I thought I was going to  
13 get for that is now going to be used for a survey of filing  
14 and processing and so on between the police department and  
15 the court.

16 Q We won't ask you to comment on your response.

17 A Very well.

18 Q Judge Brady, how would you respond to the ACLU  
19 report we've just heard today?

20 A I think it's biased, slanted, erroneous, and I  
21 intend to prove it.

22 Q All right. Well, we're here to listen to you if  
23 you'd like to give us some examples, chapter and verse.

24 A Fine. Very well. Do you mind if I stand?

25 Q Not at all.

1           A.     All right.

2                 I've been Judge of the Flagstaff City Court now,  
3 Chief Magistrate for some seven years. You have a copy  
4 of the report, you also should have gotten a copy of the  
5 first draft. The draft was done over and they came out  
6 with the second draft. I answered, and by the way, if  
7 any of you would like to go along with this, on my chair  
8 are copies of this and you can go along with it page by  
9 page.

10                If you'd like to have them, I think it might prove  
11 interesting.

12                Now, this study was done by a one-year law student  
13 who came into the Flagstaff City Court on June 23rd, and  
14 as he states in the first draft, I approached Judge Brady  
15 in Chambers and not without qualms of conscience.

16                I told the judge a very carefully measured portion  
17 of the truth. Now here's a man who's going to be an attorney  
18 and he's already violated the cannon of ethics. Cringe.

19                All right. He mentioned that he was a former police  
20 officer, and he was, in a small town back east, he worked  
21 summers for three summers in a police -- or a capacity in  
22 a town of 250,000 people and during the three years, he  
23 made two arrests. It's in the record.

24                Okay. Former police officer. Now a law student,  
25 working in cooperation with a professor of law at the

1 Arizona State University, doing a study of the lower courts.  
2 And what was that study about? A study of defendants and  
3 the alibis that they use in the lower courts. It's in the  
4 report.

5 All right. He further explained he was having  
6 difficulty hearing the arraignments, asked if he might be  
7 allowed to sit in the jury box close to the judge and  
8 defendants. Judge Brady courteously agreed, and the  
9 situation improved from then.

10 All right. Now, this was on the 23rd of June, on  
11 the afternoon of July the 10th he decided to tell the judge  
12 the truth. That he was in fact doing an investigation  
13 for the ACLU. And Judge Brady took the news calmly but  
14 appeared surprised. When the observer expressed his hope  
15 that the news would have no effect on the judges, the  
16 bailiff or the clerk or his access to the records, the judge  
17 said we won't even tell them. And I didn't tell them.

18 Sam Clements, which there was a letter from him,  
19 a three-year law student who was practicing in the court  
20 at that time, he's the one that found out from Mr. Kammer  
21 and told the others.

22 All right. This is all taken from the first draft  
23 which all of you who have a copy of this, a letter addressed  
24 by me to Ms. Nancy Hicks, received your letter dated  
25 October the 15th, the Flagstaff City Court did receive a

1 a copy of the first draft of the Flagstaff Municipal Court  
2 -- or proceedings court. I went through this report  
3 thoroughly. This court feels the report is full of mis-  
4 statements, innuendos and half-truths. He advised -- I  
5 have submitted copies of this report to the city council,  
6 to the Coconino Bar Association, at one of their regular  
7 meetings, and requested that they study the report and  
8 offer comment to the court regarding the allegations made.

9 When I was through speaking to the bar, Mr. Gaylord,  
10 who is a member of the ACLU, was present at that meeting.  
11 Mr. Gaylord took the floor and stated and I quote verbatim,  
12 Mr. Gaylord's here, if he'd care to deny it, he was one  
13 of the instigators in the setting up the investigation of  
14 the Flagstaff City Court procedures, but that he did not  
15 believe half of the stuff in the report, that it would  
16 be redrafted, and that 50% of the garbage would be taken  
17 out.

18 All right. Then I went on to say, I had not re-  
19 ceived the second draft, which I did last Friday. Okay.  
20 Now, the garbage that was taken out was everything nice  
21 or decent that Jack Kammer had to say about the Flagstaff  
22 City Court and its treatment of the Indians. It's right  
23 here. There's copies of it out there.

24 All right. Let's take the first page. At arraign-  
25 ment the defendant's case will be in the hands of non-

1 attorney judges. If the defendant is fortunate enough to  
2 be brought before Chief Magistrate Brady, his case is  
3 likely to be treated with dignity and compassion. But  
4 they took it out.

5 Let's go to page 10 of the original report. On  
6 July 8th, informed of number three's predicament by court  
7 observer, Charlie Donaldson, a lawyer in Tuba City, Arizona,  
8 with DNA, phoned Chief Judge Brady, who immediately con-  
9 tacted the jail and ordered number three sentences commuted  
10 to time served. Number three. In this report, everybody's  
11 referred to as a number. Not names.

12 I had no chance to look these up, to check them out,  
13 to rebut them. Numbers. There was a key with the names  
14 furnished, that was given to me this morning, the day of  
15 the hearing. This is fair and this is impartial?

16 All right. Now here, we've had talked about  
17 interpreters, no attempts made to see that people under-  
18 stand their rights. And yet in this report, Brady to the  
19 interpreter, do you read English? Yes. Interpret this,  
20 then, for the defendant. He handed the guilty plea pro-  
21 ceeding form. It lists the substantial defendants'  
22 rights. Tell him he's charged with disturbing the peace  
23 but read the rights first.

24 The interpreter referring to the form spoke with  
25 the defendant for two full minutes. Judge Brady, does he

1 understand that? The interpreter said yes.

2 Now, tell him that he's charged with disturbing  
3 the peace, and Judge Brady read the statute, the statutory  
4 language, including the words maliciously, wilfully,  
5 tumultuous, I don't know where maliciously came because it's  
6 not in the disturbing the peace statute, but anyway, it's  
7 in Jack Kammer's report.

8 The interpreter, taken back, says you want me to  
9 interpret that? Judge Brady said yes. He then, however,  
10 dismissed the charge on grounds not related to the language  
11 problem.

12 Let's go to page 14 of the first draft. The inade-  
13 quate efforts by the Flagstaff Municipal Court to overcome  
14 language difficulties could be termed a sort of dis-  
15 crimination against Indians, especially Navajos. If it is  
16 discrimination, it is a passive discrimination brought about  
17 by indifference, rather than a conscious or subconscious  
18 effort to treat the Navajos poorly.

19 All right, they do not indicate that the Flagstaff  
20 Municipal Court actively discriminates against Indians or  
21 against Chicanos or Blacks either, for that matter. The  
22 court observer found very little evidence to support  
23 allegations of affirmative discrimination.

24 All right. Page 15 of the first draft. Judge  
25 Brady is proud of his court, there is no indication that he



1 personally has tainted his court with racial discrimination.  
2 All right. And then he says, Judge Brady, too,  
3 makes mistakes. During a trial before Brady on July 9th,  
4 a defendant acting as his own attorney was cross examining  
5 the prosecution witness. The prosecutor objected to a  
6 question that the defendant had asked. The objection had  
7 nothing to do with the question being a leading question,  
8 for the prosecutor, of course realized that the defense has  
9 every right to ask leading questions of a prosecution  
10 witness. Nevertheless, the judge sustained the objection.  
11 He told the defendant nothing other than he was leading  
12 the witness.

13 Well, that one I was able to look up, because of  
14 the date, he certainly was leading the witness, he was  
15 asking the questions and answering them too. And certainly  
16 the objection was sustained.

17 Now, page 18 of the original draft. It has been  
18 observed that many JP's, justices of the peace, are ex-  
19 sheriffs, police officers, peacemen with prosecution ex-  
20 perience only. Appointed for political plums, who as  
21 judges tend to be prosecution minded. But if such is the  
22 rule, Judge Brady is the exception. Brady has 25 years  
23 experience in law enforcement, see appendix E, but  
24 rather than having made him prosecution minded, his law  
25 enforcement background appears to have made him more de-

1 manding on police and prosecutors.

2 On June 25th, in an obvious boast, I was bragging,  
3 but perhaps still a true statement, Judge Brady, during  
4 a break between trials told this observer, before I came  
5 this was an assenbly line court but I changed that. Before  
6 that the police would bring a man in, he would be found  
7 guilty and that was it. But I have since told them that  
8 chief, the cases had better be good, if so you'll win,  
9 bring in a bad one and you're wasting your time.

10 Judge Brady's boast exhibits an intent to remain aloof  
11 at all times, and not have undue cooperation with the  
12 police. He has been even criticized by some police  
13 officials for being so.

14 All right. Judges Brady and Brown might both be  
15 better judges if they were trained attorneys, certainly  
16 they could be better trained in the law. But even a judge  
17 who knows and can quote the law beautifully may be lacking  
18 in judgment, common sense, compassion, feeling for his  
19 fellow man.

20 All right. Judge Brady, compassion. Judge Brown,  
21 harsh. Judge Brady does not have the ability to quote the  
22 law beautifully. But he does have judgment and common  
23 sense. Judge Brady is a man of compassion and fairness.

24 Now, on June 26th, while accompanying the bailiff  
25 on the transporting of prisoners from the county jail to the

1 city court, the observer went with the bailiff, they were  
2 coming for arraignment. The observer had occasion to speak  
3 with two of the court's regular offenders. Number 13  
4 and 14. Both told the observer that they would much  
5 rather prefer going before Brady than Brown. And they  
6 were both upset when the observer mistakenly told them that  
7 Brown would be on the bench that day. All right?

8 Judge Brady has an uncanny knack for putting a  
9 nervous, frightened defendant at ease. You know, these  
10 are some of the good things.

11 We're going to get to the non-attorney judges part,  
12 the observer part, the en masse readings and so on, if you'll  
13 just bear with me.

14 On the next page Brady, this is page 19 of the  
15 original report, Brady has the respect of the defendants  
16 who appear before him in large part because he treats them  
17 with dignity. A treatment which does not preclude friendly  
18 chiding. Number 14 had been before Brady on June 25th on  
19 a charge of malicious mischief to which he pled guilty and  
20 was fined \$31.50. The next day he was back on a charge of  
21 being a pedestrian in the roadway, and the judge chided him,  
22 this is actually -- all right.

23 On June 26th, an elderly and apparently penniless  
24 gentleman was arraigned by Brady for hitchhiking in the  
25 roadway. The defendant told the judge he was trying to get

1 back to Buffalo, New York, on the occasion of the death of  
2 his father. After accepting his plea of guilty and pro-  
3 nouncing a sentence of one day or time served, Brady asked  
4 the defendant do you have any money? When the defendant  
5 said no, Brady said how do you eat? He said, well, I start  
6 at one end of town and go to the other, hitting the  
7 restaurants for a handout. That doesn't work, then it's  
8 brother can you spare a dime. Judge Brady reached into  
9 his wallet, handed the old man \$3.00, and says this ought  
10 to help you get started.

11 After court the observer asked the bailiff about  
12 the donation. The bailiff answered, yes, he does that every  
13 now and then.

14 The only reason I'm bringing this in, I have been  
15 accused in what I feel, in a vicious attack on the -- my  
16 character and the character of the court, more or less in  
17 the article in the paper, I've been called stupid, unintelli-  
18 gent, don't know the law, but it's a funny thing, there have  
19 been no complaints from the Superior Court of Flagstaff  
20 regarding the operation of the city court, there have been  
21 no complaints from the Coconino Bar Association regarding  
22 the operation of the city court, there have been no com-  
23 plaints from the City Council of the City of Flagstaff  
24 regarding the operation of the court. We serve the people,  
25 all of the people. It makes no difference to me whether

1 they're Black, blue, green or brown, everyone is treated  
2 the same way. We have had problems, yes, with interpreters.  
3 We are going to correct that. We are making every effort  
4 to correct that. Now, this court handles, in 1973, we  
5 handled 9,000-and-some cases. 1974 it jumped up to over  
6 10,000, almost 10,500, that's a tremendous increase.

7 We're talking here about Native Americans, I have  
8 lived in Flagstaff for 25 years, I don't think there's  
9 anybody in this town that knows or understands the Indians  
10 better than I do. But anyway, to get on with this, and  
11 get on to other things, on July 31st Brady conducted an  
12 arraignment which of all the arraignments the observer  
13 witnessed typifies the judge's mercy.

14 The defendant was a bruised and battered number 21,  
15 an Indian, it might be worth mentioning, charged with  
16 disturbing the peace.

17 After hearing the defendant's intent to plead  
18 guilty, Brady asked him what happened. The defendant said  
19 I got in a conflict last night. Judge Brady said, con-  
20 flict? It looks like you fell in a cement mixer. Were you  
21 taken to the hospital? The defendant said yes. Brady,  
22 checking the report, taken to emergency room and was  
23 checked but refused care. He asked the defendant why? The  
24 defendant said I was too up tight. If it's possible I'd  
25 like to go back to the hospital.

1           Judge Brady said definitely. One day's suspended,  
2 hold on, there's a warrant here for you from last April,  
3 '74, you were given time to pay a fine which you failed to  
4 do, so therefore you're found contemptuous of the court  
5 order and you must serve the time then.

6           All right. The defendant then protested the  
7 warrant must for someone else, not him, however identifica-  
8 tion was made through tatoos, age, physical characteristics.  
9 All right. Brady said I find you contemptuous of the court  
10 order, and sentence you to the ten days in county jail,  
11 to the bailiff, see that he gets medical attention.

12           Okay. After the adjournment, number 21 approached  
13 the judge, the defendant told him he was -- had been tem-  
14 porarily released from a Halfway House and the local  
15 alcoholic reception center in Phoenix. So that he could  
16 go to Cortez to see his mother who was ill. Judge Brady  
17 told the bailiff we will suspend the ten days, there's a  
18 possibility that what he says is true. And it's not that  
19 important to us that we keep a man in jail. I would hate  
20 to have it on my conscience that I kept a man from his sick  
21 mother, dying.

22           Now, page 22. Brady is not a brilliant jurist, I  
23 never claimed I was. But he may, with diligent study, learn  
24 to become an adequate jurist. That adequacy combined with  
25 the respect and dignity with which he regards defendants,

1 could make Brady a municipal, a brilliant municipal court  
2 judge.

3 Now, this is from the man who made the report. This  
4 is the garbage that they took out in the redrafting of it.  
5 All right. And in here the parts where it says both  
6 judges will dismiss charges where the arresting officer  
7 has failed to submit a report of the arrest, he gives  
8 examples of this on there, which we do on illegal com-  
9 plaints that are not proper, they are dismissed summarily.

10 All right. Then we have been the loitering arrests.  
11 And these date back to the Pow Wow. Now, I don't know  
12 whether any of this committee has ever been a guest at the  
13 City of Flagstaff during Pow Wow. But if you haven't  
14 been, you should attend. Because during the week end of  
15 Pow Wow, it flat looks like it's raining drunks all around  
16 this town. They are in people's back yards, they are under  
17 trucks, they are in cars, they are just everywhere that there  
18 is. And there is a problem of getting them for their own  
19 protection, to keep them from physical injury, from being  
20 run over, rolled, and so on, to get them off the streets.

21 Now, I am prepared here, if you would like to go  
22 through the arrest reports from the '71 Pow Wow, and we'll  
23 go through the one of the '75. The sentences are mostly,  
24 unless the offense is serious, if it's an alcohol-related  
25 offense, one day. Long enough to get them out of the way,

1 sobered up, they sleep where it's safe, and then they are  
2 released to go back out and celebrate. I have been to 25  
3 Pow Wows here, I know of what I speak. And they talk  
4 about the arrests. Okay. I observed a subject for a  
5 period of three or four hours sitting on the sidewalk in  
6 front of the Club 66. She became progressively more in-  
7 toxicated and then was no longer able to sit and just fell  
8 over. She was arrested for her own protection and in-  
9 carcerated in the county jail. This is full of those.

10 The disturbing the peace, we've heard talk about  
11 that, well, they don't think it's right for an officer to  
12 sign a complaint on someone who curses them. Now, I dis-  
13 agree. For the simple reason it says nowhere in that  
14 statute, when you disturb the peace and quiet of the neigh-  
15 borhood, or the peace and quiet of the complainant or  
16 other persons, by loud or unusual noise, by tumultuous or  
17 offensive conduct, by threatening, traducing, quarreling,  
18 challenging to fight or by fighting or by the use of  
19 violent, abusive or obscene language and it doesn't say  
20 at the bottom that this does not apply to police officers.  
21 In no way.

22 Now, the percentage of arrests in disturbing the  
23 peace, we average somewhere around, between 40 to 60 a  
24 month. The percentage out of that maybe three that the  
25 police officers will sign. And that's because every foul



1 four-letter word that you can think of has been used on  
2 them. Now, -- and we heard some talk about the supreme  
3 court ruling. That's quite interesting.

4 In Gooding versus Wilson, prohibiting certain types  
5 of language must limit their prohibition to fighting words.  
6 Well now, if somebody called you those words, or me, we'd  
7 fight. And it's true also, but they neglected to mention  
8 this, that there is no law in Arizona which states that a  
9 police officer's peace may not be disturbed. But Supreme  
10 Court Justice Powell, in an opinion on Lewis versus New  
11 Orleans, in these words curses to a police officer had  
12 been addressed by one citizen to another face to face and  
13 in a hostile manner, I would have no doubt but they would  
14 be fighting words.

15 All right. Presumption of guilt. They may induce  
16 a defendant to give up his intention to plead not guilty.  
17 A defendant may be told that he has pled guilty when in  
18 fact he has not.

19 On June 23rd, number 57 was brought before Brady  
20 on scruple charges of writing a \$5.00 check on a closed  
21 account. The defendant explained that he'd been on vacation,  
22 that he'd just made a deposit of \$80.00 to his checking  
23 account, he was not aware that the bank had closed his  
24 account.

25 After conversation with the defendant about the cir-

1 cumstances of the check, the judge said well, how do you  
2 plead? With a puzzled expression on his face, the defen-  
3 dant said, well, I'm guilty of writing the check. Brady  
4 interrupted then, all right, the court will accept your  
5 plea of guilty, however the sentence was withheld until  
6 June 24th pending reconciliation of the check. It was  
7 expunged from the defendant's record by Judge Brady.  
8 And the charge dismissed.

9 All right. Now, we've had some talk about how it  
10 comes that you're given time to pay a fine in the city  
11 court. The proper procedure and it's followed to the  
12 letter. Now, I might add this, Mr. Gaylord doesn't really  
13 know, he doesn't practice in the city court. And the  
14 records will show Mr. Mickeljohn doesn't practice in the  
15 city court, and Bryan Short, as far as I know, is not even  
16 an attorney. I question their ability on the basis of  
17 this report to sit in judgment of the procedures in the  
18 city court. Now, when a sentence is rendered on a plea  
19 of guilty at arraignment for a finding of guilty at the  
20 trial, the judge will, unless the sentence is a straight  
21 jail term, include an alternative sentence in the familiar  
22 pattern of one, 20 or 30 days.

23 Now, these sentences are authorized by the Arizona  
24 Revised Statutes, we are not doing anything wrong regarding  
25 that. Arizona Revised Statutes, 13, 1648, all right.

1           The municipal court judges ask each defendant who's  
2 punished by a fine, how long will you need to pay the fine?  
3 Now, Judge Brown may ask that. I don't, I say are you  
4 prepared to pay your fine at this time or will you need  
5 some time to pay it? I'm well aware of the rules of the  
6 supreme court regarding this matter. So therefore we give  
7 them the time and the observer goes on to say, in the  
8 Flagstaff City Court, the standard reasonable time could  
9 be 30 days, or the defendant may need and be allowed only  
10 a few hours or he may need and be allowed two months.

11           And upon any showing at all of good faith on the  
12 part of the defendant, Judge Brady, as Chief Magistrate,  
13 will grant further extensions.

14           No justice, no fairness? All right.

15           Now, we come to the bail, the ROR. I heard the  
16 testimony in this case today regarding the Indian subject  
17 who testified that the officer demanded \$12.00 and so on.  
18 I didn't know anything about that case until it was brought  
19 to my attention by Louise Gibson from DNA out of Tuba City  
20 who called me regarding that. She also sent me a copy, she  
21 told me she had contacted the chief of police and that she  
22 was told by him that that was standard procedure and that  
23 it was set up by the city court.

24           I told her, no way, a traffic citation may be signed  
25 by the person getting it unless there are extraordinary

1 circumstances. I went down and talked to the chief of  
2 police and told him that that was not so, it had never  
3 been an order of the court, and he said well, we always  
4 do it to the Indians, and I said well, you're wrong, that  
5 procedure should be stopped immediately.

6 And as far as I know, it has.

7 All right. I know proper procedure on a traffic  
8 violation.

9 Now, there's -- it's been said that it's hard to  
10 get an ROR in city court. That's a misstatement, it's not  
11 true. The only time that you will be denied release on  
12 your own recognizance by me in the Flagstaff City Court is  
13 if you have a prior, where you failed to appear for an  
14 arraignment or if you failed to comply with the court  
15 order where you were given time to pay a fine and didn't  
16 do it.

17 It also says, by orders of the supreme court, if  
18 the judge has reason to believe, and he may use his judi-  
19 cial discretion, that the defendant may not show up for  
20 arraignment or trial, he does not have to grant ROR.

21 It's at his discretion. However, I have no reason not to  
22 if they don't show up we can go ahead and issue a warrant,  
23 they come back through town, they're picked up for another  
24 offense, then we will have them and drop it on them.

25 There's been some talk here by the gentlemen from NACA,

1 and I was happy to hear somebody admit that we did have  
2 NACA interpreters in court over this past 4th of July,  
3 somewhere in here I'm not exactly sure, I think it was by  
4 the attorney, said -- or no, it was Kammer who said that  
5 interpreters were there but they were not used.

6 We had two, Phoebe Hill (P), from NACA and Rose Benally  
7 and Ladies and Gentlemen, they were used. They read the  
8 en masse rights to them, those who could not speak  
9 English and now I might add this, also, at Pow Wow time  
10 when the Indians all come to town we get many, many more  
11 longhairs who do not understand the language. We under-  
12 stand this, we try to bend over backwards to see that they  
13 do understand the proceedings that's going on. They know  
14 from past years that the penalties, one day. Which they  
15 have already spent the night in jail, they know what to  
16 expect.

17 Now, there's been talk about all these people  
18 pleading guilty, has anybody given any thought to the fact  
19 that maybe they were, that they were apprehended actually  
20 in the commission of the offense?

21 We are talking only about low misdemeanors. Alcohol-  
22 related offenses and we have a terrific alcohol problem  
23 being this close to the reservation border. Since they  
24 did away with the D and D charge, they did away with the  
25 LARC, it is a problem. But what in the name of humanity

1 are we going to do with these drunks who are passed out  
2 in the alleys, in the streets, in the doorways, and now  
3 with winter coming on, unless we get some action somewhere,  
4 and get a LARC started back again? NACA is doing its  
5 best, we work with Native American for Community Action,  
6 when I took over this court I got a grant from Justice  
7 Planning Agency, got a full time probation officer, first  
8 in the state. He works as a hub for the spokes of the  
9 wheel are the various agencies around town that we work  
10 and cooperate with.

11 NACA is one of them, we refer alcoholics, Indian  
12 problems to them, they are able to refer them to counselors  
13 on the reservation, we put them on probation with the  
14 number one provision that they will attend counseling  
15 and guiding, we get reports back regarding the progress  
16 they're making. It's a good program.

17 Now, we also work with vocational rehabilitation, we  
18 work with the American Legion, we work with the Veterans of  
19 Foreign Wars, Coconino Guidance Clinic, if somebody comes  
20 into the court they have a mental problem, we can help  
21 them, an alcoholic problem we work with the recovery house,  
22 if they need a better job we can arrange for their training  
23 under vocational rehabilitation and through the state un-  
24 employment service we can even help them find a better job.

25 All right. Now, Mr. Kammer even mentions, on page 55,

1 that we talked about interpreters then. That it was a  
2 fundamental necessity. And Judge Brady is seeking authori-  
3 zation from the city council to employ such a worker,  
4 since the new worker would presumably work five days each  
5 week an arrangement for the other two days could be  
6 made with the Native Americans for Community Action or other  
7 local agency which has contact with larger numbers of  
8 Navajo-speaking persons.

9 All right. I think I've probably covered enough  
10 here. I might mention on the ROR's, Mr. Kammer's observa-  
11 tion, nevertheless a showing by the Flagstaff Municipal  
12 Court that an OR release of a reservation Indian does not  
13 reasonably assure his appearance in court as required and  
14 could be destructive of the case. Strong evidence in the  
15 court's favor, strong evidence in the court's favor is the  
16 fact that the court, on July 11th, had warrants issued  
17 on defendants who had failed to pay almost \$22,000.00  
18 by the time specified for payments. Not all of that is  
19 due from reservation Indians, but it is not unreasonable  
20 to suspect that the majority of the delinquent fines may  
21 involve reservation Indians.

22 Now trials. In that final draft it says the few  
23 trials that we have in city court. We are averaging over  
24 a 1,000 cases a month in city court, we are holding trials  
25 on Tuesdays, Wednesdays and Thursdays and had these gentlemen

1       been practicing in city court they would have known that.  
2       We have a calendar that is almost beyond belief, but on  
3       Mondays we have boundouts and the in-custodies, Tuesdays  
4       we have trial all day, Wednesdays we have trials all day,  
5       Thursdays all day, Friday we have in-custodies and traffic  
6       court.

7               Every third week I work seven days a week. Holding  
8       the initial appearances for the county. Okay.

9               Now, there's been some talk about the en masse  
10       proceedings that we use in city court. I would like to  
11       just say at this time, tell you where it came from.

12              I attended a judicial conference put on by the  
13       American Academy for Judicial Learning at Denver, Colorado.  
14       One of the people or the instructors that we had there,  
15       and it was a most learned group, was Judge Joseph Barnard.  
16       Judge Barnard is the presiding judge of the Recorder's  
17       Court at Birmingham, Alabama, he graduated from Birmingham  
18       Southern College and also his law degree, University of  
19       Alabama. Former district deputy attorney for the Judicial  
20       Circuit of Alabama, faculty of '71-74, various state and  
21       national academy instructor and now American Academy of  
22       Judicial Education.

23              Judge Barnard, a very well-educated man in the pro-  
24       fession of law, Judge Barnard. And this is the one he gave  
25       me at the conference, made this up, it passed the Supreme



1 Court of the State of Alabama, it was passed out to the  
2 judges, some 52 of us at the conference, and he told us  
3 that this covered everything that a defendant needed to  
4 know as far as the rights are concerned.

5 It's been said in the report that we say that a  
6 defendant has the right to have an attorney to represent  
7 them, however in most of the cases in this court, and we're  
8 talking about the low misdemeanors, a defendant may pre-  
9 sent their own case and the services of an attorney are  
10 not really required.

11 However, should any of you desire a lawyer, if  
12 you will inform the court, you will be allowed the oppor-  
13 tunity to employ or otherwise retain counsel. Now, should  
14 you not care to act as your own attorney, and are shown  
15 to be indigent, the court will appoint an attorney for  
16 you at no cost to you.

17 If you wish to make application for a court-appointed  
18 attorney, you will so advise the court and you will be  
19 given the opportunity to do so.

20 THE CHAIR: Is indigent operationalized, do they  
21 know what that is? Most of the persons who appear before  
22 you, are they able to clarify indigent?

23 A Well, indigent or without funds, now I don't know  
24 how you can make it any more plainer than that

25 Q (By Mr. Williams) Are you using DES guidelines?

1           A     In fact, our superior court has come up with even  
2 a better one than that. These are the advisements, the  
3 mass advisements, and it's also been ruled by the superior  
4 court who is the chief judge of this county, Judge Thomas  
5 Brooks, that the en masse advisements is all right.

6           Q     (By Mr. Levis) Judge Brady, excuse me, before you  
7 go on, if we could identify this as Exhibit Number 6, that  
8 is the municipal court advisement of defendants' rights  
9 prior to arraignment.

10           I just have one other question, if you're going to  
11 go through --

12           A     I sure am.

13           Q     -- this document page by page, I would prefer,  
14 because of the late hour, if we could just enter this as  
15 Exhibit 7, that is the information that Judge Brady has  
16 provided starting with the letter to the ACLU, dated  
17 October 24th and I think you've discussed many of the  
18 things in here, if you could briefly, like in less than  
19 five minutes, talk about it, I'd really appreciate it because  
20 I think there's some committee members --

21           A     Less than five minutes, very well, I'll just quote  
22 from each letter, how's that? Who it's from and --

23           Q     If that's okay. Because I know there are committee  
24 members who have questions and it is 6:00 o'clock now.

25           (Short recess)

1 THE CHAIR: We're ready to proceed.

2 Q (By Ms. Lyon) Judge Brady, we'd appreciate it,  
3 as Mr. Levis mentioned, if you would limit the remainder  
4 of your remarks to five minutes. Whatever else you would  
5 like to submit into the record we would be happy to  
6 receive, and we will have some questions to ask you which  
7 pertain to the general subject of our whole study.

8 A Very well. Then in the five minutes, first of all,  
9 there's been a recommendation by these gentlemen before  
10 the hearing was ever concluded regarding attorney judges.

11 Okay. Now, during the spring term of the Supreme  
12 Court of the United States they came out with a decision  
13 regarding this, it's in the case of North versus Russell,  
14 this case has not yet achieved notoriety and at the present  
15 time it looks a little auspicious. However, presently  
16 there are over 15,000 lay judges in this country, our  
17 forefathers thought that it was sufficient that the layman  
18 hear the small misdemeanors and so on that are committed  
19 by their fellow man.

20 However, it's also notable that there are over 30  
21 states which have criminal trial courts in which the pre-  
22 siding judge is not an attorney. It's also been held the  
23 fact that a justice of the peace or the city magistrate is  
24 not an attorney does not mean that he is, per se, unqualified  
25 to declare the law in the limited type of situations over

1 which he has jurisdiction.

2 The fact that a judicial error may be committed in  
3 a proceeding does not necessarily imply a denial of  
4 due process of law. The 14th Amendment to the United  
5 States Constitution does not assure any of us immunity from  
6 judicial error.

7 Beck versus Washington, Arizona Appeals Courts,  
8 U.S. Courts. So it's been held.

9 You know, isn't it funny? I read an article in  
10 the paper last night that there's 20,000 attorneys out of  
11 jobs. We have 15,000 lay judges. Coincidence. Okay.

12 The problem is not feasible in the State of Arizona  
13 due to the fact that our outlying districts we don't even  
14 have any attorneys to make judges out of there, not that I'm  
15 implying that they will make better judges or serve up a  
16 better brand of justice than myself or Judge Garcia, that  
17 they would have more understanding, that they would have  
18 more compassion, show more mercy in the court than myself.  
19 I have endeavored to increase my education, shall continue  
20 to do so, should the city council see fit to keep me on.

21 All right. Now, I have here --

22 THE CHAIR: Do you have any more items --

23 A Yes, I do.

24 THE CHAIR: -- as part of an exhibit?

25 A No. I wanted to get into the record just statements

1 from each one. And I want to tell you what these are.  
2 These are letters from the practicing attorneys in the  
3 City of Flagstaff who practice, if not daily, but weekly in  
4 the Flagstaff City Court. The first one from Sam Clements,  
5 a third-year law student who was present in the court at  
6 the time that this alleged investigation was being made,  
7 and as he says, in his letter, that neither Jack nor I  
8 knew much about the Flagstaff Municipal Court. His period  
9 of observation coincided with my internship under the city  
10 attorney, so he and I are drawing from the same cases and  
11 arraignments.

12 I take issue. I'll just mention a few things in  
13 here. All right. Now, in truth, Magistrate Brady, you  
14 do not need to be defended by me or anyone else. You've  
15 built your own defense by your years as a fair and im-  
16 partial magistrate, concerned for the rights of all  
17 parties.

18 It was my privilege to practice before you this  
19 summer, your record speaks for itself. There's his  
20 certification as a third-year law student. So we know  
21 what he was.

22 And then we have Aspey, Watkins and Diesel, a firm  
23 here in Flagstaff, an unsolicited response, it is certainly  
24 worth reading and I believe being considered by this  
25 committee.

1           It is our considered opinion, in the fourth para-  
2 graph, that you, Judge Brady, although not a lawyer,  
3 possess the integrity, the judicial knowledge, the honesty  
4 and above all the common sense necessary in the making  
5 of good magistrates. The people of Flagstaff should be  
6 proud to have a man of your proven ability.

7           Now, my learned, not adversaries, this is not sup-  
8 posed to be an adversary thing, they have passed over  
9 this very lightly. Insignificant. It's not important.  
10 It's important to me, it's important to the City of  
11 Flagstaff, to the people in Flagstaff, how the attorneys  
12 feel.

13           Garbarino and Lee, Attorneys at Law. I have had  
14 occasion to prosecute and defend in many of the lower  
15 tribunals throughout the state, and I can say without  
16 hesitation that justice in the Flagstaff Municipal Court is  
17 superior to any of the other courts I've practiced in.

18           John Grace, Attorney at Law. I have perused the  
19 report prepared by one Jack Kammer, who I don't even know,  
20 and I'm somewhat amiss as to how he appoints himself amicus  
21 curiae, so I offer a few comments.

22           Now, you want me to make it short, since your term  
23 on the bench I have observed an upgrading of the dignity of  
24 the municipal court as truly a court of law. You have  
25 followed very well the Arizona Rules of Criminal Procedure

1 and the rules of court for the municipal court, which, when  
2 prepared, were approved by a committee of the Coconino Bar  
3 Association of which committee I was a member.

4 All right. He casts aspersions both directly and  
5 by innuendo in the operation of the court. I would challenge  
6 him or anyone else to find any specific instances where  
7 your court has been unfair or misleading.

8 Verkamp and Verkamp. We both felt the criticism  
9 in general of your court was distinctly off base and mis-  
10 leading.

11 So it wasn't just my opinion. My opinion and the  
12 opinion of these gentlemen who practice in the court. The  
13 language problems experienced by the court and some of  
14 the non-English-speaking Indians do represent a problem.  
15 Granted, I know that, I'm trying to correct it.

16 All right, now in closing, may we say that we feel  
17 that our Flagstaff City Court system is one in which all  
18 of its citizens can be proud, we commend you personally  
19 for your role and offer our continued support also.

20 Another point that should be noted is the immense  
21 administrative task which you have in just processing the  
22 hundreds of cases filed in your court each month. People  
23 think a judge has an easy job. Sit on his tail and sentence  
24 people.

25 Stevenson, Warden and Smith. I have, at this time,

1 previously reviewed the above report, I'm shocked at the  
2 manner in which it was obtained. This is an ex-county  
3 attorney who has practiced superior courts, state courts,  
4 other state courts, Ninth Circuit Court of Appeals, and  
5 federal courts in Washington.

6 All right. He feels that the procedures used in  
7 the Flagstaff City Court are beyond reproach. He also  
8 makes the statement it's peculiar to me why the ACLU would  
9 waste its time on the Flagstaff Municipal Court when in  
10 fact it could be used more profitably in other areas.

11 One more. William Egan, Attorney at Law. All  
12 right. Because I have also practiced in many lower courts  
13 throughout the State of Arizona, I can compare your court  
14 with many others. And in my opinion the Flagstaff City  
15 Court is far more superior than any others I know. Mr.  
16 Kammer's report is too greatly concerned about techni-  
17 calities and not sufficiently concerned about fairness  
18 and impartiality and justice.

19 Okay. I realize the time is running short, I'll  
20 rest my case.

21 THE CHAIR: Fine, we have some questions we would  
22 like to ask.

23 A I was sure you would have.

24 Q (By Ms. Lyon) Thank you. Well, may I reiterate  
25 that any additional material you would want to submit for



1 the record now or within the next 30 days, the commission  
2 would be happy to receive, let me also reiterate that this  
3 is not an adversary proceeding, the purpose of this hear-  
4 ing is to hear testimony from witnesses on the facts as  
5 they perceive them, and this you have given us. And we  
6 have some questions which bear directly on the adminis-  
7 tration of justice for Indians in the State of Arizona,  
8 which, based on your very extensive experience, I feel  
9 sure you can give us your opinion on if you would, sir.

10 A. Very well.

11 Q. First of all, you did mention that you would take  
12 care of the matter of the interpreter. And --

13 A. Yes, Ma'am.

14 Q. I would be very interested in hearing from you how  
15 the plan to approach that.

16 A. Well, with the City Council of the City of Flagstaff  
17 there -- you -- the procedure is you make out a budget,  
18 and you submit it, and they tell you now don't put that in  
19 ink because some of it's going to be erased. I now have  
20 a committee to the court from the city council who know  
21 and understand the needs of the court. Now, there's  
22 something that I didn't mention here, we have \$76,000.00  
23 out on accounts receivable right now. Fines that I have  
24 given, and Judge Brown, people time to pay. That's a lot of  
25 money. Some of it is going to be accounts uncollectable.

1           Okay. We started this, of course, when the supreme  
2 court ruling came in when the new rules were promulgated  
3 in '73, and it has just kept building up more all the  
4 time. I needed more office help. I went to the council  
5 and I cried, I begged, I threatened, and so on, I couldn't  
6 get them to give me anybody. So in order to get additional  
7 help, I got a COE girl from the high school. Then through  
8 SETA, I got another girl. Then I got the city council  
9 to finally give me another full time girl in the office  
10 that I put to handling traffic citations and accounts  
11 receivable. So that we could work on this.

12           Okay. In case you're interested, at the present  
13 the total amount of fines past due in the city court,  
14 \$76,624.60. You know, if I had somebody to work these  
15 accounts receivable, now the procedure on that is this,  
16 they are asked how much time they need to pay the fine,  
17 how much time will you need. They say 30 days, 60 days,  
18 or sometimes they'll say, oh, I'll pay it next payday,  
19 but that's not so. They can't pay it all in one payday and  
20 I can understand that, if they do, then if it's a non-Indian  
21 the rent doesn't get paid, there's no food on the table,  
22 they turn the lights off and so on. So we'll go ahead  
23 and in the most cases, 60 days to pay it and more as it  
24 states in Kammer's report, if they make any effort at all  
25 I'll give them more time.

1           Here's a breakdown, in case you're interested. The  
2 status of the warrant file in city court at this time,  
3 during the month of September, 1975, we made a search of the  
4 warrant file to ascertain the status. It was found that  
5 a total of 1,005 warrants were issued and a total of  
6 825 persons, which means that some of these people have  
7 more than two charges. The types of warrants that are  
8 covered in this report are, warrants for failure to appear  
9 for arraignment or trial, they're generally of two kinds,  
10 first those that are released by the police department  
11 after being charged with the commission of a crime, the  
12 commission of a crime and are released in the custody  
13 of some other person but they'll fail to appear for  
14 arraignment.

15           Second is the pretrial release where the defendant  
16 is released on their own recognizance with no bail re-  
17 quired and has pleaded not guilty.

18           The third failure to comply with a court order, these  
19 are persons who are found guilty in a court trial or have  
20 pled guilty to some charge and sentenced to pay a fine.  
21 The court withheld the imposition of sentence and they  
22 were given time to pay the fine within a specified time.

23           Now, if the fine is not paid within this specified  
24 time, a letter of reminder is mailed to these persons  
25 giving them an additional 14 days to contact the court to

1 make some arrangement for payment. At the end of this  
2 time, if we have not heard from them, a warrant is  
3 issued by the court.

4 Q May I ask, sir, is the purpose of your statement  
5 to illustrate how you will fund the position of interpreter?

6 A Yes. Basically if I can collect some of the fines.

7 Q Well, would you care to submit that into the record  
8 also?

9 A Okay. We have a lot of fines outstanding, if the  
10 court is able, and I have explained this to some of the  
11 councilmen, to obtain another employee, for the -- to  
12 work on this, we can increase the income of the court, we  
13 can also, it was my intention and, as Tom Gonzalez, from  
14 NACA, told you, I was going to hire a full time bailiff  
15 and also to assist in the court records, and he was to be  
16 a Navajo, an educated Navajo who would know and understand  
17 the -- he would be trained in the court, he would under-  
18 stand the workings of the court, and this sort of thing.

19 Q Who would do the training?

20 A Who would do the training?

21 Q Yes.

22 A He could be trained by the superior court or he  
23 could be trained in the working operations of the city  
24 court, he could observe, we could train him ourselves.  
25 You see, the city court is a misdemeanor court, I mean we're

1 limited, very limited, so his knowledge, what he would have  
2 to understand is how to break down the terms we've been  
3 criticized for using the word arraignment, indigent, the  
4 -- this sort of thing, and I don't know how you would  
5 break that any -- or down any further than indigent, without  
6 funds, or able to pay, the arraignment or hearing, now  
7 this is the way I put it, this is an arraignment or a  
8 hearing, and you are here to be heard. How much plainer  
9 you can make that, I don't know.

10 Q All right, if we might get back to the subject,  
11 then --

12 A All right.

13 Q -- have you explored the possibility, since this  
14 appears to be a unique problem, the need for a Navajo in-  
15 terpreter, have you explored the possibility of assistance  
16 through the state Judicial Planning agency, I submitted an  
17 application for help through Mr. Berger, Leon Berger, who  
18 works on these grants for the city. And it was under-  
19 stood, we've made it all out that I wanted a bailiff, and  
20 he -- he would be able to talk Navajo and so on, what his  
21 duties would be and then I went on a week's vacation.  
22 And when I came back, there was \$5,000.00 granted for a  
23 study on the proper way to file papers between the police  
24 department and the city court, and possibly going to a com-  
25 puter system.

1 Q Well, I would strongly encourage you not to give up.

2 A Oh, I am not going to give up.

3 Q LEAA does have an Indian programs manager in Washing-  
4 ton. Mr. Dale Wing, and if all else fails, I would en-  
5 courage you to contact Mr. Wing and get his advice on how  
6 you might get this position filled because we have, I  
7 think, seen it demonstrated today, and you have agreed  
8 that this is a very crucial need.

9 A Absolutely, and I think that perhaps on the basis  
10 of this hearing, the need brought out before everyone,  
11 and so on, may help me but definitely when the council  
12 meets tomorrow night.--

13 Q Well, let us devoutly hope so.

14 If we might quickly progress to some of the other  
15 questions that we have.

16 A Very well.

17 Q Very briefly then, what are the types of cases that  
18 you hear, you mentioned that they were largely misdemeanor  
19 cases?

20 A They are all misdemeanor cases.

21 Q I see. I believe you stated to commission staff  
22 that 65% of the misdemeanor defendants are Indian people?

23 A I would say possibly between 55% to 65%, yes.

24 Q What is -- excuse me.

25 A Go ahead. This -- and these are mostly the Native

1 Americans do not really commit, shall we call the real  
2 serious offenses, they are the low misdemeanor, that is  
3 the alcohol-related offenses, in the majority.

4 Q What is the most frequent charge that Indian people  
5 appear before you on?

6 A I'd say under the present time, trespassing, public  
7 nuisance.

8 Q This would be trespassing into private property?

9 A That's right, they are finding them in people's  
10 back yards, in their cars, on their porches and so on.

11 Q Under what circumstances do you release individuals  
12 on their own recognizance and when must they post bond?

13 A I explained that before, however I'll do it again.  
14 I will release them on their own recognizance if they have  
15 not, in the past, failed to appear for arraignment or  
16 failed to comply with a court order when given the oppor-  
17 tunity to pay a fine.

18 Q And this would include residents of Indian reser-  
19 vations?

20 A Absolutely. As I also explained before, that I  
21 have no feelings about this because if they fail to appear,  
22 we can issue a warrant for their arrest, if they're  
23 picked up again and the warrant is in the file and can be  
24 served on them.

25 I don't worry about extradition, I don't try to bring

1       them off the reservation at all.

2       Q.     You don't?

3       A.     I went with Judge Garcia to talk to Chief Dart up  
4       at Window Rock, and there is better cooperation now that  
5       came out of that meeting, however, I do not process any  
6       warrants on the reservation.

7       Q.     Was this in August, the meeting that you referred to?

8       A.     Was it where?

9       Q.     What month was that meeting with Chief Dart?

10      A.     Let's see, it was about a month before last, I  
11      guess.

12      Q.     I see. Well, I note that as of July 13th of 1975,  
13      according to information you gave our staff, reservation  
14      Indians accounted for 188 of the 288 persons who owed  
15      unpaid fines.

16      A.     Uh-huh.

17      Q.     What do you do, you say you just let these cases  
18      go?

19      A.     Right. If they fail to pay, then a warrant is  
20      issued according to the rules and then sooner or later,  
21      why, they'll come in.

22      Q.     But you do not routinely request the cooperation  
23      of tribal police, if a defendant fails to pay?

24      A.     No. And for this reason, if you send a warrant to  
25      the reservation, and a person is picked up, then they have



1 the right to a formal hearing by a reservation judge as  
2 to whether this warrant will be -- it's the same as if you  
3 try to extradict them from the next state or so on. So  
4 -- and here again I say these are misdemeanors, and I  
5 just don't feel that it's worth it to push it that far.  
6 There are other ways.

7 Q And what would these other ways be?

8 A As I already said, a warrant will be issued for their  
9 arrest and should they come back to the court's attention,  
10 with a warrant in file, then they will be given due  
11 process.

12 Q I see. Would this include a notation on their li-  
13 cense -- driver's license number?

14 A No. Only on a traffic offense.

15 Q I see.

16 A That's state law.

17 Q I see. What recommendation would you have regarding  
18 the legalization of alcoholic beverages on Indian reser-  
19 vations in this area?

20 A Well, I think they should. I think that if alcohol  
21 was legalized on the reservations, that we'd save some of  
22 the accidents coming and going. I also feel that though  
23 it might be an increase in alcoholism at first, that when  
24 it became available and easy to get, that this would then  
25 wear off, and they would settle down to a normal, about the

1 way they are now, to coming to town and getting it. It  
2 would certainly ease the situation in the fringe reserva-  
3 tion towns regarding law enforcement for alcohol-related  
4 offenses if they could get it on the reservation.

5 It would also, of course, if it was controlled by  
6 the tribe, which it should be, provide added income to the  
7 tribe.

8 Q What type of cooperation do you have with the  
9 Navajo and Hopi Tribes, and with NACA specifically, I  
10 mean is there routine procedure that you follow or do you  
11 contact them as needed?

12 A Right. We have a working arrangement with NACA at  
13 this time that, before we have our arraignments in the  
14 morning, that one of the girls calls down and tells them  
15 about it so they will be there for the arraignments. Then  
16 if we have an alcohol-related offense that the court feels  
17 that this person needs some guidance and counseling,  
18 that it appears that they are getting too many charges of  
19 alcohol-related offenses, why then we refer them to NACA.

20 We put them on probation, refer them to NACA on a  
21 regular form, and then they are able to refer them for  
22 counseling and guiding on the reservation.

23 Q One final question. You mentioned, and I quote,  
24 we do have problems, unquote. Are these any problems we  
25 have not yet discussed?

1           A       Well, the number one that I feel is -- is the  
2 interpreter, and also working with NACA now who has offices  
3 here in town, and with Mr. Gonzalez and Mr. Wood, if  
4 there are problems that come up regarding the Indians, and  
5 I do get contacted every day on some of these things, why,  
6 I think that we have a better working relationship now  
7 and that it will increase, it will get better as time goes  
8 by.

9           The -- and with a full time interpreter, I can't see  
10 anything but good come out of it, that's all, because the  
11 rights will definitely all be read then in Navajo by some-  
12 one who is more apt to explain it in a better way than as  
13 I heard today from a prisoner who happens to be in custody  
14 at the time, although many of those are very well educated  
15 and are able to speak the language very well. But with  
16 NACA coming in and should Rose be there on these mornings,  
17 she makes an excellent interpreter, although she has  
18 trouble with -- in her Navajo with some of the words.

19           However, if we knew we were going to have her all  
20 the time we could probably break that down.

21           MS. LYON: I have no further questions.

22           Any committee members have additional questions?

23           Q       (By Mr. Levis) I have a few very quick ones.

24           A       Shoot.

25           Q       What are longhairs?

1           A     What are longhairs?     These are the older Indians  
2 who still wear their hair in the old style, it is a cue  
3 sort of thing in the back, and it's in a roll, I might --

4           MS. LYON:   Turn around, Trudy.

5           A     Right.

6           Q     (By Mr. Levis)   The reason I asked is because there  
7 are several different types of longhairs, and I don't think  
8 it was clear earlier.

9           A     No, I was speaking of the Indian.   Well, we've got  
10 some other Indian longhairs too, look at Tom Gonzalez.  
11 Ron Wood, too.

12          Q     The other concerns are based on my information is  
13 that the rules of the city court that you referred to in  
14 one of your letters were approved by the county, the county  
15 bar association in 1971, which is two years before the  
16 Arizona Rules of Criminal Procedure went into effect, and  
17 to the best of my knowledge, they have never been adopted  
18 by the Arizona Supreme Court, so --

19          A     If you'll notice, these rules do not change any  
20 laws, they are mostly on the duties of the court, the  
21 scheduling, the 48 hours notice in the city court before  
22 a motion for a continuance and this sort of thing.

23          Q     Okay.   But they don't have the force of law only  
24 because of the fact they have not been approved by the  
25 supreme court and by the rules they have to be before they

1 can be used in lieu of the supreme court rules.

2 A Well, we could very well change that from rules to  
3 actually regulations or something like that, these were,  
4 we made them up to get some kind of -- and they're sup-  
5 posed to be revised every three years, so they -- we intend  
6 to do that.

7 The committee from the bar association and myself  
8 will be trying to get that straightened out, it was  
9 brought to my attention, and if they feel that it's  
10 necessary to revise these rules or just forget them, and  
11 go by the new rules, then that's the way we'll go.

12 Q Two other quick points. You talked about legal  
13 technicalities and you're more concerned about individual  
14 rights, unfortunately I think that legal technicalities are  
15 what make the rights and the rules of civil procedure I  
16 think you could very easily argue are legal technicalities  
17 and everything else that involves the law is, and that  
18 gets to an issue concerning the LARC law. And we have an  
19 opinion by the state attorney general in this state, who  
20 said his biggest concern concerning the public drunkenness  
21 law is not the fact, as I understand it, that people are  
22 not arrested but that people are arrested as a result of  
23 this. And my question is, based on his opinion and the  
24 fact that the says that the county and the city and the  
25 state has an affirmative duty to establish LARCs, and the

1 fact that the City of Flagstaff does not have a LARC, and  
2 then he also says that you have a problem if you arrest  
3 somebody, how do you feel with this situation because it  
4 appears to me that the police are in violation of the law  
5 for arresting someone. You, possibly, are in violation of  
6 the law for finding someone guilty, and the city and county  
7 are in violation of the law of not having a LARC center.  
8 Have you ever thought about that? The attorney general's  
9 opinion?

10 A The attorney general lives in Phoenix, and it's nice  
11 and warm down there and the drunks can lay out all night.  
12 Or they have a LARC to take them to. But here, up here  
13 and in these northern counties, we don't have that, and  
14 they can very well freeze to death, you see.

15 All right. Now technicalities. Sure, a bad arrest  
16 is made or perhaps -- but from the humanitarian side or  
17 from the Indian side himself, or from the Indian people,  
18 would they rather thave these people taken from the cold  
19 out of the streets and wherever it is that they're found,  
20 even across the railroad tracks, stretched out, and brought  
21 to safety and warmth, to where they have a place to sleep  
22 and a meal in the morning and then are released, or would  
23 they, because of the technicality of this law, would they  
24 rather have them left there? Now --

25 Q Are you saying, then, that you have other concerns,

1 I don't know if the word is beyond or above, and I'll let  
2 -- you can almost fill in the last two words if you'd like  
3 to.

4 A Bill, I'm only a small town judge. I've tried to  
5 treat these people the way I'd want to be treated myself  
6 and I would not want to be left laying out in the cold,  
7 drunk, and unable to keep myself warm. I'd rather they  
8 picked me up, take me where it's warm and I'll talk to the  
9 judge in the morning, because I would know that he under-  
10 stands.

11 Q One final question. It's my understanding that  
12 Judge Brown is an associate or an assistant magistrate  
13 under you. Many of the charges in both the preliminary  
14 report and the final report are addressed to his court. His  
15 procedures.

16 A Right.

17 Q What is being done concerning those allegations  
18 and also what is being done, I think you mentioned to me,  
19 concerning bringing in a full time magistrate who has had  
20 formal training?

21 A The good Lord's willing and the creek don't rise,  
22 why, next July the budget comes out, there will be money  
23 for a full time magistrate, if not before. If it must  
24 happen before, possibly we can get it done and the way the  
25 caseload is now, why, I'm sure that something will be done

1 before then. Beyond that I can say no more, it rests in  
2 the hands of the city council.

3 Q Or in the hands of anyone who wants to deal with it  
4 on a different level, I suppose, too, as far as a lawsuit  
5 is concerned?

6 A Well, yes. Right. Judge Brown is quite elderly  
7 now, he's been with the city for nine years, I don't know,  
8 he -- he sometimes doesn't listen as well as he should.  
9 I have this problem. But hopefully that will be corrected  
10 before too long.

11 Q We were going to permit Mr. Gaylord and Mr. Meiklejohn  
12 if they'd like, to a short five minutes to rebut if they'd  
13 like, to anything that Judge Brady has said, and I'd like  
14 to ask them if they'd like to take advantage of that  
15 at this time? On an equal time basis.

16 Thank you, Judge Brady, and again if there's any-  
17 thing else you'd like to submit into the record, please  
18 do in 30 days, or anyone else in the audience.

19 A Very well.

20 MR. GAYLORD: First, this isn't intended entirely  
21 as a rebuttal, I would agree with the portion of Mr.  
22 Kammer's report that says Judge Brady is considerate and  
23 compassionate and all of those things, and that portion that  
24 was excluded from the second, the final report, that wasn't  
25 the part of the garbage that I was referring to. There were



1 also many derogatory comments about his colleague, Judge  
2 Brown, which I felt were perhaps true but it's almost --  
3 it almost sounded like a personal vendetta and we did  
4 exclude all of those comments as well.

5 In addition, there were a couple legal theories  
6 that we felt, we being myself as well as the other lawyers  
7 that were helping in the preparation of this, we felt the  
8 legal theories were a bit tenuous. However, since the  
9 judge has mentioned it we would ask your permission to  
10 forward a copy of that initial report so that you can see  
11 the changes that were in there.

12 MR. LEVIS: If I could just for the record, identify  
13 the initial report that Judge Brady referred to at length  
14 as Exhibit 8. Which would be the Kammer report, I think  
15 we can refer to it or the Kammer draft.

16 MR. GAYLORD: Next point that I would like to  
17 emphasize, this wasn't intended as an attack on the Flagstaff  
18 Municipal Court, although I would concede that it cer-  
19 tainly comes out that way when you read our report. I  
20 would agree with the statements in several of the other  
21 attorneys' letters that the Flagstaff Municipal Court is  
22 superior to many of the other justice courts in the State  
23 of Arizona. I would agree that Judge Brady has upgraded  
24 the quality of justice in the Flagstaff Municipal Court.

25 What we're asserting is that nevertheless, the

1 requirements of the United States Constitution and the  
2 Rules of Procedure for the State of Arizona, are not always  
3 being complied with. With regard to the attorneys,  
4 saying I don't appear in Judge Brady's court, I do  
5 periodically, not that often. What we're trying to  
6 emphasize here, though, these are the things that happen  
7 when attorneys are not present, when I've been there, I've  
8 seldom had any complaint about Judge Brady's procedures.  
9 The procedures that we're complaining about, the en masse  
10 advisement, the initial hearing, that whole proceeding  
11 takes place without a lawyer present, without the judge of  
12 the superior court, without the city council. The sole  
13 judicial officer normally is Judge Brady. The city  
14 attorney isn't there.

15 A (By Judge Brady) May I ask a question?

16 MR. GAYLORD: Yes.

17 A I have wondered, you know when this thing started,  
18 that if these people that criticize the city court, now  
19 every practicing attorney is considered an ex-officio  
20 officer of the court, am I correct?

21 MR. GAYLORD: Yes.

22 A Very well, and have a responsibility to the court.  
23 Why didn't these people get it all together and come and  
24 say hey, Judge, I think that what you're doing here is wrong  
25 and here's why? Why didn't we all get together, we could

1 have got the committee from the bar association and we'd  
2 have talked it over and made the proper changes.

3 There have been things recommended to the court  
4 before that I have immediately incorporated into the opera-  
5 tion of the court. Why was it not done this way instead  
6 of this way?

7 THE CHAIR: This is a procedural matter and I think  
8 we're going to have to call this meeting to a close after  
9 a few minutes.

10 Are you finished with your comments?

11 A I thought he wanted an answer.

12 MR. GAYLORD: I will.

13 The next point, if a person's guilty, if he's caught  
14 in the act, nevertheless that person is entitled to their  
15 constitutional rights, to the rights that are guaranteed  
16 to them under the Constitution and under the rules of  
17 the Arizona Rules of Civil Procedure. We are not con-  
18 vinced that the guilty pleas that are being accepted by the  
19 Flagstaff Municipal Court are entered knowingly and in-  
20 telligently, voluntarily, that's required by the United  
21 States Constitution and the Arizona Rules of Criminal  
22 Procedure.

23 A I'd like to answer that.

24 THE CHAIR: Well, if he has some other points.

25 MR. GAYLORD: With regard to the statement on low

1        misdemeanors and the right to counsel that language was  
2        overruled in the case of Argersy (Phonetic), if there's  
3        a possibility of incarceration, and I believe that could  
4        include dollars or days, that person's entitled to a judge.

5                THE CHAIR: To an attorney.

6                MR. GAYLORD: Excuse me, an attorney.

7                Mr. Kammer's conclusion again, was that excluded  
8        from the final report? If I would reemphasize, if not,  
9        we did not find overt bias in the municipal court, which is  
10       what you're here concerned about, we were concerned about  
11       the lack of interpreters, we were concerned about the bonding  
12       procedures, but as to overt bias, simply doing this because  
13       he's an Indian and doing that because he's an Anglo, we  
14       did not discover that.

15               MR. LEVIS: Can I just make one clarification?

16               Under the statute that the commission operates and  
17       the committees operate, we are not only concerned with  
18       overt bias we're concerned with equal protection of the law  
19       which does include discriminatory effect under the 14th  
20       Amendment.

21               MR. GAYLORD: Finally, the last statement and in  
22       partial response to Judge Brady's question as to why we  
23       brought this out this way is because we have discussed many  
24       of these things with Judge Brady, he has been more than  
25       cooperative, he has listened, he has made changes when he

1 thought they were justified. We have disagreed with him on  
2 some of them and we've argued with him. But we got to the  
3 point where the most dramatic change I think has to come  
4 in the attitude of the city council, and not just the  
5 Flagstaff City Council but city councils all over this  
6 state, and county supervisors all over this state, the  
7 justice courts, the lower courts where the little, grubby  
8 misdemeanants come in are completely ignored. Nobody's  
9 getting any money. We got lots of money in the superior  
10 court, boy, we can prosecute cases and we got investigators and  
11 secretaries and everything running out everybody's ears,  
12 that's why we went to the Flagstaff Municipal Court, not  
13 because it was unique but because it was one of many of  
14 these low courts that have lots of misdemeanants, no money.

15 We're talking about LARC, what's happened to a LARC?  
16 Flagstaff gets one for every Pow Wow and then immediately  
17 it disappears.

18 Interpreters. We've all acknowledged the need for  
19 interpreters, we've sent letters to the city council,  
20 we've been politely ignored. Defense attorneys, defense  
21 attorneys don't hear many of the problems that are here that  
22 we've talked about, just having him here to point out to  
23 the judge, Judge this complaint is deficient. It's not the  
24 judge's job to look at the complaints and say it's deficient  
25 it's the defense attorney's but if you don't have a

1 defense attorney saying the judge should be doing it,  
2 that's all.

3 THE CHAIR: Thank you, thank you very kindly.

4 We will recess now until tomorrow morning at  
5 8:00 a.m. and we wish to thank all of the persons who  
6 appeared to offer testimony.

7  
8 (Hearing adjourned until 8:00 a.m. Tuesday,  
9 November 18, 1975)