

1
2
3
4
5
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7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X
VOLUME IV

| <u>SPEAKER</u> | <u>PAGE</u> |
|------------------------------|-------------|
| Ms. Yolanda Salter | 577 |
| Mr. David Lawrence Boni, Sr. | 587 & 754 |
| Mr. Edward Morgan | 597 |
| Mr. Paul Blubaum | 627 |
| Mr. Everett Little Whiteman | 636 |
| Mr. William Wilson | 644 |
| Mr. Clarence Wesley | 656 |
| Mr. Edmond Wesley | 663 |
| Mr. Philip Shea | 665 |
| Sgt. Frank Teachout | 678 |
| Mr. Velazquez William Sneezy | 692 |
| Mr. Harold L. Stevens | 698 |
| Mr. Tibaldo Canez | 721 |
| Mr. Dave Tierney | 732 |
| Mr. Josiah Moore | 763 |
| Ms. Margie Winters | 767 |
| Mr. Philip Antone | 775 |

1 November 21, 1975

2 8:00 a.m.

3 Tucson, Arizona

4
5 PROCEEDINGS

6
7 (The following session was chaired by Ms. Catherine
8 Palmquist)

9
10 THE CHAIR: Ladies and Gentlemen, this open meeting
11 of the Arizona Advisory Committee to the U.S. Commission
12 on Civil Rights will please come to order.

13 In Catherine Palmquist, Vice Chairperson of the
14 advisory committee.

15 Over members of the committee are, to my left, Ted
16 Williams Bill Levis, staff, Juana Lyon and Rita Madrid.

17 Over members of the commission, not present
18 currently Dr. Morrison Warren, the Chairman, Rudolph Gerber,
19 John Glas, Grace McCullah, State Senator Manuelito Pena,
20 Petersonah, Peter McDonald, Maria Elba Molina, Diane
21 McCarthy and Edward Guerrero.

22 Also with us today are Dr. Shirley Hill Witt, Director,
23 Mountain States Regional Office, Maria Pares, Bill Levis,
24 Esther Jonson, and Phyllis Santangelo, also from the
25 Denver office.

1 This meeting is being held pursuant to rules appli-
2 cable to state advisory committees and other requirements
3 promulgated by the United States Commission on Civil Rights.

4 The Commission on Civil Rights is an independent,
5 bipartisan agency of the United States Government estab-
6 lished by Congress in 1957, authorized by the civil rights
7 acts to investigate complaints alleging that citizens are
8 being deprived of their right to vote because of their
9 race, color, sex, religion or national origin.

10 Two, to collect and study information concerning
11 legal developments which constitute a denial of equal
12 protection of the laws under the Constitution.

13 Three, to appraise federal laws and policies with
14 respect to denials of equal protection of the law.

15 Four, to serve as a national clearing house for
16 civil rights information and five, to investigate allega-
17 tions of voter fraud in elections.

18 The commission has established 51 state advisory
19 committees like ours in Arizona, to advise the commission
20 of relevant information concerning matters within the
21 jurisdiction of the commission. And matters of mutual
22 concern in the preparation of reports of the commission
23 to the President and Congress.

24 The advisory committee may receive reports, suggestions
25 and recommendations from individuals, public and private

1 organizations and public officials on matters pertinent to
2 inquiries conducted by the state committees and attend, as
3 observers, any open hearings or conferences which the
4 commission may hold within the state.

5 This session today is an informal hearing, not an
6 adversary proceeding or a court of law. Individuals have
7 been invited to share with the committee information re-
8 lating to the administration of justice

9
10 Each person who will participate has voluntarily
11 agreed to meet with the committee. During the public
12 meeting today, the advisory committee will explore the
13 issues regarding the treatment American Indians receive
14 during the administration of justice process in off-
15 reservation areas.

16 Since this is an open meeting, the press, radio and
17 television stations, as well as individuals, are welcome.
18 However, no witness shall be televised, filmed or photo-
19 graphed during the informal hearing nor shall testimony be
20 recorded for broadcasting if a witness objects.

21 We are very concerned that we bring out all the in-
22 formation relating to the matters under inquiry, we are
23 also concerned, however, that no individual be the victim
24 of slander or libelous statements.

25 As a precaution against this happening, each person

1 making a statement here today or answering questions has
2 been interviewed prior to this meeting. However, in the
3 unlikely event that such a situation should develop, it
4 will be necessary for me to call this to the attention of
5 the person making the statement and request that he or she
6 desist in such action.

7 If any persons in the audience today have statements
8 or information they would like to share with the advisory
9 committee, Maria Pares of the staff and other committee
10 members will be available to meet with you individually.

11 Also, any persons wishing to submit documents into
12 the record of this open meeting may do so within a 30-day
13 period. Every effort has been made to invite persons who
14 are knowledgeable about the problems and progress in this
15 area. This meeting will provide the basis for a written
16 report by the advisory committee containing findings and
17 recommendations about the issues raised today.

18 As you see, we have a Court Reporter, who records
19 the proceedings to assure that we receive accurately all
20 statements made by panel participants and witnesses.

21 On behalf of the advisory committee, let me welcome
22 all of you here today.
23
24
25

1 Now we'll go to our first panel, may we please have
2 Yolanda Salter, David Boni and Edward Morgan?

3 David Boni?

4 MR. MORGAN: I don't see David. I don't see Mr.
5 Boni.

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

9
10 MS. YOLANDA SALTER

11
12 A (By Ms. Salter) Yolanda Salter, San Carlos, and I
13 am a field coordinator for the NAP, San Carlos, Arizona.

14 Q That's the Native American Program at San Carlos,
15 right?

16 A Yes.

17 Q Would you tell us just what happened this past year
18 when you were driving on the San Carlos Reservation between
19 yourself and four non-Indian men?

20 A January 5, 1975, that evening went into Globe about,
21 around 5:30, and coming back from Globe we stopped at a
22 rest area where two men got off to go to the restroom, and
23 we stopped on the road on the way to San Carlos.

24 And we saw a car going across where we were parking,
25 they have a red car on the side. And they were checking or

1 maybe it's their car, I don't know. But we were sitting in
2 the car at the time this car passed. And the boys in the
3 back went to the bathroom and they did get back in again.

4 We didn't touch nothing, we were just out there,
5 but I didn't get off either, I was the driver to that pickup.
6 And then we went on our way. I saw those boys went the
7 opposite way and we went onto San Carlos.

8 And then on the way, I saw a car turn, I could see
9 the headlight flashing, real swiftly and they start follow-
10 ing us. I could recognize them when they passed across
11 our path and they were four boys in this car. And then
12 we went on our way, and they start in a high speed following
13 us a little ways and then they got caught up with us and
14 then they start bumping our car.

15 First and then the second time and then the third
16 time, we ran off the highway.

17 Q May I ask you at this point, were you on the old
18 road to San Carlos or on the new road?

19 A Dirt road, it was the old road.

20 Q On the old -- at that time you were on the reser-
21 vation already?

22 A Uh-huh.

23 Q Okay, please --

24 A And we ran off the road and I was scared because
25 they were a bunch of boys, you know, teenagers, I guess

1 they were, I don't know. But anyway, we went off the road
2 and then I was sitting there, I was wondering what I can
3 do to help myself or to defend myself against these boys.

4 So I was just sitting there. And then a White man,
5 driver, a White boy, got off and I got -- I got the nerve
6 to ask him why he did that, I just yell at him, what's this?
7 And I -- I yell at him and then I kind of got scared myself,
8 I was shook up by this thing. And then he said you took
9 my battery. And you took some of my parts from the car.
10 That red car over there. And I said I -- I didn't have
11 anything to do with that car. I didn't even touch it. I
12 didn't get near it.

13 And then I asked him, I told him to look in the back
14 of my pickup, see if you can find anything that belongs to
15 you. I was really yelling at him at the time.

16 And I saw another car coming from Globe and that
17 was Tom Francis. I just ran in front of him, he almost
18 ran over me because I couldn't -- I don't know what to
19 do so I just ran in front of that car and he stopped and
20 I asked for help.

21 And I told him that I'm going to put two boys in
22 there to get to the jailhouse. So he helped, he took those
23 boys and took it to San Carlos and we were stuck there.
24 Another lady was with me so there was four of us Indians
25 there and four Whites. And I -- they tried to -- detach

the car, so they did, the bumper got caught, so they pushed my car out and they pushed their car away and they were parked on the side and he asked me what he's going to do about that damage to his car and whose fault was it?

I didn't bump his car. And he start yelling at me, you better pay for it, he was saying, I said I can't because I -- I wasn't, you know, I wasn't even bumping him. So, well, let's go to the jailhouse and find out, I told him, see what -- what the decision will be there. Because I didn't want to do -- I didn't want to be with them over there because it was dark already, I was scared too.

So we went on ahead to get to the jailhouse.

Q This was to the jailhouse at San Carlos?

A Yes, that was the closest one, I thought they could help me. So we went on, but they start chasing us again like in a high speed again, I don't know what to do, but I turned my car back to the -- there was a skill center there so I went back over there and tried to contact one of the highway patrolmen, he lives there, I know. Paul Nosey (Phonetic)?

So I stop at one of the trailer and they were still chasing us, those other boys, they were just chasing us and then I stop at once the trailer, and then I asked this White man if I could use his phone to call the policemen. He didn't say anything, and those boys were already behind

1 me so he ran up to this boy, Bob he called him, and they
2 were talking together. So I just -- say they can't help
3 me so I just ran off and then got in my car and then I
4 went to the next trailer, there I found Paul, Paul Nosey.
5 And I told Paul to call the policemen for me so they can
6 come up and get me or try to get those boys.

7 So he called the policemen. And I sent those other
8 two, too, I guess they reported that incident. Then --

9 Q Did you wait there for the police?

10 A Yes, I wait there until the policeman come to
11 escort me home.

12 So they were half-way, Paul asked me to go half-way
13 so we went half-way and the policeman stopped there and
14 then we went on our way.

15 And that night I contact one of the investigators
16 there. The reservation investigator, Mr. White -- Little
17 Whiteman, I guess he's called, I contacted him and I told
18 him what happened to me. He said he wouldn't -- he can't
19 do nothing now, but tomorrow morning at 8:00 o'clock he
20 said, when everybody leaves the area, I guess, I don't
21 know, but I didn't think that was a fair thing to do to
22 wait until 8:00 o'clock the next day. I wanted something
23 done that night.

24 And then I just went home and then the next day I
25 came back to the jailhouse to file a complaint against these

1 boys, but instead they told me to go to Gila County Attorney
2 or Sheriff's Office where I could file my complaints.

3 Q Who told you that, Mr. Little Whiteman?

4 A Yes. He is the one that told me to go over there
5 to the county attorney.

6 Q And what was the reason he gave for that?

7 A Well, he said he have no jurisdiction over a White
8 person, you know, if he's on the reservation. So I -- I
9 didn't know what to do but go to Gila County.

10 I went to the sheriff's office first and then sheriff's
11 office talked to me and then he seems like he make a fun
12 out of what happened to me, you know, my life was in stake
13 here. But he just make fun of that.

14 Q Do you know who the person was that you talked --

15 A Mr. Smith, I know he's from San Carlos, he's
16 married to one of the San Carlos women there.

17 Q And he's a deputy sheriff?

18 A No, I don't think he was a deputy, he was just --
19 I don't know what he was, but anyway, I remember he's
20 a sheriff.

21 Q He works for the sheriff's department?

22 A Yes, he used to be but I don't think he's there
23 anymore. And then I didn't like the way he -- his
24 attitude was towards San Carlos Apache, you know, or toward
25 the policeman, department, and they told me to go to see an

1 attorney up there, and then see what he can do about it,
2 and I went up there and met this old attorney.

3 Q Was this the county attorney?

4 A Yes.

5 Q What was his name, do you remember?

6 A I don't remember his name but I know he was a Gila
7 County Attorney. And I talked to him and I asked him if
8 I could file a complaint against these boys, he said he
9 have no jurisdiction over them too, even there.

10 Q What was the reason he gave?

11 A Well, he said that the San Carlos Apache have the
12 jurisdiction over them, you know, White man was supposed
13 to be --

14 Q On the reservation?

15 A On the reservation.

16 Q I see.

17 A It was supposed to be taken care of by the San Carlos
18 Apache he told me, and he called Mr. attorney, I guess he
19 was attorney Barry DeRose, to ask this question, and then
20 he told me to go back to the reservation and file the
21 complaints there.

22 Q This was after he spoke to Mr. DeRose?

23 A Uh-huh. He told me to go back to the San Carlos
24 police and file the complaints there, so I couldn't do
25 nothing. That was as far as I went, so I didn't get any
service or any --

1 Q So, in other words, the San Carlos -- no, the
2 special officer for the BIA at San Carlos told you the
3 reason he couldn't do anything was because he had no
4 jurisdiction over a White man on the reservation, and the
5 Gila County Attorney told you the same thing, he said he
6 had no --

7 A Yes, they send me back.

8 Q -- he had no jurisdiction on the reservation.
9 So what did you do then?

10 A Well, I couldn't do anything because I have no
11 money to my name to hire an attorney like they do, and I
12 have nothing to my name so I just set on it now. But I
13 wish I could have it straight, you know, straightened out
14 between the White and the Apache on the reservation, who
15 has the --

16 Q Jurisdiction?

17 A Uh-huh.

18 Q Do you know what the status of your case is? Has
19 anyone looked into it at all or --

20 A No, nobody.

21 Q Or was that the end of it?

22 A I don't think nobody tried to help me or tried to
23 contact me or question me about these certain things,
24 but just, it's dead right now.

25 Q I see. Do you know if the same sort of thing has

1 happened before or off the reservation, and how that might
2 have been handled?

3 A I heard about a lot of other, the same thing, you
4 know, on the road, being chased and everything, but they
5 said they couldn't do nothing because they're scared of
6 the White people. They have more power you might say, more
7 authority over a lot of things like this. And I don't
8 believe, I don't believe that. I think both sides do have
9 power to, you know, overcome this, so I -- I heard a lot
10 of things like that and then they just let it go at that.
11 I guess their lack of money or lack of glories, you might
12 say.

13 Q If an Apache from San Carlos needs any legal assis-
14 tance, is there anywhere that he can get it or she can
15 get it?

16 A No, the legal aids maybe, but I don't know how they
17 can help us.

18 Q I see. You've never tried to get help from them?

19 A No, not --

20 Q So, as far as your experience, your case, nothing
21 more was done about it?

22 A Nothing.

23 Q Did you ever see those persons again?

24 A Yes, four days later, I was just checking over there
25 to see if I could find them again and they were around yet.

1 Q Was this on the reservation?

2 A Yes, they were on the reservation. They weren't
3 chased or anything, they were just robbing the reservation
4 again. But I never reported to the policeman again what
5 they were still doing on there.

6 Q So you think that something needs to be done to
7 straighten this kind of problem out, where a tribe would
8 have jurisdiction on its own reservation over anyone that
9 is on the reservation?

10 Do you think it would help to --

11 A Yes, I think it would help if they passed some
12 certain ordinance or any bylaws that goes on the reserva-
13 tion to help us out, or other, just to get the White man
14 on this side and then let them have the jurisdiction or
15 the San Carlos Apache.

16 MS. LYON: I have no further questions. Do any
17 of the other committee members have questions?

18 Q (By Mr. Levis) Ms. Salter, was the county attorney's
19 name Edward Dawson, to the best of your knowledge?

20 A Well, I never -- personally I never know, it's
21 Attorney Dawson or I don't know who I talked to but he was
22 there, he's an older man. But I was told that he was a
23 middle-aged man but I never met that guy, Mr. Dawson or
24 something. But I went up there and talked to this old man.

25 Q One final question. Did the bumping of your car

1 start on or off the reservation?

2 A On the reservation.

3 Q Nothing occurred until you were back on the reser-
4 vation?

5 A Yes.

6 Q But you were told by the police you had to file
7 with the county attorney off the reservation?

8 A Yes.

9 MR. LEVIS: I have no further questions.

10 A But I was sent back to San Carlos to file the
11 complaints over there but nothing has been done about that.

12 MR. LEVIS: So it isn't clear as to whether you
13 should file your complaint on or off the reservation?

14 A Yes, but I was told to go back.

15 THE CHAIR: Are there any other further questions
16 of any of the committee?

17 Q (By Ms. Lyon) For the record, Mr. Boni, would you
18 please state your name, address and occupation?

19

20

21

MR. DAVID LAWRENCE BONI, SR.

22

23

24

25

A (By Mr. Boni) My name is David Lawrence Boni, Sr.,
my address is Box Number 646, San Carlos, Arizona. The zip
code, 85550. The date of birth is 12/30/43, the age is 31.

1 Height is five-nine. Apache, full blooded Indian.

2 Q Thank you.

3 I understand you have a gentleman with you whom you
4 wish to speak for you, is that correct?

5 A No.

6 Q Oh, I see. I see. Would you describe for us what
7 happened when you were arrested or what happened before
8 you were arrested, what led to your arrest?

9 A Well, my job, my job was a game warden on the San
10 Carlos Apache Reservation. And there was a violation going
11 on on the reservation. It's the middle of the night, these
12 pig hunters from California, they were shooting across the
13 road and towards to the waterhole where there is lot of live-
14 stock is, they shooting towards that way, so I stopped
15 them. And they were drunk. They'd been drinking all night.
16 They making noise, so I stopped them.

17 So they put up their rifle and later on, they start
18 shooting again. So I went over there. I told them, now
19 I was just going to give you a citation for what you been
20 doing. So I told them I going to give you a citation for
21 a misuse of a firearm. But this, these are non-Indian
22 from California, they jump in their truck and they took
23 off. They really speeding down the jeep trail.

24 And then -- and then later on, about an hour later,
25 I went down and I went down, and I met another camper there,

1 he's from California too. Well, he know me pretty good
2 and I know him real well too. His name is Andy Anderson.
3 He wave at me so I stop, I wave at him. I said, Andy,
4 do you want something? That's all. He said how are
5 you doing? I told him I'm fine, that's all. And it was
6 about a 100 -- he was about 100 yards away from me and
7 this is the guy accused me of assault with a dangerous
8 weapon, he just making that story for me. Because they
9 tried to push me off from the -- from the law enforcement,
10 because they want to do something, they want to violate
11 everything, you know, that's why they just push me off the
12 -- that's what they were trying to do, they just trying
13 to make a story for me, that's what they did.

14 So they signed -- they signed complaint against me
15 through the federal court. They charged me with assault
16 with a dangerous weapon. On this one here, they arrested
17 me in Globe, Arizona, on December -- the thing, it happened
18 -- it happened on February 17th, it happened on February
19 17, 1973. They reported at that time, and then they de-
20 layed it for December, until December 1st, and they issue
21 a warrant and they pick me up on December 1st. They pick
22 me up, there's a highway patrolman, they're the one picked
23 me up on a street. I was -- I was driving on a street and
24 they pulled me over. So I stop and I got out, and this
25 highway patrol, highway patrol, he pulled -- he pulled a

1 handgun on me, he pointed at me and he told me to turn
2 around facing your car and put your hands on the cab, so I
3 did. And he searched me there. And then later on there's
4 another -- another two officers came, one of them is a
5 highway patrol and the other one is city -- city police
6 captain. They come over, they told me you got -- they
7 told me you're wanted by FBI, I told them who's the FBI,
8 so they said Wayne Mack (Phonetic). So they -- so, and
9 then we wait there for about 15 minutes and they make a
10 call, and then later on they took me down to city -- to
11 city jail.

12 At city jail they don't want to -- they don't want
13 to take me there, they don't want me to stay there so
14 they don't know what they going to do with me so finally
15 they took me to Gila County Jail, it was on Saturday
16 afternoon.

17 Q This was the highway patrol that took you to these
18 different jails?

19 A Yes. Highway patrol. So I was -- I was behind the
20 bars for five days, that's about 120 hours without seeing
21 my attorney, nothing. I was in there Saturday afternoon,
22 all day, and Sunday, Monday, Tuesday, Tuesday, Wednesday,
23 Thursday, half a day, and on Thursday afternoon the U.
24 S. Marshall, they brought me over in Tucson.

25 Q At any time during those days that you were in jail,

1 were you given the opportunity to make a telephone call?

2 A No.

3 Q Did you ask to make --

4 A I asked. I asked.

5 Q But you were refused?

6 A Yes.

7 Q Was this in the -- which jail was this?

8 A In the Gila County Jail.

9 Q I see. Whom did you ask?

10 A The jailer or the deputy. I don't know what his
11 job was but I asked him, said could I make a phone call?
12 So finally, finally they brought me over here to Tucson.

13 Q When you were arrested, were you given a statement
14 of your rights?

15 A No, nothing.

16 Q Were you told what the reason was for your arrest?

17 A Well, after -- after they arrest me they told me,
18 you know, you got a felony warrant like that. The guy --
19 I mean the highway patrol, the one he arrest me, he didn't
20 say nothing to me about my warrant. He just stopped me.

21 Q He didn't read you your rights either?

22 A Nothing. And then this other -- other patrolman
23 and city policeman, they come over, they're the ones that
24 tell me I got a warrant.

25 Q Were you carrying any firearms at the time you were

1 arrested?

2 A No.

3 Q Go ahead, Mr. Boni.

4 A So they took me down to federal court here. For
5 bond like that now and for arraignment. So I went to the
6 judge and -- they took me to the judge and my bond was
7 \$20,000.00, and that day, on Thursday, I didn't get out
8 because that bond, that bond was no good. They said
9 there's something wrong with the bond. So I wait. I wait
10 another night in the county -- in the county jail here,
11 I don't know what -- what county is this but I was in
12 county jail here for another night.

13 And then on Friday, I was released on bond, 20,000
14 bond, \$20,000.00 bond.

15 Q At what point, Mr. Boni, were you told what the
16 charges were against you?

17 A Huh?

18 Q When did they tell you what the charges were against
19 you?

20 A On Thursday.

21 Q I see.

22 A Thursday afternoon.

23 Q And then you were released on bond?

24 A Yes, on bond.

25 Q I see. And what happened then?

1 A And then -- well, they set a date, you know, they
2 keep on cancelling it until -- until March, I think March
3 16th or March 17th, and then I had a trial there. I had
4 a trial there, in that trial, in that hearing, while
5 they use -- they call Geronimo's name in there, in the
6 court.

7 Q For what reason?

8 A Well, I don't -- I don't really remember what is
9 for all about but they did, but they mentioned Geronimo's
10 name in there. I don't know what Geronimo be doing a long
11 time ago to White people. This is the thing, they brought
12 me out and then that's the way they found me guilty.

13 Q Who was this that mentioned Geronimo, do you know?
14 Was it the judge or the prosecutor or --

15 A The prosecuting attorney.

16 Q Did you have an attorney at that time?

17 A Yes.

18 Q Did you employ this attorney yourself? Or was this
19 attorney assigned to you by the court?

20 A No, this -- this attorney was assigned by the tribe.

21 Q I see.

22 A So they brought that thing up, and so they found
23 me guilty and they told me to wait for my sentence until
24 April 17th. So I was waiting, I thought I was going to
25 go back, but on April 16th I heard that my case been throw

1 out of court for it was unconstitutional.

2 Q And so you thought that the case was closed, right?

3 A Yes.

4 Q And then what happened?

5 A And then they appeal it again.

6 Q Was this the persons that filed the charge against
7 you that appealed it?

8 A I think -- I don't really know. I don't really
9 know on that. So they -- they appeal it, I think today
10 I -- maybe it's still pending or --

11 Q I see. And then were you, at any time, arrested
12 again on the same charge?

13 A Well, they just brought me back, they -- well, they
14 just wrote me a letter to come before the judge again,
15 you know.

16 Q I see.

17 A For -- for I think rehearing, something like that,
18 you know. So --

19 Q So your case still is not closed at this time?

20 A I don't really know.

21 MR. MORGAN: No.

22 Q (By Ms. Lyon) I see.

23 What do you think, Mr. Boni, could be done to im-
24 prove this kind of thing, this kind of situation to keep
25 this kind of thing from happening to Indian people, do you

1 have any idea what or any recommendation of what should
2 be done and by whom it should be done?

3 A I think -- I think it's better for tribal authorities
4 should have their own -- their own rights to take care of
5 the non-Indian on the reservation. I think it's better
6 that way.

7 Q Right.

8 Is there anything else that you would like to say,
9 Mr. Boni, or do you have a gentleman with you that wants
10 to make a statement?

11 Or I don't know the gentleman, did you -- wish to
12 testify, sir?

13 MR. MORGAN: Yes.

14 Q (By Ms. Lyon) Are there any other questions to
15 Mr. Boni?

16 Q (By Mr. Levis) I have three.

17 Mr. Boni, as game warden do you carry firearms?

18 A Yes, I do.

19 Q And you talked about the trial in March, was that
20 1974 or 1975?

21 A Seventy-four.

22 Q And then as far as the case being thrown out
23 initially, was that April, '74 or April, '75?

24 A April, '74.

25 Q Seventy-four?

1 A Yes, '74. April, April, '74.

2 Q And at the present time the case is being appealed
3 by the U.S. Attorney's office, to the best of your knowledge?

4 A Yes.

5 Q And you said it was thrown out as being unconsti-
6 tutional, on what grounds was it declared unconstitutional?
7 To the best of your knowledge? Or if Mr. Morgan would
8 like to --

9 A On this one here, you know, you know, we're Indian.
10 If it's on the reservation, if a non-Indian, if it's a
11 non-Indian they give him a lesser punishment. Indian
12 get more punishment.

13 Q Such as --

14 A Huh?

15 Q Well, you talk about a lesser punishment.

16 A See, see, a non-Indian, what they accuse me with,
17 assault with a dangerous weapon, you know, if a non-Indian
18 violate the same law, they can take him to the state or
19 to the county. Like that. And he get a lesser punishment
20 over there.

21 Q In state or county court?

22 A Yes.

23 Q Than he would in federal court? If an Indian is
24 arrested on the reservation only the federal court has
25 jurisdiction?

1 A Yes.

2 Q Was that the reason it was thrown out as being un-
3 constitutional?

4 A Yes.

5 MR. LEVIS: I have no further questions of this
6 witness.

7 THE CHAIR: Are there any other questions of other
8 commissioners?

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

12

13

14

MR. EDWARD MORGAN

15

16 A (By Mr. Morgan) Edward Morgan, 45 West Pennington,
17 Tucson, Arizona. Lawyer.

18 Q Would you describe for the committee the type of
19 justice system that you feel is necessary for American
20 Indians in the State of Arizona?

21 A Well, I don't wish to be presumptuous.

22 Q Based on your experience?

23 A Over the last 30 years of practice within the
24 State of Arizona, primarily in the southern part of the
25 state, the primary matter is the facility and adequacy of
obtaining legal representation for people from the Indian

1 Nations. The ability of people from the Indian Nations
2 to get to lawyers and get lawyers available to them is
3 just about, on an initial basis, just really doesn't
4 exist.

5 Second, even when, by the process of law, a lawyer
6 is appointed for them under a public defender system, that
7 lawyer's experience and ability to communicate with the
8 particular client and the client with that lawyer is
9 inadequate, to say the least.

10 The circumstances that the lawyer must meet with
11 the client in a good number of cases, the person from the
12 Indian Nation is not bondable for a number of reasons,
13 to the same degree that non-Indians would have available,
14 to be free on bail, that means that the lawyer must meet
15 with the client in a jail, where communication is extremely
16 limited. The environment is hostile, the lawyer may or
17 may not have an interpreter, where the client uses a
18 limited English vocabulary to talk to a lawyer that has
19 little or no experience with the Indian culture or Indian
20 language or Indian view of the reality of what the Indian
21 is involved in.

22 The fact that it's done under hostile conditions,
23 that is within a jail framework, just about destroys the
24 ability to really communicate with the client.

25 Assuming that the client is free on bail, a possibly

1 less threatening environment is used for the communication
2 with the client, maybe the lawyer's office, but again,
3 it may be the first time that the client has been in a
4 lawyer's office. And it may be the first time that that
5 client has been into a -- into that type of environment.

6 There, a very hurried and usually inadequate con-
7 ference is held, usually with some persons in the family
8 acting as, quote, an interpreter, but not a trained inter-
9 preter. So that my first observation is that by and
10 large, people from the Indian Nations do not have ready
11 access to legal services off the reservation.

12 Second, that when they do have access, it comes
13 usually later in the criminal proceedings and doesn't,
14 it's not initiated at the earlier time of arrest or
15 immediately after arrest. Lawyers understand that the
16 longer period of time between the point of arrest and
17 the point that the lawyer gets on board, the more diffi-
18 cult it is to adequately represent the client.

19 So that in many instances, the lawyer only comes on
20 board at some point down in the proceedings after there
21 has been an indictment.

22 My point, and the one that I would like to suggest,
23 would be a creation of -- it would be nice to have more
24 lawyers, but because of the standard of living that lawyers
25 in this society demand, there are, then, charges that are

1 involved, their fee structure, so that they can live on
2 that standard of living which they believe that they have
3 some sort of God-given right to live on, makes the
4 financing of legal representation maybe prohibitive.
5 Which I think is unfortunate. But I think is the case.

6 Dealing with that reality, that unfortunate
7 reality that lawyers charge too much, by and large in this
8 culture, the next best thing is to attempt to create
9 paralegal workers, and it would be my recommendation that
10 we undertake the training of Indian peoples in paralegal
11 training, and that they be made available in every
12 community. That we create a state system of making them
13 available.

14 I would recommend a state WATS line that any Indian
15 or any person with a concern for Indians, who is involved
16 with the law enforcement problem, arrest or harassment,
17 could phone 24 hours a day, seven days a week, on a state
18 WATS line, who would then have a list of resources of the
19 closest paralegal worker that was available to immediately
20 plug the paralegal worker into the Indian and his family
21 or her family as the case would be.

22 So that, one, the Indian would not feel isolated
23 in a situation without friends and without the knowledge
24 and skills and social techniques of getting aid, would
25 have a person who would act as their advocate immediately,

1 to meet with them, to help assure that person emotionally
2 so they don't feel so isolated, and so willing to
3 acquiesce in the demands of the law enforcement people,
4 to be able to act as both an intellectual translator
5 in terms of language, but also a cultural translator of
6 the value structure, because there's, in my experience,
7 often, a very different view of reality and what is right
8 and what is wrong and what the right thing for an Indian
9 to do within their cultural concepts and what the ordinary
10 White man's lawyer's training brings to the White man's
11 idea of what's right and wrong to do in a given situation.

12 I think those paralegal people should be Indian,
13 I think they should be trained in those legal skills,
14 in resources, and I think that the system should be
15 available on a 24-hour a day, seven days a week, basis.
16 And of course, free to the persons.

17 In some respects, I would think that such services
18 would be greeted with pleasure by some enlightened law
19 enforcement people who find themselves in a situation of
20 dealing with an Indian person who has been charged with
21 some offense, and really don't have any tools of communi-
22 cation or any way to really relate or help the person that
23 they're arresting, and I would think that with some en-
24 lightened law enforcement people, they would feel very,
25 very happy to be able to call a central clearing agency and

1 get that type of help for the person that they may have
2 taken into custody or feel that they have to take in custody.

3 Now, I don't want to be real rosy about that, but
4 you know, one can't presume bad faith all the time, though
5 history sometimes would lead us to feel that way and
6 view reality that way. So that I think it would be useful,
7 I think that a budget of somewhere about \$75,000.00 to
8 \$100,000.00 a year could set up that service statewide.

9 Q Thank you, Mr. Morgan.

10 You mentioned that many times Indians are not
11 bondable. Could you give us examples of some circumstances
12 related to bonding?

13 A Well, bonding, you know, is a matter of -- of the
14 feeling of the police, of the prosecutor's office and of
15 the judge as to whether someone is going to be coming back
16 and make themselves available for trial.

17 Ostensibly, that's supposed to be a -- a rather,
18 oh, legal formula, by and large, it's more visceral than
19 that. But it operates with all people that are -- with
20 all the poor. Where do you live? Do you have a house?
21 Do you have a steady job? All of the normal indicia that
22 is used by courts to release people is reduced when it
23 comes, in many instances, with Indian people, because of
24 their poverty, may not have a steady job, may not have an
25 immediate residence in the community, so that by reason of

1 their poverty, by reason of their inability to communicate
2 and to sell themselves, you know, it's a lot of difference
3 between if I'm pulled in in some small town in the State
4 of Arizona on some criminal charge, you know, I have the
5 security of being raised as a White man in this society,
6 the security of an education, the selfesteem so that I can
7 stand there and explain who I am and what my needs are
8 and why I'll be back.

9 Take someone who comes in there without all of those
10 goodies and that security alone, isolated, a limited
11 knowledge of the proceedings, a limited ability to com-
12 municate, with possibly some very hostile people who
13 really don't want to communicate, and then to convince the
14 judge that the client should be released becomes a very
15 formidable task.

16 The thing that's very difficult, I think, for the
17 culturally elite people of this society to understand is
18 how much self-possession we have, how much arrogance we
19 have, in terms of being able to speak and say what we want.
20 And how difficult it is for people who have been deprived
21 of an equal share in this society, to be able to say the
22 same things and ask for their own rights.

23 It is very similar, I think that within the White
24 culture, it's normally more easily understood to try and
25 get the White person to recollect their own feelings of

1 inadequacy when they were young, adolescents trying to
2 talk to their parents or trying to talk to adults. The
3 very intimidation, the very sense of inadequacy is operable,
4 and that's why I believe that the paralegal person must
5 get plugged in at the very earliest moment to give self-
6 esteem, to give a sense of not being isolated, of having
7 someone who is committed to being your friend, who you
8 identify with, who you feel understands you.

9 At that level, a paralegal worker is necessary,
10 immediately at arrest. Someone that you know that you
11 can trust will get the information to your family that you
12 are in jail, just even if the person wasn't trained as a
13 lawyer at all, if you had a person who could be there to
14 identify immediately, because I think the same problem
15 happens in all the relationships of minority peoples in
16 this culture, when they go to the doctor, when they go
17 to the dentist's office, when they go to a federal bureau,
18 when they go for their driver's license, when they see
19 the school administrator, that type of advocacy, personal
20 advocacy is necessary.

21 When it comes over in the criminal justice system,
22 it becomes a matter literally of life and death. And that's
23 why it's necessary.

24 Q Thank you.

25 Mr. Morgan, from what you have told us, are we to

1 conclude that equal protection of the laws is not accorded
2 Indian citizens in the State of Arizona?

3 A No, it's not accorded in terms of a delivery
4 system. They can't -- even when it is made available,
5 it's not usable. Because it is not designed to deal
6 with the consumer.

7 The construct of the consumer that the laws have
8 in mind is the secure, middle class, White person. And
9 so the product is designed for a particular customer. And
10 is not designed for Indians or other minorities. And
11 though the words of the law may be equal, the ability to
12 use it is not equal. And there is no equality of justice
13 unless there is equality of income to get lawyers, and
14 because of the very poverty, there isn't an equal delivery
15 system, even in externals, much less the ability to make
16 use of the system once you have it.

17 That is, I don't think an Indian gets the same
18 service out of a lawyer that White, middle class person
19 would get out of the same lawyer. And when you think of
20 that sort of deprivation, you know, it's just outrageous.
21 Ability of lawyer to communicate with a client, the
22 ability of a lawyer to not be hierarchical with a client,
23 because part of the problem is also the tyranny of an
24 Indian person or minority person to the dictates of his own
25 lawyer.

1 The lawyer takes over, the lawyer determines what
2 will be done, the lawyer tells the client what to do. And
3 that's why the paralegal person has to stay all the way
4 through the process, not just get him to a lawyer or a
5 lawyer to him, but must stay with it to help the client
6 fight his own lawyer in terms of what the client wants to
7 do, not what the boss-lawyer wants to do.

8 Because a lot of injury is done to Indian clients
9 because they are in a subservient role to their own lawyer.
10 Oh, Mr. Lawyer, whatever you say, Mr. Lawyer, the lawyer
11 says --

12 Q Thank you, Mr. Morgan.

13 As legal counsel for David Boni, do you have any-
14 thing to add to his testimony?

15 A No. I'm not directly handling his case in my
16 office, my associate, Paul Willis is, and I did not know
17 that we were going to be discussing that case or else
18 I would have had him here present or else I would have
19 literally boned up on the matter.

20 I am not in detail familiar with the problem. It
21 is now before the Ninth Circuit Court of Appeals on a
22 motion for rehearing. The Ninth Circuit Court of Appeals
23 sustained Mr. Boni's previous counsel's position that there
24 was a denial of equal application of the law in his case,
25 and reversed the lower court. The government made a motion

1 for rehearing predicated upon a United States Supreme Court
2 ruling, and that motion for rehearing is -- has been
3 tentatively granted, and as I understand it, we're in the
4 process of fighting, trying to have them reverse their
5 decision on the rehearing.

6 MS. LYON: Thank you. I have no further questions.

7 Q (By Mr. Guerrero) Just one question, Madame Chair-
8 man.

9 Mr. Morgan, this paralegal concept you're more or
10 less relating to us, is it in effect anywhere else in the
11 country on reservations, that you know of?

12 A I'm not -- I'm not very knowledgeable of what goes
13 on outside of Tucson or maybe Arizona. And all -- I've
14 lived here all my life, practically, and I really don't
15 know.

16 Q Do you know if it's in existence anywhere in this
17 state or anywhere else?

18 A I don't know of it in this state.

19 Q What type of training or how extensive of this
20 training do you feel a person should have to more or less
21 be qualified to be paralegal, in your mind, and in your
22 concept, paralegal person?

23 A Okay. I'm a very greedy person. Two drumsticks are
24 better than one, three are eminently better, you know. I
25 would like them trained, you know, just to the hilt. What

1 I would like. What do I think is a bare minimum? Okay.

2 I think that they would be trained in the simple
3 legal procedures of arrest, bail, court procedures, so that
4 they would know the various courts, have a fairly good
5 idea of the jurisdiction of various courts, and the
6 practical application, operations of those courts.

7 I think they would be given a training in a legal
8 vocabulary and legal concepts, so that they would be able
9 to translate both the concepts and the vocabulary. I
10 think they would be trained in terms of resources within
11 the particular community, all the social resources, not
12 just the legal resources but social resources. Because
13 part of the problem with the criminal defendant is that
14 they have so many other problems that are going on at the
15 same time, who's going to take care of family, how do
16 they take care of their job, so that they would need some
17 training in terms of the social service resources of a
18 community.

19 I would think that with a -- with good motivation,
20 and the normally bright people that are available, we
21 could train women and men initially. I think in an in-
22 tensive, six-weeks course, that we could obtain a sufficient
23 original basis, and I predicate that on, because of my
24 practical experience in draft counseling, where we trained
25 -- my office and people associated with me trained something

1 like 500 or 600 draft counselors, and we found, you know,
2 that the ordinary housekeeper, service station operator,
3 with intensive care, could be trained in very complex
4 legal and federal procedures concerning draft rights,
5 etcetera, and I think if that were an initial intensive
6 course for about six weeks, some on-the-job training,
7 supervised by other people initially, and review courses
8 about every six months to keep them abreast of it, I think
9 we could do it.

10 MR. GUERRERO: Thank you.

11 THE CHAIR: Mr. Guerrero, does that answer all your
12 questions?

13 We want to move right along here, our time is getting
14 short. Ted, did you have something else?

15 Q (By Mr. Williams) One little question. On the
16 WATS line concept for legal aid, would you envision that
17 concept if it was practical, a funding mechanism was de-
18 veloped to also address the problem of Mexican-Americans,
19 even some of the other people that might be -- other
20 majority who have problems with legal system?

21 A I think that all deprived people in the culture
22 need the personal advocate, paralegal person concept.

23 Q Do you have any ideas on funding for something like
24 that?

25 A I'm nearly bankrupt so don't ever talk to me about

1 the vagaries of government and financing and funding and
2 that sort of thing, I never had anything to do with it,
3 I've been a lowly private enterprise lawyer, with never
4 any funding, so I don't know anything about that.

5 No, but I think -- and by the way, that should be
6 oriented for women and men. I don't think you send a man
7 advocate to a woman Indian who has problems and I don't
8 think you send a woman to the man. I think women, par-
9 ticularly, need that. Because there the double discrimination
10 occurs. Not only are they a minority Indian, but they're
11 also -- get all of the trouble of being a woman.

12 And I think it would be very special training for
13 women advocacy, paralegal workers in that --

14 THE CHAIR: Are there any other questions of
15 commission members?

16 Very good. Thank you very much.

17 We'll take a one-minute break.

18
19 (Short recess)

20
21 THE CHAIR: Mr. Morgan has addressed the committee
22 to make a brief statement and then we will proceed with
23 the next panel, so would the committee members and those
24 who are involved in the next panel, William Smitherman
25 and Edward Dawson, please make themselves readily available?

1 Mr. Morgan, would you like to make your statement?

2 A (By Mr. Morgan) I would like to apologize to the
3 persons from the Indian Nations that were here when I was
4 making my remarks. Because it would seem as if I were
5 implying that the creation of this system would be some-
6 thing that was done outside them and then given to them.

7 My view is that the program should be developed by
8 the Indian Nations within their own needs, within their
9 own constructs, and the way they feel it should be done.
10 It shouldn't be done outside by either the State of
11 Arizona or by the federal government, it should be de-
12 veloped by the Indian Nations themselves, within their
13 needs and the way they feel it should be done.

14 Thank you very much.

15 THE CHAIR: Thank you, Mr. Morgan.

16 Mr. Smitherman here? Mr. Smitherman and Edward
17 Dawson?

18 MR. DAWSON: I'm Ed Dawson.

19 THE CHAIR: Would you like to be seated over here?

20 Q (By Mr. Levis) Mr. Dawson, for the record, would
21 you please state your name, address and occupation?
22
23
24
25

1 MR. EDWARD DAWSON

2
3 A (By Mr. Dawson) My name is Ed Dawson, I'm Gila
4 County Attorney, my address is 215 South Fourth Street,
5 Globe, Arizona.

6 Q Could you describe the role of your office in the
7 case involving Yolanda Salter, please?

8 A No, I may not.

9 Q Could you explain why?

10 A I have no knowledge of the case whatsoever.

11 Q Okay.

12 A I received a letter a week ago asking that I might
13 be present to testify before this commission, I wrote
14 and asked the details of what I may be asked so that I
15 could be prepared and I was -- received a letter in return
16 stating that there was a case involving a Yolanda Salter.
17 I again wrote and called and asked for the details of the
18 case so that I could be prepared to testify intelligently
19 before this commission. I received a call from a Maria
20 Pares and she said, told me that this person would not
21 testify until just before I did. That it involves something
22 to do with a dispute of jurisdiction between the San
23 Carlos Tribal Reservation and the Gila County Law Enforce-
24 ment Agency.

25 I looked in our files and we show no case file re-

1 regarding the name Yolanda Salter. So if someone can give
2 me the facts, perhaps I will -- if I handled the case
3 personally in the office, I may know of it.

4 I saw the lady who was seated at this table prior
5 to my testimony and she did not look familiar. I don't
6 believe I've talked to that person before.

7 Q Okay, thank you very much.

8 A But other than that, tell me what the problem is
9 and I'll try to tell you what our policy would be.

10 Q Okay, in a case similar to the one that you heard
11 Ms. Salter describe --

12 A I didn't hear Ms. Salter describe the case, I wasn't
13 present when she spoke to the commission at all.

14 Q Let me briefly just review the general facts, then
15 you can give me an idea as to what your office can or
16 can not do because I think that was the question of
17 concern.

18 It's my understanding that while this incident
19 happened on the reservation, that is Ms. Salter's car was
20 bumped by a car containing three or four non-Indians, and
21 she reported this incident to the BIA on the reservation,
22 she was informed by the BIA that since, in a sense,
23 defendants were non-Indian, that she should report it to
24 the Gila County Attorney's Office.

25 And that when she reported it to your office, that

1 she was told since it happened on the reservation that
2 you do not have jurisdiction. I just wonder if that's the
3 policy of your office or what a person should do in such
4 an incident?

5 A I'd be glad to tell you what our general office
6 policies are, I won't be able to tell you in that specific
7 case.

8 Q In a similar case?

9 A Why or why we could not or could take action. Our
10 policy is that on crimes that happen within the limits of
11 Gila County by non-Indians, whether they're on or off the
12 reservation, that we do have jurisdiction, and we do
13 systematically charge people that are not Indians with
14 crimes that happened in Gila County but on the Indian
15 Reservation.

16 We do this not daily because we don't have that
17 many instances arise, but in every case that I know of
18 where a crime by a non-Indian was committed on the reser-
19 vation, we do file the charges in Gila County in the
20 superior court, take them through the state court.

21 Q So, Ms. Salter, who is still here, should talk
22 to you after your testimony concerning her individual case?

23 A I would say if -- I would -- tried to find out how
24 long ago this happened, I was told it was quite some time
25 ago, but no one either knew or could give me an idea of

1 when this happened.

2 Q It's my understanding, I think it happened within
3 the last, I think year and a half or so.

4 A I see that Layman Peace is going to make some
5 comments at 1:15, he's the sheriff of Gila County, and
6 I wish he were here now, because the problem, if there is
7 one, that arises in cases like this, is getting the
8 information we need to prosecute. Just as the case that
9 happens off the reservation, when an individual, not a
10 peace officer but an individual comes to our office
11 directly and says, I want to prosecute a complaint, we
12 usually assign it to an investigator to bring the facts
13 before us, talk to all the witnesses.

14 Sometimes this is a problem when the crime occurred
15 on the reservation. But again I have no knowledge of this
16 case at all.

17 Q Okay, thank you.

18 Could you describe the types of cases that do in-
19 involve American Indians that your office does handle?
20 Would those only be off-reservation cases?

21 A Yes, yes, contrary to what Mr. Morgan testified to
22 earlier, we really have a very small percentage of cases
23 involving Indians in Gila County, although we have a
24 large population of Indians within our boundaries.

25 The ordinary case would be a case that happens in,

1 usually in the City of Globe, by an Indian and constitutes
2 a crime. The vast, vast majority of these would be bar
3 fights or burglaries. I'd say that would comprise 90-some
4 percent of the cases that come before me.

5 Now, I'm talking about felony cases and I don't
6 handle the minor cases that go before the justice of the
7 peace personally.

8 Q Misdemeanor cases are handled by your assistant or --

9 A Yes.

10 Q Then there's also a city court in Globe which would
11 be handled by the city attorney?

12 A Right.

13 Q Do you happen to know what percentage of your
14 felony cases do involve American Indians?

15 A I can only say it would be quite small.

16 Q Do you have any opinion as to what could be done to
17 resolve some of the jurisdictional issues that have been
18 discussed earlier today by Mr. Morgan and by others?

19 A Again, I work in the law enforcement field, and
20 for my small county, I would probably say that if there's
21 any discrepancy in an Indian case as opposed to a non-
22 Indian case, it would be to the Indian's advantage.

23 The Indian, of course, has the same rights to an
24 attorney and even in misdemeanor cases, even in the --
25 there aren't many misdemeanor cases that I know of that

1 involve Indians, it mainly would be driving while intoxi-
2 cated on their way to the reservation, but within the --
3 outside the reservation, and -- but they are accorded
4 an attorney, it's the same attorney that's appointed to
5 represent people who can't afford an attorney who are
6 non-Indian.

7 Q This is the public defender you're talking about?

8 A This is the public defender's office. Who has a --
9 quite an experience in these lines, and the representation
10 would be the same, the experience would be as much related
11 to the Indians as could be done in our county without a
12 specialist appointed just for Indians.

13 The attorneys that happen to have the public
14 defender contract also happen to be the tribal counsel for
15 the White River Apaches and have extensive experience
16 with the Indian people.

17 Q Are they Anglo attorneys?

18 A Yes. And as are most of the attorneys that would
19 represent them otherwise. But if there's any -- any
20 discrepancy or discrimination on the part of Indian cases
21 it would be that, by and large, they are treated much
22 more lenient by the court system than would a non-Indian,
23 and like I say, we have many -- burglary is a fairly
24 serious charge, and this is the most serious charge, I
25 would say, that we've ever had against an Indian, but since

1 I've been county attorney, no Indian person has gone to
2 the state prison, no Indian person has received a severe
3 sentence, most of them are put on a very short probationary
4 term, and this is -- it starts with the inception from
5 the police officer, the police officer who makes a com-
6 plaint, usually takes into consideration the Indian and
7 often asks for a lesser complaint than he might have in
8 a different situation.

9 Q How long have you been county attorney in Gila
10 County?

11 A Since January 1, 1973.

12 Q Is there any liaison between your office and the
13 Indian community in Globe or around Globe on the reser-
14 vations? Any formal --

15 A A person who plays the role of liaison?

16 Q Right.

17 A No.

18 Q Is there an interpreter who's assigned to the
19 court or is that done on a case by case basis?

20 A Just a case by case basis.

21 Q And that would be out of court funds, I take it?

22 A Yes.

23 Q And the public defender's office is funded, I
24 would assume, on contract from the county?

25 A That's exactly true.

1 Q Are most persons released on their own recognizance?

2 A Most, if you're talking about the majority, yes.

3 Over 50% of all people charged with crimes are released
4 either on their own recognizance or a minimal-type bond.

5 Q Is there a distinction made between persons on or
6 off the reservation?

7 A I don't believe so. I don't get actively involved
8 in the setting of bond, this is done before a case even
9 gets to my office, but in my experience, most of the
10 Indians that do come before us on serious charges, which
11 as I've said are not too many, are usually released. I
12 don't know if they're on bond or on their own recognizance
13 because I just know that they're not in custody, they're
14 not, they don't have to be brought to the court by the
15 sheriff's office, so under what conditions they've been
16 released, I can't say.

17 Q Could we write you for some of that information?

18 A Anything you'd like.

19 MR. LEVIS: Thank you. I have no further questions.

20 THE CHAIR: Are there any other questions of other
21 commissioners?

22 Yes, Mr. Gerber?

23 Q (By Mr. Gerber) Mr. Dawson, does it occasionally
24 happen that Indians who are publicly intoxicated are
25 charged with other offenses such as disturbing the peace?

1 A Not that particular offense. Many of the Indian
2 people who are charged with more serious complaints are,
3 or as investigation later determines, were intoxicated
4 at the time of the offense. In other words, the burglaries
5 I talk about and one of the reasons these are treated
6 with very great deal of leniency by the court is that
7 ordinarily it turns out that the Indian probably didn't
8 have the criminal intent that someone else would have if
9 he breaks through a window in a store and steals a small
10 amount of items, and so intoxication does play a role in
11 the more serious offenses. But I -- I don't know of a --
12 any trend, especially, and very few instances where an
13 Indian person is charged with driving while intoxicated,
14 disturbing the peace and other buildup charges.

15 Q So, your testimony, then, is that you would not
16 actively prosecute an Indian for disturbing the peace when
17 he was merely publicly drunk?

18 A If that is the story, you're right.

19 Q Yes, that's my hypothetical.

20 A I would not charge, just because he was drunk
21 in public, a person with disorderly conduct unless there
22 is some extenuating circumstances which made his conduct
23 very abrasive, and I can't tell you a specific instance
24 where that's happened.

25 Q As I understand your testimony, you don't really have

1 jurisdiction over offenses committed on the reservation,
2 by Indians?

3 A By Indians, no, sir.

4 Q And so you would not get actively involved in any
5 prosecutions stemming from crimes that occurred on the
6 reservation?

7 A I won't say I would not or could not, I have not.
8 I have been given to understand that occasionally the
9 U.S. Attorney's office will ask that the county attorney's
10 office proceed on a case where there may be quasi juris-
11 diction or joint jurisdiction, that hasn't happened to me
12 on any cases, we've had some where the question is closer
13 or maybe the boundary line was very near and there's
14 probably joint jurisdiction there.

15 But usually the U.S. Attorney's office does proceed
16 in -- in federal court and I haven't personally been in-
17 volved in a case where they've asked us to go ahead
18 and prosecute in state court.

19 Q Have you ever been personally involved with a
20 situation where an Indian would come to your office and
21 complain about an offense committed against the Indian
22 within your jurisdiction, that is off the reservation --

23 A Certainly.

24 Q -- and -- how do you handle complaints like that
25 traditionally?

1 A As a general rule, and that's all we can talk about,
2 is we handle it just like any other complaint. There is
3 -- there's no way I could give you statistics because we
4 don't note the complaining witness' race or origin or
5 whatever. So -- but we've had many, many cases where
6 Indians have been the victims of crimes off the reservation
7 and I -- in my opinion, we handle them just as if there
8 were any other victim of a crime and proceed accordingly.

9 Q You'd take a complaint filed by an Indian every bit
10 as seriously as a complaint filed by a person of any other
11 race, then, is that --

12 A I would. Our office, I can say unquestionably, would.
13 Again, usually when a person, a private individual
14 appears at my office and wants a complaint, our first course
15 of action is ask the sheriff's office or the police depart-
16 ment if it happened within a city, to conduct their inves-
17 tigation.

18 And we, for anyone who appears at our office, the
19 lay person, and asks for a complaint, we like an investi-
20 gation to interview all the witnesses and bring us the
21 whole story and we seldom issue a complaint based upon one
22 person's side of the story who comes into the office.

23 But this would not be any different with an Indian
24 person coming into the office or any other race.

25 MR. GERBER: Thank you, that's all I have.

1 THE CHAIR: Any other commission members have
2 questions?

3 Ms. Lyon?

4 Q (By Ms. Lyon) Mr. Dawson, you mentioned that in-
5 terpreters were provided at the expense of the court. What
6 is the source on which you draw to find these interpreters?

7 A Since we haven't had a -- a trial with, say an
8 Apache or an Indian person since I've been county attorney,
9 I can't tell you who the individual would be. But we
10 would contact the tribal council and ask for a person who
11 is able to converse in both languages fluently to be
12 suggested for the interpreter. We've -- we've started this
13 process once or twice, but it's never ended in a trial,
14 it's never actually been necessary to have the interpreter
15 at court for the hearing.

16 Q Do you, personally, feel that a person who is bi-
17 lingual, but just in the ordinary sense of the word, would
18 be qualified to translate the legal technical terms that
19 might occur?

20 A Well, like I say, I haven't had any -- we've had
21 almost every other language interpreted in court, and
22 sometimes our interpreters are not people who have been
23 trained in some very intense program with that language.

24 I can recall a couple of instances where we had people
25 where there's only a small percentage of people that speak

1 their language, and we -- we have operated with the best
2 possible interpreter in those cases. Being somewhat
3 familiar with Apache language and -- I don't know how some
4 of the legal terms would be interpreted or translated
5 into Apache, where it would be understood. Like I say, it
6 hasn't come up so I can't say it couldn't be done. We
7 would need a person who is quite intelligent and quite
8 conversant with both languages to amply explain to the
9 Indian what was going on.

10 Q So, basically, then, you go on the assumption that
11 an Apache defendant understands everything that is directed
12 to him or everything that is said about his case? But you
13 can't really be sure?

14 A I can't be sure of any defendant, if he fully under-
15 stands. We have many, many bilingual defendants in our
16 court systems, I don't -- I wouldn't give you a percentage
17 of how many, and I would hope that their attorney would be
18 more understanding of how much they were understanding than
19 the prosecutor would be because I don't get to talk to the
20 defendant at all under any circumstances unless he takes
21 the witness stand.

22 Q I see. What resources would their attorney have to
23 obtain the services of an interpreter?

24 A Again, the particular attorney who usually represents
25 the Indian people at this time is very familiar with, not

1 only the San Carlos Reservation but also White River, and
2 probably knows a lot more about that than I do. I -- there
3 would be resources, as far as funds to pay an interpreter
4 for interviews, office interviews, investigations, if
5 witnesses had to be interviewed out on the reservation,
6 the public defender's office has a budget for investigations,
7 interpreters, whatever they need, so the resources are
8 there. But the individual that would be the recipient of
9 those resources, I wouldn't know who they would select
10 or how they would make that selection.

11 MS. LYON: I see, thank you.

12 THE CHAIR: Are there further questions from any
13 of the commissioners?

14 Did Mr. Smitherman come in?

15 All right. There being no further questions, thank
16 you, Mr. Dawson.

17 A If the commission wishes any statistics that our
18 office can provide and we're quite a small county and our
19 numbers aren't great, we couldn't give you any statistics
20 on any particular crime or any treatment of any situation
21 because whatever it is we probably only had four or five
22 instances a year. But if you wish any type of statistics
23 or investigation into our record on complaints, particular
24 types of crimes or whatever, we'd be glad to make a
25 search and furnish you what we have.

1 THE CHAIR: Fine, thank you.

2 Is there a representative from the U.S. Attorney's
3 Office present?

4
5 (No response)

6
7 THE CHAIR: Before we proceed to the next panel,
8 we just have a couple of short announcements.

9 Dr. Rudy Gerber of the commission has joined us and
10 I also want to remind the audience of the open meeting
11 which will be held at -- which will begin hopefully at
12 2:15 this afternoon.

13 Anyone who wishes to testify at this time should
14 see Maria Pares and she just walked out of the room, she's
15 been sitting right in front here, and -- oh, she's standing
16 in the back, if you wish to testify during that open
17 session, please see her sometime this morning. Thank you.

18 May we have Everett Little Whiteman, William G.
19 Wilson and Sheriff Paul Blubaum?

20 Mr. Blubaum has asked to speak first.

21 Q (By Ms. Madrid) Would you state your name, address
22 and occupation, for the record, please, Mr. Blubaum?

23
24
25

MR. PAUL BLUBAUM

A (By Mr. Blubaum) My name is Paul Blubaum, I'm the Sheriff of Maricopa County and I reside in Phoenix at 717 West Dunlap.

Q Would you briefly describe the Arizona County Attorney and Sheriffs Association?

A It's an association of the 14 county attorneys and the 14 sheriffs, it has been in existence for some 20 or more years. It's kind of a loose-knit organization, if you will, that participate in the Arizona Association of Counties as a sub-grouping of that association, and it meets twice a year regularly, a summer meeting generally in the northern part of the state, hosted by one of the sheriffs and county attorneys, and a winter meeting in the southern part of the state. There will be one here in Tucson in the first week in December.

And then we have such other special meetings as are called by the membership to discuss such things as pending legislation or imminent problems that we see that might affect our work.

Q What issues does the association deal with and how?

A Well, we deal with primarily -- I've been a member since January the 1st, 1973, and since that time, our main concerns have been with legislation. Various legislative

1 processes. And we've not really had much to consider or
2 not went much afield from that one topic.

3 Q And what is the relationship of the association with
4 the reservation officials? Or do you have any?

5 A Well, I don't think we have an official position as
6 an organization. It varies from county to county. I can
7 describe the relationship in Maricopa County that exists
8 between the reservations and our department. And I think
9 probably we have the most active relationship with the
10 Indian communities of any agencies in the county. We, in
11 addition to our -- well, first of all our regular officers
12 that work adjacent to the reservations and might have some
13 occasion to go on the reservation, and vice-versa, the
14 tribal officers who might have occasion to work off of the
15 reservation or come off the reservation, are cross-commis-
16 sioned.

17 In other words, the tribal government or council
18 have commissioned some of my regular deputies, and I have
19 commissioned officers as deputy sheriffs. So that they
20 don't have problems with the line, so to speak, so that
21 they can work in or on or off of the reservation. We have
22 associated with our department approximately 3,000 volunteers,
23 many of whom are field people, trained in special services
24 in the field. One of our most active groups is a four-wheel
25 drive volunteer organization. They and other of our volunteer

1 organizations are likewise made available to the Indian
2 communities, and actively go onto the reservation and patrol
3 when requested with the Indian officers, so that there is
4 in the vehicle, we usually are using our vehicle, which
5 helps them because they don't have enough vehicles.

6 So we usually have a non-Indian representing my
7 office and an Indian representing the tribal community
8 working together. And most cases are handled or cited
9 into before the tribal judge. And so we do provide that
10 service.

11 We've offered additional services in communications,
12 we provide portable radio equipment when requested, when
13 there's going to be a special function. Let's say on the
14 reservation and there is a need for extra crowd control
15 or communications between our departments, why, we do
16 furnish or loan equipment so that we can communicate back
17 and forth.

18 So I think that generally describes our relationship
19 with the Indian communities in Maricopa County.

20 Now, I've made this, our relationship, our activities,
21 I've made them -- the other sheriffs in the state aware,
22 and -- to a lesser degree I think in some counties, some
23 sheriffs are following suit. But there's not a uniformity
24 of approach yet with regard to jurisdiction and with re-
25 gard to close working relationships between the non-Indian

1 community and the Indian community.

2 Q (By Ms. Lyon) Mr. Blubaum, you were present, I
3 believe, when we heard testimony this morning from Ms.
4 Salter. Could you tell us, in a hypothetical case, if the
5 same were to occur in your jurisdiction, say in relation
6 to the Salt River Reservation, how your department would
7 have handled this case?

8 A Well, matters occurring on the reservation in our
9 county, it's our opinion, and we operate under the assumption
10 that the tribal community, tribal court has jurisdiction,
11 and we would have urged the person to contact the tribal
12 police and we would have assisted by making that contact
13 ourselves and referring them.

14 One thing I neglected to mention, that is that we
15 have brought from the reservations the various tribal
16 officers into our training academy and have trained them
17 so that they are qualified as state peace officers, they
18 have the 280-hour required training, and so we do have a
19 knowledge of their operation and a sort of a first name
20 basis with them, and we would call them and tell them
21 about the situation and then refer the person to them and
22 I would think that they then would be handled by the
23 tribal officer who would take the report and the persons
24 would be cited before the tribal court.

25 We would help them, assist them in bringing those

1 persons to the tribal community if they were not Indians.

2 Q Are we to interpret your statement, then, as meaning
3 that all the tribes in Maricopa County have assumed
4 jurisdiction over non-Indians on the reservation?

5 A This is my understanding.

6 Q And that would be the Salt River, Fort McDowell --

7 A Gila.

8 Q -- Gila Bend and the northern part of the Gila
9 River Reservation?

10 A Yes, Ma'am.

11 Q Now, in the case of the Gila Bend Rservation, would
12 the tribal court not be located in Sells?

13 A That's perhaps so. I'm not real familiar. That's
14 a very small reservation and we have very little, we've
15 had almost no difficulty or -- you know, problem in that
16 area, to my knowledge.

17 Q Maybe we can discuss that with Mr. Wilson later,
18 thank you.

19 On the subject of training, you mentioned that you
20 brought some of the tribal officers in to share your train-
21 ing. Conversely, do any of your non-Indian staff receive
22 any training in sensitivity to Indian characteristics and
23 tribal structure and so on?

24 A Not formal training. It's just that they're very
25 willing and very anxious to be of help and service and get

1 this kind of information on a one-to-one basis when they
2 are working on the reservation in conjunction with the
3 tribal police.

4 Q I see. What about the volunteer organizations that
5 you mentioned, which relate to your department, do they
6 have any Indian members?

7 A I doubt it. There are very few Indians, although
8 we have a few on the department, paid members of the depart-
9 ment, and Judge Rhodes was formerly a member of our depart-
10 ment, the Gila River Community Judge was formerly a member
11 of our department, so -- but in the volunteer groups that
12 work with them, I don't think there are any Indian members.

13 MS. LYON: Thank you, I have no further questions.

14 Q (By Mr. Levis) I have four questions.

15 Sheriff Blubaum, is there a national county attorneys
16 and sheriffs association that you're affiliated with?

17 A There's a National Sheriffs Association, and I
18 think there is a National Association of County Attorneys.
19 I'm not involved in that. I am active in the National
20 Sheriffs Association.

21 Q Are reservation police, officials and reservation
22 prosecutors, members of the state county attorneys and
23 sheriffs association?

24 A No. But they are eligible for membership in the,
25 in Arizona, for instance, in the Arizona Police Chiefs

1 Association. In other words, there is an association of
2 local police officials. But in our association we have
3 and deal with just the elected officials of the 14 dif-
4 ferent counties. The two associations, unfortunately, do
5 not work together, I'm sorry to say.

6 Q Does your association or the Pima County Sheriff's
7 Department have liaison with Indian centers within the
8 county? And within the state?

9 A It's not a formal liaison. We do it through our,
10 in our organization through our bureau of volunteer
11 services, and the man who heads that has members of that
12 group who are in contact almost daily with the communities.

13 Q Do you have a human relations officer or office
14 in your sheriff's department?

15 A Not by that particular title. If you're referring
16 to the recently-developed police community relations-
17 type program, I'm of the opinion, as I believe many police
18 officials are, that that's a rather superficial program,
19 and not really the best way to relate to the community.
20 And so we don't have such a vehicle, per se. We do it
21 through the broader spectrum of our, you know, our com-
22 munity involvement program and our volunteer services
23 bureau.

24 Q And what is that?

25 A So I have several people working with the various

1 communities.

2 Q Is it like a speakers bureau and --

3 A We have that, yes.

4 Q How many officers --

5 A It's much broader than that, but that, we do have
6 that service as one -- one of the functions of that
7 bureau.

8 Q Could you briefly describe what the bureau does and
9 also how many Indian officers, men and women you have out
10 of your total number of officers?

11 A Well, the bureau that deals with the community had --
12 works with -- works in the schools, works with the various
13 service club organizations to present programs, we have a
14 film library, we have access to film that is available at
15 the state level and national level, we present, when
16 people show an interest in a particular subject matter.

17 We give talks on particular subjects in the schools
18 and before various groups. We do not treat the Indian
19 community separately, and we only go in on request. And
20 then in those cases, use people in our organization who
21 have already established a rapport with the community.

22 Again, I can think of one man by name, Glen Lily,
23 who's a member of our paramedics or head of our paramedic
24 group, has, I think, a good relationship with the Gila
25 River community, and we -- in other words, he does the

1 initial contacting, he brings to me the requests or the
2 problems or identifies for me the needs of the community,
3 and then I provide the resources to him and the community.

4 Q And how many officers do you have and how many, to
5 the best of your knowledge, are Indian men and women?

6 A The department is about 570 total personnel, sworn
7 personnel, around 350. The Indian membership is probably
8 one percent. Very small. You probably have four or five.

9 Q Do you have an active recruiting effort to increase
10 this number?

11 A Not specifically directed at the Indian community.
12 However, we have no -- and we -- there's no rejection or
13 discrimination as far as I know, we're happy to -- wherever
14 we can, have representation from minority community.

15 Q Do you know how many women officers you have?

16 A About seven at the moment that are full time, sworn
17 deputies.

18 Q Are any of them women -- Indian? Excuse me.

19 A No, there are no Indians.

20 MR. LEVIS: I have no further questions.

21 Q (By Ms. Madrid) Mr. Whiteman, would you please
22 state your name, address and occupation, for the record?
23
24
25

MR. EVERETT LITTLE WHITEMAN

A (By Mr. Whiteman) My name is Everett Little Whiteman and I'm the agency special officer for the Bureau of Indian Affairs on the San Carlos Reservation, Arizona.

Q Could you tell us what type of jurisdictional problems the BIA has encountered with regard to law enforcement and administration of justice for American Indians on and off the reservation?

A At the present time the San Carlos Tribal Court does not have jurisdiction over non-Indians for any offenses occurring on the reservation in any -- any offenses that is brought to our attention we refer to the, either Gila County or Graham County. And any -- any instances off the reservation that come to our attention, we refer to the proper authorities also.

Q And who makes the determination whether you have jurisdiction or not?

A Well, myself for one and I'm in constant contact with the Federal Bureau of Investigation and the United States Attorney's Office.

Q Under what conditions may an American Indian be extradited from the reservation?

A Presently, none. We -- on the present tribal law and order code which we operate on, we do not have extra-

1 dition processes.

2 Q (By Ms. Lyon) Mr. Little Whiteman, perhaps we need
3 to be more specific on that question of extradition. Could
4 you describe what takes place in the event of a federal
5 offense?

6 A On federal offenses, the -- of course the federal
7 government does have jurisdiction over felonies or over
8 crimes against federal regulations and the United States
9 Attorney's Office does have jurisdiction and if they feel
10 a complaint is justified, they do file a complaint and a
11 warrant is issued and the individual is arrested and
12 taken before the magistrate, whether it be in Globe or
13 Tucson.

14 Q I believe you're familiar with the case on which
15 Ms. Yolanda Salter testified today. In your opinion, how
16 could Ms. Salter have received assistance and from what
17 authority?

18 A I learned of the incident by Ms. Salter, she came
19 to my house and reported the incident to me. I got in con-
20 tact with my officer that was on duty and I instructed him
21 to do a preliminary investigation to find out the facts.
22 And when he reported back to me of the facts, I referred
23 it to the Gila County Sheriff's Office because I felt that
24 they had jurisdiction in the matter.

25 Q But you left it to Ms. Salter to obtain that

1 assistance, you are not ordinarily involved in such
2 cases by actively assisting the person to make contact?

3 In other words, you would not make contact yourself
4 with the Gila County Sheriff's Department?

5 A Not usually, because the -- the sheriff's office
6 or the county attorney's office will have to get the
7 information from the complaining party.

8 Q Were you aware that Ms. Salter was unable to obtain
9 assistance from the sheriff's department?

10 A Yes, Ma'am.

11 Q And in such cases you are unable to take any fur-
12 ther steps to obtain assistance for an Indian person?

13 A Well, in this particular case we did open a federal
14 case for assault and we referred it to the FBI and the
15 United States Attorney's Office and we had an ultimate
16 declination, then, when that happens, I can not do any-
17 thing else because the prosecutor themselves are declining
18 on the case, and there's nothing else I can do.

19 Q Could you tell us on what basis the case was de-
20 clined?

21 A By whom?

22 Q By the federal court?

23 A They felt that it was a minor -- minor case and not
24 a felony, and the local authorities should handle the case,
25 meaning the Gila County Sheriff's Office or County Attorney's

1 office.

2 Q Did the federal court then refer the case back to
3 the county attorney's office?

4 A Yes, Ma'am.

5 Q And was there any further action taken by the county
6 attorney's office?

7 A I don't believe so.

8 MS. LYON: Thank you, I have no further questions.

9 THE CHAIR: Dr. Gerber?

10 Q (By Dr. Gerber) Yes, just a few questions here on
11 this jurisdiction thing.

12 Are you of the opinion, Mr. Little Whiteman, that
13 there is a jurisdictional mess dealing with the treatment
14 of Indians on the reservation and off the reservation?

15 A I don't know what you mean when you say mess, but
16 I do believe there is a problem.

17 Q How would you define a problem, where does it -- what
18 does it consist of?

19 A Well, it's usually lack of understanding or communi-
20 cations on one or both parties involved.

21 Q Do you think that this problem works to the benefit
22 or the detriment of the Indian people?

23 A Well, I don't know of that many cases that are in-
24 volving jurisdictional conflicts, but in Ms. Salter's
25 case I believe there -- it was detrimental.

1 Q Do you have any ideas of your own as to how to remedy
2 the jurisdictional problem?

3 A Yes. I made a suggestion at one time that the
4 police academy, that was initiated at Globe for an area law
5 enforcement officers on the reservation and the towns
6 surrounding the reservation, that jurisdiction questions
7 be part of the curriculum. I don't know what they'll do
8 with that.

9 Q Part of the curriculum in the sense that it be
10 taught in various law enforcement academies?

11 A Right, so that all law enforcement agencies sur-
12 rounding the reservation will have an idea what they can
13 and can not do.

14 DR. GERBER: Thanks, I have nothing further.

15 Q (By Mr. Williams) Mr. Whiteman, am I right in
16 assuming that you said that the jurisdiction, you did not
17 have jurisdiction over non-Indians on the reservation?

18 A Right.

19 Q Okay.

20 Sheriff Blubaum, earlier when you stated, didn't
21 you indicate that you felt that the reservations did have
22 jurisdiction over non-Indians?

23 A (By Mr. Blubaum) Yes.

24 Q We have a bit of a problem.

25 A (By Mr. Little Whiteman) Well, we're talking about

1 different reservations.

2 Q I understand that, but I think the sheriff was
3 talking about all the reservations in Maricopa County,
4 do you have any knowledge of any other reservations or
5 is that a general feeling among the sheriffs' organization
6 that they take this particular point of view, that the
7 jurisdiction lies with the reservations in the state?

8 A (By Mr. Blubaum) Well, apparently there are some
9 -- some fine legal distinctions or differences between the
10 status of various reservations and they're not all the
11 same, I think we have to defer to the federal attorney with
12 regard to who has jurisdiction and in our county, it's --
13 this is the way it's being handled.

14 Q Is this addressed at all in your organization, the
15 sheriffs and county attorney's organization? Is there any
16 kind of standardization or procedures?

17 A We have discussed it at times, the same thing that
18 the investigator here is referring to, because I've heard
19 this comment made by the other sheriffs that they do have
20 some problems. One of the problems is the delineation
21 or -- in boundary lines, for instance, in some areas they're
22 not all that clearly marked or established for the law
23 enforcement authorities or for the non-Indian community.
24 They really don't always know when they are on or off of
25 the community property. So -- so that that seems to be

1 actually another problem we haven't addressed here, that
2 needs some consideration.

3 Q Mr. Whiteman, we're aware that some of the depart-
4 ment of public safety officers are cross deputized, also
5 some of Sheriff Blubaum's officers are cross deputized
6 to try and alleviate this jurisdictional problem. Is that
7 true on this reservation that there's cross deputization
8 of the Indian tribal officers and the sheriff's officers
9 and, what is it, Gila County or --

10 A (By Mr. Little Whiteman) San Carlos Reservation is
11 on two counties, Gila and Graham County. We do have -- we
12 do cross deputize our officers with the Gila County
13 Sheriff's Department and vice-versa. Not Graham County.

14 Q Well, if you have cross deputization, I'm still at
15 a loss of why the jurisdictional problem exists to the
16 point that it has in Ms. Salter's case?

17 A Well, it's -- the tribal court, it's an instance
18 that took place on the reservation but the tribal court
19 at present does not have jurisdiction over non-Indians.

20 Q Even though your tribal officers have jurisdiction?

21 A Right. We can arrest non-Indians for violations
22 on the reservation and refer them to the county attorney's
23 office.

24 MR. WILLIAMS: That's all.

25 Q (By Mr. Levis) I just have one question. You

1 indicated that an American Indian is on the reservation he
2 can't be extradited to the county?

3 A Well, in San Carlos it's true because we do not
4 have that in our tribal code.

5 Q So there is no way for the county to extradite an
6 American Indian who commits a crime in the county but off
7 the reservation unless that person just happens to be
8 off the reservation?

9 A Right.

10 Q Is there any discussion to change the tribal code
11 concerning this?

12 A Yes, the tribal council is in the process of re-
13 vising their tribal code and it will include extradition,
14 among other things.

15 Q Will it include jurisdiction over non-Indians who
16 commit crimes on the reservation?

17 A The wording will be changed to read any person.

18 Q Were you here when Mr. Dawson testified?

19 A The latter part.

20 Q It's my understanding from his testimony that he
21 said that the county attorney has assumed jurisdiction
22 over non-Indians who commit offenses on the reservation,
23 is that correct?

24 A Say that again?

25 Q That the county attorney, the county sheriff have

1 assumed jurisdiction over non-Indians who commit crimes
2 on the reservation within their county?

3 A Right.

4 Q Is this also true with Graham County?

5 A Right.

6 Q To the best of your knowledge? Yet the BIA presently
7 does not cross deputize the Graham County?

8 A No.

9 Q And the Graham Police are not cross deputized in
10 that county?

11 A No.

12 MR. LEVIS: I have no further questions.

13 THE CHAIR: I've nothing further.

14 Q (By Ms. Madrid) Mr. Wilson, would you state your
15 name, address and occupation for the record?

16
17
18 MR. WILLIAM WILSON

19
20 A (By Mr. Wilson) My name is William Wilson, I am a
21 supervisory law enforcement officer to the Phoenix area
22 for the Bureau of Indian Affairs, located at 124 West Camas
23 Street, Phoenix.

24 Q Could you please tell us what are some of the major
25 concerns involving American Indians and the administration

1 of justice?

2 A Well, if I can address myself first to law enforce-
3 ment in the Indian country, if you were to ask me to
4 identify the reservation law and order program problems
5 and the problems affected by Indians relying on those
6 programs for services, I would say in general that bureau
7 and tribal law enforcement programs are understaffed,
8 underfunded, underequipped and undertrained.

9 And when that happens, when those conditions pre-
10 vail, services are not as they should be and problems re-
11 sulting, inadequate supervision in jails, these kinds of
12 problems arise, and consequently, people suffer from a
13 lack of effective and efficient services.

14 Q One concern you mentioned in a previous interview
15 was the inadequate jail facilities. Could you describe
16 the physical condition of some of the jails with which
17 you are acquainted?

18 A Are you talking now about on-reservation or off-
19 reservation?

20 Q Off.

21 A Off. Well, I -- with the sheriff here let me say
22 that historically sheriff offices have been underfunded
23 and understaffed and some of the county jails are rather
24 antiquated, and I'm aware that you're going to have Sheriff
25 Peace here from Globe and there is a jail facility that's

1 very sad and one that has been recognized by the sheriff.
2 Indians, of course, find themselves in jail, in Globe,
3 as other people do, and anybody put in that facility, you
4 know, it represents some real tragic problems.

5 However, the county now is building a new facility.
6 You can say the same thing about Holbrook. Their jail
7 was in a deplorable condition. They're now building a
8 new facility.

9 And I don't mean to sound critical of the counties,
10 I recall for some seven or eight years the San Carlos
11 Tribe has made its demands to get the bureau to build a
12 new jail at -- on that reservation. Money was not forth-
13 coming.

14 Several years ago, San Carlos Tribe invited me to
15 San Carlos for the purpose of a celebration. And I asked
16 what the celebration was for and they said our jail is
17 100 years old, we're going to burn the damned thing down.

18 Well, as a result of that action and the action of
19 the tribal council, this next year a new jail will be
20 built at San Carlos, it costs about a million, six hundred
21 thousand dollars. So the conditions of jails are not only
22 in off-reservation border communities but pretty well
23 statewide on-reservation, off-reservation.

24 Q So, in your opinion, what could be done to correct
25 the conditions of the jail you have mentioned if they don't

1 have the funds to build a new one?

2 A That's a tough question. Seems to me that, you
3 know, the cost of building a facility today is almost pro-
4 hibitive. When you think in terms of some of the smaller
5 communities, operating antiquated facilities, it's not
6 only the cost of the facility, if you have suitable facili-
7 ties, the operation of a jail is extremely expensive. You
8 become involved in measures of health and feeding and sani-
9 tation and security and segregated facilities for men and
10 women, and then you face the question of 24-hour super-
11 vision, seven days a week. And that will involve at least
12 five specific people employed just for that purpose.

13 If you operate a jail, without adequate supervision,
14 where you lock them up at night and you come back the next
15 morning, you're going to find, eventually, that people get
16 assaulted in jail by other prisoners, things happen in
17 there, people get injured, people attempt suicide, in
18 some cases, you'll have fires and you'll have death. And
19 I don't really have an answer on how you can help a
20 community that doesn't have the money but has an outdated
21 and understaffed jail.

22 THE CHAIR: Mr. Williams?

23 Q (By Mr. Williams) Mr. Wilson, would you advocate
24 county jail structure being taken over by the department
25 of corrections from a state point of view?

1 A (By Mr. Wilson) Well, I work for the federal
2 government and I'm not sure here, but I would think if --
3 what the Indian tribes done, if you look back a few
4 years and what the Bureau of Indian Affairs did, we had,
5 eventually, to close some of our facilities and transport
6 people some miles away to suitable facilities and pay
7 three, \$5.00 a day, rather than to continue to put people
8 into a facility which resulted in mistreatment.

9 I think we're coming eventually to this point of
10 regional facilities.

11 Q Sheriff Blubaum, what's your feeling about regional
12 facility run by the department of corrections through the
13 various counties?

14 A (By Mr. Blubaum) We were mandated by the electorate
15 in Maricopa County to develop a countywide corrections
16 system and some 14 million dollars was approved for the
17 construction of facilities. We're just getting ready to
18 open one which is already generated considerable press
19 coverage, because it's supposedly a little too plush, but
20 actually the way our state is populated, with the two
21 major urban areas and the two class A counties, I think
22 probably our best approach to the problem would be to
23 develop countywide correctional systems in Maricopa and
24 Pima County, and then have the state assume the operational
25 problems for the balance of the counties. Because of their

1 lack of tax base and inability to provide the services,
2 the same level of services in the outlying counties.

3 MR. WILLIAMS: Thank you.

4 THE CHAIR: Are there any other questions of com-
5 missioners?

6 Q (By Ms. Lyon) Mr. Wilson, I believe we need to go
7 a little deeper into the problems with jurisdiction because
8 there appears to be no uniformity throughout the State of
9 Arizona in terms of, number one, cross deputization or
10 cross commissioning, and number two, the assumption by
11 Indian tribes of jurisdiction over non-Indians on the reser-
12 vation.

13 Could you tell us roughly how many tribes at this
14 point in Arizona do exercise jurisdiction over non-Indians?

15 A (By Mr. Wilson) I think the first tribe that moved to extend its
16 laws to non-Indians on the reservation was the Gila River
17 Tribe, several years ago. The Salt River Tribe followed
18 shortly thereafter, Colorado River Tribes at Parker,
19 Arizona, have extended their jurisdiction, the Fort Apache
20 Tribe at White River have extended their jurisdiction,
21 there is a question on the extension of the Hopi juris-
22 diction, other tribes are talking about it.

23 Now, this question of tribal jurisdiction over non-
24 Indians is not a well-settled issue. And some tribal
25 governments are watching it closely, it's being challenged

1 in the courts now, and they're waiting for those court
2 decisions before they make a decision. There's all kinds
3 of legal ramifications here. When a tribe moves to
4 extend its jurisdiction, many times there is a challenge,
5 a number of challenges from the non-Indians who may live
6 and work on that reservation, from the sheriffs' offices
7 or the deputies themselves, from the county attorneys, from
8 business places that may be located on that reservation.
9 The Ute Tribe, in Utah, just recently extended its juris-
10 diction about July 1st, and immediately, a furor arose be-
11 tween the businessmen in town who were fearful that the
12 tribes were going to tax them once they had the juris-
13 diction.

14 Other questions arose. The governor of the state
15 interceded. The Ute Tribe is now suing the governor of
16 the State of Utah in the federal court, trying to prohibit
17 his interference in what the tribe feels is an exercise
18 of its sovereign rights, and so it's one thing to say,
19 but it's got a lot of problems with it.

20 I look for more tribes to extend their laws, to
21 get at the kind of problem that the woman from San Carlos
22 was talking about this morning. You know, when you talk
23 about jurisdiction our rule of thumb is that the federal
24 government has a very limited criminal jurisdiction and
25 that jurisdiction is only over certain major crimes, the

1 murder, the manslaughter, the rape, the robbery, that
2 kind of thing. The laws of the State of Arizona, the
3 criminal laws of the State of Arizona, have no application
4 whatsoever to an Indian on an Indian reservation. So,
5 consequently, the bulk of responsibility for law enforce-
6 ment services rests with the tribal government, and the
7 tribal court.

8 And where that tribal court does not have juris-
9 diction over a non-Indian, and the county refuses to act,
10 you have a vacuum and then emotions and feelings come into
11 play.

12 Q Could you tell us, Mr. Wilson, through what process
13 those tribes that have assumed jurisdiction, did so? Did
14 they publicly announce that they would henceforth exercise
15 jurisdiction or what was the procedure?

16 A Tribal governments, of course, are governed by
17 tribal constitutions and charters. The tribal government
18 is empowered to do certain things. Now, with regard to,
19 if I can generalize here, a tribe will have in its con-
20 stitution, it will grant authority to the tribal government
21 to promulgate laws, set up an Indian court, operate a
22 jail and a police department and that type of thing. So,
23 under that section of promulgating laws, they have ex-
24 tended their jurisdiction.

25 Now, these actions, in their constitution it will

probably say subject to the approval of the secretary of the interior. A tribe will enact that ordinance, it will go to the superintendent who, in all probability, will approve it.

There is 90-day period thereafter whereby the secretary of the interior will either favorably review it or disapprove it and these actions have had favorable review.

Q In other words, each case where a tribe took this action, the secretary approved it?

A Well, that authority has been delegated down to the commissioner and now it's down to the area director, so it's us writing the letters of approval. We stumbled with this, you know, what is going to be our position, are we going to disapprove it or approve it and we're aware that there are two cases in Seattle federal district court where the question came before the court, that district court held that the tribe does have the right to enforce its laws on its lands on all people. We had a solicitor's opinion from the department of the interior, and I'm guessing at the date, but I think it was 1970 or maybe '72, that says Indian tribes do not have the authority to extend their laws to non-Indians, they are without authority to impose criminal sanctions against non-Indians.

A year or so ago, over a year ago, that opinion was

1 withdrawn. And the solicitor's office of the department
2 of the interior was involved in the Seattle cases that I'm
3 talking about, in support of the tribe, and so, conse-
4 quently, we have nothing to replace it, we're aware of
5 those court decisions, we're aware of the solicitor's
6 position, even though it's not in writing and we have
7 approved these enactments.

8 Q To your knowledge, then, there are currently no
9 challenges in court to tribal assumption of jurisdiction
10 in Arizona?

11 A In Arizona, there are none that I know of.

12 MS. LYON: Thank you.

13 THE CHAIR: Dr. Gerber?

14 Q (By Dr. Gerber) Yes, I think I have just one.

15 Prescinding for a moment from the complex legal
16 issues involved, if this were to take place, Mr. Wilson,
17 in your opinion would there be an advantage for Indians if
18 the counties could assume concurrent jurisdiction over
19 Indian reservations?

20 A You know, I'm guessing here now, but in my dis-
21 cussions with tribal officials, I would think that they
22 would not at all support this. There are not many sheriffs
23 like Paul Blubaum. All you have to do is go back in
24 Maricopa County three short years and there was kind of a
25 steel curtain around the reservation.

1 Today, at Gila River, they -- they have a hunting
2 season, lots of doves, this type of thing, literally
3 hundreds of non-Indian hunters come onto that reservation
4 and the sheriff's got his staff out there, there's heli-
5 copters there, there's a reserve there, there's cross
6 commissions, Indian officers are in the academy. But if
7 we had -- if he leaves and we got somebody that wants to
8 go back to the steel curtain concept, you know, then the
9 tribes are hurting again.

10 I think tribes are beginning to bring to themselves
11 and exercise the powers they feel they have, and I'm not
12 sure they'd buy your suggestion.

13 Q That is they would not be in favor of concurrent
14 county jurisdiction to enforce county -- or statewide
15 criminal laws over the reservations?

16 A I'm guessing, but that would be my answer, yes.

17 DR. GERBER: Thank you.

18 THE CHAIR: Any other commissioners have questions.

19 Q (By Mr. Levis) I have a question.

20 Mr. Wilson, do you have any formal or informal liaison
21 with different county sheriffs or county attorneys?

22 A From time to time, I -- I'm charged with the re-
23 sponsibility of maintaining a liaison with a number of
24 different agencies, and certainly one of those is the
25 sheriff's office. It's one that I have not done well, I

1 suspect that with regard to the sheriffs and myself, we
2 get busy doing our own thing, and we never quite get to-
3 gether often enough.

4 Q So you have no individual who's assigned to such
5 a task?

6 A No, no, no. We have several hundred people working
7 in our program but they're scattered throughout Utah,
8 Nevada and Arizona, my office represents two people.

9 THE CHAIR: Are there any other -- commissioners
10 have further questions of the panel?

11 Mr. Whiteman, before you leave, would you please
12 approach the desk? The rest of you may leave, thank you.

13 We'll take a five-minute recess.

14
15 (Short recess)

16
17 THE CHAIR: We will continue with our hearing.

18 Before we go on to our next panel, may I ask if
19 there is a representative of the U.S. Attorney's Office
20 in the audience?

21
22 (No response)

23
24 THE CHAIR: All right, thank you.

25 We will go on to the next panel now.

1 We have Edmund Wesley, Clarence Wesley and Phil Shea,
2 please come over to our --

3 Q (By Ms. Lyon) Mr. Clarence Wesley, for the record,
4 would you please state your name, address and occupation?
5

6
7 MR. CLARENCE WESLEY
8

9 A (By Mr. C. Wesley) My name is Clarence Wesley. I
10 reside in Bylas, Arizona, on the San Carlos Apache Reser-
11 vation. And I'm a bureaucrat.

12 Q I believe prior to your present occupation you
13 served as chairman of the San Carlos Apache Tribe. Could
14 you tell us how many years you served in that capacity?

15 A All together, I've put in 20 years as a member of
16 the tribal council, ten years of it as chairman of the
17 tribal council.

18 Q Thank you. Mr. Wesley, would you describe for the
19 committee the incident regarding your arrival at the Roadside
20 Bar after the shooting of your grandson?

21 A I have prepared a written statement and if you don't
22 mind, I'd like to read it because I have a language barrier
23 as you know.

24 Q Go ahead, please.

25 A On the evening of March 16, 1974, I was told that

1 my grandson was shot at the Roadside Bar, operated by
2 Gene and Tom Mayfield. It must have been around 9:00
3 o'clock. I was already in bed and when I got the news.

4 MS. MADRID: Mr. Wesley, would you want to just
5 submit your statement into the record without reading it?

6 A No, I'll go ahead and read it.

7 I immediately got dressed and drove hurriedly to the
8 Roadside, where I found my grandson lying in a -- in a
9 pool of blood. There were also Apache men all over the
10 place, busting bottles inside the bar and many more Indian
11 outside. I was told that an ambulance was called and was
12 on the way, but after being there for quite a while I
13 became impatient and started for home to get some blankets
14 so I could take him to the hospital myself.

15 When I got back to the bar, the ambulance had
16 arrived, my grandson was loaded in the ambulance and
17 taken to the hospital where he died that night.

18 After the ambulance was gone, I started for home.
19 I turned to look back to see if the highway was clear before
20 I got on the highway. I stopped in my tracks because there
21 were about 20 or more cars coming right after another from
22 the east, in the direction of Safford, Arizona.

23 At the Roadside Bar there were some Indians' own
24 cars and pickups in front of the bar but were across the
25 highway. And there was some Indian men and women sitting

1 in their vehicle and some were standing around. Most of
2 these came on the scene when they heard of the shooting.
3 The lawmen got out of their cars with rifles in their hand
4 and start ordering all those standing around to get inside
5 the bar.

6 One of the Apache men from across the street said
7 something and one of the lawmen said, you shut up or
8 I'll shoot.

9 When I heard this, I couldn't help but make a sharp
10 reply. I said go ahead and shoot, one Indian is shot al-
11 ready and you might as well shoot me too, since my grandson
12 is already shot, and may be dying.

13 Then three lawmen came after me and ordered me to
14 get inside. I said nothing doing and they pushed me around.
15 I resisted and finally they threw me on the ground and
16 handcuffed me and put me into the rear seat of one of the
17 police cars.

18 About a half an hour later some of the police
19 started for Geronimo, which is further down the road about
20 half a mile. Where they surrounded the place but no one
21 was inside.

22 My wife arrived at the Roadside -- at Geronimo and
23 blasted everyone around, especially the lawmen and they
24 let me out when I -- and then we went home after being
25 locked in the police car for about two hours.

1 For many years there has been anti feeling against
2 Apache Indians up the Gila Valley and up to this time, an
3 Apache has no chance in so far as justice is concerned.
4 Even the media makes it appear like it really was the
5 Apache who started the whole thing. The radio and the
6 press call it a riot all the way. It was far from riot.

7 A similar episode erupted about six months prior to
8 this incident. At that time this same man, Gene Mayfield,
9 kick an Indian between the legs and was knocked unconscious
10 for two weeks. Gene Mayfield never came to justice and this
11 incident never came to the media and a short time he
12 resumed his operation.

13 We learned later he was operating this bar illegally,
14 using the license which was never transferred legally and
15 he was still operating without proper liquor license up to
16 the time he killed my grandson.

17 This kind of activity still goes on right now in
18 Geromino, we are trying to stop it but it is a long, drawn
19 out affair. I realize the fact that courts and laws
20 decide the fate of law breakers. Only when they are con-
21 victed after a fair trial. But I do not believe it is
22 fair justice when attorneys get together and settle be-
23 tween themselves on what you call plea bargaining, specially
24 when there is a death involved.

25 And this is what was done to us. To me it is racist

1 all the way. I feel the State of Arizona has to change
2 some of its methods in giving a fair deal to its Indian
3 citizen.

4 Sometime prior to this event, which took place at
5 the Roadside Bar, I went to see Mr. Layman Hollywood, who
6 was the justice of the peace in our area, to see if we
7 could do some way declare Roadside Bar a public nuisance
8 and have it closed down. I definitely told him that some-
9 day, somebody is going to get killed there. I never know
10 it was going to be my grandson.

11 Mr. Chairman and Members of the Commission, it is
12 apparent that all these talks I'm making, all the hearings
13 that we are having today, your decision one way or the
14 other will never bring my grandson back to me, but I hope
15 and pray that through this commission and all its hearings
16 we will find solutions to improve the overall justice of
17 the country. And that no Indian or Indian family will go
18 through all the sadness, all the maneuvering that was done
19 by the funeral home, the department of public safety,
20 people, courts, state attorneys and other deals that set
21 Gene Mayfield, the murderer, free.

22 Q (By Ms. Lyon) Thank you, Mr. Wesley. The committee
23 expresses its sincere regret to you and Mr. Edmund Wesley
24 that we have to put you through the grief of having again
25 to tell what occurred, but as you said, we hope that by

1 recording your statements, we can draw attention to some
2 of the areas of relations between the Indian people and
3 the non-Indian community which require a great deal of
4 improvement.

5 With regard to the method in which the death was
6 investigated, would you care to add your feelings on the
7 way this was done?

8 A It was started by the Gila County authorities first,
9 but believing that we would never get a fair deal from
10 this source, we went and got the state to investigate
11 thoroughly. And this way we thought we would get a
12 better -- a better deal. And that -- and that was done.

13 The thing the -- at the start, a hearing, investi-
14 gation that was being held, we were -- we were really
15 pleased that something was going to come out of this, out
16 of this deal. But at the final hand, state attorney
17 general, fellow named Crimson, I believe it was, came on
18 the scene and he got talked out of this little country
19 attorney, a fellow named Mortenson in Safford, to a plea
20 bargaining. But we thought Mr. Schaefer, the regional
21 attorney that started handling the case, was going to go
22 all the way and get this superior race man, Gene Mayfield,
23 who was guarded all over, everywhere he go, by public
24 safety people, we thought he was going to -- we thought
25 we were going to have justice done.

1 But at the final end of the conclusion, everybody
2 watched me, everybody watched everybody around to see if we
3 had some weapon around. But at the final conclusion, we
4 were all disgusted and sick with what happened. Even
5 the psychiatrist -- psychiatry testing he went through at
6 the state hospital in Florence was -- everything was in
7 his favor. And I don't know, I don't know, I just don't
8 know why we didn't get the fair justice we thought we were
9 entitled to.

10 Q Mr. Wesley, what do you think needs to be done to
11 prevent this type of incident from happening in the
12 future?

13 A I think it's a -- I think that sometime I feel that
14 we ought to get even, you know. I think when a guy kills
15 a person we ought to go back and kill him too. But -- but
16 we're breaking the law all the way around when we do that.
17 But I really don't know what will bring, in so far as
18 justice is concerned, between people in Graham County who
19 are anti-Apaches, you know, especially the -- where I live.

20 I went through this, I think lot of times myself,
21 and I know what I'm talking about. But in order to improve
22 the situation, there has to be, I think there has -- they
23 have to create a better feeling, a better attitudes to the
24 Indian people, Apache people that is, in Graham County.

25 MS. MADRID: Madame Chairman, at this point may I

1 request that the documentation made available to the com-
2 mission by Mr. Philip Shea, attorney for the Wesley family,
3 be placed in the record of this hearing?

4 THE CHAIR: Yes.

5 MS. LYON: Thank you.

6 MR. LEVIS: If we could, Madame Chairperson, could
7 we mark that as Exhibit 15 of the hearing?

8 MS. LYON: Thank you.

9 Q (By Ms. Lyon) Mr. Edmond Wesley, for the record,
10 would you please state your name, address and occupation?
11
12

13 MR. EDMOND WESLEY
14

15 A (By Mr. E. Wesley) My name is Edmond Wesley, I
16 reside in Bylas, Arizona, San Carlos Reservation, Box
17 Number 3, and I'm the education coordinator, I'm on the --
18 presently on the tribal council.

19 Q Mr. Wesley, would you give the committee your opinion
20 concerning the investigation into the death of your son?

21 A I don't know what I have to add to what my dad have
22 already stated. But I want to go back, even prior to the
23 incident. Because there have been incidents that occurred
24 where Indian have been put in the hospital because of
25 trouble at the Roadside Bar and at Geronimo. And I've con-

1 fronted Mr. Harold Stevens at Fort Thomas one time be-
2 cause there were two cousins of mine that were involved
3 in a serious beating. Matter of fact, one of them have
4 -- one of them have landed in the hospital at Phoenix
5 Indian Hospital and I told Mr. Harold Stevens at Fort
6 Thomas, that says what is the sheriff's department doing
7 to protect the Indians? Dad says -- and I told him that
8 and he said, you going to wait until somebody get killed
9 and then you going to come down.

10 And, you know, that -- this have been known, you
11 know, I have contacted him before about some of the serious
12 troubles that we have because I was the vice chairman during
13 -- during that time. And I believe the investigation or
14 either what -- or either the way things turned out, I just
15 don't -- don't -- I just totally disagree with the whole
16 thing. Because there was no justice done.

17 Matter of fact, today that you see an Indian in that
18 Graham County, they pick him up for drunkenness and put him
19 in the can and throw the book at him.

20 But what about -- but what about Gene Mayfield that
21 have killed my son, never spent a night in jail. They
22 never set the bond, he was released on his own recognizance.
23 And yet, today, that they pick up an Indian and I bet you
24 he will spend the full time in jail.

25 Then, one of the things that -- one of the things

1 that happened was that the mortician, either intentionally
2 or accidentally, the evidence was destroyed. And knowing
3 that mortician do go through training and they are subject
4 to certain laws and they know certain laws that pertain
5 to some tragedies like that, and yet, without either the
6 sheriffs wasn't consulted or the sheriff was consulted,
7 but anyway, you know, the evidence was destroyed that
8 could have been -- the factor in what did really happen.

9 Q Then it's your opinion, according to what you just
10 told us, that the procedures used by the mortician were
11 not appropriate?

12 A No, it wasn't appropriate.

13 Q (By Ms. Madrid) Thank you, Mr. Wesley.

14 I would now like to ask Mr. Shea, as attorney for
15 the Wesley family, to state your legal opinion regarding
16 the investigation of the death of Vernon Wesley?

17
18
19 MR. PHILIP SHEA

20
21 A (By Mr. Shea) Yes, for the record, my name is
22 Philip Shea, from Phoenix, Arizona, and I'm a lawyer and
23 I represent the Wesley family.

24 Really, my view of the -- of the investigation is not
25 a legal view, there is nothing legal or technical or there's

1 no legal experience or technical knowledge required to
2 evaluate what went on here.

3 The victim, Vernon Wesley, was sent to -- now the
4 defense that Gene Mayfield asserted was that -- was that
5 Vernon Wesley, when he was being told to get out of the
6 car at rifle point, struggled for the rifle and the rifle
7 went off. The evidence, the -- the story as told by Mayfield,
8 was to me incredible in light of the pathological report.

9 Q Would you tell us what that was?

10 A Well, I don't want to go into detail, but anyway,
11 it showed that the -- the bullet entered through the right
12 arm and Mayfield's story was that Vernon grabbed the rifle
13 and pushed it over to this way. Making, as I said, the
14 story incredible. The Indians who were at the bar said
15 that May field came into the back door and standing behind
16 the bar, shot at Vernon was he was leaving in the area
17 of the front door, which would make it the difference be-
18 tween some kind of involuntary homicide and first degree
19 murder.

20 The proof of what, the way it really occurred,
21 could have been obtained by examination of the body of the
22 victim. Namely through powder burns on the arms and on
23 the shirt. The body was taken to the mortuary and I was
24 told by William Schaefer, who is the head of the prosecution
25 originally in the attorney general's office, that the

1 mortician was told, either by DPS or sheriff's officers, on
2 two, if not three, occasions, not to alter the body or
3 the clothes in any way because they constituted evidence.

4 The powder burns were washed off the arm completely.
5 When the sheriffs went there the next day or the DPS
6 officers, they found the clothes in an incinerator. They
7 had been incinerated.

8 Now, in light of the fact that they were warned
9 clearly not to change the evidence, and in view of the
10 fact that they changed the evidence, they washed the body
11 and incinerated the clothes, it would seem to me that that
12 was a pretty clear case of obstruction of justice, there
13 was a pretty clear case of obstruction that was not brought.
14 And I don't think that takes a legal conclusion, you see,
15 it's just too obvious.

16 Then, of course, there was the plea bargaining, and
17 I think there was something else beside the plea bargain,
18 I can't say really. Judge Lines is the judge in Graham
19 County who would normally, he's the only judge in Graham
20 County and since the crime took place there he would normally
21 hear the case. There were probably good reasons why he
22 shouldn't because of his religious persuasion, because of
23 the strong local feelings, but Judge Lines told me that Erv
24 Mortenson, who was Mayfield's lawyer, went to him, Judge
25 Lines, and said will you give Mayfield probation if he pleads

1 or gets convicted? Judge Lines told me that he wouldn't
2 make such a deal, so Erv Mortenson then went and shopped
3 around for another judge.

4 Now, the judge that ended up with it was Judge
5 Fernandez of Greenlee County, whom I happen to know and
6 think very, very highly of. In other words, it went to
7 Judge Fernandez and he gave him probation. And it's
8 just a -- it was one of the most outrageous things I've
9 ever seen in my life.

10 Now, the reason that Judge Fernandez gave him pro-
11 bation, Judge Fernandez said was that he agreed that he
12 would send Mayfield down to this -- this treatment center
13 at the state prison and have him evaluated there by
14 sociologists or whatever kind of people there evaluate
15 persons charged with -- convicted of crime. And he'd go
16 by their report.

17 Well, I have here a letter, I called Judge Fernandez
18 at the time that Mayfield was down there being evaluated
19 and I said I want to make sure that you know everything
20 about this man because he's a terribly violent man.

21 So he says, well, don't send it, give the information
22 to me, give it to the people down, that are doing the evalua-
23 tion. So I sent the letter on December 19, 1974, to the
24 Arizona State Prison, Diagnostic Center, which I gave them
25 the facts which were on record about Mayfield always carried

1 a gun, about incidents where he has shot people and he put
2 pistols at people's necks to get them to buckle in, how he
3 beat up severely, a guy who won \$50.00 from him shooting
4 dice, and the man was afraid to fight back because
5 Mayfield had a gun. And Mayfield says, after he beat him
6 up, get out before I kill you.

7 Reported to them the incident where he shot,
8 Mayfield shot Irving Bush with birdshot at the Geronimo
9 Bar. I quoted briefly from DPS Officer Mitchell's report,
10 departmental report, dated November 18, 1973, which con-
11 cludes with this observation: Mr. Mayfield, though out-
12 wardly pleasant, appears to be a violent individual.

13 This officer is aware of the fact that at times a
14 bar owner in a remote area such as the location of the
15 Geronimo Bar, needs to resort to physical action to eject
16 unruly customers but Mr. Mayfield has sent at least four
17 persons to the hospital in the past four months. This
18 seems a bit unnecessary.

19 This, of course, was before the shooting of Vernon
20 Wesley. So, you know, if an Indian did to a non-Indian
21 what Gene Mayfield did to Vernon Wesley, he would be
22 labeled a savage and would be dealt with accordingly.

23 But solely because of the fact that the races were
24 turned around, Mayfield as Edmond pointed out, got not a
25 single day. He walked off scot free. And is given the pro-

1 tection of public -- of public officials. And so there is
2 something terribly racist about what happened here, and
3 if you ask, and I suppose that's usually the concluding
4 question, what can be done about it, I haven't got the
5 slightest idea.

6 Q Thank you, Mr. Shea.

7 Dr. Gerber, I believe you had a question?

8 Q (By Dr. Gerber) Yes.

9 Mr. Shea, I wanted to ask you from your own inves-
10 tigation in the case, whether you think the destruction
11 of evidence was due solely to the actions of the mortician
12 involved, or whether law enforcement agencies had an active
13 role in the destruction of the evidence?

14 A My understanding is that the department of public
15 service, which -- because of the very political intense
16 nature of this thing in this little rural community, came
17 into this thing, quite quickly handled it in a very pro-
18 fessional way, and as I said, I was told by William Schaefer
19 of the attorney general's office, head of the criminal
20 prosecution department there, and former chief prosecutor,
21 as I understand it, in Tucson, that the mortician was told
22 two, if not three times, carefully, deliberately warned
23 about preserving the evidence. Under these circumstances,
24 I can see nothing but -- I can see no deviation from pro-
25 fessional efficiency on the part of the investigating police.

1 Q So is it a fair statement, then, that the problem
2 here is not so much one of, at this level, the destruction
3 of evidence, is not really so much the fault of the law
4 enforcement agencies as the fault of a private individual,
5 namely the mortician who took it upon himself to destroy
6 the evidence?

7 A No. It's the failure to prosecute the mortician.
8 The mortician was never charged with a crime. A complaint
9 could have been -- could have been filed against him and
10 at least have a hearing in the manner of a preliminary
11 hearing to see if he should be bound and held for trial.

12 Q Was a complaint requested against the mortician?

13 A I have no idea.

14 Q Do you know if there was any effort by the county
15 attorney or the county sheriff there, to avoid the prose-
16 cution, an explicit effort to avoid the prosecution of the
17 mortician?

18 A I have no idea.

19 Q Do you have any indication that police authorities
20 are deliberately ignoring Mr. Mayfield and other persons
21 like him who seemingly persecute the Indian people?

22 A I think that the evidence here, it's in the facts.
23 Yes, I -- I think that this is not an isolated case. I
24 think to put it very bluntly, I think that this is an
25 example of the racist application of criminal prosecution.

1 And sentencing.

2 Q This incident occurred last year. The statute of
3 limitations would still be open for a prosecution of the
4 mortician. Wouldn't that be correct?

5 A As far as I know.

6 Q Have you advised your clients or anyone else that
7 they might consider taking this before the county attorney
8 and asking for a complaint?

9 A No, I remember talking about it with William Schaefer,
10 the matter is -- the fact is well known. I'm sure the
11 county attorney there knows about it, certainly the
12 attorney general's office. They're very familiar with it.
13 The police know about it.

14 Q Do you know from your own investigation of the case
15 if there was any collusion on the part of the bartender
16 and the mortician?

17 A No, and I didn't investigate the case. This is not
18 a result of an investigation of the case, it was because
19 I did attend the preliminary hearing and I did discuss
20 the matter with Mr. Schaefer.

21 Q But I take it we're making a kind of hypothesis
22 here, that the mortician was acting in some sort of collusion
23 with the bartender to suppress the evidence?

24 A No, I can't charge that. I'll charge solely, what
25 I'm saying simply is that I was told by Mr. Schaefer that

1 the mortician was told two, if not three, times, deliberately
2 and carefully, not to destroy any evidence, told exactly
3 what to do and what not to do. And that the mortician
4 immediately violated that and incinerated the clothes.

5 DR. GERBER: I have no further questions at this
6 point.

7 Q (By Ms. Lyon) Mr. Shea, to your knowledge, based
8 on your past experience, is it customary for a suspect,
9 suspected of the same offense as Mr. Mayfield, to be re-
10 leased on his own recognizance?

11 A No, it's not customary.

12 Q Then you feel that in this case, an exception was
13 made?

14 A I can't say an exception, I said it's not customary.
15 The matter was not treated in a customary fashion.

16 Q What would be the customary fashion?

17 A Well, I think that on such a serious matter, bond
18 should be set upon a hearing. And that the hearing should
19 consider the violent propensities of the man, and should
20 properly have been set at a very high level.

21 Q Mr. Shea, do you have any other statements or obser-
22 vations you would like to make before the committee?

23 A No, I have nothing else.

24 Q (By Mr. Guerrero) One question.

25 Mr. Shea, who would be charged, in your opinion, with

1 the responsibility of filing a formal complaint against
2 that mortician for the destruction of that evidence?

3 A. In the first instance it's with the county attorney,
4 the County Attorney of Graham County.

5 There's a little problem there. As -- as I -- it's
6 a Mormon community, a very tight Mormon community, as you
7 know, and I believe all the -- all the people that we're
8 dealing with are Mormons. And that's just part of the
9 reason why it might be appropriate for the county attorney
10 to ask the attorney general's office to step in and per-
11 form the prosecutorial function. And I think that if the
12 county attorney in Safford thinks that there's some question
13 about it at all and he's not going to do it, maybe he
14 ought to call the attorney general's office in on the
15 matter.

16 MR. GUERRERO: We have a person here from the
17 attorney general's office, don't we? I wonder if I can ask
18 him a question, he should be out in the audience there,
19 shouldn't he?

20 Mr. Silver? Could you give us any indication as to
21 why maybe the attorney general's office couldn't pursue
22 that matter on the destruction of evidence?

23 A. (By Mr. Silver) Rep. Guerrero, let me again remind
24 you I'm not tied in with the criminal division at all, I'm
25 solely out of the civil rights division. The little that I

1 do know about our criminal jurisdiction after the legis-
2 lature passed the grand jury bill, added to the duties that
3 we have in the criminal field, are two-fold, one is to
4 serve as the appellate lawyer for the state and for the
5 counties when the criminal cases go to appeal, and the
6 other is to accept prosecution or engage in prosecutions
7 on behalf of the county where there is a conflict of
8 interest.

9 Now, whether or not the statute authorizing the
10 attorney general to engage in criminal prosecutions is
11 broader than a conflict of interest-type statute, I am not
12 sure. However, you can be, if you have any further
13 interest, I would suggest that you address the question to
14 Mr. Sophie or the Attorney General, Mr. Babbitt, as to
15 whether or not the attorney general's office can proceed.

16 I do not know that the -- I'm not sure that the mere
17 fact that there is the type of potential prejudicial problems
18 that Mr. Shea mentioned, the fact that it is a tight-knit
19 Mormon community, would be a sufficient basis upon which
20 to bring the attorney general's office in. I'm not sure
21 whether that's statutorily correct.

22 A. (By Mr. Shea) I recall something now since Mr.
23 Silver started talking, that happened, that was a recent
24 case in Phoenix, where the attorney general brought a, or
25 attempted to bring a prosecution against somebody that he

1 thought that the Maricopa County Attorney wasn't properly
2 prosecuting, and that was taken, I -- either the court of
3 appeals or I think the supreme court and the attorney
4 general was knocked down on it, holding that the -- court
5 holding that the statutes provide that the attorney general
6 may come into a county to prosecute only upon the invi-
7 tation of the county attorney.

8 Q. (By Mr. Guerrero) Well then, Madame Chairman,
9 Mr. Shea, then, it would seem to me it would become within
10 the parameters of the department of public safety to have
11 lodged or registered a complaint, being the investigating
12 unit, is that correct?

13 A. (By Mr. Shea) Yes. Well, I think that -- I think
14 that -- I haven't seen the report, now these are full de-
15 partmental reports prepared in connection with a criminal
16 prosecution which I was not privileged to see. But I am
17 told that the reports contain the information which I
18 have stated. About the destruction of evidence by a person
19 who was duly warned not to destroy it.

20 Q. Warned by the DPS?

21 A. Either the DPS or the sheriffs, I don't know which.

22 Q. (By Ms. Lyon) Mr. Shea, one more question. Is it
23 correct that part of the sentence of Eugene Mayfield im-
24 posed the condition that he not leave the jurisdiction?
25 And is it also correct that that condition has since been

1 removed?

2 A It's a condition that he not leave the jurisdiction
3 without permission of the judge.

4 Q Yes.

5 A And I got a copy of a letter from Judge Lines here,
6 did you get it? What was it saying that there was a request
7 for permission to go to Africa was denied?

8 A (By Mr. C. Wesley) Denied; yes.

9 MS. LYON: Thank you, I have no further questions.

10 THE CHAIR: Do any other committee members have
11 questions?

12 MS. LYON: I want to again thank Mr. Clarence
13 Wesley and Mr. Edmond Wesley for coming before our com-
14 mittee, I know it was difficult for them to do so and we
15 appreciate your cooperation. Thank you very much.

16 THE CHAIR: I'd like to call the next panel, Frank
17 Teachout, Velazquez Sneezy and Harold Stevens, please?
18 Please come to the microphones on my left?

19 Q (By Dr. Gerber) Mr. Teachout, for the sake of the
20 record, would you state your full name, your addresss
21 and your occupation, please?

1 SGT. FRANK TEACHOUT

2
3 A (By Sgt. Teachout) Sgt. Frank Teachout, presently
4 employed with the department of public safety, 2010 West --
5 correct, 2010 West Ajo Road, Tucson Arizona.

6 Q And were you employed with the department of public
7 safety at the time of the Wesley incident that was just
8 described here?

9 A Yes, sir, I was.

10 Q Could you describe for us your participation in
11 that incident?

12 A I was one of the supervisors in charge to conduct
13 the homicide investigation. I conducted the investigation
14 under the direct leadership of Capt. James La Ponsie,
15 who I might say would have been present today but he's
16 suffering a heart condition and I was asked to appear in
17 his behalf.

18 Q And in that capacity what sort of investigation
19 did you do?

20 A Approximately two days after the shooting incident,
21 to be more specific, on March the 19th, the department
22 of public safety had received a request from the Graham
23 County Sheriff's Office and the Graham County Attorney's
24 office to make an investigation in regards to a death of
25 Vernon Wesley, suffering from a gunshot wound as a result

1 of Mr. Gene Mayfield.

2 The incident happened at approximately 11:30 Saturday,
3 March the 16th, 1974. The victim, Vernon Wesley, de-
4 scribed as an Indian male, 18 years of age, a resident of
5 Bylas, Arizona, had sustained a gunshot wound to the upper
6 right shoulder from a 308 rifle which was fired from the
7 hands of Mr. Eugene Mayfield while at the Roadside Bar.
8 I think the address is Bylas, Arizona, just west of
9 Safford.

10 The victim, Mr. Wesley, was transported to the San
11 Carlos Hospital and he was pronounced dead on arrival at
12 12:15 a.m., approximately 45 minutes after the incident,
13 Sunday morning, March the 17th, 1974. He was pronounced
14 dead by Dr. David Smith of the San Carlos Hospital.

15 The body was subsequently removed to the Safford
16 Mortuary, and an autopsy had been performed by Dr. Edward
17 Curtis -- correction -- yes, Dr. Edward Curtis had per-
18 formed the autopsy. I understand Dr. Curtis has a medical
19 practice in the City of Safford, Arizona.

20 This all took place on Sunday, March the 17th,
21 shortly after midnight.

22 Wednesday, March the 19th, is when the department
23 of public safety received an official request, I understand
24 it was channeled from Graham County to the governor's
25 office and turned back to the director of department of

1 public safety, requesting to make the investigation of the
2 homicide.

3 Q Do you have any first-hand knowledge of what the
4 autopsy showed?

5 A The autopsy showed that the victim, Wesley,
6 died as a result of a gunshot wound, I'm trying to recall,
7 there was an entrance wound on the upper right-hand shoulder,
8 I don't believe there was an exit wound, fragments of the
9 bullet, I have the autopsy report here, but viewing the de-
10 ceased I don't recall seeing any exit wound, but it was
11 determined by Dr. Curtis, the Wesley boy died as a result
12 of a gunshot wound.

13 This was later confirmed by a pathologist here in
14 Tucson, acting upon my request via Capt. La Ponsie
15 that the Wesley boy be removed to Tucson for additional
16 pathologist's examination.

17 Dr. Louis Hirsch, from Tucson, is the one that con-
18 ducted the final autopsy.

19 Q Was the second autopsy and pathological report re-
20 quired because of some suspicion that the original autopsy
21 was not performed according to usual standards?

22 A I felt that in my own mind, previous investigations
23 of this nature, that additional, additional examination
24 should be performed. One being the reason, the entrance
25 wound, at the time I first saw the victim, was an open,

1 gaping wound, it was quite evident that this wound indicated
2 an entrance wound.

3 Q What I'm getting at, Sergeant, is, was there any
4 incompetence on the part of Dr. Curtis at the time he did
5 his original autopsy?

6 A I don't believe -- no, I wouldn't say competence on
7 the part of Dr. Curtis, from all his report that was sub-
8 mitted would have been consistent with a normal autopsy.
9 However, what I was going to do, and I was referring to
10 my notes, the open wound, first time I saw it was open and
11 later on in the afternoon, the wound was sutured and closed.
12 I felt that further examination, whether Dr. Curtis
13 possibly he was not capable or did not have the expertise
14 to explore the wound, I felt that Dr. Hirsch, who is known
15 throughout the state for his competence in this field of
16 pathology, would be able to help us determine powder burns,
17 the size of the wound and further tests which we had antici-
18 pated to be conducted by the department of public safety,
19 may possibly have indicated, we may have been able to de-
20 termine the distance that the gun was fired.

21 This was the primary reason that a request by Dr.
22 Hirsch was made. The request was followed up, even though
23 after the open wound had been sutured closed, I discussed
24 it with Dr. Hirsch by phone, and realizing that it would
25 possibly, almost be virtually impossible to determine these

1 things that we were looking for, Dr. Hirsch had consented
2 to examine the body. He being an expert in this field,
3 I thought possibly he may be able to, even though the
4 wound had been closed he might be able to help us out in
5 determining some unknown factors.

6 Q Let me ask you, was the bullet ever found?

7 A There were fragments of the bullet found by Dr.
8 Curtis, further exploration by Dr. Hirsch revealed, oh,
9 very minute additional fragments from the shell casing,
10 it was a copper-jacketed bullet, the bullet had literally
11 -- had just exploded, it went into a thousand different
12 pieces.

13 We did recover, were successful in recovering minute
14 portions.

15 Q Now, in your dealings with the mortician involved
16 do you recall if any instructions were given to the
17 mortician as to how the evidence should be handled?

18 A In reviewing DPS report, Agent Hamilton was assigned
19 to, in fact he did on the very first day of DPS's par-
20 ticipation, on February (sic) 19th, he went to the Safford
21 Mortuary and contacted the owner, Mr. Roger David.

22 Agent Hamilton viewed the body, took some photo-
23 graphs, I think it was at this time several bullet frag-
24 ments were handed to him that had been previously retrieved
25 by Dr. Curtis. Mr. David was told to retain all clothing

1 that belonged to the Wesley boy, and anything that might
2 indicate any evidentiary matter.

3 Q Who told him that?

4 A Agent Hamilton. Now, this was sometime on March
5 the 19th of 1974. Mr. Roger, David Roger was instructed
6 that these things would be picked up on the following
7 date, there was this, I'm sure a specific reason why we
8 waited till the next day, I think you have to appreciate
9 the magnitude of this thing and investigators had to get
10 a feel for the entire situation.

11 They felt comfortable and this is not an unusual
12 practice in investigation of this type to have the mor-
13 tician or some responsible person keep evidentiary matter
14 until the following day or several hours later, whatever
15 the case might be.

16 Q So the following day did officers from the depart-
17 ment of public safety come back to get the evidence?

18 A Yes, sir, on -- in fact, I was present on this
19 particular morning. I had not viewed the deceased up
20 until this time. DPS arrived on the scene on Wednesday,
21 I also arrived on Wednesday, but the entire involvement,
22 I did not get the opportunity to view the body until
23 Thursday. And that was Thursday morning, March the 20th.
24 I accompanied Ellis Hamilton and Bud Farnsworth, who is
25 a resident agent at Safford, to the Safford Mortuary to

1 view the body.

2 Q Well, did you find the evidence that you had asked
3 to be saved for you, did you find it there?

4 A The only items that we were able to retrieve was a
5 pair of pants belonging to Vernon Wesley, a pair of boots,
6 a pair of socks, and Mr. Wesley's undershorts. I inquired
7 with Mr. David Roger about the victim's T-shirt, his under-
8 shirt and his outer shirt, I don't recall whether it was
9 long or short-sleeved, however I was aware that he had
10 an undershirt and an outer shirt. Roger David had -- said
11 that --

12 Q Excuse me, is his name Roger David or David Roger?

13 A I've probably been calling him David Roger. I have
14 it as Roger David and I understand he's the owner and
15 mortician of the Safford Mortuary. Roger David, I stand
16 corrected.

17 Q Let me ask you this question, did you inquire as to
18 where the T-shirt was and the other shirt and the upper
19 torso of the body and did he give you any explanation as
20 to where it was and what he had done with it?

21 A He said that he had -- first of all we'd made an
22 inquiry with Mrs. David, Mrs. Roger David, Mr. David was
23 not present and she said that Mr. David was gone, the only
24 clothing that she was aware of was the boots and the pants
25 and socks and undershorts. I think we waited for his return,

1 for Mr. David's return, inquired the whereabouts of the two
2 shirts that we were vitally interested in. He said that
3 they had been placed in a plastic bag the day before, which
4 was the day of the first encounter with Mr. David, and the
5 clothing had been since removed to the city dump.

6 Q And this is Mr. David himself who told you this?

7 A Yes, sir.

8 Q Did he give you -- did he tell you this was their
9 standard practice?

10 A No, I don't believe we went into any discussion as
11 far as to standard policy.

12 Q Well, did he give any explanation as to why he had
13 clearly contradicted your orders to save all the clothing?

14 A He maintained that it was an accidental oversight
15 on his part.

16 Q He took responsibility for it himself?

17 A Yes, sir. I stressed some concern, a lot of con-
18 cern at this point, I felt these items of clothing were
19 vitally interested in a fair and impartial investigation,
20 which DPS was assigned to do. I stressed to him that my
21 concern that I was very upset with him, and he apologized.

22 Q Well, do you have any indication that his action
23 was an oversight or whether it was deliberate? Or do you
24 have, perhaps, no opinion at all on that?

25 A Really, I've pondered this for a long time and I

1 can't really -- it could be 50-50, it could be very
2 possible that it was an accidental oversight on his part.
3 I don't know. Why the pants, the boots, the socks and
4 the undershirt were retained and not the two pieces of
5 clothing that we were vitally interested in, why they were
6 not kept with the total items, I don't know. I don't know
7 what his packaging procedure is or anything like that,
8 whether it was intentional.

9 Q I think Rep. Guerrero has something to ask you.

10 THE CHAIR: Before we -- let's go ahead and finish,
11 -- it has to be brief.

12 Q (By Mr. Guerrero) Madame Chairman, Sergeant, what
13 do you usually do when a person destroys evidence? That's
14 an offense, isn't it?

15 A If -- I would have to say from what I'm familiar
16 with criminal law if it's knowingly and an intentional
17 destruction of property, there is statute provisions for
18 obstructing justice.

19 Q Would it seem to you, sir, that once having been
20 warned not to destroy that evidence and he did destroy it,
21 that, sir, it might come within your jurisdiction to sign
22 a complaint against that party for destroying that evidence?
23 Why doesn't your office do that, is what I want to know,
24 why didn't you sign a complaint for destruction of evidence?

25 A First, for me to arbitrarily sign a complaint, this

1 matter was discussed with Mr. Greenhalgh, Graham County
2 County Attorney. He was aware of what had taken place. I
3 was in no position to demand a complaint, the destruction
4 of the property, whether it was intentional or accidental,
5 I felt, as a police officer, that I would relate the facts
6 and the circumstances as they were, as were documented,
7 if he wanted to entertain a complaint, he is the chief
8 legal adviser in Graham County for criminal matters, then
9 I felt that it should be him, for him to make a decision.

10 Q And the county attorney refused to prepare a com-
11 plaint?

12 A Well, I wouldn't say that he refused, as of this
13 date no complaint has been filed. I was not present when
14 you might say an ultimate decision, what are we going to do
15 with this matter concerning Roger David, are we going to
16 issue a complaint or aren't we, I was not present if any
17 discussions had been entertained or had transpired. I
18 discussed my findings with Capt. La Ponsie, whom I was
19 directly responsible to, I was present in Mr. Greenhalgh's
20 office when Capt. La Ponsie and I had discussed the
21 matter, we had advised of what had transpired.

22 Any decision as to why a complaint would not be
23 entertained, for what reason, I don't have any idea at
24 that particular point because my responsibility was to
25 supervise the entire investigation, gather evidence, retain

1 it, do whatever -- the things that I felt necessary to
2 do a fair and impartial investigation. The legal aspect
3 of it was, I say, not for me to say, I demand a complaint,
4 that was not my position in the investigation.

5 Q Is your office prepared to try to pursue that
6 matter further, as long as it's still within limitations
7 of your office to do that? Has the county attorney's
8 office been approached in this regard of pursuing that
9 complaint?

10 A I couldn't tell you that, sir. I don't have any
11 update, whether any additional discussion has been made
12 in that direction or not. I dare suspect from what I
13 know about it that the possibility, it has not been pur-
14 sued, but as far as -- you'd ask me, is the department
15 prepared to pursue it, I think this will have to be taken
16 up with my superiors in conjunction with the Graham County
17 Attorney.

18 Q Who is your superior in that district?

19 A Here in Tucson locally?

20 Q No, in your jurisdiction there in Bylas? In that
21 district, is that district 4 or 7?

22 A Well, sir, I'm stationed here in Tucson, I was
23 called into this investigation which is out of my district.
24 I was acting under the directions of Chief Carl Needham to
25 Capt. La Ponsie who at that time was my immediate supervisor.

1 Q. (By Dr. Gerber) Sergeant, is Mr. Greenhalgh still
2 the county attorney over there?

3 A. To the best of my knowledge.

4 Q. And he's in Safford?

5 A. Yes, sir.

6 Q. One final question, Sergeant. Do you have any
7 suggestions on what could be done in the future to prevent
8 the destruction of evidence in a case such as this?

9 For example, what I'm getting at is would it be
10 perhaps better procedure by a police department in a situ-
11 ation like this to take the evidence the first time you
12 encounter it instead of letting it remain with the
13 mortician a day or so?

14 A. That, I'm sure, would be -- be advantageous, it
15 certainly would eliminate a situation of this in the future.
16 It's hard to say what -- I'm not aware of the policies
17 and procedures laid out by the city police or the sheriff's
18 office in regard to this. This was an unusual set of cir-
19 cumstances, and the reason I'm saying this, my being rep-
20 resentative of DPS, the fact that it occurred on one date
21 and approximately two days later DPS was called, this does
22 not happen all the time.

23 I think under stress conditions in the community at
24 that particular time, the total involvement, surely Sheriff
25 Stevens here did not have the manpower to conduct an inves-

1 tigation DPS was at the liberty to, at one time or another,
2 DPS had a total of 29 agents on the scene at one time or
3 another. Of various expertise. I don't know the staff of
4 Sheriff Stevens' complement in Graham County, but I don't
5 believe he has 29 people that he could have pulled the plug
6 on and provided this sort of investigation.

7 It was unusual, it was obvious that they needed
8 help in this particular area, this was the request by DPS.

9 I would have to say that in my experience in the
10 past, that this is not a standard procedure to have a major
11 crime occur and then have an agency be called in two or
12 three days later, that has not been my experience.

13 I think it was just a set of unusual circumstances.

14 Q One final question from me and that is, to your
15 knowledge, has Mr. David ever done a similar thing to any
16 other evidence that had been turned over to him? Just to
17 your knowledge, yes or no? §

18 A Mr. David did make -- we inquired about blood samples
19 for blood alcohol, Mr. David did make the comment to me
20 that, he gave an example of a fatality, primarily Indian,
21 that he was on contract for the San Carlos Reservation,
22 and that he did not retain blood samples for blood alcohol
23 content, which is -- struck me very unusual because my
24 experience in 18 years in law enforcement, these samples are
25 retained. These are evidentiary matters.

1 Q Did you just state that he was under contract to
2 the San Carlos Indian Reservation?

3 A That was my understanding, that --

4 Q And he was given some blood alcohol samples, I
5 suppose by the tribe? To be saved?

6 A No, when he retained possession of a deceased person,
7 for whatever reason, he did not retain any sample blood
8 for further analysis, and in a major crime of this magni-
9 tude, a murder, --

10 Q The custom would be to keep some blood alcohol
11 samples?

12 A Would be in my experience, to retain these samples.
13 However, in this particular case as in the past with
14 traffic fatalities, no blood samples were retained. And
15 I thought this to be an unusual procedure.

16 MR. GUERRERO: Madame Chairman, I have something
17 I would --

18 THE CHAIR: Mr. Guerrero, may we continue with --

19 MR. GUERRERO: Just a minute, I was reviewing some
20 material, some documentation in regards to this case and
21 I do -- I did find that the pathologist or -- that was
22 called in from Tucson did take blood samples and he did
23 find no alcohol in the blood?

24 A Yes, sir.

25 DR. GERBER: I have no further questions, if anyone else--

1 Q (By Ms. Lyon) I have just one question.

2 Sgt. Teachout, we heard earlier testimony that the
3 clothing was located in an incinerator. Is that in con-
4 flict with your findings?

5 A In viewing the report, the only notation I had was
6 that it was -- had been burned. Now, whether the ashes
7 had been subsequently found, I'm -- I really don't know,
8 this would be new information to me. Agents, after dis-
9 covering that they were informed by Mr. David that the
10 items had been removed to the city dump, several agents
11 from our department went to the dump, and attempted --
12 attempting to locate this bag. They had talked to some-
13 body from the city sanitation department and he advised
14 them that this particular hopper or truckload or whatever,
15 this bag was in, had been burned.

16 Now, whether it was taken to an incinerator or what,
17 I don't know. At any rate, it was not made available.

18 MS. MADRID: Okay.

19 DR. GERBER: Okay, Mr. Sneezy, would you state your
20 full name, please, for the record? And your occupation?

21
22
23 MR. VELAZQUEZ WILLIAM SNEEZY

24
25 A (By Mr. Sneezy) I'm with the Arizona Highway Patrol,

1 Department of Public Safety. Velazquez William Sneezy.

2 Q And were you working for them last year at the time
3 the Wesley incident occurred?

4 A Yes, sir.

5 Q And what was your role in that incident?

6 A I was assigned to that investigation for, to assist
7 the agents in locating the people and also as an intelli-
8 gence.

9 Q You say you were assigned there to assist in locating
10 the people?

11 A Yes. The witnesses that was involved with the
12 incident.

13 Q Did you have anything to do with the matter of the
14 evidence that was turned over to the mortician?

15 A It was this one day when I was with the agents at
16 the mortuary when we went over to view it, that I heard
17 them tell the mortician that they wanted the clothing.

18 Q You heard who tell the mortician?

19 A I can't recall which officer, which agent it was that
20 made the statement, but --

21 Q But it was a fellow officer in the department of
22 public safety?

23 A Yes, sir.

24 Q And do you recall exactly, as precisely as you can,
25 what his instructions were to the mortician?

1 A I -- I can't recall the exact wording on it.

2 Q But are you sure that there were instructions given
3 to the mortician that the clothes of the victim should be
4 retained as possible evidence?

5 A Yes, sir.

6 Q And you were there at the time this was said?

7 A Yes, sir.

8 Q Did Mr. David, the mortician, make any indication
9 that he was not going to comply with that order?

10 A I don't remember.

11 Q He didn't flatly refuse to comply?

12 A No.

13 Q Were you there at the time you and the other
14 officers returned to get the evidence?

15 A Well, I -- I wasn't there at the time when the
16 officers went back to get the evidence. I was assigned to
17 other details.

18 Q Have you heard --

19 A The following day.

20 Q Have you heard the account, either today or through
21 your own departmental investigation as to what happened to
22 the clothing of the victim?

23 A Well, just from hearing the agents talk there at
24 the motels, I heard them say that the mortician had destroyed
25 the clothing. And I remember the day when they -- they sent

1 two agents out to the dump to look for the shirt.

2 Q Was the shirt found at the dump?

3 A No.

4 Q Did you, yourself, personally follow up the inves-
5 tigation by going to the county attorney or any other law
6 enforcement agency and suggesting that perhaps obstruction
7 of justice had occurred?

8 A No, sir.

9 Q Was that your responsibility to do that?

10 A No, sir.

11 Q Did you ever, yourself, personally, confront Mr.
12 David and ask him why he had destroyed the clothing?

13 A No. Never have.

14 Q Were there any other indications of destruction of
15 evidence in the Wesley case, that you're aware of?

16 A Well, from -- not -- not the evidence I'd say, but
17 at the place where the shooting took place, different
18 things was moved around. When -- it might have happened
19 during the -- the riot, but that's not for me to say, you
20 know, that the --

21 Q By different things, what do you mean by different
22 things?

23 A Well, like for instance the casing was found in the
24 back room, the shell casing was found in the back room, and --

25 Q Was it ever dusted for fingerprints?

1 A I really don't know. I -- I just saw that this one
2 agent pick it up with his pencil.

3 Q Any other things that had been moved around in the
4 bar?

5 A Well, the tables, the chairs.

6 Q Are there any other matters that you would like to
7 share with us concerning the investigation of the Wesley
8 case?

9 A Well, the only time, the only thing that I thought
10 was wrong was when they had this old man on the inquest
11 jury, who didn't even understand English or what the --
12 the attorneys were talking about. This is the one thing
13 that I know of, you know, which was done by the judge, I
14 guess, which picked the jury.

15 Q And what judge is that?

16 A Holyoke.

17 Q It was not Judge Lines?

18 A No, it was Holyoke at the time.

19 Q Do you know the name of that old man who didn't
20 understand English?

21 A No.

22 Q Was he a Mexican-American or an Indian or --

23 A No, he's -- he's a member of the Bylas Indians, Bylas
24 -- well, he's a resident of Bylas, you know, he's the --
25 well, I'll say -- a San Carlos Apache. But I remember at

1 the time when they asked him what these people were talking
2 about, and he didn't -- he said no, you know, because
3 that's the time when he said it in Apache, and I was also
4 asked by, I think it was Schaefer, to act as an interpreter,
5 you know, for the people out in the audience. And so,
6 later, I was asked to pick the jury. Which I did, you
7 know, I picked the people that, well, not really picked
8 them but I just pointed out that these people understood
9 -- well, they were well educated, let's put it that way.

10 DR. GERBER: Thank you, I have nothing other with
11 this witness.

12 If there's no further questions --.

13 Q (By Ms. Lyon) I have one question of Mr. Sneezy.

14 You were talking about the jury at the inquest where
15 this old man was on the jury and who did not understand
16 English? Is it not correct that when Judge Holyoke stepped
17 down and another JP was brought in, that there was a change
18 in the jury?

19 A Yes.

20 MS. LYON: Thank you.

21 DR. GERBER: If there's no further questions, maybe
22 we can proceed with Sheriff Stevens, would you state your
23 full name, please, for the record, and your occupation?
24
25

1 MR. HAROLD L. STEVENS

2
3 A. (By Mr. Stevens) Harold L. Stevens, Graham County
4 Sheriff.

5 Q And Mr. Stevens, or Sheriff Stevens, were you the
6 sheriff of Graham County at the time of the Wesley incident?

7 A I was.

8 Q And did you play a role in that investigation?

9 A Well, not too much. I don't know whether it was
10 fortunately or unfortunately, but I was out of town the
11 night that it happened.

12 Q Did you -- when did you come back in town?

13 A The next day.

14 Q And then did you play any role at all in the case?

15 A We started an investigation and then called for the
16 department of public safety to come in and help us.

17 Q How much of an investigation did you, yourself,
18 conduct, you and your department?

19 A Oh, my department talked to several people, but we
20 didn't really do too much of the investigation, we thought
21 we better have the state help us.

22 Q Well, could you describe in more depth the extent
23 of your own investigation, do you remember who you talked
24 to and --

25 A Not at this time.

1 Q But you did conduct several interviews with people?

2 A Yes, I think the ones we did, the statements we did
3 get we turned them over to the department.

4 Q Was it your office that responded to the call at
5 the scene of the shooting?

6 A Yes.

7 Q And did some of your officers interview some of the
8 people at the time the shooting occurred?

9 A Yes.

10 Q And you turned those reports over to the department
11 of public safety?

12 A Yes.

13 Q Was it you, yourself, who initiated the invitation
14 to the department of public safety to enter the case?

15 A It was either me or the county attorney or we did
16 it jointly, but we did.

17 Q What is the name of the county attorney?

18 A Ron Greenhalgh.

19 Q And is he still the county attorney over there?

20 A He is.

21 Q Did you play any part in the sequestering of the
22 evidence in the case?

23 A No.

24 Q None whatsoever?

25 A No.

1 Q Did you have any conversations with Mr. David, the
2 mortician?

3 A No. On this particular incident, no, I -- if I
4 remember that Capt. La Ponsie and the county attorney
5 talking something about whether a complaint should be
6 signed or not, Roger David, he does do all the Indian
7 mortuary work, he has for several years and he still does
8 have the contract.

9 Q Mr. David himself is not an Indian, though, is he?

10 A NO, no.

11 Q But he has been under contract with the Indian
12 Reservation to do --

13 A I guess, he handles all the Indian deaths. He's
14 very well liked among the Indian people and, you know, he
15 has had the contract for several years and he still does
16 have it.

17 Q How long has he been in the mortuary business?

18 A I really couldn't say. He's been there probably
19 ten or 12 years. I don't know where he came from.

20 Q Were you, by any chance, present at the time he
21 was given instructions regarding the saving of the
22 evidence?

23 A I -- I can remember them talking and he said the
24 clothes are there and they said well, we'll pick them up
25 in the morning and then we went back to get them and they

1 weren't there.

2 Q Do you know if he himself had taken them out to the
3 city dump?

4 A No, I know he didn't.

5 Q How do you know he didn't?

6 A Well, it seems to me that he said that his helper
7 had moved them out there and the city had picked them
8 up and then they went immediately to the dump but we
9 never did find anything.

10 Q Do you remember the name of his helper?

11 A I think it was Joe Figaroa.

12 Q Is he still working for him?

13 A No, I don't believe so. I think he helps him out.

14 Q Does Mr. Figaroa live there in Safford?

15 A Yes.

16 Q He's still there now?

17 A I believe so.

18 Q Did you conduct any followup investigation regarding
19 the destruction of evidence, discuss the case with Mr.
20 David or Mr. Figaroa?

21 A No.

22 Q Did you ever discuss it with the county attorney to
23 inquire as to the propriety of a complaint for the de-
24 struction of evidence?

25 A I didn't, no.

1 Q But you are aware that a discussion was had re-
2 garding that?

3 A Yes.

4 Q Have you received a great number of complaints
5 dealing with disturbances at the Roadside Bar?

6 A Yes.

7 Q Over the last several years?

8 A Yes.

9 Q What's the nature of these complaints you've heard?

10 A Well, it's -- it's a bar just about -- the Geronimo
11 Bar is about a half a mile from the line and the Roadside
12 Bar is another half a mile down the road. And I even
13 talked to Mr. Mayfield about, he was having dancers and
14 I tried to get him to close up early, we had other proprietors
15 down there that, you know, would close up when dark came
16 and he indicated that that's when he made all his money.

17 And so he was going to stay open and there was a
18 state law he could stay open until 1:00 o'clock so there
19 was nothing I could do about it.

20 I did have conversation with the Indian people
21 about putting a bar on the reservation so the people wouldn't
22 all congregate down there, I have a small department, ten
23 men all together, it takes four to run the -- do the
24 dispatching so I have six outside men. And as Edmond said
25 previously, about four months later we had an altercation

1 down there and I almost got a couple men hurt, and no one
2 wanted to go down there, you know, just two men, which I
3 have on duty at one time, so on this particular night, by
4 the time they got some help from the DPS and the city
5 police and there was lots of people down, down at the bar,
6 and they were, I guess it was a riot, from what I under-
7 stand.

8 Q What is the -- is there ever any racial pattern to
9 the riots that occur at these bars? Is it, for example,
10 usually the Whites against the Indians or vice-versa or is
11 there no predominant racial mixture in the fights?

12 A Not that I know of. I -- when I was elected sheriff
13 I hired an Indian boy, Early Kitchy (Phonetic) and, he
14 worked until he quit and then after he quit I hired another
15 Indian, Dewey Wesley, and he worked until he quit.

16 Q No, I mean the fights down at these bars?

17 A Well, I -- no, however, there is, I guess you know,
18 tension in Graham County due to the fact that you all
19 signed the mineral strip over, and then I really don't know
20 too much about it, but San Carlos Lake, the people, some
21 of them are mad because they have to pay a dollar and a
22 half to go down there and fish. And we have our problems.
23 But as far as, you know, the Whites against the Indians,
24 specially down there, the Whites -- well, they don't con-
25 gregate there like the Indians, and one case that Edmond

1 was talking about on the fight, they -- we did have Mr.
2 Mayfield in court and he got in a fight over the dice
3 game, it was with a White man and I think he was fined
4 on that, and on the other instances the Indians refused
5 to sign a complaint against him and we couldn't do any-
6 thing about it.

7 Q Do you have the authority to close down his bar?

8 A I sure don't.

9 Q That has to come from the state department of liquor
10 licenses?

11 A I imagine, I -- I have no authority to close it,
12 it's a state license that he's operating under and the
13 Roadside Bar was tried to be reopened by another fellow
14 there in Safford and the board of supervisors denied the
15 transfer of the liquor license and at the present time
16 it is still closed. But the Geronimo Bar is open again.

17 Q (By Ms. Lyon) Mr. Stevens, you mentioned that there
18 was tension in the community since the mineral strip land
19 was given back to the San Carlos Apache Tribe. Are we
20 to interpret your statement to the effect that prior to
21 that happening, there was no tension whatsoever between
22 the Apache people and the non-Indian people?

23 A Well, prior to that, I -- I couldn't say, I don't
24 think there was. I couldn't say prior. I mean I -- I
25 have no definite knowledge of anybody, you know, that wants

1 to go down there and start a riot or anything, in fact,
2 I've got some relations on the reservation, the Stevenses,
3 and like I said, I hired a couple of Indians and they got
4 along good with my deputies and -- but I don't know,
5 several months ago a rancher called me and said that, come
6 out here, they're draining my stock tank and I really
7 don't know anything about the mineral strip, but this guy
8 showed me a contract from the BIA that he'd been hired to
9 drill a hole in the stock tank and it almost caused another
10 -- I don't know what you'd call it, but we got some help
11 out of Washington and the Bureau of Indian Affairs and
12 they stopped the drilling and things are quieting down
13 again.

14 MS. LYON: Thank you.

15 A. But I mean, you just don't go out and, you know,
16 drill a hole through a guy's stock tank and drain his
17 water, specially in Arizona, because it's scarce.

18 Q (By Ms. Lyon) Thank you, Mr. Stevens. I have one
19 question for Sgt. Teachout, which is not related to the
20 Wesley case.

21 But since he is a representative of DPS, perhaps
22 he could clarify a point for me.

23 We heard earlier testimony that a tribal game
24 warden was arrested in Globe by a member of the highway
25 patrol, which I assume is the same thing as the department

1 of public safety. With a drawn sidearm. And I wanted
2 to inquire whether that was standard procedure when a
3 suspect is being arrested.

4 A (By Sgt. Teachout) You mean whether it's standard
5 procedure for the officer to draw his weapon?

6 Q Yes.

7 A I'd have to have some more facts in regard to the
8 particular incident. I can only tell you my experience
9 concerning or policy concerning drawing firearms. I'm
10 presently working narcotics, have been the last five or
11 six years, and when serving a felony search warrant or
12 arresting a suspected felon, it's a common practice for
13 agents of my department to draw their weapon.

14 We have had approximately three or four, maybe five
15 agents shot in the line of narcotics investigation, and
16 this is a common practice, so relating to your incident,
17 the narcotic investigations are no way related to what,
18 you know, you're trying to say. I'd have to have more
19 facts to substantiate, you know, the policy.

20 I can only relate procedures that I would be in-
21 volved in or investigations that I would be involved in
22 where it is a common practice on a felony arrest.

23 MS. LYON: I see, thank you. That's all I have.

24 Q (By Mr. Guerrero) I have a few questions. I had
25 one for Sheriff -- for the sheriff.

1 To your knowledge, Sheriff, can a -- a person going
2 to the justice of the peace for a complaint, say for assault,
3 say a person is assaulted and goes to the justice of the
4 peace, can he sign a complaint there in that court for
5 assault?

6 A. (By Mr. Stevens) Yes, he can. If the judge will
7 accept his complaint.

8 Q Can you tell me why, Sheriff, that Judge Holyoke
9 in the justice of the peace there in that Bylas area, why
10 he kept sending persons from Bylas all the way to Safford
11 to sign a complaint, he wouldn't accept complaints?

12 A Possibly -- are you talking about a misdemeanor or
13 a felony?

14 Q Simple assault. Simple assault, I guess, would be a --

15 A The county attorney wants all felonies originated
16 in his office.

17 Q He wants all complaints originated --

18 A No, all felony complaints. Ones that he's going
19 to have to be involved in trying.

20 Q A simple assault isn't a felony, though, is it?

21 A No.

22 Q If a person wants to sign a complaint for simple
23 assault, why would the justice of the peace, who has
24 jurisdiction and a complaint of that nature, refer that
25 person all the way to Safford to sign a complaint? Why

1 wouldn't he accept a complaint in his court, do you have
2 any idea?

3 A No, I don't. You'd have to ask him or -- do you
4 have any specific one in mind or -- that you know about or --

5 Q Yes, there's documentation, there's been several
6 instances where persons from Bylas had gone to his court
7 to get complaints signed or consideration of a complaint,
8 and he just would refer them on to the county attorney's
9 office in Safford. How far is Safford from Bylas? Or
10 from the justice court?

11 A Oh, approximately 30 miles. However, Judge Holyoke
12 is no longer the judge now, they did have four JP's and
13 now they just have two. One in Pima and one in Safford.

14 Q There is no longer, then, a justice court there
15 where Judge Holyoke presided?

16 A No, sir.

17 Q I had another question.

18 I was reviewing, Sheriff, the documentation your
19 office had in reference to complaints received from the
20 Geronimo Bar and the Roadside Bar. And also complaints
21 received by your office from those American Indian people
22 there that reside on that reservation, when they are off
23 the reservation there, those bars, and I was wondering
24 why, Sheriff, that, if it was brought to the attention of
25 your office, that one of those bars in one particular instance

1 was open after 1:00 o'clock, practically 2:00 o'clock in
2 the morning, that your office didn't take any action?

3 I'm speaking of an incident that a call to your
4 office in October, I believe it was the ninth, 1972, you
5 were sheriff at that time, weren't you?

6 A I was, but I can't remember, you know, any specific
7 night, and you know, what time they called or -- or what
8 the --

9 Q Yes, your office has it logged as 0199, so I
10 imagine it was 0159.

11 A And you say we didn't respond or what?

12 Q Yes, sir.

13 A I couldn't -- I'd have to go back and check and
14 see who was on duty and find out why?

15 Q Sheriff, do you review --

16 A If it was 0159, and it was still open, though, and
17 we got down there 30 miles, it would be closed and whoever
18 reported it could surely sign a complaint against them, I
19 mean that's their prerogative. That's one thing that lot
20 of people don't seem to understand, they want the sheriff
21 to do everything and when they really got more rights
22 than the sheriff.

23 Q Well, you know, as strange as it is, it was Mr.
24 Wesley, Clarence Wesley who called your office in 1972.

25 A Well, I'm not --

1 Q About that place being open.

2 A I'm not doubting that it was open, but I mean were
3 they disbursing drinks or --

4 Q Yes, they were drinking, that was brought to the
5 attention of your office.

6 Q Another thing I wanted to ask, sir, seeing that
7 all of these, does it seem strange to you? It does seem
8 strange to me that upon receipt of all these complaints,
9 from the Roadside Bar and also from the Geronimo Bar,
10 of all the assaults and knifings and cuttings and a guy
11 getting shot in the head down there, and -- it would
12 seem to me that you, as an enforcement agency and an
13 elected official of the entire county, would have seemed
14 to take or would have taken some appropriate action to
15 try to see if that -- those two facilities down there, which
16 were not in fact according to the law, reporting those
17 incidents to the department of liquor board, they were
18 not doing this. It would have seemed to me that your
19 office might have considered or done everything in its
20 power to have those violations brought to the attention
21 either of the department of public safety or you, I under-
22 stand in fact, have that power to do something about it
23 in the form of complaining or signing a complaint against
24 those owner-operators.

25 I was wondering how come, has your office ever had it

1 considered doing anything like that or why hadn't it?

2 A Well, the way I look at it, the license and the
3 bars are the state's job, and the state did come in there
4 and get a record of all of our complaints, and the bar's
5 still open.

6 Q Well, isn't it also the jurisdiction of your office
7 in law enforcement to enforce state law?

8 A Yes.

9 Q Well, I understood yesterday, when Mr. Bean was
10 here, that he, as an ex-county attorney, did tell us that
11 you are within your jurisdiction if you do go ahead and
12 bring action against an owner-operator on your own volition.
13 Upon -- after an offense is committed?

14 A Well, like I said, we did prosecute him on the --
15 when you're talking about Mayfield probably -- on the
16 one offense, but the other we couldn't get any complaint
17 signed, and when we drove up, well, things get a little
18 bit different. And we have to sign complaints on our
19 knowledge.

20 Q Sheriff, what are your usual procedures, or the
21 procedures of your office, if you should see an American
22 Indian maybe has had a little bit too much to drink and
23 if he's on the side of the road, what does your office
24 do with these persons?

25 A Well, I guess you know the legislature passed a

1 law that it's not against the law to get drunk anymore,
2 and we don't have any LARC facility in Graham County, we
3 do have a counseling service at the present time, but
4 there's nothing we can do.

5 Q What do -- does your office, and what do the -- what
6 about the offices in -- or the enforcement offices in your
7 sub-offices and the rest, what if they should see a person
8 maybe has had a little bit too much to drink and I know
9 there's been calls to your office on occasion, somebody's
10 laying down on the side of the road or alongside of one
11 of these establishments, what was your policy towards these
12 persons who'd had a little bit too much to drink?

13 A We used to arrest them for being drunk but since,
14 like I said, since they passed the law, we don't do any-
15 thing except maybe we, you know, if they are on the highway
16 we either call the patrol and if they can't go we go to
17 try to get them off the road.

18 Q What do you do with them after you get them off the
19 road?

20 A Take them home or get somebody else to take them
21 home. Our jail population since the drunk law went out is
22 practically nil.

23 Q There is no LARC facilities in Graham County?

24 A Counseling service.

25 Q (By Mr. Levis) Madame Chairperson, I have three

1 questions, if I could, from the sheriff.

2 We heard testimony earlier from Mr. Shea, concerning
3 the religious affiliation of county officials and he
4 indicated that is one reason why he felt that the com-
5 plaint against the mortician was not followed up and I
6 just wondered if you had any comment on that?

7 A No comment. I guess the county attorney's a Mormon
8 and so is the mortician, but I'm not, so -- I'd have no
9 comment.

10 Q Other two points were, Mr. Wesley, that is Clarence
11 Wesley, talked about the treatment that he received after
12 he went back to the bar after his grandson was shot. And
13 again, do you have any comment concerning that incident
14 and the investigation as to what happened as a result of
15 that?

16 A I talked to one of the deputies involved and that
17 he'd put him in the car and when he got down there he
18 didn't recognize him or know him and like he said, he --
19 you know, he was excited, his grandson was -- had been
20 wounded and he did lock him in the car. And when they
21 found out who he was, they released him.

22 Q Is it standard procedure to lock someone in the car
23 who's excited after such an incident?

24 A Well, they said -- have you ever been involved in
25 one of these?

1 Q I was just asking you in your --

2 A That's --

3 Q -- in your experience.

4 A That's the worst -- the worst thing we have ever
5 had happen and we haven't got any procedure for it. We
6 was just trying to get everybody quieted down. Mr. Wesley
7 did lose a gun that he had a permit to carry on the
8 reservation. And he was off the reservation with the
9 pistol. And the officer said he didn't know who he was
10 and he did make, I believe, several arrests that night but
11 did release him as soon as they found out who he was.

12 Q I think we heard testimony earlier from another
13 panel that your officers are not cross deputized with
14 the San Carlos Apache Reservation?

15 A We have no jurisdiction of a -- on the reservation
16 of an Indian.

17 Q Or a non-Indian?

18 A Of a non-Indian we do.

19 Q You do.

20 A They call us if they have any problem with a non-
21 Indian.

22 Q If I could ask Sgt. Teachout one question, we heard
23 testimony yesterday from the Pima County Sheriff's Office,
24 I think it was Sgt. Taylor, who indicated that you had
25 been involved in teaching courses in Indian relations at

1 their academy and I wondered if you could just expand
2 on that? He mentioned you by name. Minority relations?

3 MS. LYON: Sensitivity type of training.

4 A (By Sgt. Teachout) I have in the past, I have not
5 here recently, last several years. When I first came to
6 Tucson in 1966 with the department of liquor licenses and
7 control, I did give class instructions at the Tucson
8 Police Academy and also the Pima County Sheriff's Office,
9 but the scope of these instructions are, or lectures,
10 were primarily surrounded with the enforcement of state
11 liquor laws, Title IV.

12 I did not, as a matter of part of the instruction,
13 there was a little repertoire in there concerning sensitive --
14 I don't know what Sgt. Taylor, I might -- my instructions
15 were strictly to earmark and geared around liquor en-
16 forcement.

17 We probably did maybe talk in general about re-
18 lations with minorities and things of this nature, but it
19 was not part of the curriculum. So I don't want to dis-
20 agree with Sgt. Taylor, but I don't recall specifically
21 giving a prepared instruction on minorities or any of
22 this nature.

23 Q How many years ago was that?

24 A From 1966 to, I became a member of DPS in '69, oh,
25 probably on and off from '66 through, almost up to '70,

1 periodically, I'd given several classes at the academy,
2 half a dozen.

3 MR. LEVIS: Thank you.

4 Q (By Ms. Lyon) Sheriff Stevens, as part of your
5 response to a question from Representative Guerrero, you
6 said, and I quote, when we drive up things get a little
7 bit different. Could you explain what you mean by that
8 remark?

9 A (By Mr. Stevens) Well, it's like you going down the
10 road when you see a patrolman you automatically lift your
11 foot off of the gas a little or -- I mean he could be doing
12 something wrong on the inside, could be shooting dice, but
13 if they see us drive up they aren't going to be shooting
14 dice when we get there.

15 Q I see what you mean, thank you.

16 At this point I would like to ask Mr. Everett
17 Little Whiteman if you have anything to add to the testimony
18 we have heard on the investigation into the Wesley case?
19 And if so, if you would please come forward?

20 DR. GERBER: On behalf of the commission I'd like
21 to thank you, Officer Teachout, Sgt. Sneezy and Sheriff
22 Stevens for coming here to be with us today?

23 A (By Mr. Stevens) Think you can get some problems
24 solved?

25 DR. GERBER: I think so.

1 A I talked to Everett Little Whiteman, you know,
2 about a bar on the reservation, I don't know what is the
3 problem with getting a bar on the reservation.

4 DR. GERBER: Maybe he can say something to that
5 right now.

6 Q (By Ms. Lyon) Mr. Little Whiteman, I understand
7 that you were part of an investigating team investigating
8 the conditions surrounding the killing of Vernon Wesley,
9 is that correct?

10 A (By Mr. Little Whiteman) No. I was not a member
11 of the investigating team, I was the investigator in San
12 Carlos and we received probably some of the initial reports
13 surrounding the shooting. And requests from the Wesley
14 family.

15 Q Do you have anything to add that would help the
16 committee to form a clear picture of the incidents con-
17 nected with the killing of Vernon Wesley?

18 A Well, the initial report that I received was
19 approximately 11:30 on March 16, 1974, in reference to a
20 shooting and a rioting as they referred to it, in Bylas,
21 or in -- at the bar, and we requested -- we were requested
22 for assistance over there to help, and I called up my
23 partner who was in San Carlos at the time, Ralph Senson,
24 who's an investigator with the Phoenix area office, we took
25 several of our officers to the bar and assisted there.

1 And the part that we played was we instructed our
2 officers to talk to the Indian people and call them down
3 and have them return to the reservation.

4 Q Did you have any involvement with the incident
5 involving the destruction of evidence?

6 A No, Ma'am, let me go back some more and try to re-
7 iterate what our position was, concerning the investi-
8 gation.

9 This was an instance off the reservation in which
10 we had no jurisdictional control over. And the part
11 that we played, we attended the preliminary inquest,
12 the justice of the peace at the time, Holyoke, held and
13 from there, they were going to have an additional hearing
14 scheduled for the following Friday. I believe this was
15 on a Sunday. We went back and we went to Bylas and we
16 talked to Edmond Wesley and the family there, and to find
17 out if anybody from the sheriff's office or from the county
18 attorney's office had been there to inquire as to wit-
19 nesses or facts surrounding the incident.

20 Again on Monday, we talked to the Wesley family and
21 we were informed at the time that no one, none of the in-
22 vestigators had been in touch with them or inquired about
23 witnesses. So Mr. Senson and I drove into Safford and
24 talked to the county attorney and the county sheriff's
25 office and offered our assistance. And at the time we handed

1 over a rifle that was used in the incident there.

2 Q What is the distance in miles from the bar where
3 the incident occurred, to Safford on the one side and
4 San Carlos on the other?

5 A I'm not sure, but I believe the sheriff said 30
6 miles, approximately.

7 Q To Safford and how many miles is it to San Carlos?

8 A It will be about, roughly 30 miles from San Carlos --

9 Q So it would be about the same distance?

10 A Right.

11 Q Is there any explanation why it took so long to get
12 an ambulance to take the injured person to the hospital?

13 A I couldn't offer any explanation, I don't know.

14 Q Would an injured Indian person, even if the incident
15 happens off the reservation, routinely be taken to the
16 Indian Health Service rather than the nearest available
17 hospital?

18 A That's correct, Ma'am, the ambulance service at
19 the time was from San Carlos. There was no ambulance
20 service in Bylas, there is now. But at the time there wasn't.
21 And the call was apparently received at the public health
22 service hospital, and the ambulance drivers were not on
23 duty 24 hours a day and every time they get an ambulance
24 call they had to go get them.

25 Q And there's no such service available from Safford

1 for emergency ambulance service?

2 A I am sure there is a -- some available, but in
3 cases involving Indians there the call is usually made to
4 San Carlos.

5 Q Is that a matter of policy or just a matter of
6 custom?

7 A I think it's probably just custom, it's the way
8 they've been doing it. In some cases our police officers
9 from Bylas do transport the emergency cases.

10 Q Do you have anything else you would want to add
11 fro the record?

12 If not, I have no further questions.

13 A I have nothing.

14 MS. LYON: Thank you very much.

15 THE CHAIR: Any of the other commissioners have any?
16 Thank you for staying.

17 We will adjourn now and reconvene promptly at
18 1:15.

19 Also, I might mention there, we have received notice
20 from three persons that they wish to testify at the end
21 of the meeting. They'll be allowed approximately five
22 minutes to present their point, and they're reminded to
23 keep their statements to generalities because some of the
24 statements they make are about persons who have not been
25 notified that they are going to be involved. Thank you.

1 AFTERNOON SESSION

2 November 21, 1975

3
4 THE CHAIR: I'm going to call the hearing back to
5 order, please.6 May we have Tibaldo Canez, Dave Tierney and Layman
7 Peace or his representative please step over to the
8 microphones on my left.9 Q (By Mr. Williams) Mr. Canez, for the record, will
10 you please state your name, address and occupation?

11 A.

12
13 MR. TIBALDO CANEZ14
15 A (By Mr. Canez) Yes, my name is Tibaldo Canez, I
16 live at 609 East Oxford Drive and I'm a public health
17 sanitarian with the Arizona Department of Public Health
18 Services.19 Q Is it true that you visited many jails around
20 Arizona?

21 A Right. The last part of October.

22 Q Was that specifically for the department of health
23 service?24 A It was at the request of the U.S. Commission on
25 Civil Rights.

1 Q Okay. Could you give us a summary of your report
2 on the health conditions in the jails that you visited?

3 A Are you just interested in southern jails or --

4 Q Yes, I think we already had a summary from the
5 northern jails from you.

6 A You want them specific or just general terms?

7 Q We can read, we can have your specific records
8 entered as exhibits, can't we? Just give us in general
9 terms the conditions that you found.

10 A Okay. Well, I visited three jails, the Pima County
11 Jail, the Safford -- I mean the Graham County Jail and
12 the Globe City Jail.

13 The Pima County Jail was very overcrowded, there
14 was lot of cleanability problems, specially the plumbing
15 fixtures, and the ventilation was poor. That was because
16 of the overcrowded conditions. That's the main problems.

17 At the Globe City Jail, they also had overcrowded
18 conditions, had ventilation, poor ventilation, the -- they
19 had, their bedding was -- they had problems with bedding,
20 they never furnished any clean blankets or anything like
21 this. There was a lot of plumbing repairs that needed
22 to be done and there was cleanability was lacking.

23 In the Graham County Jail, there was ventilation, it
24 was overcrowded, the bedding wasn't adequate, and the
25 plumbing fixtures needed repair or were not operating.

1 They had inadequate garbage disposal and they had several
2 floors, toilets, wash basins, showers needed cleaning.
3 The lighting's very poor.

4 That's basically what my findings were on the jails.

5 Q Okay. For the record, we have copies of your re-
6 port, we'd like them admitted as evidence, the report on
7 the Globe City Jail will be Exhibit Number 16, the
8 report on the Graham County Jail will be number 17, and
9 the inspection and the report on Pima County Jail will
10 be number 18.

11 Were you also able to observe any food handling
12 or preparation in the jails that you've just talked about?

13 A Right, the inspections included the kitchen
14 facilities. The ones for Pima County Jail and the
15 Graham County Jail were adequate but the one for Globe
16 City Jail was inadequate. They had a contract with the
17 Globe Cafe for catering the food, and the establishment
18 was -- did not meet grade A specifications so I recommended
19 that the contract be terminated and some other establish-
20 ment be found to provide the food services.

21 Q We're aware that the Commission on Civil Rights
22 initiated or requested you to make this inspection, but
23 now that you've made the inspection, will the department
24 of health service take any action as a result of your
25 findings?

1 A Well, we'll try to get voluntary compliance. The
2 Pima County Jail should not have too many problems com-
3 plying because they do have new construction going on and
4 it should alleviate their ventilation and population
5 problems.

6 We will reinspect the Globe and Graham County
7 Jails, the actual responsibility and jurisdiction belongs
8 to the county health department so we'll have to work
9 with them to try to get voluntary compliance. There is --
10 we can go through state rules and regulations to eventually
11 get a cease and desist order from the attorney general's
12 office, but it's a very complicated matter and seldom
13 used.

14 I haven't -- I have not known of any case where
15 it's been used.

16 Q Aside from the cease and desist order, is there any
17 formal working relationship between the state health de-
18 partment and the various county health departments?

19 A It varies from county to county, some counties
20 we have very good cooperation and some others we don't,
21 it all depends what the political structure is.

22 Q So it's just an informal relationship then?

23 A Right.

24 Q Do you know that -- have your findings been made
25 available to the various county health departments?

1 A In some counties it has been.

2 Q I mean if these particular findings, have they been
3 made available to the county health departments?

4 A Yes, these three reports were submitted to the
5 county health departments.

6 Q Do you have any feel for what action the counties
7 will take as a result of your investigation?

8 A I am sure that the Pima County Health Department
9 will take action. And the Graham County Health Department
10 should cooperate with us, but I extremely doubt whether
11 we will have any cooperation with Gila County.

12 Q Am I right in assuming that the state health de-
13 partment actually does have minimum standards, health
14 standards for these institutions?

15 A We don't have specific standards, we have specific
16 standards for food service and things like cleanability
17 and the proper operation of plumbing fixtures, we have no
18 standards as far as ventilation.

19 We'll, you know, we don't have specific standards
20 as far as ventilation.

21 Q Okay.

22 A Space requirements or lighting.

23 Q So you tell us that they're overcrowded, they're
24 poorly ventilated, you're using not a standard for jails
25 or institutions but just what you would consider general

1 standards for good health then?

2 A Actually, what we're using there is the recommenda-
3 tion for the U.S. Bureau of Prisons, the one in their insti-
4 tutional sanitation books.

5 Q Within the jurisdiction that the state health de-
6 partment does have the cleanability, the food service,
7 will the health department go back in on these particular
8 items and reinspect to make sure that the problem has been
9 rectified?

10 A As I said before, probably we'll go to the Globe
11 City Jail and the Graham County Jail. The reason I --
12 we'll probably not come to the Pima County Jail is because
13 we have delegated all our authority to the county health
14 department in Pima County and it's, you know, it's their
15 responsibility.

16 Q So if you delegated it, then there is some kind of
17 formal relationship between the state health department
18 and the county, Pima County Health Department?

19 A Just with Pima and the other county is Coconino. We
20 don't have any delegated -- I don't think the programs have
21 been delegated to the other counties as yet.

22 Q Did you find that most of the jails that you visited
23 -- is your report also made available to the sheriffs and
24 the local jurisdictions that would have control over,
25 direct control of these jails?

1 A The inspection report is sent to the jails, I mean
2 the original copy is sent to the sheriff or the chief of
3 police.

4 MR. WILLIAMS: Anybody have any more questions of
5 Mr. Canez?

6 Bill?

7 Q (By Ms. Lyon) Mr. Canez, during your inspections
8 did you observe any unequal treatment of inmates in the
9 jail facilities, either on the basis of sex or on the
10 basis of race, such as assignment of facilities or any
11 equipment?

12 A The only place I could comment on would be the
13 Globe City Jail. It was overcrowded like I said, they had
14 three Native Americans in one cell and it was the worst
15 cell, you know, in the jail. I don't know whether they
16 got it -- got that cell because they were the last ones
17 in or not, I really can't say.

18 The rest of the cells were occupied by trustees or
19 -- so the people weren't there, really. Those were --
20 that was the only cell that was actually being used that
21 people were locked up in. That was closed.

22 Q I recall that in the northern portion of the state
23 you did observe some other unequal treatment and this was
24 not the case in the southern area?

25 A Well, except for like I say, that case where they

1 had the worst cell, they had some plumbing problems,
2 sewage was leaking on the floor and they had one inmate
3 sleeping on a mattress on the floor, which is not approved.

4 Q I see.

5 A That's the only case in the southern part that I
6 could observe.

7 MS. LYON: I see, thank you.

8 Q (By Mr. Levis) Mr. Canez, you indicated, I think
9 in the northern half of the state that there was some
10 distinction as to size of the cells. Housing men and
11 women. And I think your report indicates that also in
12 the southern half of the state, I think you made a recommenda-
13 tion specifically concerning the Graham County facility,
14 is that correct?

15 A Well, you mean as far as overcrowdingness?

16 Q Right. The cell housing women.

17 A Right. Well, in Graham County, it was not over-
18 crowded at the time of inspection, but the number of beds
19 there were in the individual cells were way past the -- what
20 we would call an adequate level.

21 In the women's section, I don't think they had any
22 shower facilities. And the wash basin in the women's
23 area was not working, it was either plugged up or not
24 draining properly. And there was, I think there was -- oh,
25 they had five beds in the women's section and they only

1 should have only about three at a maximum because of the
2 square footage that we recommend.

3 Q I think your report also indicates that in Globe
4 that there is only one cell which serves as both the
5 women's or juvenile unit?

6 A Right.

7 Q And then I think with Pima County, you indicated
8 that cell A of the women's section was crowded in addition
9 to cells D, E and F. How many cells did the women have
10 at Pima County?

11 A Well, there was the -- the maximum security cell,
12 which has six individual cells. There was a dorm and
13 that's the one I was indicating was overcrowded. And
14 then they had a trustee section which had four beds. The
15 dorm was -- look at my raw notes and I could tell you how
16 many inmates there were in there.

17 Okay, there were 24 beds and 20 inmates in A cell
18 of the women's section and it was designed for 16. The
19 -- I got the number 16 from their floor plan, their
20 original floor plan for the jail.

21 Q Is this the only dormitory in Pima County for women?

22 A Yes.

23 Q And then there are individual cells in addition?

24 A Right, that's for the maximum security.

25 Q You also stated, I think earlier, that you expect

1 cooperation from both Pima and Graham County, but not
2 from Gila County. I wonder if you'd explain what you
3 meant by that?

4 A Well, I've been working with the different county
5 health departments for three years now, and after a while
6 you know which people will give you cooperation, and just
7 talking to the sanitarian from Gila County, I -- he gave
8 me indications that nothing would probably be done because
9 of the political structure of that county.

10 As a matter of fact, he probably said that even
11 the restaurant would not be, you know, they would not do
12 anything about the restaurant and that restaurant was
13 completely, I mean -- it's hard for me to explain to you,
14 I've never been to a restaurant as bad as that one.

15 But he said that they couldn't close it because --
16 because of the political structure involved.

17 Q Is there anything that your office can do in such
18 a case or does a formal complaint have to be filed in
19 superior court?

20 A We can not do anything against the restaurant because
21 it's up to the county health departments. Well, I take
22 it back, we could do it, but it -- first we have to go
23 through the county health department, they have the primary
24 responsibility. And it's only at their request that we
25 probably would try to close it down or something.

1 Q So, what alternative do persons have if the res-
2 taurant is not closed down or the jail conditions do not
3 improve in the county?

4 A Well, as I indicate in my report, we recommend that
5 the contract be terminated immediately, and other suitable
6 facilities be found. I will do a reinspection, and if
7 the restaurant and jail facilities are in -- in the same
8 state, we will probably try to get something done through
9 the -- first working with the county health department
10 and then maybe through the attorney general's office.

11 MR. WILLIAMS: Any further questions from Mr. Canez?

12 Mr. Tierney --

13 MR. TIERNEY: Is a participant permitted to ask?
14 I have three questions. First, is there any reason why
15 the reports on the health conditions that you've mentioned
16 can't be given to the presiding judges in the jurisdiction
17 in which those locals are located?

18 A I don't know of any reason.

19 MR. TIERNEY: If that's the case, if it's not a
20 problem, slander or something like that, if your depart-
21 ment would permit the presiding judges are the people that
22 might control whether or not inmates are placed in those
23 institutions so perhaps it would be advisable to do that.

24 My second question is whether you visited Maricopa
25 County to check for bedding on the floor?

1 A No, I just checked the jails that were requested
2 to be checked.

3 MR. TIERNEY: My third question, or I guess it's
4 a remark to Mr. Levis, I would think that that citizen
5 of Globe, especially a citizen who had a relative or friend
6 or loved one in the jail, could bring a mandamus action
7 concerning the county health department up there and could
8 make sure that the restaurant in question were visited
9 by that department and handled by them.

10 MR. WILLIAMS: Thank you, Mr. Tierney.

11 Any further questions of Mr. Canez?

12 Okay, Mr. Tierney, would you please state your name
13 and address and occupation for the record?
14
15

16 MR. DAVE TIERNEY
17

18 A (By Mr. Tierney) My name is Dave Tierney, I live at
19 5334 North Third Avenue, in Phoenix, Arizona. My occu-
20 pation, I am a lawyer, and by avocation I am the chairman
21 of the state bar committee on corrections and rehabilitation.

22 Q Could you give us a brief idea of your responsi-
23 bilities as chairman of the state bar special committee on
24 corrections and rehabilitation?

25 A Responsibilities are what the committee makes of

1 those responsibilities and at present they are as follows:
2 We are working on a study which we were performing last
3 summer, as I've explained to some of you in the hall out-
4 side, we do not have the figures yet from that study, but
5 it's in progress.

6 The study has to do with recidivism, length of
7 stay in jails, and use of bail versus OR, that's own
8 recognizance release and those three subject matters are
9 being gone into by us under a grant from the ABA basics
10 in Washington. The reason for our going into those three
11 subjects is that we discovered that those subjects needed
12 some factual investigation during the time that we were
13 performing an earlier study, the earlier study was released
14 on May 2, 1975, by the bar association.

15 And it concerned the living conditions and facilities
16 at Arizona's local jails. It's a 50-page volume that I've
17 supplied to the commission.

18 In addition to the contact with the local jails in
19 the two studies I just mentioned, our group is looking into
20 the status of parole and probation revocation hearings
21 and we are bugging the attorney general to see if he can
22 take care of what we see as a problem and that is that
23 we have received numerous complaints that parolees, for
24 example, are not given the required counsel when they go
25 in for a parole revocation hearing.

1 And we have a member of the committee who is making
2 life difficult for the attorney general about that subject.

3 In addition we have one other project that we did
4 about a year and a half ago, which we are attempting to
5 follow up on and that relates to the restrictions upon the
6 employment of ex-offenders in Arizona and specifically
7 restrictions that are imposed on ex-offenders by state
8 institutions, that is to say agencies such as the mortician's
9 board or the grave diggers' board or the cosmetologists
10 or finger wavers or chauffeurs' boards, all of these places
11 have restrictions on the ease with which an ex-con can
12 hope to get a job or be a grave digger or a finger waver
13 or a cosmetologist and that sort of thing.

14 I think that exhausts what my responsibilities are
15 at this time.

16 Q Could you give me a brief summary, the initial
17 report you mentioned that was filed in '75, the results
18 of that study on jail conditions in Arizona?

19 A Let me tell you something about how we came to get
20 into this. Back in 1974, during the year, members of the
21 bar, myself in particular, received complaints from
22 citizens concerning the status of local jails. And in
23 September of 1974, we heard that there was going to be
24 some money available to bar associations to do investi-
25 gation-type work and then eventually studies, reports.

1 We looked into a couple of different subjects,
2 but kept coming back to the local jails. We kept choosing
3 the local jails because we felt that there were plenty of
4 people who were involved in looking into the state de-
5 partment of corrections, but that the local jails were
6 the orphan child of the corrections system and that nobody
7 really wanted to tamper with them or look into them, so
8 we eventually decided we would go ahead and work on the
9 local jails.

10 We obtained a lady to run the project out of Arizona
11 State University Law School, we obtained 16 interviewers
12 from the law school and trained them, we created an inter-
13 view guide or questionnaire of some 40 pages, and we sent
14 out our interviewers to 31 jails out of the 47 jails in
15 Arizona.

16 The specific thing that we were looking for was
17 facts relating to the living conditions within the jails.
18 We were not attempting to create material from which we
19 could argue for certain programs or certain approaches
20 to rehabilitation we simply wanted to know whether the
21 complaints we had been receiving were true or not.

22 To give you an example, of a complaint, sometime
23 during 1974, the father of a young man who was in Flagstaff
24 called me, I say Flagstaff, I mean he was in the jail up
25 in Flagstaff, and said that his boy was being required to

1 dress meat in the kitchen there, and that the way the
2 meat for the institution was being obtained, at least
3 some of the meat was that carcasses hit by automobiles
4 on the road were being brought into the kitchen. I was
5 never able to run that one down, but that's the kind of
6 thing that made the members of our committee get very
7 interested in the local jails.

8 Eventually, we did the study. During the months
9 of December, 1974, through April of 1975. The results go
10 in a question such as, how are the budgets made up for
11 local jails? Who is employed by the local jails and how
12 are they trained if at all? What medical care is avail-
13 able or needed? What do the facilities look like?
14 Plumbing that Mr. Canez mentioned, for example, the
15 electric lights that were said to be exposed, wiring
16 for which was said to be exposed, for example in Globe,
17 Layman Peace, the other member of our panel that should
18 be here today.

19 The food, where is it served and how is it served,
20 the arrival procedures, whether they're uniform or not,
21 the visitation arrangements both physical facilities and
22 the rules and the manner in which those rules are adminis-
23 tered, correspondence restrictions, the facilities for
24 religious expression or services, the recreational or
25 exercise facilities, there are none. The rehabilitation and

1 counseling procedures, there are essentially none, and
2 lastly, discipline rules.

3 Q Mr. Tierney, can you give me an idea how these
4 problems that you've related specifically relate to the
5 Indian problem that we are discussing here today?

6 A It's pretty difficult for me to do, to explain
7 exactly how these relate to ethnicity. The figures that
8 we're getting from our work during the summer will give
9 us some real meaningful information along those lines.

10 What I did was ask the two people who worked on
11 the study this summer to go through what records we have
12 from the computer runs so far. And there's really only
13 one thing that I can draw out of the figures, that they
14 gave to me over the phone in the last couple of days.

15 The one thing that I can say about the Indians or
16 the Native Americans that we've been able to trace through-
17 out the system, is that the records of those people are
18 almost undecipherable and are statistically more lost than
19 any other group which we looked at.

20 Let me explain what I mean by that. During the
21 summer, one of the things that we did was to have the two
22 people who were employed under the grant full time, go
23 around to certain jails, pull the records on the people in
24 the jail as of a certain day, track those records back into
25 the system to see how those people were treated on bail,

1 for example. To see how long they were confined in jail.
2 In every case we would find that when you tracked back
3 some of those people, the records would be hopelessly
4 muddled and simply you just couldn't find out what hap-
5 pened to these people, how long they had been held in
6 jail, whether they got bail or an OR release, you couldn't
7 tell what had happened in their situation.

8 In every jurisdiction, and statewide, the Native
9 American has by far the highest percentage of undecipherable
10 records. I don't know what that means, but I'll pass it
11 on to you as something that might be looked at in the
12 future.

13 I would make a guess at what it means, and that is
14 that many of these people are being handled in a very in-
15 formal fashion, that is to say in the JP's office, in a
16 casual fashion and not treated to a full scale hearing,
17 and that this is the reason that the records are so messed
18 up.

19 Can I tell you that for a certainty? I can not.
20 We do not have a way of ascertaining that as we look back
21 into the records.

22 I'd like to comment a little further concerning the
23 food and so forth, although I really can't answer your
24 question as to how it relates to the Native Americans who
25 are passing through our jail systems.

1 Q Okay. The food problem in the whole jail structure,
2 the local jail structure? Without regard to any ethnicity?

3 A I think that some of the subjects that I touched
4 on, you know, in listing what our study covered, it's
5 worthwhile just taking a moment to learn what the study
6 says in a nutshell.

7 Let me say that the -- the singlemost important
8 finding that we made about jail budgets was that almost
9 no jail has a budget such that you can tell what the costs
10 are for incarcerating a single person or a group of
11 prisoners. There is no way that you can do cost accounting
12 under the present structure, there are no uniform budgets,
13 you can not tell if Globe is spending more per prisoner
14 than Pima County is spending, you can not see if a certain
15 county is spending an amount which is ridiculously below
16 some kind of a standard there's simply no way of telling.

17 Secondly, on the people who are employed in these
18 jails, we found that many of the jails are left unsuper-
19 vised for a significant part of the day and this means
20 that there is a risk of prisoners against prisoner violence
21 or the inmates being hurt in a fire, flood or explosion
22 or something like that.

23 On the medical care we found that there's only
24 one institution in Arizona that has any serious procedure
25 for checking up on people as they are admitted into the jail

1 jail asking them whether they are diabetic, on insulin,
2 whether they need certain kinds of medicine, whether they
3 have asthma, whether they have allergies, whether they
4 need treatment for VD, these things simply are not done
5 in our Arizona local jails.

6 Concerning the physical facilities, much as what
7 Mr. Canez told you, we found that plumbing and electrical
8 wiring are very seriously deficient in many places. I
9 can not speak about it with the authority that Mr. Canez
10 can speak about it, first because we weren't comparing
11 the plumbing and wiring to any particular set of standards,
12 and secondly, because the people that we sent out weren't
13 proficient in those fields as Mr. Canez would be.

14 Concerning the food, we found that 16 out of the
15 31 jails that we visited served only two meals a day.
16 Now, in the jail that I visited, one of the small jails
17 that I visited, that two meals a day consisted of a
18 hamburger in the morning, dry, on a bun and a hamburger
19 in the evening, dry, on a bun, from the local, low bidding
20 cafe. Quite a number of the jails that we visited,
21 especially the ones that had two meals a day, had that
22 system because they used what they call the low bidding
23 cafe in the jurisdiction. They have somebody who runs
24 a little joint there in the town and he gets so many
25 thousand dollars a year to feed whatever prisoners come

1 down the pike in that local jail.

2 Concerning the arrival procedures, it was incon-
3 sistent from place to place but very frequently whether
4 Native American, Black, Chicano or Anglo, you simply
5 don't find out about your rights. There is no uniform
6 procedure for advising you of your rights. There's
7 quite a confusion among the jailers as to whether the
8 officers in the field are required to inform prisoners
9 of their rights or whether the jailer in the jail is
10 required, and of course everybody lets the ball drop
11 to somebody else's hands. And we feel that quite
12 frequently that is -- their advice as to rights is not
13 given to them.

14 Concerning visitation, we found that in all cases
15 the visitation facilities are way overcrowded, and so
16 noisy that it discourages visitation, and people complained
17 of that very frequently.

18 Concerning correspondence, we found mostly an
19 absence of rules and just kind of a, out of the back pocket,
20 what will we do today-type of approach to the situation,
21 but some of the larger jails we found have a very definite
22 plan and program whereby they read all of the incoming
23 and all of the outgoing mail. Now, I don't mean that they
24 censor it, they very rarely cut anything out or black it
25 out in the letter, occasionally they turn a letter back and

1 say we don't like these kinds of comments made in our jail.

2 But instead, they read that mail in order to, as
3 one jailer said to me, face to face, he said, I like to
4 know what my boys are thinking. And therefore they read
5 the mail very carefully.

6 Concerning religion, there simply are no provisions
7 made for practice of religion in the local jail system.

8 Concerning recreational and exercise facilities, we
9 found two jails that made some attempt to give their
10 prisoners both recreation and exercise, and both those
11 jails, the jailers said that they felt that it had a
12 significant effect on morale and the ability of people to
13 get along with each other in the jail. The likelihood
14 of no friction in the jail.

15 Most of the jails in Arizona, with the exception
16 of those two, simply have no provision for giving guys
17 sunlight or a walk around the yard. You either jog in
18 place in your cell or you're out of luck for exercise.

19 Of course, that isn't too bad when you're only
20 getting two meals a day, you don't feel like doing too
21 much anyway.

22 Concerning rehabilitation and counsel, we went into
23 this as regards drug programs, as regards alcoholism
24 programs, as regards work furlough-types of programs, and
25 in a nutshell, I can tell you there is practically nothing

1 going on in Arizona. We did find one jail in the northern
2 part of the state in which the chief of police who was
3 responsible for the jail had made a real serious effort
4 on work programs and was having a great deal of success.

5 That brings to mind one other thing I should say,
6 it goes along with budgets, one of the problems and per-
7 haps the major problem in Arizona's jails, is that it's
8 extremely rare that you find an employee of the system
9 who is responsible for that jail. Instead, what you find
10 is kind of a floating responsibility, it's the man on
11 watch who is supposed to keep his eye on the prisoners
12 and he's gone after eight hours and somebody else takes
13 over.

14 But there is no one from day to day who is re-
15 sponsible for making the jail work. As a consequence,
16 the budgetary matters, the problems of cleaning up the
17 broken pipes or the leaking pipes, tend to get handed
18 around from fellow to fellow and never taken care of.

19 One of the things we could do to improve the system,
20 I think is to require that every city, municipality, every
21 county assign some one person and make him responsible.
22 Were that to happen, there would be somebody against whom
23 mandamus actions could be brought, for example.

24 Let me sort of stop talking, I guess, to the end
25 of my line here, there's not much to say about discipline

1 but you rarely find any written rules, I only know of two
2 jails that have written rules for discipline the rest of
3 them rely upon a word of mouth-type of situation and they
4 let the guards enforce them as they feel fit and one
5 thing that the prisoners constantly complained about was
6 that contrary to the statutes in Arizona, the jailers or
7 the sheriffs tend to treat the two for one time as their
8 personal prerogative. They administer it and hold it
9 out and take it back as kind of a privilege when in
10 reality, if I remember correctly, the statutes require
11 that two for one time can only be taken away by a vote of
12 the board of supervisors, and we made some mention of that
13 at the end of our study.

14 It would be a very clumsy thing to try and follow
15 the law but the system as it is right now is illegal,
16 number one, and number two, it's being administered so
17 arbitrarily that it creates a great deal of friction in
18 the jails.

19 That's relevant as to trustees, trustees are very
20 special people in our local jails, they are able to get two
21 for one time and they also usually get three meals a day,
22 which is very important to prisoners, and the trustees
23 will do almost anything, they'll jump through hoops for
24 the jailer in order not to lose that status. In order not
25 to lose those three meals a day, in order not to lose that

1 two for one time. Let me stop running on and go back to
2 you.

3 Q The two for one time statutes you mentioned, isn't
4 it also true in that particular statute that one of the
5 requirements is the person has to be a person of trust?

6 A Yes.

7 Q So that could be a discretionary thing on the part
8 of a jailer?

9 A No question, but if I remember correctly, the --
10 withdrawal, or the taking away of two for one time or the
11 terminating of the status of trustee can not be done
12 without a vote of the supervisors, a very silly system,
13 but that's the law.

14 Q But it's possible for two for one time without
15 being a trustee, isn't it?

16 A I believe not, Ted, I believe once you get on the
17 status of two for one, in order to get it taken away,
18 we'll have to go into the law which is cited in this
19 study.

20 Q Would you advocate as a solution for some of the
21 problems raised some kind of state legislation to set
22 minimum standards for these institutions?

23 A I was hoping you'd ask me something like that. As
24 a matter of fact, the bar in this study, which was approved
25 by the board of governors, has been released as the bar's

1 white paper, the bar is in favor of establishing some
2 state legislation much like the one that you find in Arkansas.
3 Arkansas, much like us, had a pretty bad situation
4 several years ago, and it was so bad that it led to some
5 reform in Arkansas, which in itself is remarkable.

6 But at any rate, Arkansas adopted a law in 1973
7 and the law simply says that there shall be a board called
8 in their case, the board of corrections in Arkansas,
9 and the board shall adopt standards for the living con-
10 ditions and other conditions in the local jails. The
11 board is required to be composed of -- they call them a
12 circuit judge, it would be our superior court judge, a
13 justice of the peace, a sheriff, and a few other people,
14 one of their county coroners and so on.

15 The board adopts standards after a year of study.
16 Those standards become effective after a year. Once they
17 are effective there is a procedure provided in that Arkansas
18 law whereby an institution may be closed down. Required
19 to conform to the standards or closed down.

20 We have a law something like that, we put together
21 and which the bar is now considering and as of the end of
22 the month of November, I expect the board of governors will
23 approve the lobbying effort on behalf of the bar.

24 The law calls for a commission on corrections. We've
25 arranged with some legislators to get that bill prefiled and

1 we intend to push it this year in the legislature.

2 If you were to ask me what I thought or our chances
3 of getting it passed were this year, I realize the State
4 of Arizona is in a very tough financial situation and
5 unless we can find some money to fund that kind of
6 standard creation, I do not believe that we'll get the bill
7 passed this year, so we're looking like crazy to find a
8 source of funding.

9 Q The study that's on-going now, that the bar
10 association's doing, will that give you any better handle
11 on the ethnic breakdown as far as how the people in the
12 jails are treated, how different ethnic groups are treated?

13 A Yes, it definitely will. The study that we've been
14 doing during the summer and which we should have had the
15 figures on right now, attempted to find out by ethnic class
16 or group, how people were being sentenced and treated.
17 I don't mean treated in terms of living conditions, I mean
18 treated in terms of number of days spent in jail. So yes,
19 we will definitely have some ethnic-based figures.

20 Q Do you have any feel as to when they'll be available?

21 A I feel in the next month or month and a half.

22 Q Can you forward that to the commission for their
23 records?

24 A I will do so. I'd like to say one other brief
25 thing about the reason we've bothered to do the study we've

1 been doing during the summer. We felt when we finished
2 this volume on living conditions, that a lot of people in
3 the legislature and elsewhere would simply say, big deal.
4 Those people are only in the can for a couple of days
5 anyway. So let them eat two meals a day and let's let it
6 go at that. What we've tried to do during the summer
7 is determine just how long and how many times in a row
8 people are spending time in our local jails.

9 It's our belief that although the average stay in
10 jail is only approximately five days, that there's a tre-
11 mendous recidivism rate and as a result we have the same
12 people coming back again through that revolving door,
13 over and over and over again. So that the people are in
14 fact spending a considerable amount of time at our local
15 jails. Which would, of course, make it reasonable,
16 economically and otherwise, to try to rehabilitate these
17 people at the local level.

18 Q What you're alluding to, though, is a problem with
19 the criminal justice system as a whole, moreso than just
20 the jail structure that they wind up at?

21 A Yes, it's a problem of the system as a whole and
22 we got another glimmer of how basic the problem is this
23 summer when we tried to track people from one county to
24 another, for example. And the record system, for example,
25 set up so chaotically that it's extremely difficult for a

1 jailer in Globe who's got a fellow who's come into his
2 institution to know whether that guy's been in five times
3 in Greenlee County, five times in Graham County and 15
4 times in Maricopa County. It's sort of like the situation
5 with the children of migrant workers some years ago, where
6 the federal government realized that the record keeping
7 was so bad, and that the children were being deprived of
8 so much education as they moved from place to place by
9 a loss of records relating to how well they were doing
10 and what they had studied that they enacted a law which
11 straightened out the record keeping and required the
12 records to be kept in a fashion they could be transferred
13 easily from locale to locale and I really thing something
14 like that is going to have to happen someday in Arizona
15 in order for us to get a handle on who is passing through
16 our system and how much time they're spending here and
17 there.

18 Q Would you advocate the state board of, department
19 of corrections running regional facilities for the counties
20 as an alternative to the counties running their own
21 facilities?

22 A Speaking in a vacuum and from my own personal
23 opinion only, I'd say that would be a wonderful thing.

24 Speaking practically, politically I think it would
25 be disaster in Arizona. We found quite a bit of rejection

1 of the department of corrections in the outlying counties,
2 they simply do not want to be under the thumb of another
3 statewide organization operating out of Phoenix at a great
4 deal remote distance from them. Therefore, I wouldn't
5 think that would be a good idea in the near future. It's
6 something that Arkansas realized they were pushing them-
7 selves toward when they enacted a law relating to jail
8 standards.

9 And I think if we enact a law relating to jail
10 standards, we will be moving slightly in the direction of
11 regionalizing the corrections institutions, and ultimately
12 slightly in the direction of having the department take
13 over, but I sure wouldn't come out and shout about that
14 in the near future.

15 MR. WILLIAMS: Anybody have any questions of Mr.
16 Tierney?

17 Dr. Gerber?

18 Q (By Dr. Gerber) Yes.

19 Dave, to return to the problem of Native Americans,
20 did you encounter any instances of police brutality or
21 jailer brutality against Native American inmates of jails
22 anywhere?

23 A We did not, but I do not want to say that that
24 means that there aren't any. It was simply that the way we
25 went about doing our study it was not likely that we would

1 turn up those kinds of pieces of information.

2 Q Another question. Did you find out anything on the
3 extent to which, if any, Indians are denied bail and re-
4 lease from jail on bond?

5 A I wish I had the figures that we will eventually
6 have from the study that we did this summer. The rough
7 look we've been able to take at those figures indicates
8 that especially in the northern part of the state,
9 Indians get bail considerably less than other people, get
10 bailed out considerably less than other people, but even
11 more important, they get OR releases significantly smaller
12 amounts than do the Anglos, the Chicanos or the Blacks.

13 In Flagstaff in particular, I remember that the
14 figures show there was a very distinct difference between
15 the groups as far as your ability to get an OR release.
16 In fact, before we started today I was showing one of the
17 staff a letter which we picked up during our travels this
18 summer and I'm told that you already have it in the record,
19 but it indicates that in Flagstaff there was a policy that
20 because of a failure, I'm not sure which tribe it is,
21 to enforce warrants, the local courts up there do not
22 choose to give OR releases on the belief they will not
23 then be able to get back in their clutches the people who
24 skip and go back to the reservation.

25 I'd like to say something about that because I've

1 been thinking about it for some time.

2 It seems to me that there are two things to be done,
3 as relates to the Native American passing through the
4 system, who is finding it difficult to get an OR release.
5 The easiest thing to do is to strike out at the system
6 and bring a lawsuit or something like it and perhaps the
7 second easiest thing to do is to go to whomever it is on
8 the reservation that is refusing to cooperate, find out
9 their reasons, and if their reasons aren't good, then to
10 change their attitude towards the service of the warrants
11 and I think that would clear up some part of the problem.
12 I sure would like to know what the reasons are for the re-
13 fusal to enforce the warrants on the reservation.

14 Q One final question, Dave. Did your study or any of
15 your studies encompass the conditions of Indian jails on
16 reservations?

17 A No, we did not.

18 Q Didn't get into that at all?

19 A The reason was that we are going to go to the
20 Arizona State Legislature and ask them to enact a law
21 which would apply to jails in their jurisdiction and we
22 felt it would be fruitless to spend part of our very
23 precious time in going on the reservation.

24 DR. GERBER: Fine, thanks, that's all I have.

25 MR. WILLIAMS: Any other commission member have any

1 questions of Mr. Tierney or Mr. Canez?

2 A Mr. Chairman, can I offer this copy for your
3 record? Or do you have it already?

4 MR. LEVIS: We'll just put that in as Exhibit 19.
5 That's the report of the State Bar of Arizona on living
6 conditions and facilities at Arizona's local jails.

7 MR. WILLIAMS: No further questions, thank you
8 very much, Gentlemen.

9 THE CHAIR: Before we conclude this panel, is
10 Layman Peace or his representative here?

11

12 (No response)

13

14 THE CHAIR: Thank you.

15 MR. WILLIAMS: Thank you, Gentlemen, for your time
16 and cooperation.

17 THE CHAIR: We will now go on -- we will now go on
18 with our open session as we announced before, and we
19 do have three persons who have asked to speak, again I'd
20 like to remind them that they will have approximately five
21 minutes to present their points, and they're reminded to
22 keep their statements very general, not to deal in per-
23 sonalities, as they will be talking about some instances
24 in which individuals have not been notified of this testi-
25 mony.

1 First one I'd like to call on is David Boni. Would
2 you like to step to the microphone?

3 Did you have a statement you wished to make?

4 MR. BONI: Oh, yes, yes. Well --

5 DR. GERBER: Excuse me, could we get his full name
6 first and the spelling of his name?

7 THE CHAIR: If you want to give us your name,
8 and address?

9
10
11 MR. DAVID LAWRENCE BONI, SR.

12
13 A (By Mr. Boni) Yes, my name is David Lawrence Boni,
14 Senior, from San Carlos, Arizona. My job was a game
15 warden but not now. Now I'm a -- I don't work now, you
16 know, so they laid me off, so -- well, I just want to say
17 this, you know on the reservation, on the reservation, you
18 know, if a non-Indian go on a reservation, he can go on
19 his own. Well, this, earlier this morning I heard that
20 they said for a federal warrant or felony like that, that
21 captain officer said that he could use his weapon. How
22 about the game warden? I think game warden got a right
23 to use his weapon too. If it's on a reservation.

24 See, it's going to be way out in the mountain, the
25 game warden take care of the people, then the people they got

1 their arms already, I mean firearms are in their hand
2 already. That's kind of people we take care of on the
3 reservation.

4 Sometimes they drunk, they don't know what they
5 doing and they have a rifle loaded already in their arm.
6 And I was -- they give me authority from the tribal council
7 to carry a firearm on a reservation. I was on the line,
8 on duty as a game warden while this thing happened.

9 Q (By Dr. Gerber) Excuse me, Mr. Boni, what thing
10 are you referring to?

11 A Well, I testified this morning, you know. You know
12 this captain this morning, sergeant, he said well they
13 did point, they point -- they point a handgun on me when
14 they arrest me for a felony warrant in Globe, Arizona,
15 you know, by the highway patrolman?

16 He point it at me so you know, I think -- I think
17 that's an assault too, you know. I think that's assault
18 with a dangerous weapon too.

19 See, in my case I didn't did nothing like that but
20 they accuse me and they took me to federal court. So the
21 federal e- so the federal officer they said they couldn't
22 deal with the non-Indian on the reservation and how could
23 they help a non-Indian to sign complaint against the Indian?

24 MS. LYON: I think, Madame Chairman, that Mr. Boni
25 is extending his remarks which he made this morning in order

1 to present further observations for the record, so he's
2 just continuing, basically, the testimony that he presented
3 this morning, and I think, at the moment, if I understand
4 Mr. Boni correctly, he's making a point of unequal treatment
5 or unequal protection of the law.

6 THE CHAIR: Well, when he asked to speak again he
7 mentioned that he had some additional testimony concerning
8 the grand jury. Is that -- are you going to be including
9 that?

10 A Well, that's when -- this is another one, this is
11 going to be in a court too, in United States District
12 Court. If they going to try Indian in there, they should
13 have an Indian grand jury. At least they should have some
14 Indian.

15 Q (By Ms. Lyon) May I ask, Mr. Boni, has your attorney
16 made that point?

17 A Well, my attorney, he turned me down, I told him
18 I'm going to waive the jury, but he said no, so he refuse
19 me so they had a non-Indian -- I mean non-Indian jury.

20 MR. LEVIS: Madame Chairperson, I think for the
21 record, right now the case is before the Ninth Circuit
22 Court of Appeals on the jurisdictional issue so that
23 there would be no jury before a court of appeals, but if
24 there is a new trial, you have a concern that Indians be
25 included on that jury panel, is that correct?

1 A Yes, I mean when they try me, you know, in a dis-
2 trict court.

3 Q (By Mr. Levis) But you have a different set of
4 attorneys now than you had when your original trial was
5 held?

6 A Yes.

7 Q And at the original trial you waived trial by jury?

8 A Yes, I was going to, you know, but -- but then my
9 lawyer was turn me down, you know.

10 Q So you are indicating now if you have to have a new
11 trial that you would like a trial by jury and that the
12 jury should include American Indians?

13 A Yes. From the reservation.

14 Q (By Ms. Lyon) Mr. Boni, I believe you indicated to
15 me during the recess that you observed some mistreatment
16 of Indian prisoners in the Gila County Jail or was this
17 the city jail?

18 A Both, both jails.

19 Q Could you give us more information on that subject?

20 A Well, in city jail, they done it to my young
21 brother.

22 Q Could you describe what was done and by whom?

23 A Well, they -- they beat him up.

24 Q Who was that?

25 A This boy, this my boy, this my brother's name is

1 Kenneth Boni.

2 Q And who beat him?

3 A City, city policemen.

4 Q I see.

5 A Besides they charged him with resist like that, you
6 know, if the Indian lane, if they pass out outside the bar
7 like that they kick them in their back too, you know, they
8 kick them around too before they pick them up.

9 Q Do you know of any Indian person that has ever
10 filed a complaint about that kind of treatment?

11 A No. If they going to -- if they gonna do that,
12 you know, the next time, they gonna do it worse to them,
13 you know, that's why they kind of afraid and they afraid
14 to say something about it too. That's why they just let
15 it go.

16 Q I see.

17 A And in the county jail when I -- when the patrolman
18 arrest me, when I was in there, I see one happen in front
19 of me when I was behind the bar, they beat up one Indian
20 boy there in front of me.

21 Q And this was police officers or deputies?

22 A No, this was deputies.

23 Q I see. They beat an Indian prisoner?

24 A Yes.

25 Q How many deputies were beating one Indian prisoner?

1 A Three.

2 Q (By Dr. Gerber) Do you know why they were beating
3 him?

4 A Well, well, he just -- you know how it is, you know,
5 when you're drunk, you got a big mouth that, you know,
6 only for the talk, that's why they beat him up, you know --

7 Q Is the same true of your young brother, Ken?

8 A Well, they did the same thing to him in a city jail
9 too.

10 Q He was drunk and mouthing off --

11 A Yes.

12 Q -- to a police officer?

13 A Yes, they knocked a tooth out and this reservation
14 policeman, they didn't did nothing about it, he filed a
15 complaint there, you know, but they just forget about it
16 and he turned it over to the FBI, but I don't know what
17 happened. It was long, long time.

18 Q (By Ms. Lyon) Do you recall the date when this
19 occurred?

20 A No, I don't.

21 Q Was it last year or how long ago, roughly?

22 A About a year and a half ago.

23 Q I see. What about the beating of the Indian
24 prisoner by the three deputies, how long ago did that
25 happen?

1 A It was in December 19th of '73. I don't really
2 remember, I think it was Thursday night or Wednesday night
3 when I was -- when I was in jail there. You know, if they
4 going to arrest the Indian they don't give them their
5 rights, they just throw them in the police car, you know.
6 They just push them in. If you say something, or if you
7 going to ask them some questions, they beat you up right
8 there too. Or they can give you a fist and knock your
9 teeth out and that's how they treat you, you know. I
10 know it too, that's how I been treated, you know, long
11 enough. So --

12 Q (By Dr. Gerber) Mr. Boni, have you, yourself, ever
13 been beaten by a police officer?

14 A Yes.

15 Q And when did that occur?

16 A About -- about seven years ago.

17 Q What -- I'm not asking for --

18 A This is a tribal, tribal policeman, you know, on
19 the reservation. He was a government, government employee.

20 Q But he was an Indian police officer?

21 A Yes, Indian.

22 Q That's happened to you just the one time, is that
23 correct?

24 A Yes, one time.

25 Yes, he broke -- he broke my ankle, you know, that's

1 why I still walk crippled like that, you know.

2 Q If I understood your testimony correctly, you said
3 that as a general rule police officers do not give the
4 rights to Indians at the time they're arrested?

5 A Yes.

6 Q What did you mean by the rights, the so-called
7 Miranda rights?

8 A Yes, I mean their rights like that, you know. You
9 know, for the -- for remain silent like that, you know,
10 they don't give you nothing like that, even on the reser-
11 vation they're the same way too.

12 Q Has that been true in your own case that when you
13 were arrested --

14 A Yes.

15 Q -- you were not given your rights?

16 A Yes. See, I was arrested by highway patrol, they
17 didn't give me nothing, he just started pushing me around,
18 he point a gun at me and told me to turn around, you know.
19 I got a badge on my heart but still he keep pushing me
20 around.

21 THE CHAIR: Did you have any further questions?
22 Any of the commission? Did you have any other statements
23 you'd like to make?

24 A Well, about job, too, you know, you know for this
25 case here, I lose my job, too, you know, besides this.

1 For that -- for that case, you know, that's why I lose my
2 job too, and it's -- it don't look good for me too, you
3 know, to get another job somewhere, you know, they stand
4 in front of me where I go, you know, trying to get a good
5 job, but they always offer me a \$200.00, \$250.00 a month
6 job, you know, and I got six kids. So I couldn't -- that
7 wouldn't do me any good, you know.

8 See, I've been suffering for about over three years
9 now. This case been -- it's been open for about over
10 three years now.

11 Q This was a tribal job you had?

12 A Yes.

13 Q And you were dismissed by the tribe?

14 A No. Well, the tribal council, they read a statement,
15 they told me to -- when they throw out the case from dis-
16 trict court, you know, they told me to go back, get on
17 the job again, you know, but they told me to start it at
18 May 1, 1974, they told me to start on May 1st. I thought
19 I was going to start it but they got another financial
20 committees there on the reservation, you know, they call
21 the seven -- seven man committee, they are the one, they
22 are the one they turned me down, you know.

23 Q (By Ms. Lyon) But still the final decision would
24 be up to the tribal council, right?

25 A Yes.

1 THE CHAIR: I'm sure this is of great concern to
2 you, but I'm not sure this falls directly in the realm
3 of what we're discussing today. Did you have anything
4 else other than what -- directly pertinent to this or
5 does that conclude your remarks?

6 A. That's all.

7 THE CHAIR: Fine, thank you very much.

8 Next we'd like to hear from Josiah Moore and
9 Margie Winters? Josiah?

10 Would you identify yourself and give your address
11 for the record and you have listed an incident here that
12 you -- and would you keep your comments directly to that?
13
14

15 MR. JOSIAH MOORE

16
17 A. (By Mr. Moore) My name is Josiah Moore and a
18 counselor at Mesa Community College and I also teach
19 freshman English at Arizona State University. And I'm
20 grateful for your allowing me at this time because we had
21 made, we had submitted our names earlier when we became
22 aware of the hearings and didn't get any word, so we came
23 on down anyway, thanks to the assistance of the Phoenix
24 Indian Coalition.

25 And other than that, I guess we would really like to

1 point out that in the area of higher education I guess
2 students come off the reservations, come into urban com-
3 munities or metropolitan communities, the treatment by the
4 local police is rather strange and of course this is my
5 third year at the college and I was aware of this with
6 Black students and Chicano students, not so much with
7 Indian students until it occurred to one of the candidates
8 for our school.

9 And the incident involved not only her but myself.
10 And so we're here to mention that.

11 Another student who was unable to come had also been
12 harassed by another city's police department, and I guess
13 my concern is that we wanted to put on record these
14 experiences, because I think they're, maybe they're not
15 new and maybe they ought to be made aware of.

16 The other student was not able to come with us for
17 fear that his would not be helpful to him and this was
18 true also of Black students and Chicano students when they're
19 harassed by police departments.

20 The situation we'd like to relate to you occurred
21 in the Town of Tempe. Margie came from the State of South
22 Dakota and wanted to enter the College of Nursing at Mesa
23 Community College. She called up my office and we made
24 arrangements for her to come down and go through a tour
25 and visit with the college of nursing. Margie's mother is

1 also a student at Arizona State University and was doing
2 student teaching and they had one car, which meant that
3 Margie didn't have any transportation and didn't really
4 know her way around the community and also we don't have
5 bus service out there. So I offered to pick her up on my
6 way to the college and as I picked her up at her, at their
7 apartment or actually they were living in a mobile home,
8 a police car followed us and Marge was busy explaining to
9 me because this was the first time I'd seen her, explaining
10 to me her plans and showing me some of the letters that she
11 had had from the Bureau of Indian Affairs, who were going
12 to provide the scholarship, and support for her college
13 classes.

14 And I still watched the policeman following me and
15 I felt that maybe he was going to check us out. I guess
16 we must have went about a mile and a half when he stopped
17 me, as he stopped me there were three police cars, you
18 know, immediately up to us. And I was asked to get out
19 of the car and the comments were stand over here. And so
20 I got there, and one of them went up to -- to the door, to
21 the front where Margie was sitting as a passenger and I
22 hadn't really gotten to know her that well, I asked what
23 was going on. They said this is a routine check.

24 I said, routine check with three police cars? And
25 they said, well, there are only two, sir, one had, was

1 just moving away. Later they came, one of the officers
2 that had gone to Margie was questioning her and I was not
3 permitted to go up there, to find out what was happening.
4 I still thought that it was strange that three police
5 cars were there and that I was being asked to stay at
6 one end.

7 I asked the officer again, you know, what's --
8 what's going on and he wanted to see my driver's license,
9 I showed him my driver's license, he asked if I lived at
10 that address. I had just bought a home that summer and had
11 moved about two weeks ago, or two weeks previous I hadn't
12 changed my address. I explained that, and he held onto that.
13 The other officer came back and asked me if I knew the
14 passenger and I said yes, I know her. This is the first
15 time I've seen her, I've talked to her by telephone. He
16 asked me the name and I said, you know, I'm not even sure
17 that's the name.

18 He -- the name he strung on me was something,
19 Springer. And he said don't you know your passenger? I
20 said I don't know her, she's going to be a student, I
21 thought it might help if I explained to them that I was
22 a college counselor and that she was a candidate for our
23 school. It didn't seem to help. They went back and kept
24 radioing and after giving her a hard time and frightening
25 her, and I was helpless to help her or to clarify to them

1 that we were, I thought I was a professional person and
2 that we were doing our business.

3 I'll stop here and then Marge can explain to you
4 some of the questioning she went through.

5 We've never really discussed that, but I thought
6 that was her business and her own affairs, but I'd like
7 you to hear Margie's statement and I have some more
8 comments or I can respond to any questions you may have.

9 THE CHAIR: Would you identify yourself, please?

10
11
12 MS. MARGIE WINTERS

13
14 A (By Ms. Winters) My name is Margie Winters, I
15 live at 1112 1/2 East Bendix, Tempe.

16 And the officer just came up to me and took my ID,
17 and then he -- and then he turned around and wanted to know
18 my height and everything that was on that ID. And then
19 he asked me who Marsha Springer was and I guess that's
20 the name Joe gave him, and I don't know, I didn't know what
21 to do. You know, but all the questions and -- I knew Joe
22 was back there but he couldn't, you know, I didn't know
23 what to say because I didn't know who was in trouble or
24 anything, it was -- I don't know, it was kind of confusing
25 and that's how they left it. And to this day, you know.

1 Q (By Dr. Gerber) There was no arrest made of either
2 of you?

3 A No.

4 A (By Mr. Moore) No, what I did was I followed up
5 by, because I had seen the way Margie was questioned and I
6 could see the, you know, she was frightened, as a counselor
7 I'm very concerned in the attitude and the atmosphere that
8 we treat our students, particularly if they come from
9 out of state or from off the reservation, my concern was,
10 as they were finished they, the officer gave me a little
11 blue card and said this, when you sign this blue card, it
12 states that on this time, on this day and this time I
13 stopped you, and explained, states the reason that I
14 stopped you. The reason that he gave me was that at some
15 time a person had received a citation and was a passenger
16 in that car, was not the owner or the driver of the car
17 but a passenger in that car, and that because she failed
18 to show up on the citation there was a warrant out for her
19 arrest.

20 The car belonged to my brother, so I asked about
21 how long ago did this happen because, you know, I wondered
22 whether my brother hadn't had a passenger that had a
23 warrant, and they said they didn't remember.

24 And so, but he said that's the reason we stopped you,
25 we just wanted to check out your passenger.

1 I had had the car for, had borrowed the car and
2 using it for two years, my brother had had the car at
3 least three years prior to that time and so my concern
4 was maybe I had a hot car. Then I asked who the officer,
5 you know, if there was some other way that he could have
6 found it, you know, got that information, and he said,
7 well, that if I didn't like the way we were being treated,
8 I could complain down at city hall and I said that I would.
9 But I said before I complain to city hall, I'd like you
10 to know, you know, that -- and then using Edward Morgan's
11 words this morning about being White and being educated,
12 I think as Indian I'm educated and that I think I can speak
13 for myself and so I said that I didn't appreciate being
14 stopped on the main thoroughfare where some of the students
15 from my college might be going by.

16 As a matter of fact, some did go by, they did want
17 to help and they thought that, because maybe one of the
18 things that is quite prevalent among college students
19 are pot, busts and so they thought that with three police
20 cars around that that might have been the case.

21 They offered to drive my car home. But the strange
22 thing is that when I did call the chief of police in Tempe,
23 he had been given the report, and the car that was listed
24 was a Buick and my car is a, or my brother's car is a
25 Plymouth. So that had the wrong information on that.

1 He explained the purpose for the three cars, he felt
2 that, or explained that the three cars, one was probably
3 the supervisor, the reason for at least two cars was that
4 there were three of us in the car. Myself, Margie and my
5 daughter, my daughter's 19 years old, was 18 years old
6 at that time.

7 I explained that I recognized a fourth car that came
8 up and I assumed that he was the supervisor so he said,
9 well, he asked if the car was unmarked, I said yes it was,
10 so he said that was the supervisor, so there were really
11 four police cars involved.

12 He promised to check into that and because he
13 thought it was unusual that there were that many police
14 cars with three of us.

15 Q Mr. Moore, did you state earlier that this is a
16 somewhat frequent occurrence in Tempe, that the police
17 harass Native Americans on a somewhat regular basis?

18 A Well, beginning, as I recognize it I think they're
19 beginning to do this also to Native American students.
20 They've been doing it to Black students and Chicano students.

21 Q And this is the Tempe City Police as opposed to
22 the campus police?

23 A Well, we don't have a campus police, per se, we have
24 some security, which only takes care of the parking lots
25 and the facilities. Mesa Police is also doing the same and

1 the other person that was the student that is not here
2 had been harassed by the Mesa Police Department.

3 Q (By Ms. Lyon) What time of day was this?

4 A This was about 9:30 in the morning.

5 Q And since the description of the car that the police
6 was looking for did not tally with the description of the
7 car you were driving, is it your conclusion that you were
8 stopped because you were Indians?

9 A Well, actually, they explained to us they were not
10 after the car they were after a passenger that had been
11 riding in the car, and my conclusion and as I spoke to
12 other people, their conclusion was that, number one, we
13 were Indian and so they were going to check what we --
14 we were minority, in our case Native American, also be-
15 cause I have long hair.

16 Q I see. Did you then pursue the -- you did pursue
17 this matter and you were given the information that this
18 was not the car that they had originally listed in their
19 files?

20 A It was definite it was not the car and that the
21 person was a rider in the car, and as it turned out
22 that the person when they got their information on the
23 radio broadcast, the person they were looking for was an
24 Anglo with red hair and it didn't fit the description of
25 Margie.

1 Q Was any apology extended to you?

2 A No apologies because I guess I upset the officer
3 when I -- when I acted like an educated person and com-
4 plained and he said, you know, if you don't like it, you
5 know, complain to city hall, that I did.

6 MS. LYON: Thank you.

7 Q (By Mr. Williams) Mr. Moore, Arizona State Uni-
8 versity does have a police force and have you had any
9 problem or know of any problem with their treatment of
10 minorities?

11 A I am not that familiar. I am not full time at
12 Arizona State University, but -- so I'm not that familiar
13 with their treatment of Native American students.

14 Q (By Mr. Levis) Mr. Moore, on what date did this
15 occur?

16 A The date was last spring, in May, I'm not sure that
17 I have the date down but --

18 Q Did you file an official complaint with the police
19 department or only talk to the police chief orally?

20 A I talked to him by telephone.

21 Q Did you check with your brother concerning the
22 passenger that was supposedly in his car?

23 A Yes, I did, but there was no date given and he had
24 owned the car, well, he'd owned the car five years and he
25 used it three years and I used it the last two.

1 Q So he was not familiar with any such person?

2 A No, no. In fact, he lives on the reservation and
3 he doesn't usually give rides to Anglo women with red hair.

4 MR. LEVIS: I have no further questions.

5 THE CHAIR: Do any commissioners have questions?

6 Do either of you have any other concluding state-
7 ments?

8 A No, I think that basically we want this to appear on
9 record and because I think there are going to be an in-
10 creased number of college students, Native American college
11 students coming to campuses, with the experience that we've
12 had with Black students as a counselor we schedule an
13 orientation for new students, usually inviting a Black
14 lawyer to explain the rights of students and how much
15 treatment or what kinds of treatment to expect and their
16 legal rights so that they don't go flying off half cocked
17 and get into more trouble.

18 Q (By Ms. Lyon) Has any attempt been made to estab-
19 lish cooperative relations with the police force, say
20 between the college or yourself as a counselor, have you
21 made any contacts perhaps with their human relations officer,
22 if they have one?

23 A One, my understanding is that colleges do this. They
24 have very good relationships with the police administrators.
25 My understanding is that particularly in this town of Mesa,

1 which is primarily a Mormon community, that Black students,
2 for instance, are not the most welcome people and the
3 harassment comes and maybe this is the attitude about
4 Indians.

5 Q Well, I was thinking in terms of yourself as an
6 Indian person who is a counselor. Whether you thought it
7 would be accomplishing anything to try to establish some
8 cooperative relations but perhaps you've already answered
9 that question.

10 A Well, okay, I think that we would probably do this,
11 maybe this would be the next step, the precaution that we
12 were taking was giving, you know, having an attorney, an
13 ethnic minority attorney come in and give orientation to
14 students, we were sort of getting them ready.

15 Q Prepared for the worst?

16 A Preparing them but we don't have a mechanism to
17 prepare them, saying hey, look, you're going to have to
18 accept us because we're in education too, and we're
19 citizens.

20 THE CHAIR: Thank you very much.

21 A Yes, there's one other student that is with me that
22 has a -- do you have him, Phil Antone?

23 THE CHAIR: Yes.

24 A Okay.

25 THE CHAIR: You're Philip Antone?

1 MR. ANTONE: Yes, that's my name.

2 Q (By the Chair) Would you like to identify yourself
3 for the record?

4
5
6 MR. PHILIP ANTONE

7
8 A (By Mr. Antone) Yes, my name's Philip Antone, I'm
9 a Papago from the Papago Reservation. And I'm a college
10 student -- I'm a student at Mesa Community College and my
11 present address is 25 North Brooks, Mesa, Arizona.

12 And my testimony is going to be based on the legal
13 assistance, you know, to Indians off the reservations and
14 this I'm going to testify on this took place now February
15 of this year.

16 I was arrested and when I went for that -- for my
17 arraignment I requested a public defender and I was granted
18 one. But I never saw that public defender until five
19 minutes before my preliminary hearing. And I guess that
20 public defender had already talked with the judge and when
21 he came in, it was about five minutes before, you know,
22 my time was -- time was set for my public, you know,
23 preliminary hearing.

24 He told me that he already talked to the judge for
25 a bargain, that if I was to stay out of town, stay on the

1 reservation for six months, that the judge was to give me,
2 you know, turn me loose and give me a suspended sentence
3 so I told him that it was no go because I need to go to
4 town, you know, to get my personal items and my groceries
5 and things like that.

6 So I told him I wasn't going to go for that. And
7 then he was trying to persuade me and he was telling me,
8 you know, that why don't you go for it, you know, what have
9 you got to lose? Just you get out, you know, instead of
10 spending all this time in jail, he was trying to encourage
11 me to cop out to that charge which I feel that I'm, you
12 know, I wasn't guilty of.

13 And so I told him I wasn't going to accept it, I
14 told him that okay, if you don't want to help me out okay,
15 man, it's all right with me, I can always go to the judge
16 again and request for another public defender and you can
17 do whatever you want to.

18 So he said he was going to go talk to the judge again,
19 so he left. Then it took about 30 or 35 minutes later
20 that was way past when I was supposed to have my pre-
21 liminary hearing, about 35 or 45 minutes later, came back,
22 then he told me that the judge had made another bargain that
23 I was supposed to -- that I was supposed to cop out to that
24 charge and the judge was supposed to like give me some
25 time, but at an additional commitment to where I'm supposed

1 to go to the Halfway House in Sells. So I was thinking
2 about it so I told him what are the conditions of the
3 commitment, you know, conditional commitment so he told me
4 that within that date from the day I was to be sentenced
5 to the day, you know, when whatever time he gives me I
6 was supposed to stay in there, but if any time between
7 that time there is an opening at the Halfway House,
8 that he would, you know, release me to the Halfway House.
9 And then he told me that he already contacted the Halfway
10 House and they knew about it and all they -- they, the
11 Halfway House, was full so they had to wait for, you know,
12 for an opening.

13 So I told -- so I told him I guess that it was all
14 right, you know, that was a bargain, you know. So besides
15 I want to go to the Halfway House anyway, you know, so
16 I said all right. I'll accept that one.

17 So I copped out and he gave me three months, so I
18 stayed in there and I waited for about three weeks and
19 nothing happened, you know, nothing came of it, so I wrote
20 a letter to the alcoholism program in Sells and I told
21 them and then this one counselor came over and then I told
22 him that, you know, what the situation was and then he
23 told me that he never heard nothing about it. That he
24 was just, that their understanding was that I'm supposed to
25 stay there three months and after that it was the court

1 order for me to go to the Halfway House.

2 Then I told him, you know, the way I was told, I
3 guess he went and talked to the judge and the next day
4 they turned me loose. And that was it. You know, but
5 you know what I was getting at is the public defender,
6 it wasn't only me, it was other minorities that were
7 treated that way at that time when I was in there waiting.
8 Like I thought, you know, when you go to jail that you're
9 -- that if you requested a lawyer, a public defender, you're
10 supposed to see that person, at least, you know, you know
11 a reasonable time before your preliminary hearing.

12 But I didn't see that person until five minutes
13 before my preliminary hearing.

14 And another thing is prior to this incident that
15 I'm talking about, there was this one time in December in
16 '74 when I was arrested, and I don't know what I was
17 arrested for, but I was -- you know, I didn't know what I
18 was, I was drunk and I didn't know what I was doing and
19 I was taken into a hospital, and the next day I woke up
20 and I had a hangover and I was kind of shook up, you know,
21 and jailer came, took me out, took me to the CID office
22 and they were throwing a bunch of questions at me, cussing
23 me out and words that you wouldn't want to hear me now and
24 they were calling me dumb, ignorant Indian, you know, they
25 were trying to break me down to where I was supposed to

1 admit that I did what they were trying to charge me for
2 but I knew I didn't do it so I just hang onto myself.

3 And they were, you know, threatening me like they
4 were going to throw the book at me, they were going to do
5 this and do that, you know, they were going to get me for
6 worse, you know, worse charge, they were going to watch
7 my every move. You know, that was some of the incidents,
8 you know, that I experienced off the reservation in the
9 police department.

10 Q (By Dr. Gerber) What police department is this?

11 A Ajo.

12 Q Ajo?

13 A Pima County.

14 Q The city police department?

15 A No, this is county.

16 Q This is Pima County?

17 A Pima County.

18 Q The sheriff's department then?

19 A Sheriff's department.

20 Q (By the Chair) Now, that's who originally detained
21 you for that three-week period?

22 A Pardon me?

23 Q Was that also the Ajo --

24 A No, that -- yes, that was also at Ajo, yes.

25 Q And that was in -- the first -- the first incident

1 that you spoke about, when you were detained --

2 A No, both of these incidents took place in Ajo.

3 Q (By Mr. Levis) But you were in the Pima County
4 Jail or the Ajo City Jail?

5 A Ajo City Jail or county substation. Ajo substation.

6 Q And why were you arrested for the first incident?
7 Why were you arrested?

8 A Why was I arrested?

9 Q Did they give you a reason?

10 A Well, they told me it was -- well, when they first
11 brought me in they told me it was possession of stolen
12 property but later on when they took me to my arraignment
13 they didn't mention that, they didn't mention nothing
14 about, you know, that possession of stolen property, that
15 they were questioning me on the first place, and they
16 just charged me, charged me for, you know, disturbing the
17 peace.

18 Q You got three months for disturbing the peace?

19 A No, this was a different incident. The one, the
20 incident I'm talking about, you know, that I'm discussing
21 now, is one that took place in December. The one you're
22 asking me is the one that's in February.

23 Q The one in February, which is the incident you
24 talked about first, what were the charges that --

25 A Disturbing the peace.

1 Q You got three months --

2 A Three months.

3 Q -- for disturbing the peace?

4 A Disturbing the peace.

5 Q With the provision that during the three months
6 they would send you to the Sells Halfway House once
7 there was an opening?

8 A Yes.

9 Q And after three weeks you found out they were
10 going to send you after the three-month period?

11 A No, not really. Well, that's what, you know, this
12 other guy told me, the guy, you know, the way he under-
13 stood, the guy from the, the counselor from the alcoholic
14 program in Sells told me that, they, you know, they didn't
15 know anything about it, that, and here the judge told me
16 when he sentenced me and the public defender told me when
17 he told me to go for that bargain was that I'm supposed to
18 be released within maybe one week that there was going
19 to be an opening in one week, two weeks.

20 Q Then you would have to go to the Halfway House for
21 the remainder of the three months?

22 A No, not really. It all depends when I get there,
23 once they turn me over to the Halfway House it's out of their
24 hands they can't do nothing.

25 Q But what did happen is after you complained after the

1 three weeks you were released and you did not have to go
2 to the Halfway House?

3 A Well, I did go on my own.

4 Q And was this your first or second offense when
5 you were sentenced for three months?

6 A No, this my first offense for three months, the
7 -- well, the first one, the one in December I was sentenced
8 for 40, something like 40 days, then this one, second
9 offense I was sentenced three months.

10 Q And the first offense was what, that you were sen-
11 tenced 40 days?

12 A Disturbing the peace. Disturbing the peace and
13 petty theft, I think it was.

14 Q Is there a LARC center in Ajo?

15 A No. Not that I know of.

16 Q (By Ms. Lyon) Mr. Antone, did I hear you say that
17 when you wrote to the alcoholism Halfway House at Sells,
18 you found out that they had never been contacted about
19 your case?

20 A Well, they have been contacted but in a different
21 way. They were told that, you know, that I was -- that
22 there was a court order for me to go to the Halfway House,
23 that was all they know. That if I wasn't to go there
24 these guys were supposed to tell the judge and there was
25 going to be another warrant out for my arrest.

1 Q (By Mr. Levis) Mr. Antone, what is the CID office
2 that you referred to?

3 A Criminal investigation detectives, I think that's
4 what it stands for.

5 Q Were the charges specific as far as disturbing
6 the peace is concerned, or was it an alternative to public
7 drunkenness which is no longer an offense in Arizona?

8 A That's about what it amounts to, that's what it
9 seems like to me.

10 Q In both cases?

11 A In both cases.

12 Q Did they indicate whose peace you were supposedly
13 disturbing?

14 A No. See, there was no -- there was no civilian
15 person that signed the complaint, it was the officer that
16 picked me up that signed the complaint.

17 Q And your last name is spelled A-n-t-o-n-e?

18 A Yes.

19 Q And the first event was December of '74, second
20 one was February, '75?

21 A Yes.

22 Q And it was the City of Ajo?

23 A Yes.

24 THE CHAIR: Any commissioners have questions?

25 Do you have any further statement or comment to add,

1 Mr. Antone?

2 A Well, yes, I'd like to say one more thing, you know.
3 Well, one time -- well, during that time when I was
4 serving that 40 days, I was in this cell, and they brought
5 in an Indian guy and you know, they were -- there was
6 about eight of those sheriffs deputies on him and they
7 were hitting him, you know, throwing him, you know, spraying
8 Mace in his face and you know, kicking him, pulling his
9 hair, and after they locked him up in the cell, you know,
10 they got one of them, them, what, plastic types they use
11 now where you cut it with the pliers? They got him in
12 the back and they tied him up real tight to where his hands
13 turned blue, you know, and they tied it right around his
14 legs too, you know, and the guy was laying there and he was
15 trying to ask, you know, to take it off, and they walked
16 off and they left him lay there for a couple of hours and
17 I went to sleep and I don't know when they came back
18 and took them off.

19 Finally took them off, and this incident I just
20 witnessed in there, you know, but it didn't happen to me.

21 Q It was during the first time that you were in the
22 jail?

23 A No, this was -- this was in April, '74.

24 Q April, 1974?

25 A Yes.

1 Q Okay, then we're going to write to the Ajo Police
2 Department and I want to get the dates correct.

3 Q (By Dr. Gerber) You don't know the name of the
4 Indian who was being mistreated?

5 A Yes, I know his name but I don't want to state it.

6 Q Was he fighting the officers back?

7 A Well, -- well, the way, you know, everybody's
8 hands were going at each other. See, their hands were
9 going at him and their hands were going at him, he was
10 swinging his hands and they were swinging their hands,
11 so I wouldn't really say who was fighting who.

12 Q Could you tell if he was drunk or not?

13 A Yes, he'd been drinking.

14 Q But he was Maced in the face as well as being hit?

15 A Yes.

16 Q Was he hit with the closed fists of the officers
17 or was it like a slap in the face?

18 A I think it was on the face, it was a slap. But
19 on the -- on the body, I think it was closed fist.

20 Q Like this?

21 A Yes.

22 Q Do you have any rough idea of how many blows were
23 struck?

24 A No, I wasn't counting blows.

25 Q I mean it would be, say five, ten, way more than ten?

1 A Well, I can't really say.

2 Q (By Ms. Lyon) Mr. Antone, do you think this
3 person would be willing to file a complaint if you were
4 ever to speak to him about it?

5 A I can't really say.

6 Q I have one question for Mr. Moore.

7 Mr. Moore, you've been around quite a while in a
8 number of different reservations and different occupations,
9 and I would say you have a very good experience of overview
10 of what happens when Indian people get off the reserva-
11 tion, would you have any recommendations to the committee
12 as to specific programs or projects that that should be
13 instituted to help Indian people who need help under these
14 conditions?

15 A (By Mr. Moore) I'm sure that the two that I'm
16 going to mention have probably been mentioned before.
17 Edward Morgan mentioned the one about the paraprofessional
18 people being available to assist these people in the
19 cities. And I suppose that the students that I come in
20 contact with, and I guess the purpose that we give the
21 orientation, using attorneys, is in the form of orientation,
22 again college students or people coming off the reser-
23 vation can not afford an attorney, the Black attorneys
24 maybe just put the fear of God in students, say they become
25 very high, you know, they cost like \$40.00 an hour see, and

1 college students say well, maybe I better behave myself
2 or whatever. But still, you know, this doesn't stop the
3 treatment.

4 I suppose the second recommendation I guess that
5 I have is, and there was some reference made to it in the
6 form of a question, of the orientation to the police
7 departments, my understanding is that the larger municipal
8 communities have well-trained police departments, maybe
9 not so well trained in the area of human relations and
10 the understanding of ethnic minorities. The information
11 I have is that in the smaller communities, the police
12 departments are not as well trained and there is no, no
13 orientation at all for the police departments on how to
14 deal with Native American people.

15 And of course, I suppose there are indications made
16 that they hire Indian people, supposedly to function in
17 that area, but I -- because I see Indian policemen, I
18 think they follow orders and follow instructions and
19 probably become very good policemen, in carrying out the
20 regulations and the rules, and without really understanding
21 of how to deal with their own brothers.

22 Q Do you think this is one area where Indian organiza-
23 tions should play a stronger role, perhaps?

24 A Well, I think that the police -- okay, as far as
25 getting the awareness probably the stronger it has to almost

1 take the police department to become aware of their re-
2 sponsibility of carrying out this function. I think that
3 would be the recommendation that they ought to include
4 some courses, I was kind of hoping when I was listening
5 to testimony this morning that the man who admit that he
6 was teaching some courses and that it was failing, but he
7 said I didn't teach any course on Native American or the
8 treatment of Native Americans. I think that's probably
9 what is needed.

10 MS. LYON: Thank you. That's all the questions I
11 have.

12 THE CHAIR: That concludes your statement?

13 A Yes, Philip made one comment and I'd like to add to
14 that, during his second stay, you know, he said that within
15 three weeks he wrote to the Halfway House, there was still
16 some time that he spent there after the letter that he
17 wrote. And at one point he was interested in becoming a
18 trustee, and raised that question, you know, if you want
19 to make that comment, you know, Philip?

20 A (By Mr. Antone) This was just, you know, I asked
21 the jailer, you know, if I could be made a trustee, and he
22 told me that the only way I could be made a trustee is to
23 cut my hair so I cut my hair and I asked him if I was going
24 to become a trustee and he said no, no way you can become
25 a trustee. So that's the only --

1 Q (By Ms. Lyon) Did you ask him why? You already
2 knew why, but did you ask him?

3 A Yes, I asked him why, you know, and he gave me --
4 he told me that, you know, that I was there too many
5 times, but I don't know if that was the real reason or
6 not, but if I was there too many times I should be a good
7 trustee.

8 A (By Mr. Moore) My only reason for thinking that
9 was important is that other students have had, you know,
10 either were asked to cut their hair or they just cut them
11 while they were there and I thought that was no longer
12 permissible because of rights, individual rights.

13 Q Do you know of any students who ever protested
14 this happening to them?

15 A Yes. And I think that they were told that if, you
16 know, that they would get worse if they -- it was better
17 -- of course they'll go ahead and cut their hair anyway
18 but my concern again maybe again as a counselor, is the
19 pride, the damage to that individual and I guess the
20 first testimony this afternoon was that when you're in
21 jail, you play the game with the jailer. It's easier for
22 you to play his role.

23 THE CHAIR: Thank you.

24 On behalf of the Arizona Advisory Committee, thank
25 you for attending and contributing to this meeting in Tucson.

1 We've heard testimony from groups and individuals
2 concerning the administration of justice as it affects
3 American Indians in off-reservation areas, we've heard
4 that approximately 90% of American Indians' arrests are
5 for alcohol-related offenses; that approximately two-
6 thirds percent of those arrests are for misdemeanor; that
7 American Indians rarely exercise their legal right to plead
8 not guilty.

9 Tribal officials as well as city and county
10 officials have explained problems American Indians have
11 with regard to jurisdiction. American Indians are often
12 victims of a double system of justice which subjects them
13 to prosecution by federal, tribal and local city and county
14 officials for the same offense.

15 American Indians are less represented on juries in
16 Arizona and as a result, they rarely are judged by a jury
17 of their peers. There are few rehabilitative facilities
18 available for American Indians who have an alcohol problem
19 and are arrested for an alcohol-related offense.

20 In fact, we've heard testimony that has shown that
21 local alcoholic reception centers, LARC's, in Arizona, have
22 closed recently due in part to the lack of public and
23 governmental interest.

24 Solutions to the problems mentioned in the past
25 few days are not simple but we heard testimony that some

1 tribal, city, state and county law enforcement officials
2 are willing to initiate new attempts.

3 If anyone in the audience is concerned about the
4 testimony of the past days and wants to correct or add to
5 it, he or she may call the Mountain States Regional Office
6 of the U.S. Commission on Civil Rights, at area code 303,
7 837, 2211, or contact Dr. Morrison Warren, Chairperson of
8 the Arizona Advisory Committee to the U.S. Commission on
9 Civil Rights, at 965-6529, or write to the commission
10 care of 1726 Champus Street, Denver, Colorado, 80202, or
11 Dr. Warren at 1061 East Magdalena Drive, Tempe.

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13 (Hearing adjourned at 3:10 p.m.)
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1 STATE OF ARIZONA)
2) SS
3 COUNTY OF PIMA)

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6 I, JAMES E. BOULEY, do hereby certify that I am
7 an Official Shorthand Reporter; that I was present at the
8 hearing of the foregoing matter; that I took down in short-
9 hand all proceedings had and testimony adduced at said
10 hearing; that the same was thereafter transcribed under my
11 supervision, and the foregoing 791 pages represent a
12 complete and accurate transcription of my shorthand notes
13 so taken.

14 WITNESS my hand this 10th day of December, 1975.
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22 OFFICIAL SHORTHAND REPORTER
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