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Volume II

November 18, 1975

SPEAKER

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1 MORNING SESSION

2 November 18, 1975

3 Flagstaff, Arizona

4
5 THE CHAIR: The meeting of the Arizona Advisory
6 Committee to the U.S. Civil Rights Commission will now
7 come to order.

8 I'd like to clarify some points made yesterday
9 regarding some ground rules, and in order to develop
10 some understanding of just why we're here.

11 I am Morrison Warren and I'm the Chairperson of
12 the Arizona State Advisory Committee to the U. S. Com-
13 mission on Civil Rights. And the other members of this
14 committee are Ms. Rita Madrid, Ms. Juana Lyon, Mr. Ted
15 Williams, and Ms. Grace McCullah.

16 Other members of the committee who are not present
17 today are Mr. Peterson Zah, who was here yesterday, Peter
18 McDonald, Dr. Rudolph Gerber, Ms. Catherine Palmquist,
19 Ms. Maria Elba, Mr. Edward Guerrero, Senator Manuel Pena,
20 Representative Diane McCarthy, and Dr. John Glass.

21 Also with us today are Dr. Shirley Hill Witt, who
22 is the director of the Mountain States Regional Office,
23 Dr. Maria Perez, who is in the hallway, Mr. Bill Levis,
24 who is our staff attorney, Ms. Becky Marrujo, who is outside,
25 Ms. Esther Johnson and Ms. Phyllis Santangelo, and they're

1 all from the Denver office.

2 This meeting is held, being held pursuant to rules
3 applicable to state advisory committees and other re-
4 quirements promulgated by the U.S. Commission on Civil
5 Rights. The Commission on Civil Rights is an independent,
6 bipartisan agency of the U.S. Government, established by
7 Congress in 1957 and authorized by the Civil Rights Act,
8 first of all to investigate complaints alleging that
9 citizens are being deprived of their right to vote because
10 of race, color, sex, religion or national origin, to
11 collect and study information concerning legal developments
12 which constitute a denial of equal protection of the laws
13 under the Constitution, to appraise federal laws and
14 policies with respect to denials of equal protection of the
15 laws, to serve as a national clearing house for civil
16 rights information and to investigate allegations of voter
17 fraud in elections.

18 There is a state advisory committee in each of our
19 51 states. And we may receive reports, suggestions and
20 recommendations from individuals, public and private
21 organizations and public officials on matters pertinent
22 to inquiries conducted by the state committees, and
23 attend, as observers, any open hearings or conferences which
24 the commission may hold within the state.

25 I'd like to emphasize that this session today is an

1 informal hearing and not an adversary proceeding or court
2 of law. Individuals have been invited to share with the
3 committee information relating to the administration of
4 justice as it affects American Indians in off-reservation
5 areas.

6 Each person who will participate has voluntarily
7 agreed to meet with the committee.

8 During these two days, yesterday and today, we will
9 explore or have explored issues regarding the treatment of
10 American Indians during the administration of justice in
11 off-reservation areas. We will hear testimony regarding
12 the jury selection process, arraignments, arrests, bail
13 bond procedures, the legal rights of American Indian
14 defendants, local jail conditions and jurisdictional
15 problems.

16 Related issues such as the availability of local
17 alcoholic reception centers and other rehabilitative
18 facilities will also be discussed.

19 If any person in the audience has a statement or
20 information they would like to share with the advisory
21 committee, both staff and committee members are available
22 to meet with you individually.

23 Every effort will be made not to defame or to degrade
24 any person offering testimony to the committee. Those per-
25 sons, witnesses who have traveled for some distances to

1 offer testimony, will you be sure and check with Ms.
2 Esther Johnson before you leave, please.

3 The first persons we're asking to come forward
4 are Ms. Jo Wycoff and Mr. J. Michael Flournoy.

5 Will you sit at this table, please?
6
7

8 MR. J. MICHAEL FLOURNOY
9

10 Q (By Ms. Lyon) Mr. Flournoy, is that how you pro-
11 nounce?

12 A (By Mr. Flournoy) Flournoy, right.

13 Q For the record, would you state your name, address
14 and occupation, please?

15 A My name is J. Michael Flournoy, I live at 2719 North
16 Roberta, Flagstaff, Arizona. I am the Coconino County
17 Attorney, I have been -- this is my second term as Coconino
18 County Attorney and also a partner in the law firm of
19 Preston, Flournoy, Flick and Challis.

20 The county attorney's office is in the Coconino
21 County Courthouse, my private law firm is 202 Arizona Bank
22 Building, it's 121 East Birch, Flagstaff, Arizona.

23 Q Thank you. Would you describe for our committee
24 how your duties specifically relate to the administration
25 of justice as it affects Indian people in off-reservation areas?

1 A. We are the prosecutor of all felonies in Coconino
2 County, so if any Indian defendant is a -- involved we
3 are the prosecutor of any and all misdemeanor charges and
4 in any justice court precincts, that deletes the city
5 court or the town courts of Williams, Fredonia and Page
6 and as you know, Page we were the prosecutor of all mis-
7 demeanors in Page technically since, oh, up to what,
8 March or April of this year when the town became incor-
9 porated.

10 Q. I see.

11 A. There are only three incorporated areas in Coconino
12 County and those are Williams, Page and Fredonia.

13 Q. Could you describe under what circumstances your
14 office would get involved in court bonding procedures?

15 A. At times, under bonding procedures, we could, by
16 our own initiative or upon the court's request, make a
17 recommendation as to bonding. Rarely are we involved in
18 any bonding, but on occasion we can go in and if we feel
19 someone will not show up for trial, and will be absent
20 during the trial we can recommend a high bond.

21 Many times we go in and we recommend an OR release,
22 you know, but as a rule we don't go in on all bond settings.

23 Q. Could you describe what the criteria would be that
24 you would use in establishing a high bond?

25 A. Well, I think basically if the -- you know, the

1 legalities is whether the person's going to show up for
2 trial. Undoubtedly we, you know, we would like a high
3 bond in vicious type of crimes, you know, in all honesty,
4 we just, someone is charged with a vicious crime we don't
5 want them out on the street, and we -- you know, always
6 urge high bonds in those cases.

7 Rarely do we ever go in on the bond setting but,
8 you know, if we were asked we would urge a high bond
9 setting in a vicious-type case.

10 Q Would this also apply to Indian people who reside
11 on the reservation to insure their return?

12 A They're not in the same class of a -- someone
13 charged with a vicious crime unless they could be -- you
14 know, unless they're charged with a vicious crime. If
15 we felt that an Indian defendant would not appear and would
16 hide out on the reservation we would argue a -- for a high
17 bond. But I can't remember a given case where we've
18 ever gone into court and urged a high bond on any Indian
19 defendant.

20 With the exception of one. And that was a few years
21 ago, when so-called members of AIM interrupted the Flagstaff
22 All-Indian Pow Wow. At that time we felt that they would
23 not show up for trial and we urged a high bond at that time,
24 but that's the only case that I can ever remember where there
25 were Indian defendants involved that we urged a high bond.

1 There could be many more but I can't remember them.
2 If you know any names we'll get the records and I'll tell
3 you whether we've urged it.

4 Q Could you describe on what basis you arrived at the
5 conclusion that these defendants would not show up?

6 A They were transient people, they weren't -- there
7 were only two, I think, from Arizona, or maybe there was
8 only one, one from the Tuba City area, but I felt that
9 they would not show up for bond -- for trial, and felt
10 that high bond was in order.

11 I also felt in my mind that they were there to cause
12 physical harm to many residents and that a high bond was in
13 order although that isn't the legal criteria, that was my
14 feeling in that regard.

15 Q Could you describe to us what is being done to
16 assure that court bonding procedures are not abused in
17 misdemeanor and felony cases?

18 A I know of no, you know, meetings or whathaveyou or
19 anything of that nature, I think that the -- in this day and
20 age when anyone is accused of a crime that would carry a
21 jail sentence, you know, or possibility of a jail sentence,
22 they get a lawyer in the justice court or -- that's not
23 entirely true, but in most justice courts, particularly
24 Flagstaff Justice Court, or in any felony they have a
25 lawyer. So they're arguing the bond, and arguing the test

1 of whether the individual will be able to show up for
2 trial and therefore that's the really safeguard, the
3 attorneys representing the defendant. There's no active
4 program underway that I know of.

5 Q I see.

6 A Certainly we're not involved in any.

7 Q Do you feel that more Indian people, especially
8 in misdemeanor cases, should be released on their own
9 recognizance?

10 A I really can't answer that because I am on those
11 -- on most misdemeanor cases in the justice court, our
12 office is not present, it's not -- at that time we're com-
13 bining a so-called bond setting and arraignment procedure.
14 But that's really entirely up to the justice of the peace.

15 If our office is, and it's sometimes contacted by
16 some relative saying that, you know, this defendant is --
17 will show up for trial and he's needed by his family,
18 we will go in and discuss it with the JP. And we've
19 never gone in to increase on this basis but many times
20 we've gone in to reduce it.

21 And talking about Indian people, most of the time
22 the story would come back from the -- if an Indian person
23 is charged with a crime, his whole family will end up or
24 relatives will end up in the courthouse, and there will
25 be mother and father and maybe wife and some children and

1 they'll say that, give us the story, maybe he needs to go
2 back and he's doing all the work for the family, the income
3 and there may have been ten cases in the last, oh, two or
4 three years that we've gone in and said that, to tell the
5 JP that we felt this person should be released either on
6 a low bond or on an OR release. But I can't give you any
7 cases because I don't know of any names.

8 Q Is the -- in your opinion, is the present public
9 defender system adequate to meet the needs of Indian
10 defendants?

11 A I think it is in -- I think it is in Flagstaff JP
12 Court and I think it is in the Superior Court of Coconino
13 County. There is a manpower shortage, as far as lawyers
14 are in Page and Fredonia and Sedona that there aren't any
15 Indian defendants but I have to include Sedona in that,
16 and even Williams.

17 As you know, the Tuba City people come into the
18 Flagstaff Precinct so I would say in the Flagstaff Precinct
19 there's adequate representation on misdemeanors, in those
20 other areas just for lack of manpower there's no attorney
21 in those areas that can handle it.

22 Page has one attorney, he's a deputy county attorney
23 so he can't go in and represent defendants. Fredonia has
24 no attorney. Williams has no attorney, Sedona has some
25 attorneys but there aren't that many defendants that come in

1 on misdemeanors, but that could stand improvement in some
2 of the outlying areas.

3 Q I see.

4 A Particularly I think Page and Fredonia in regard
5 to Indian defendants.

6 Q Well, in this case, where do Indian defendant obtain
7 the services of counsel?

8 A What happens in a given case, for instance in Page,
9 if someone is charged with a misdemeanor, and it could
10 carry a jail sentence, the JP is to call a Flagstaff law
11 firm, Flagstaff firm formerly was Garbarino and Lee, up
12 until last, I guess it's been about eight months or so
13 another firm, Aspey, Watkins and Diesel took over and
14 now they're to call that firm. I -- I can't cite you any
15 cases but I'm sure there's been some cases, and I know of
16 some, I can't give you the names, where Indian defendants
17 have been sentenced to jail in the Page Precinct without
18 having a defense attorney appointed.

19 Now, it comes -- we get that message after the
20 Indian defendant is placed in jail in Coconino County Jail
21 and we get a message that he has not had an attorney and
22 he's been incarcerated without an attorney representing him.
23 And usually those cases are remanded back to the Page
24 Justice Court for further proceedings. But you know, I'm
25 talking about two or three cases in the last, maybe three

1 years. There may have been others, you know many times an
2 Indian defendant if they can't speak English, you know,
3 he can enter a guilty plea and be down at the county jail
4 and no one knows about it.

5 Q From whom would you get this message that you men-
6 tioned?

7 A Oh, the message would come from another prisoner,
8 for example it could come from someone in the sheriff's
9 office, the sheriff's office, I feel in Coconino County,
10 takes great care of the prisoners and if any problems,
11 you know, are involved, they will tell us.

12 Q You mentioned the problems of defendants who do not
13 speak English. In your observation, is this a problem
14 especially in the outlying areas like Sedona, Page?

15 A I don't think it's a -- I don't think it's a -- I
16 don't think it's a problem in Sedona because I don't think
17 there's any Indian defendants in Sedona. Maybe there's been
18 one or two in the last few years but I know of none. I
19 would have to say it certainly is a problem, you know, in
20 many courts, because if he can't speak English, and the
21 proceedings are in English, you don't know what's going
22 on, it's just -- I just returned from Mexico and many times
23 I don't know what's going on in Mexico because I can't
24 speak it.

25 Q But I take it you were not on trial in Mexico?

1 A No. But the same would be true, if you can't speak
2 the language you won't know what's going on. But, you
3 know, many times Indian defendants hide behind this
4 barrier of language, in other words, they hide behind,
5 their defense is, A, they can't speak English, and B, they
6 were drunk and they don't remember what happened, you know,
7 and this is -- but it's hard to find out, you know, when
8 this occurs.

9 Q (By the Chair) But isn't the language of the law
10 esoteric?

11 A In what manner you mean?

12 Q Just the very language of the law is really only
13 understood by lawyers. Typically --

14 A I think that's true in many cases.

15 Q And there may not be a -- and I'm speaking esoterically
16 now, there may not be cognizance, translation in the
17 language that we're speaking of. To say moot, how would we
18 say moot in Navajo? I don't know. And that is one of our
19 very deep concerns of the problem.

20 A I agree with you and I agree that there are many
21 defendants that are not Indian that don't know what's
22 going on. You know, it stands to reason.

23 Q (By Ms. Lyon) Again in your observation, what has
24 been done in cases where Indian defendants apparently did
25 not speak English to insure that they understood what was

1 happening?

2 A In regard to the Flagstaff Justice Court, usually
3 the interpretation or translation is by another jail
4 inmate. Who can speak both languages. Undoubtedly it
5 would be a better system to have a court interpreter. As
6 for Page, I would assume the same would be true and
7 Fredonia I would assume the same is true. Because of what
8 the JP's have told me.

9 Q In other words, we can very safely assume that even
10 where translation is available, it is not entirely
11 adequate. Because obviously these interpreters are not
12 trained to translate legal terminology.

13 A I would agree that they're not trained in legal
14 terminology and I would agree that if you wanted a perfect
15 world, maybe you should have someone that's highly skilled
16 in translation in each of the justice courts, but the
17 problem is, for example A, money, B, personnel in those
18 areas, just -- you know, I think it would be more important
19 for a defendant to have a lawyer representing him than it
20 would to have a translator, but undoubtedly both are bene-
21 ficial.

22 And we don't have the manpower -- or lawyers in any
23 of these areas. But what you're saying is basically right.

24 Q In your opinion what is and should be done to improve
25 relations with the Navajo and Hopi Tribes, and your office

1 and the county? In terms of the administration of justice?

2 A I don't really know what our office could do to
3 improve our relations with, say the Navajo -- Navajo
4 Police or Hopi Police or the BIA people because we're all
5 on great terms and I know of no disagreement we've ever
6 had. In fact, we've had, I formed, some time ago, it's
7 really Coconino County but we entitled it Northern Arizona
8 Peace Officers Association.

9 I felt that we should all get together and discuss
10 mutual problems, and for a number of years, in the last
11 year or so they haven't had a great deal of meetings but
12 there is an organization where we all get together to
13 discuss mutual problems.

14 Our only connection, really, with these police
15 officers are in regard to an individual case where they
16 come in and discuss it.

17 I know of nothing more we could do other than maybe
18 have more meetings to discuss mutual problems which might
19 be beneficial. I think in some of the areas would be
20 beneficial to have more Indian people on the police force,
21 because undoubtedly the Indian people understand the
22 Indian people better than non-Indians, and I have -- I've
23 urged in the Page area to have more Navajo people on the
24 police force because I thought it would be beneficial to
25 the relations between the Indians and the police department.

1 I don't know of any Indians that have been on the
2 Page Police Department. I don't know of any Indians really
3 that have been deputies for the Coconino County Sheriff's
4 Department, but I think this would be a good -- I think
5 this would be a good starting place.

6 Q Do you have any personal opinion as to why we do not
7 find Indian personnel among law enforcement personnel in
8 the Coconino County Law Enforcement Offices?

9 A There may be some, I'm not -- you know, by my
10 statement I'm not saying there aren't any, I don't know
11 of any, but as for any reasons, I don't know of any
12 reasons. I know that the department of public safety, some
13 years ago, felt that they had to get more minority groups
14 involved in their department, and now there's -- they do
15 have some Indian patrolmen, and there are -- I know of one
16 in particular and there may be two or three in the Coconino
17 County area.

18 But I -- you know, I think it's a good idea, cer-
19 tainly I'm not against it.

20 Q Do you have any experience or opinion on the sub-
21 ject of extradition from the Navajo or Hopi Reservations?

22 A It's just very complicated. Probably more com-
23 plicated than extradition from another state. And the
24 reason being it seems that most of the documents are just
25 completely ignored, you know. And I don't know whether

1 that's because of lack of manpower, it could be, it could
2 be because of the distances involved because if you ever
3 tried to locate someone on the reservation it's tough, you
4 know, it might be a problem. Once in a while we run into
5 the problem of relatives that a defendant is related to
6 someone in the so-called high places or possibly on the
7 tribal council, and that person puts in a call and they're
8 not extradited but there are problems of extradition.
9 Difficult problems.

10 And we've sought to overcome these and always when
11 we have a meeting with an individual or telephone call,
12 whatever, there's many promises that there won't be problems,
13 but there have been continued problems in the extradition
14 process and I don't know the exact reason because I've
15 never, I don't go out to the reservation and investigate
16 why someone wasn't extradited.

17 Q I see.

18 Do you have any recommendations as to how this
19 might be improved?

20 A I think it would be improved if we had a warrant
21 for arrest, if -- the reservation in terms of the law has
22 to be treated as almost another state. And if in fact
23 we had a warrant for someone, if they could just be picked
24 up by a, say the Navajo Police and our man could go pick
25 them up and they could be tried if we had some type of an

1 arrangement in which we didn't have to go through a bunch
2 of proceedings to get them off the reservation, it would
3 be a lot nicer for our office. But you have to overcome,
4 you know, the tribal -- the treaties and the things down
5 through the years, and I question whether the tribes would
6 ever want to give up, you know, their right to determine
7 who gets extradited, in essence, off the reservation.

8 We use the term extradition, it's really -- it's
9 really not extradition and yet it is. And what I'm saying
10 is that I know of no documents showing that it's extra-
11 dition off the Indian reservation but in essence that's
12 what we're talking about.

13 Q Your remarks seem to indicate that for instance
14 you would be in favor of cross deputization..... is that
15 right?

16 A There is cross deputization..... now.

17 Q There is?

18 A Yes. And on most of -- not all, but on many Coco-
19 nino County Sheriff's Deputies and many of the DPS officers
20 and on many of your Navajo Police. I don't know about the
21 Hopi Police but there's cross deputization.

22 A real, you know, tragedy was yesterday in Tuba
23 City. I don't know the full particulars, but, you know,
24 the jurisdiction problems are so difficult out there, in
25 other words, you have to determine whether it's an Indian

1 or a non-Indian defendant, example, the sheriff's office
2 in Flagstaff gets a call about -- about an individual
3 shooting, their information was that it was an Indian
4 defendant. Therefore they have to call back and say well,
5 call the Navajo Police to take, you know the problem I'm
6 talking about you probably read about it in the paper
7 about the Indian Policeman who was killed yesterday. They
8 called back and in essence we would not have jurisdiction
9 if that is an Indian defendant. Within 15, 20 minutes,
10 there was another call that it was not an Indian defendant
11 shooting the rifle but it was a non-Indian individual, so
12 immediately the sheriff's office has to get in high gear
13 but we're talking about 15, 20 minutes.

14 Now, as it turned out it didn't make any difference
15 because it was in the first few minutes when this happened
16 that the individual was killed. But I'm -- I'm talking
17 about whether you take jurisdiction or not there's real
18 problems.

19 There was a problem some years ago in Tuba City
20 Public School, there were some individuals that were --
21 had taken over the principal's office. They were all
22 Indian individuals that were involved so the question
23 was, what jurisdiction, if any, did Coconino County have?
24 Well, we assumed jurisdiction and got them out of the
25 building on the basis that that was Coconino County school

1 property on the Indian reservation.

2 But it was a real problem on just what you -- what
3 you could do. There's a terrible jurisdiction problems
4 out there and I would hope that someday that we won't
5 have those terrible jurisdiction problems. But there's
6 many legal problems that stand in our way of getting that.

7 Q I see. Do you have any opinion regarding liquor-
8 related offenses of Indian people, what could be done to
9 improve the high incidence?

10 A I think I could make a statement that it is im-
11 possible to do but we could go back to where back in the
12 '40's where you had no liquor for the Indian and you'd
13 have many less crimes, I could say that.

14 I would say also that you know this isn't possible
15 in this day and age, but I would say that most of your --
16 the great, great majority of your cases involving liquor,
17 involving Indians also involve liquor. And I think if
18 there was some way that you could stop these Indian
19 defendants from consuming liquor you wouldn't have the --
20 you wouldn't have the things that happen.

21 Example, the great majority of Indian defendants
22 are involved in DWI's, they're involved in burglaries,
23 they're drunk out of their mind, if there's a rape every-
24 one's so drunk that they don't know, they can't remember
25 what happened, most of your Indian defendants aren't the

1 vicious type defendants that we have. You know, once in
2 a while you have someone. But most of their crimes are
3 nonviolent crimes relating to liquor and, you know, I
4 would assume that the only way to cure that is if they
5 didn't drink.

6 Q Well, are you suggesting to this committee that
7 before the so-called Indian liquor law was removed in
8 1953, that the Indian people had less access to liquor?

9 A No, because really there was bootlegging and
10 that and I'm not saying here that that ought to be re-
11 moved, I just threw that out, you asked me how could you
12 stop this and I don't -- the only way to stop it is not to
13 drink. And you know, I guess you could have programs
14 to encourage people not to drink but it just happens that
15 when a lot of Indian people drink they get in trouble.

16 Q Do you feel that the situation would be improved
17 somewhat if some of the reservations would -- which are
18 now dry reservations -- would legalize liquor?

19 A You know, my feeling is if you're going to have
20 legalization of liquor, you ought to have legalization of
21 liquor in every state, in every area and everyone should
22 have that right, one person has the right everyone else
23 has the right and the Indian people for years they
24 couldn't drink and I think that was wrong. And I think,
25 now on the -- for instance, on the Navajo Reservation I

1 think there's probably greater problems, particularly
2 traffic problems in hauling liquor from off-reservation
3 areas to on-reservation areas than there would be if it
4 would be sold on the Indian reservations. Just like
5 DWI's. Now, if you want to drink and you're an Indian,
6 and you live in Tuba, you got to go into Grey Mountain so
7 you drink and you have to drive back to Tuba City and
8 that's when the accident occurs. If I just had to go to
9 Tuba City they'd only have a few miles to go home, they
10 wouldn't have all the miles on the highway, so I think
11 you'd have less traffic accidents and traffic-related
12 offenses.

13 Q So you feel that the incidence of alcoholism-related
14 misdemeanor charges of the reservation might be reduced
15 if liquor was legalized on the reservation?

16 A I think so. I think the same would be true in Page.
17 You wouldn't have all the Indians in Page going in the
18 bars and, you know, having problems in Page if they could
19 buy liquor elsewhere, if they could buy it, say in some
20 community on the reservation.

21 Q Do you have any suggestions or recommendations to
22 this committee on specific issues as to how we could best
23 deal with the problems that we have discussed with you?

24 A I think about the only way that you could get these
25 problems resolved is by a combination of possibly members

1 of the Arizona Legislature, members of the tribal councils,
2 the tribal chairmen, the governor of the state, the law
3 enforcement heads getting together and deciding what course
4 of action to alleviate the extradition problems, the
5 jurisdiction problems, I'm talking about law enforcement
6 now, I think that is the only way that we can ever attempt
7 to get around the legal problems, the treaties and this
8 type of thing. And the problems we have in this regard is
9 to have a meeting and decide how we can do this, how we
10 can best do this and see if everyone's willing.

11 If everyone's willing, I think we have less juris-
12 diction problems, we can have less extradition problems,
13 less law enforcement problems. I think by a meeting of the
14 minds.

15 As to these other problems, the non-law enforcement-
16 related, such as the alcohol problems, you know, I don't
17 know the answer to that.

18 Q Thank you.

19 I'd like to ask other members of the committee if
20 they have any questions for Mr. Flournoy?

21 THE CHAIR: Bill Levis has some questions.

22 Q (By Mr. Levis) Mr. Flournoy, I just have some
23 questions on clearing up some technical points.

24 When you were talking about bonding procedures, do
25 you make any distinction between persons on the reservation

1 and off the reservation as to when they should be released
2 on their own recognizance or what bond should be posted?

3 A No, I don't make a distinction but I have a feeling
4 that if -- you know we're talking about Indian people and
5 I don't consider Indian people stupid and if we're dealing
6 with a, someone I would think would be stupid, I wouldn't
7 have this thought, but I feel that the Indian people know
8 what's going on, I feel that the Indian people know that
9 if they go back on the reservation, that they're going to
10 be protected and they won't be extradited, they've a good
11 chance of not being extradited or taken off the reservation
12 to stand trial.

13 I have a feeling that if they're released OR that
14 many of them don't show up. If that's what you're relating
15 to.

16 Q The reason I asked this is that we contacted the
17 Navajo Police after I talked to you in July as to how many
18 attempted extraditions have been forwarded to their
19 office in the last year, and it's my understanding that
20 through September of this year there were only four re-
21 quests of extradition. And if I remember correctly only
22 one or two was from Coconino County.

23 A I can't give you the numbers, I don't know. That
24 could be true, I don't know. It could be ten or 12.

25 Q We received a totally contrary picture from the Navajo

1 Nation than we received from Coconino County just on extra-
2 dition attempts.

3 A I can't ever remember ever getting someone extra-
4 dited off the Navajo Reservation in my eight years as
5 county attorney. Now, if you can give me a case maybe
6 I'm wrong, but I can't ever remember of us ever being
7 successful in extraditing an Indian defendant off the
8 reservation in my eight years.

9 I can remember of people that are wanted and finally
10 they're off the reservation and we get them, either by
11 arrest or some other method or they just show up of their
12 own, I can remember that, but I can't ever remember of an
13 extradition being honored by the tribal authorities, and
14 I could be wrong and if you give me the case I would stand
15 corrected. But I can't remember of any.

16 Q The other point is that when we had both Judge
17 Brady and Judge Gracia here yesterday, they seemed to indi-
18 cate that they don't feel the extradition procedure is
19 needed, I think Judge Brady indicated that he never
20 attempts to extradite people on misdemeanor cases and
21 Judge Garcia said at least during the last year that there
22 have been no problems. Even though he was quoted dif-
23 ferently in a newspaper article three months ago. And it --

24 A You know, I really don't -- we don't get involved
25 in the bond setting that much, about the only time we know

1 is if someone doesn't show up for trial, then we're re-
2 requested, how do we get this person, what do we do? And
3 so I can't agree or disagree with those gentlemen because
4 we're not really involved in that.

5 Q It's just that I think it's unclear to the committee
6 without statistics from your office and if you could
7 provide them we'd appreciate it as to the attempts that
8 have been made at least during the last two years, to
9 extradite persons from the Navajo Reservation?

10 A I think, I -- we certainly don't have it grouped
11 but I think we can go through our files and find out.

12 Q We'd appreciate that because I think that would
13 answer some of our concerns.

14 A What I'm talking about is the cases I -- you know,
15 we'd probably have to go back eight years to determine
16 because I really don't remember, like you say, in the
17 last year I couldn't tell you how many cases.

18 Q We would appreciate it if you could do that and
19 forward it to us.

20 Another concern is the public defender system. As
21 I understand it only Maricopa County and Pima County, by
22 law, since they've more than a 100,000 people, have to
23 have a public defender system. And that Maricopa --
24 excuse me, that Coconino County has one funded at
25 \$40,000.00 a year through the law firm you mentioned earlier.

1 A I think it's \$48,000.00.

2 Q Forty-eight thousand.

3 Now, this does not include misdemeanor offenses in
4 city court. Do you think the law should be changed to
5 include all counties under the state system and that
6 there should be a law change to include city courts such
7 as Flagstaff Court and this state law or do you feel
8 that the present system in Coconino County is a better
9 system? Where it's a contract year by year? At a certain
10 dollar amount?

11 A I really don't know the answer to that. That's --
12 you know, if you had the ideal system you'd make sure that
13 in each court you had a defender there present for any and
14 all proceedings and that would be the perfect system.

15 But you know, to have that perfect system, there's
16 just not enough money to have that type system so I just --
17 I think it's, from my knowledge, -- from what I know I
18 think it's adequately covered in all our jurisdictions.
19 I'm talking about justice courts, not city courts, and I
20 think it's adequately covered in our superior courts with
21 the exception of maybe the Page Precinct in which we should
22 have someone both in the Page Municipal Court and the Page
23 Justice Court that is available to counsel people that are
24 faced with a possible jail sentence.

25 Q Have you received any complaints concerning jail

1 conditions in Coconino County?

2 I bring this up because we will have someone from
3 the department of health services testifying later who
4 has done a study of jail conditions in county jails.

5 A I have had -- I can't give you the number, but
6 undoubtedly we've had some complaints about jail con-
7 ditions. But most of those jail conditions are usually
8 from the defendants. They're not from third people,
9 third persons, individuals. And it's usually while those
10 people are incarcerated, and it's usually by virtue
11 of a motion or a writ to a superior court judge on some-
12 thing and usually those complaints are written by someone
13 that we call a, you know, he's a jailhouse lawyer, he's a
14 person that turns out writs by volumes and he just, you
15 know, files complaints about everything.

16 I know of one case where an individual came --
17 was -- I felt wrongfully arrested by the sheriff's depart-
18 ment, and he complained to me about, he had to sleep on
19 the floor that night instead of, he didn't have a mattress.
20 And I felt he was wrongfully arrested and I -- we dis-
21 cussed what a fair settlement would be and we paid him X
22 amount of dollars in settlement of his wrongful arrest.

23 But I -- you know, there's not that many problems
24 in jail conditions, but I'm sure the people incarcerated,
25 they don't like the conditions, it's not paradise, you know.

1 Q But you feel they're adequate in Coconino County?

2 A From what I know I feel that they're adequate. I
3 don't want to comment on a particular case, but there is
4 a -- there's one particular case in Coconino County that
5 I felt the -- our authorities did not do enough in regard
6 to taking care of a prisoner and it resulted in a tragic
7 event taking place, and I don't want to go into the case
8 but I personally felt that that was wrong, there should have
9 been more done in that area.

10 But that case is in litigation now. And I certainly
11 don't want to mention the case name or anything but I --
12 I think in some of the outlying areas you don't leave
13 people in -- you know, like animals in bars, you have to
14 look after them, if there's problems you got to take care
15 of them.

16 I feel that there should be more of that in the area.

17 Q We also heard testimony yesterday concerning the re-
18 moval of public drunkenness as an offense in Arizona. And
19 a concern I think Judge Brady expressed that you just can't
20 leave people in the street even though there may be no
21 LARC center in the state, or in Flagstaff. Even though the
22 attorney general has ruled that the police stand the risk of
23 being sued if they arrest somebody for public drunkenness.

24 A You can't arrest them for public drunkenness.

25 Q Yet it's obvious from Judge Brady's testimony that

1 this is being done. I wonder what your feelings are and
2 what Coconino County must do to correct some of these
3 problems. Because there does seem to be a situation now
4 where there is no LARC, where winter is obviously coming
5 on and there's a concern that people are going to freeze
6 unless they are taken into protective custody. Yet this
7 seems to violate the attorney general's opinion.

8 A I don't think any law enforcement official in
9 Coconino County or the state is attempting to violate any
10 type of opinion, number one you can't violate an attorney
11 general's opinion because it's just an opinion. But I
12 don't think anyone's trying to get around any opinion.

13 I think the law enforcement authorities are trying
14 to do the best job they can under the circumstances. When
15 that one statute was removed, you know, in a given case
16 there might be five or six different misdemeanor charges
17 you can arrest some individual for.

18 So if -- they used to rely on the public drunkenness
19 statute. Now if you see someone in a drunken condition,
20 there are other statutes you can arrest someone for.
21 And I think in many cases there are arrests under these --
22 under these statutes and I think they're entirely legal
23 and I think the main intent is you got to protect the
24 people that are drunk.

25 I'm not talking about Indian people, I'm talking about

1 lot of people. You can't leave people lying in the streets
2 or they're going to be run over, you can't leave them
3 laying in the doorway of a bar if they're going to freeze
4 to death, you can't let them urinate in the doorway of a
5 business in Page, you can't let them run naked through the
6 streets, which happens, and there's got to be a remedy for
7 these things, and I just -- I would have to say that I --
8 I think the law enforcement officers do what they can in
9 a given situation to -- to both protect the individual
10 and to protect society in each given case and I'm sure
11 that, you know, you could take one case out of context and
12 maybe you could disagree with what happened and I'm sure
13 that there are errors made.

14 I would have to say as a -- as a whole I think the
15 law enforcement officers in Coconino County, I'm talking
16 about Flagstaff and Page and I'm talking about the Navajo
17 Police, I think they do an outstanding job, but I'm sure
18 that there are errors made.

19 Q My, I think only concern is that the attorney
20 general's opinion seems to indicate that instead of arresting
21 people that the cities and counties and the state and
22 I think even they mentioned the federal government have an
23 affirmative duty to make sure there are such LARC centers.
24 And at the moment, Flagstaff does not have a LARC center.

25 A Yes, I'm not disagreeing with what you're saying,

1 what I'm saying is I don't think anyone should be arrested
2 if that's all you have is public drunkenness, I don't
3 think you should arrest them. I think what I'm saying is
4 that if someone violates a statute whether it be a
5 trespass statute or malicious mischief statute, you can
6 arrest them and that's a legal arrest.

7 If all you have is public drunkenness, I don't
8 think you should arrest these individuals and I agree with
9 you that there should be something done in regard to LARC
10 centers.

11 But the LARC centers are just, it's just been a --
12 the legislature sat down there and formed the statutes for
13 LARC centers and there was no way to fund them. And so
14 they have been a complete disaster. And I think you know,
15 maybe my opinion is incorrect, but that's my opinion. I
16 feel that they've been a disaster almost completely in the
17 State of Arizona.

18 I think there has to be more work done in this
19 area, there has to be other legislation that you can hold
20 these people, I think the legislation as contemplated, it
21 was a -- it was something that would be great if you thought
22 it was a perfect world but it was unworkable as it turned
23 out and I think there needs to be work in that area.

24 And I don't think if someone is just drunk that they
25 should be arrested.

1 Q Including funding, I suppose, on the state level?

2 A Yes, there has to be funding, you can't just, you
3 know it's been pitiful that, for example here in Flagstaff
4 you have all these people that are trying to do a good
5 job in regard to LARC, they're going to all the governmental
6 agencies and I think the governmental agencies would all
7 like to help them but it's a problem of finances, there's
8 just so much money --

9 Q One final question, how would you define a vicious
10 crime just for the record?

11 A Oh, I think any rape is a vicious crime, I think
12 any time somebody is shot it's a vicious crime, if someone
13 is beaten up it's a vicious crime, any time there's bodily
14 harm or someone is injured or there stands a good chance
15 of a person being injured, I would classify as a vicious
16 crime.

17 I used that term, you know, it's just a term that I
18 use that I don't know where I -- I just thought it up
19 myself. I don't think there's any legal precedent for a
20 vicious crime, I'm just talking about what I feel.

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

22 THE CHAIR: Any other questions by any member of
23 the commission?

24 A I might add that our files in the Coconino County
25 Attorney's Office are open, they're open to the press,

1 they're open to the public and if you want to review any
2 file you're certainly welcome to come into our office
3 and we'll make copies of any and all reports in the files.
4 We have nothing to hide and if you -- if you can't come
5 up personally, just write to us and we'll send you copies
6 of any files that we have.

7 It's been a pleasure being here, thank you.

8 Q Excuse me, before you leave, I just wondered if
9 you wanted to stay with the county clerk if we're going
10 to talk a little bit about jury selection.

11 A I think that's her job and she knows what's she's
12 doing, she's very competent and I think she can answer
13 everything better than I.

14
15
16 MS. JO WYCOFF

17
18 Q (By Mr. Williams) Ms. Wycoff?

19 A (By Ms. Wycoff) Yes.

20 Q Do you want to state your name for the record and
21 address and your occupation?

22 A I'm Ms. Jo Wycoff, Clerk of the Coconino County
23 Superior Court. I live at 3308 North King Street, in
24 Flagstaff. I took office, I was appointed by the Board of
25 Supervisors of Coconino County, April 1, 1975.

1 Q Will you briefly explain the mechanisms for jury
2 selection in the county, Coconino County?

3 A The jurors are selected from the list of registered
4 voters which is provided to us by the county recorder.

5 Q Okay. So they give you a complete list of all the
6 registered voters?

7 A That's right.

8 Q Okay, then who makes the selection of that list or
9 how are they selected off that list?

10 A They are selected by computer in Phoenix. We get
11 an order twice a year from our presiding judge to draw X
12 number of jurors as will be needed, and we send a copy of
13 this order down to the computing firm and they draw the
14 number we request.

15 And then they send us the list and we go from there.

16 Q Okay, can you give us a brief idea of how many
17 Indian people are on the list or is there any way of knowing
18 the ratio or the breakdown of the list when it comes in?

19 A Well, the last time we drew was in August, the
20 first part of August. That's when I started working with
21 it. And we had several hundred names, Indian names on the
22 list. We drew 1,500 names, and in trying to reach the
23 Indians on the reservation is extremely hard. I have
24 tried three times, and the last time I tried by registered,
25 certified mail, return receipt requested, and even after

1 they have signed for these letters, they do not respond.

2 And I think I had around 40 in this category.

3 Q You had about 40 Indian names that did not respond?

4 A Yes, even after three times.

5 Q Do you have any idea of how many did respond?

6 A Oh, yes, I had good response. It took a long time,
7 in fact I have just now, last week, got my return typed up
8 from August. It takes a long time to hear from these
9 people and sometimes, well, many of them do not understand
10 what it's all about, many of them do not read nor write.
11 Those who finally will come into the office or write a
12 letter and tell me that they don't understand, they don't
13 read nor write or maybe a relative will come in for them
14 and tell me this. And I have gone to my judge and he has
15 worked closely with me on this.

16 I can not excuse them, even if they do not read nor
17 write, the only excuse is if they do not understand, and
18 I have been very careful about this.

19 Q Okay, do you find that the people that have been
20 selected, once they're selected on the jury list, how are
21 they selected from that list to actually be called for
22 jury duty?

23 A The names are cut up and put in a box, and I draw
24 from this box a panel to serve 90 days. And I just did that
25 last week to start serving December 1st and these are

1 actually drawn out of a box by myself or one of my deputies.

2 Q Do you again find difficulty with Indians on the
3 reservation in notification that they've been drawn for
4 jury service?

5 A Well, now, the ones who have been qualified are
6 good names, and I do have a good address for them. However,
7 a great deal of them are on the reservation, they have no
8 telephone, and I can not excuse them for that reason, I
9 put them on the list hoping that I can use them and notify
10 them by mail to serve on a particular jury.

11 Q Do you have any feel, since you've been in your
12 office, what kind of percentage that you've actually been
13 successful in getting Native Americans or Indians on the
14 jury box?

15 A Well, now, the last -- the first grand jury we had
16 I think it served May, June and July, and August, we had
17 an Indian man on the panel of 15. He lives in Flagstaff,
18 however, and he did have a telephone. But the ones who
19 have come in to serve on a particular panel, most always
20 they will tell the judge in the courtroom, they have a
21 particular problem, they can't stay or they don't under-
22 stand or something and they will eventually be excused.

23 But that's not up to me, I've done my part.

24 Q There seems to be a disproportionate amount of defen-
25 dants that are Indian and compared to the jurors that are

1 selected that are Indian. Do you have any feel for how
2 we could better set them up so we actually get more input
3 and more jurors that are Indian?

4 A. Well, I don't know.

5 Q. Is it an educational thing on the reservation?

6 A. I think maybe education is the only answer. So
7 many people will, when they do write in, they will tell
8 me they don't have transportation and that is an excuse.
9 Even if they do read and write or if they have small
10 children and they can not leave them unattended, that is
11 another excuse.

12 Q. Do you have just a list of the --

13 A. Yes, I do.

14 Q. Give us a brief idea of what those excuses are?

15 A. Well, there are 15 excuses, I think there are 15,
16 and the judge has signed an order authorizing me to excuse
17 jurors for these reasons. And if they have a health
18 problem, small children, if they are full time student
19 attending school, if they are out of the county more than
20 50% of the time, or if they are in a business where it
21 would be a financial hardship for them to serve as a juror,
22 or if they are in some line of work where loss of wages
23 would be a financial hardship, that is another thing. Most
24 of the Indians do not request work hardship as an excuse,
25 however. Most of the time it's that they don't understand

1 or they live too far or they have small children or maybe
2 they have a hearing problem, they can't see. And these
3 are all excuses.

4 MR. WILLIAMS: Are there any questions, Grace?

5 Q (By Ms. McCullah) Yes, let me ask one question.

6 You referred to the term, qualify --

7 A Yes.

8 Q -- what qualifies a juror?

9 A Well, when we initially contact the juror and tell
10 him his name has been drawn for jury duty by the computer,
11 we send him a jury questionnaire with a letter and an
12 envelope, a self-addressed, stamped envelope, asking him
13 to fill out this questionnaire and return it to me in this
14 envelope. And then we, after we look at the questionnaire
15 that he has returned and we determine, we determine that he
16 is qualified to serve as a juror, that is what we mean by
17 qualify.

18 Q So you make your determination of the questionnaire
19 that he submits, right?

20 A Right.

21 Q (By Mr. Williams) Okay, you mentioned just briefly
22 that the judge would disqualify jurors at some point.
23 That's after they've been qualified and they come in and
24 then they -- they seek at that point to be disqualified?

25 A Yes, sometimes you'll have a juror and I have re-

1 fused to excuse him but the first time he comes to court,
2 the judge will excuse him. And that's fine, I mean that's
3 the way the system works.

4 Q I got the impression, I didn't know the percentage
5 but I got the impression there was a very low percentage
6 of Indians on any jury in Coconino County. Do you have
7 any idea at all of the percentages that --

8 A I think there used to be and basically it was be-
9 cause we couldn't reach them, but I have certainly, since
10 I've been in office, I have really worked diligently to
11 hear from these people, and I -- one interesting thing,
12 I've had two different Indian people come in the office,
13 one was with the BIA and the other one was the Navajo
14 Police, and they both came in to explain to me they had
15 -- they knew someone who could not serve, he was too old
16 or too ill, and would I please excuse him and I did.

17 And I explained my problem trying to hear from these
18 people and both of these men told me that the next time
19 I draw, to let them know the names and they will help me
20 find them, and I certainly appreciate that.

21 THE CHAIR: Any other questions of Ms. Wycoff?

22 MR. LEVIS: I have some questions.

23 Q (By Mr. Levis) Ms. Wycoff, I was present during the
24 hearing involving the jury selection list in the Fred
25 Delvecchio case and I realize you were not the juror (sic)

1 at the time that -- that jury panel was selected. But I
2 have some concerns about the way that jurors are excluded
3 because while the judge ruled in that case that there was
4 no systematic exclusion of Indian people, the figures
5 indicate that out of 989 potential jurors, of whom 154 or
6 13.4% were American Indians, on 16 American Indians or 2.7%
7 of the 578 jurors who were not excluded were American
8 Indians, and based on an attorney general's opinion, it
9 appears that many more American Indians than non-American
10 Indians are excluded.

11 And I just wonder what can be done to deal with
12 the situation. Especially since the judge seemed to
13 indicate that those who are excluded are done so in a
14 sense at the jury commissioner's discretion and she doesn't
15 see any problem with this, yet the attorney general's
16 opinion seems to say that there isn't -- there shouldn't
17 be this discretion.

18 I'm really concerned that there can be an argument
19 made that there is abuse on the part of the jury commissioner.
20 I take it in Coconino County Superior Court would be you?

21 A. Well, that's true now. I mean I am responsible
22 now but at the time you were there, I had not handled the
23 jury and I can only speak as to how I am doing it now. And
24 I would welcome you to come into the office and see our
25 list, and see the number of jurors who are Indians on the

1 panels, and I'm very reluctant, since the Fred Delvecchio
2 thing, to excuse jurors except for very good cause.

3 Q But according to that case it's my understanding
4 that good cause includes lack of a telephone, the poor
5 mail service, poor roads, it just seems that for whatever
6 reason, maybe this is something that will have to be de-
7 cided by the appeals court, that those reasons alone are
8 enough to excuse somebody. And according to the attorney
9 general's opinion, I can quote from it, while it is true
10 that the law does not presume that a court will do a
11 needless thing, if a Native American on the reservation is
12 served and he does in fact appear, the action has not been
13 needless. And what that seems to indicate is that you
14 can't presume because someone does not have a telephone or
15 because the mail service was poor or because it's a long
16 distance, that that person will not appear.

17 How do you get around that attorney general's
18 opinion?

19 A Well, I don't know if I understand exactly the
20 question, but Indians basically, if -- and I think any
21 person regardless, Indian or non-Indian, if they live
22 several hundred miles away from the courthouse, it is a
23 hardship for them to come, wouldn't you say so?

24 Q Well, the problem is is that under the 14th Amendment,
25 if a policy has a disparate effect on one group, such as

1 Indians, then it's really up to the state to show a com-
2 pelling interest for having such a policy. And while we're
3 not in court or anything it's just difficult, I think,
4 for some members of the committee or me to understand how
5 this policy does not have a discriminatory effect on
6 Indians.

7 A Well, as I say, I don't think they're being dis-
8 criminated against, and I would invite you to come into the
9 office and see. Many times when we call a jury for a given
10 trial, we are not given sufficient notice to get a notice
11 to the juror by mail. And therefore we resort to telephones.
12 And we'll get several of us telephoning the day before the
13 trial. And -- but occasionally if we do have advance
14 notice that a case is going, we can send them a letter.

15 But then we have no guarantee that they will pick
16 up their mail and we may run short of jurors the day of
17 the trial too.

18 Q What suggestions, then, do you have to alleviate
19 some of these problems?

20 A Well, I don't really know. I don't have a solution.
21 It might be, if we had a policy of establishing a jury
22 trial, say every Tuesday or every Thursday and we would
23 know that we had to provide X number of jurors for that
24 day, and then we could plan on this and using these jurors,
25 but I don't know how this would work.

1 We're constantly trying to economize and save the
2 county paying jurors needlessly, so every chance we get
3 when a trial has been cancelled, I've even called them at
4 night from my home to tell them not to come the next day.

5 Q Do you have any jury substations like in Tuba City
6 or in Page or --

7 A No, none.

8 Q Is there a lack of funds, is that the reason?

9 A Yes. Now the clerk of superior court has one office,
10 it's only in the courthouse. Now the -- I think the county
11 assessor has substations around in the outlying towns,
12 but we do not.

13 Q Am I correct in stating that this is the second
14 largest county in size in the United States?

15 A That is correct. But our population is the problem.

16 Q You mean -- what is it, 60,000?

17 A I think it's a little more than that, but not much.

18 Q I just have one final question. You indicated that
19 you feel that the policies have changed the number of
20 American Indians who serve on juries and I would appreciate
21 if you could forward that information to us, we'll send
22 you a letter if that's -- just asking for the breakdown
23 because I think the committee was very concerned about the
24 statistics that Judge Mangum quoted in her July decision in
25 the Delvecchio case.

1 A. Okay, I'll be glad to do that.

2 MR. LEVIS: I have no further questions.

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

5 MS. LYON: I have one question.

6 Q. (By Ms. Lyon) Ms. Wycoff, could you give us an
7 estimate as to the number of Indian residents in Flagstaff?

8 A. I'm sorry, I just don't have any idea.

9 MS. LYON: I wonder if, Dr. Warren, if I might be
10 permitted to ask that question of Mr. Gonzalez?

11 MR. GONZALEZ: Yes, we've determined that it's
12 approximately 2,500, that's including NAU students,
13 Flagstaff, BIA dormitory students, and -- around 2,500.

14 Q. (By Ms. McCullah) Mr. Gonzalez, what information
15 are you using, statistical information are you using, the
16 1970 census?

17 MR. GONZALEZ: No, I think the 1970 census was a
18 lot lower than that, I don't recall exactly what it was.
19 Something like 1,700. We're using the latest available
20 statistics for NAU, the BIA dormitory and just some very
21 rough estimates in the community, and we have done a few
22 surveys.

23 Q. (By Ms. Lyon) So would you say that it would be
24 safe to assume that among that number of Flagstaff
25 residents, there would be registered voters who are Indian

1 people?

2 A. (By Ms. Wycoff) Yes.

3 Q. And would it be reasonable to assume that we could
4 expect these registered voters to be available for jury
5 duty?

6 A. Yes.

7 MS. LYON: That is all I have.

8 MR. LEVIS: I just have one.

9 THE CHAIR: Yes, one other question by Mr. Levis.

10 Q. (By Mr. Levis) Have you ever considered, now you
11 might have answered this question because I was out part
12 of the time, using other rolls besides voter registration
13 rolls to determine jury lists?

14 A. Well, the law requires us to use the voting regis-
15 tration.

16 Q. Can you supplement with, let's say motor vehicle?

17 A. No. Not until the law is changed.

18 Q. And this would have to be done on the state level?

19 A. Yes, it would.

20 THE CHAIR: Any other questions?

21 If not, thank you very much, Ms. Wycoff.

22 A. Thank you very much.

23 THE CHAIR: It's necessary for us to take a five-
24 minute break to reorganize our schedule.

25 (Short recess)

1 Q (By Ms. Lyon) Mr. Dart, for the record, would you
2 please state your name, address and occupation?
3

4
5 MR. ROLAND DART
6

7 A (By Mr. Dart) Roland Dart, Post Office Box 663,
8 Window Rock, Arizona. Chief of Police for the Navajo Indian
9 Tribe.

10 Q Thank you. Would you tell the committee how your
11 office handles extradition requests?

12 A All right. The tribal code specifies the procedure.
13 Any county wishing to have a warrant served on the reser-
14 vation forwards the warrant to the Navajo Police Department
15 headquarters in Window Rock, where it is logged and the
16 jurisdiction noted, the judge and the charge and every-
17 thing's inventoried, so to speak. The warrant is then
18 forwarded to the chief prosecutor's office of the tribe
19 where that portion of the statute is satisfied that says
20 the chairman authorizes the warrant to be served.

21 The warrant is then sent to my police district,
22 wherever the person may reside, depending upon the location.
23 And the police district then serves the warrant on the
24 individual making a return to the warrant and incarcerating
25 the individual in the Navajo jail at which time the subject

1 has the opportunity of appearing before the tribal court
2 judge to hear the matter of extradition or, of course,
3 the person has the opportunity to waive extradition.

4 If the person elects to go in front of the tribal
5 court, of course then the chief prosecutor's office handles
6 the co -- coordinates the presentation of the individual
7 to the tribal court. If the person waives extradition a
8 form is prepared where they sign off that they waive
9 extradition after being advised of, you know, the procedure
10 and then we in turn call the sheriff's office of the county
11 in which the warrant was issued to make arrangements for
12 the transfer of the individual to the county jail.

13 That's it in a nutshell.

14 Q Could you give us a little more detail on the con-
15 ditions that have to be met, I believe you mentioned you
16 had to make sure that the conditions are met under which
17 the chairman would give permission for the warrant to be
18 served?

19 A Well, that's -- that's a province of the chief
20 prosecutor but basically it's to determine that the warrant
21 in fact is valid, that it is signed by a magistrate and
22 that it meets the requirements, you know, of a warrant
23 being a warrant.

24 Q I see. We've heard testimony from various witnesses
25 during the hearings that there appear to be problems connected

1 with extradition of Indian defendants. Do you know, off-
2 hand, roughly during the past year, how many -- how many
3 requests for extradition you might have received?

4 A Six to eight, something in that neighborhood.

5 Q And in each case, have the warrants been served?

6 A To the best of my knowledge, yes.

7 Q Have you been contacted by city and county law
8 enforcement agencies regarding problems with extradition
9 requests?

10 A Let me answer that this way, we were contacted or I
11 contacted, it was kind of a mutual thing, as a result of
12 the attention given the problem in the news articles that
13 the commission cited earlier.

14 Judge Brady, is it Judge Brady?

15 Q Brady?

16 A Brady and Judge Garcia visited my headquarters,
17 but prior to that, as my tenure with the tribe, which is
18 approximately a year and a half, I have never had any com-
19 munication whatsoever with any of the county officials in
20 this county or others concerning any problems of extradition.

21 Q What was your reaction to the newspaper article
22 stating the problem?

23 A My reaction was that it -- that there was no basis
24 in fact for the criticisms, that either they hadn't done
25 their homework or they view the process or they apparently

1 view the process as something they don't want to waste
2 their time with, perhaps.

3 It has been said that some of the officials, although
4 I can't specify who, don't necessarily agree about
5 sovereignty of the tribes and the legality of the process.
6 But in those cases where the counties have taken the time
7 to do what I outlined, the system has worked.

8 Q We have heard some testimony this morning which
9 alleged that there may be some favoritism shown in the
10 manner in which warrants are served?

11 A Favoritism, in what regard?

12 Q That apparently, as I interpret the allegation, and
13 it was merely my interpretation, there seemed to be some
14 selectivity used depending on who the person was for whom
15 the warrant was intended.

16 A Well, I have no information, facts or any complaint
17 of that type of problem, and if we had a complaint of that
18 nature our internal affairs mechanism would take care of
19 it and if they were substantiated disciplinary action
20 would result.

21 I would say this, though, that any -- in any public
22 safety or criminal justice system, the system is made up
23 of human beings and human beings have likes and dislikes.
24 I would also say, I would suppose, that if a member of the
25 family of an important figure in the county criminal justice

1 system was to be arrested, I would imagine there'd be a
2 little bias there as well.

3 You know, a police officer may have to go out and
4 arrest a member of his clan or his first or second clan or
5 his family and he's not necessarily going to like it.
6 But nevertheless, I have never received any specific com-
7 plaint of that regard, and if we had the internal affairs
8 mechanism of the police department would have taken care
9 of it.

10 Q About how long would you estimate that it takes
11 to process an extradition request?

12 A I'd say approximately -- now when we talk about
13 process, are we talking about --

14 Q From the time you receive it?

15 A To what?

16 Q To the serving of the warrant?

17 A Okay, perhaps -- it depends greatly upon who the
18 person is, where they live and how accessible they are, but
19 I'd say on the average, from the time we receive the
20 warrant, perhaps two weeks. And depending again on the
21 severity of the warrant, too.

22 Q I see. In general, Chief Dart, what kind of working
23 relations do you have with city, county and state law
24 enforcement agencies?

25 A They vary, they vary considerably depending upon the

1 county, the city and so forth. For instance, we have had
2 very little relationship whatsoever with the City of
3 Flagstaff. However, with Coconino County Sheriff Richards,
4 for instance, has been extremely helpful, we do have
5 channels of communication between himself and myself, and
6 the relationship I would characterize as good.

7 We don't have that much communication with the city.
8 Apache County Sheriff's Office, again we have good open
9 channels of communication, although we do have a difference
10 of opinion in terms of jurisdiction and we have a civil
11 rights suit now against that county to determine precisely,
12 you know, who's right in the issue.

13 It's kind of a friendly situation, it's not one of
14 antagonism. Our relationship in the City of Gallup was
15 poor and is now characterized, I think, as good, and getting
16 better. Farmington perhaps the same. Page is a problem.

17 Q I see. Would you give us a little more detail in
18 what regard Page is a problem?

19 A Again it's -- it generally stems from a problem
20 of jurisdiction, I think that both Sheriff Richards and I
21 share this particular problem in that when that city
22 changed, went into a municipality just prior to that, law
23 enforcement in that area was performed by the -- for a
24 lack of better word, I would suspect rangers or products
25 from a prior federal park-type thing.

1 Q Would I be correct in assuming that these were
2 rangers from the Bureau of Reclamation?

3 A Yes, Ma'am. Consequently, from a -- from a police
4 professional standpoint in terms of education and certi-
5 fication and things of this nature, it was my impression
6 that the minimum standards were not evidenced, the sheriff
7 and I had mutual problems concerning a shooting of a young
8 offender in that area, the sheriff's office and I worked
9 together in communication during the course of the inves-
10 tigation.

11 I think that's been a problem there. That's, I
12 think, the primary problem.

13 Q I see. We heard some testimony this morning that
14 there was, to some extent, some cross deputization
15 between your officers and officers of the sheriff's
16 department?

17 A That was from the county attorney?

18 Q Yes.

19 A Well, that's not -- not necessarily true. The
20 Navajo Police in the State of Arizona are peace officers
21 defined under state statutes, therefore we need no cross
22 deputization in that sense. However, before an
23 Arizona Department of Public Safety officer or sheriff's
24 deputy can have tribal jurisdiction, I must commission them.

25 Q I see.

1 A. And in those cases where they have requested to be
2 commissioned and can certify to me that they have met the
3 state minimum standards established by the peace officer's
4 standards of training commission and that they waive a
5 hold-harmless clause in terms of liability, I have com-
6 missioned those people.

7 I have perhaps, I'd have to have my administrative
8 assistant here to tell me, but I think we have perhaps 15
9 or 20 deputy sheriffs from Coconino County commissioned,
10 and we have perhaps 15, between ten and 15 members of the
11 Arizona Highway Patrol, Department of Public Safety
12 commissioned as Navajo Police officers.

13 Q. Does what you have told us extend to the fact that
14 tribal police officers have jurisdiction over non-Indians
15 on the reservation?

16 A. Yes, Ma'am.

17 Q. Would this jurisdiction also extend to tribal
18 game wardens?

19 A. No.

20 Q. It would not.

21 A. Well, let me say this, the reason that it would not
22 extend to tribal fish and wildlife people would be because
23 of the minimum standards requirements, okay?

24 Q. Now, in line with the status of tribal police
25 officers that you have explained to us, does it occur that

1 a tribal police officer in an area off the reservation may
2 apprehend a non-Indian suspect?

3 A Yes, Ma'am. And we often do.

4 Q I see. Have you ever had any problems in that
5 regard?

6 A One problem, and that's with a judge, but not in
7 this county.

8 The state statute defines peace officers in Arizona
9 as municipal police officers, highway patrol, etcetera,
10 etcetera, etcetera. And does not include the word Indian
11 police. As a result of that, a subsequent statute was
12 passed that says Indian police duly commissioned or
13 established through a tribal government who meet the
14 minimum standards established by the state commission,
15 all right? Are peace officers. So that amended the
16 original definition.

17 All right. We apprehended an individual who --
18 who committed an assault against a police officer in
19 the Lupton area. And charges were filed through the county
20 attorney. The judge ruled the police department had no
21 jurisdiction over a non-Indian. But I think that he didn't
22 read the statute, he read the first statute but he didn't
23 read the second one, even though the county attorney filed
24 a motion in opposition of the defense motion to dismiss.
25 And we have been working with the Attorney General, Bruce

1 Babbitt, on this issue, and of course he is -- is as
2 interested in this decision as we are. And we've been
3 advised by the county attorney in Apache County, as well
4 as the attorney general to continue exercising our pre-
5 rogative under the statute and arresting non-Indians
6 when we have probable cause to believe that a crime has
7 been committed.

8 Q Has your department assisted the City of Flagstaff
9 Police during the July 4th Pow Wow during the past several
10 years?

11 A I don't know what happened prior to a year and a
12 half ago when I was here.

13 Q I see.

14 A But our effort was minimal, if any, recently.

15 Q What can you tell us about general cooperation with
16 the city, perhaps at such occasions as the Pow Wow, when
17 a large number of Indians are in town?

18 A I can't comment to it because we weren't involved
19 to that extent. As to the contrary however, the shoe is
20 on the other foot, though, when we talk about Gallup and the
21 Ceremonial.

22 Q Well, of course, since Gallup is out of Arizona we
23 can not at this point concern ourselves with that.

24 A Sure.

25 Q Would you have any recommendations or suggestions as

1 to how your police force and the City of Flagstaff could
2 work more closely together during the Pow Wow?

3 A I would say that if the city, you know, wanted our
4 assistance we would be more than willing to render the
5 assistance. In -- well, I can -- the only way I can
6 suggest what we could do was give you, to illustrate what
7 we did even though it was outside the State of Arizona.

8 During the Ceremonial, for instance, we had approxi-
9 mately 15 Navajo Police officers with a lieutenant and two
10 supervisors. We doubled up Navajo Police with the city
11 police. They acted as interpreters during any type of
12 a situation where there was a crisis, and they would also,
13 you know, involve themselves in crisis intervention in-
14 volving family, Indian families who couldn't -- didn't
15 have a command of the English language. We found that as,
16 by applying this type of cooperation, the incident of
17 arrest was substantially lower than the previous year,
18 that misunderstandings between why people were doing things
19 were more readily solved, and it -- you know, contributed
20 to an altogether more peaceful situation.

21 Q During our past testimony yesterday and today,
22 we've heard extensive testimony on the problems experienced
23 by Indian defendants who may need the services of an
24 interpreter, and we've also heard testimony that many times
25 another prisoner is employed in that capacity. Do you have

1 any opinion or recommendations you would like to share
2 with us on what you would consider to be the need in this
3 case to provide adequate translation?

4 A Oh, I think that based upon the volume of persons
5 in the local criminal justice system being Native American,
6 and principally Navajo, that it is almost a necessity to
7 employ, as a part of the judges, the court system, a
8 qualified interpreter to be on call at any time and to
9 interpret just exactly what the instructions of the judge
10 are, in terms of their rights, you know, this is very im-
11 portant.

12 Further than that the person should be qualified
13 in the language. But the volume alone suggests that such
14 services are needed on a full time basis.

15 Q Would you consider that the average bilingual
16 Navajo/English-speaking person would be competent to trans-
17 late legal procedures?

18 A Well, perhaps I'm not the best person to comment
19 on that, since I don't speak Navajo, except enough just
20 to get along. But we have interpreters that are paralegal-
21 types that are trained, Mr. Al Taradash, for instance,
22 who will be here later from DNA, should probably be asked
23 that question.

24 But I see no problem in training paralegal-types
25 that are fluent in both languages that competently can

1 interpret these problems. These things.

2 Q I see. During your tenure as chief of police,
3 have you had any problems brought to your attention in
4 terms of, let's say interpretation or any other problems
5 experienced by Navajo people in off-reservation areas
6 with regard to the administration of justice?

7 A Not a great deal, but they have cropped up from
8 time to time where families have come in to see me because
9 members of their family have been either victims of crime
10 off-reservation or been arrested for, you know, criminal
11 situations. I had one situation where a person died in
12 a jail, and we were very concerned about that, although
13 we didn't have jurisdiction. And the family was a
14 little confused as to what resources they had open to them,
15 you know, concerning this thing.

16 Another issue was a family came to see me concerning
17 the death of, the murder of a member of their family in
18 Phoenix. Again they had no idea precisely what the
19 mechanics of the criminal justice system were and how they
20 could seek relief and things of this nature.

21 Basically, that's the extent of the problems that
22 have come to my attention.

23 Q What is your personal opinion as to the effects that
24 legalization of liquor on the reservation might have in
25 terms of the high incidence of alcoholism-related offenses

1 off the reservation?

2 A Let me -- okay. I've got to comment on that based
3 on my background as a social scientist as well as a police-
4 man. I can say this, there was an effort several years
5 ago to perhaps take this issue on during a very popular
6 campaign or election, and it is my understanding that a
7 great deal of money was contributed by off-reservation
8 liquor establishments to block that attempt.

9 Q They must have been successful.

10 A For obvious reasons.

11 Let me approach the question from two angles, from
12 the police point of view. From the police point of view
13 legalization of liquor on the reservation would be a
14 positive thing in terms of reducing the number of fatal
15 injury accidents. I do -- the one thing perhaps I do
16 agree with the county attorney on is this situation of
17 the transportation of liquor between so-called wet areas
18 and dry areas. That phenomenon is not, you know, indicative
19 just of this area. In various parts of the south, Louisiana
20 and Mississippi, for instance, where they have parishes or
21 counties that are coterminus, one wet and one dry, the
22 highway between the two, you know, is a -- is a death
23 corridor. I think we could probably reduce the fatal
24 injury accident level by 75%. Right now our level is
25 probably the highest in the nation.

1 I think that -- I think now from a social scientist
2 standpoint, that the fact that liquor is not available on
3 the reservation, as elsewhere in the country, creates a
4 phenomenon called reenforced alcoholism, where persons drink
5 liquor off-reservation and do it abundantly because they
6 know they can't do it back on the reservation.

7 And they have a limited amount of time to be, you
8 know, there, and if they do get liquor on the reservation,
9 of course it has to be consumed rather rapidly too, because
10 if my police catch them with it they're going to go to jail.

11 So you have this problem. I don't believe that
12 there's any specific cultural differences in alcohol for
13 Native Americans and alcohol for non-Indians. I believe
14 that perhaps if liquor were available on the reservation
15 that a person wanted to go home and watch the Saturday
16 afternoon football game to buy a six-pack of Coors and go
17 home and have a beer like everybody else, we probably
18 wouldn't have the problems.

19 I'd say initially we'd have problems because it
20 would be like a new thing, you see, but after a period of
21 a year or so when it's not so much a new thing, it would
22 taper off and we wouldn't, you know, have -- really no big
23 problem.

24 I spent four days just recently on the Apache
25 Reservation where it is legal. I saw no substantial problems.

1 I've spent time down on the White Mountain Apache
2 Reservation, I saw no substantial problems. I do think
3 though, however, that the liquor situation should be under
4 tribal control, that it should be established under a
5 tribal system and should not be given out to the private
6 licenses who would rip off -- oh, excuse the language --
7 the private liquor establishments, I think they should be
8 a revenue-producing entity to be applied in areas like
9 juvenile justice administration improvement and perhaps
10 alcohol rehab. and detox. centers, things like that.

11 Q In general, Chief Dart, what recommendations would
12 you have to improve the administration of justice for
13 Indian people in off-reservation areas in terms of closer
14 relationships with reservation, tribal police, and perhaps
15 education both of the off-reservation communities and the
16 Indian people regarding the off-reservation system they're
17 going to encounter?

18 A I could do my doctorate, you know, dissertation
19 on that subject, probably.

20 Q Would you submit it for our records when you do?

21 A I think that -- I think -- I couldn't probably give
22 you specific recommendations rather than perhaps general
23 ones, but there are a lot of communities in this country
24 that have the same problems that the border towns have here.
25 But perhaps with a different ethnic approach. I think that

1 mechanisms such as victims rights commissions, which we
2 have adopted on the reservation and it's now being imple-
3 mented, there has to be a mechanism in a community like
4 Flagstaff that can tell a victim of crime and as well as
5 an offender of crime, what resources those persons have
6 available to them that they aren't aware of.

7 The store front, you know, community relations-
8 type programs, joint commissions such as the type that is
9 planned in New Mexico between the governor and the tribe
10 in terms of governmental relationships in checkerboard
11 areas, things of this nature, joint commissions existing --
12 represented, you know, by Native Americans who live on the
13 reservation and the Anglo people of Flagstaff to approach
14 these problems we're talking about.

15 For instance, I was listening to the court clerk
16 discussing the problem of serving notices of jury duty.
17 Okay. The police department is spread out in substations
18 almost, you know, everyplace on the reservation. It would
19 not be an unrealistic thing, I mean we'd be happy to assist
20 in the serving of these notices. As well as perhaps
21 having the officer interpret the content of the notice to
22 the individual. Again, there should be a --a person that
23 is fluent in Navajo as well as trained in a paralegal
24 field to serve as an interpreter in the court system.

25 Q To your knowledge, is the court recorder aware that

1 you can offer these services?

2 A They've never asked us.

3 Q I see.

4 A I mean, you know, we do a lot of things, notifica-
5 tion of families, death notices, you know, the police
6 department on the reservation has to be a little bit
7 more public-service minded than you would a municipal
8 police agency because of the geography, because of the
9 lack of services, all my officers are emergency medical
10 technicians, for instance, and you know, we have to wear
11 several hats.

12 Q In other words, in your opinion, then, the fact
13 that a prospective juror resides on the reservation and
14 doesn't have a telephone should not be a deterrent to his
15 serving on a jury?

16 A No, I would say that it probably would just be a
17 little bit more difficult so therefore you have to apply
18 just a little bit more effort.

19 Q But you are willing to assist with this effort?

20 A Sure.

21 MS. LYON: Thank you.

22 I have no further questions, perhaps some other
23 committee members do.

24 Q (By Mr. Williams) I just want to clarify one point,
25 you said twice that if you find people that are fluent in

1 both languages and give them some paralegal training, they
2 would be sufficient as interpreters. What we understand
3 about the court system in Coconino County in the City of
4 Flagstaff, is that they've been utilizing other incarcerated
5 persons as interpreters. Do you have a brief comment on
6 that particular practice?

7 A I don't think it is a good practice. Because you
8 have an inconsistency of --an inconsistency on the level
9 of competence of the interpreting, you may have a person
10 who, for other reasons, may interpret wrongly, it's not
11 under control, the person is not employed for that specific
12 purpose, therefore it's not a first line interest, okay?

13 You have a multitude of problems. And it's just
14 a cheap way of getting off the hook.

15 Q (By Mr. Levis) Chief Dart, you've talked about the
16 severity of the warrant influencing the amount of time it
17 takes to serve it, --

18 A Sure.

19 Q -- are you talking about severity you're talking
20 about the type of crime involved?

21 A Yes.

22 Q I take it the more severe the crime the longer the
23 time between --

24 A No, no, conversely.

25 Q Conversely?

1 A. Yes, if -- for instance, if we have a warrant for a
2 failure to show on a traffic violation, for instance,
3 you know we have to assign priorities to our services the
4 same as anyone else. I think that a warrant for assault
5 and battery or assault with deadly weapon or a felony
6 would probably be viewed on a higher priority than a
7 traffic violation, for instance, necessarily so. That's
8 the only comment that -- that's how I made my --

9 Q I was concerned it might be more difficult to appre-
10 hend somebody for a more severe crime, that was my clari-
11 fication, thank you.

12 The other question is, you mentioned you've working
13 relationships with the city and county police and I don't
14 think you mentioned Navajo County, Arizona. What is your
15 relationship with them?

16 A Our relationship is good. We have a deputy sheriff
17 assigned to the reservation up in that area, we are also
18 trying to develop a strategy of perhaps having deputy
19 sheriffs assigned on the reservation but only to involve
20 themselves in the civil process area, as opposed to any
21 criminal involvement.

22 Q I see.

23 A We have about, we're in seven counties, see. So it's
24 pretty hard to approach this problem unless you have a
25 standardized position that everybody can agree on.

1 Q You talked about the need for Navajo individuals
2 who can act as interpreters and paralegals. Should these
3 persons also be equipped to serve as bailiffs or should that
4 be someone else in addition to interpreter and paralegal?

5 A Well, the function of a bailiff, if I can -- you
6 know, if the function of a bailiff in Arizona is sub-
7 stantially the same as the function of a bailiff in Cali-
8 fornia, no, I don't believe so. I think that, you know,
9 a bailiff is generally to maintain peace and order in the
10 court, to call witnesses, to swear witnesses in, that
11 kind of stuff. I would view, I think the need of an in-
12 terpreter to be a pre -- precisely that, and that's all
13 he would or she would confine herself to.

14 Q The other question is, are there such people available
15 or are they easily trainable?

16 A Oh, yes, I think that Northern Arizona University
17 has a paralegal program designed primarily for Native
18 American people, and their advocate system on the reser-
19 vation under the direction of Peterson Zah and of course,
20 you know, again Al Taradash, who'll be here, should be
21 asked that question.

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

23 THE CHAIR: Okay, any further questions by any
24 member of the panel?

25 Okay. If not, Chief Dart, we certainly want to thank

1 you for your testimony. You're free to remain, however,
2 if you must go we will understand.

3 A Fine.

4 THE CHAIR: We have some questions of Mr. Hennessy.

5 A Thank you.

6
7
8 MR. JACK HENNESSY

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

12 A Jack Hennessy, Box 182, Oraibi, Arizona.

13 Q Also, please describe your duties as criminal justice
14 coordinator for the Hopi Nation?

15 A My duties mainly include working with the courts of
16 the Hopi Nation, law enforcement is still under the hands
17 of the Bureau of Indian Affairs, largely. Though I do
18 coordinate the actions of the police with the courts.

19 And my job basically is to oversee the administrative
20 aspects of the justice system.

21 Q You're familiar with some of the issues that we have
22 discussed this morning?

23 A Yes, I am.

24 Q And I also note that you've been with the Hopi Nation
25 for only two months?

1 A. Right.

2 Q. And you stated that you primarily are working with
3 the courts and police officers and that law enforcement
4 still resides with the responsibility of the Bureau of
5 Indian Affairs. Okay. I would like to have you relate
6 issues to tribal-county cooperation in matters of law
7 enforcement, I'm wondering whether or not you might dis-
8 cuss a little bit whether or not your duties later on will
9 include this sort of -- these sort of matters?

10 A. Yes, right now we don't coordinate that much with
11 the county. The main county we deal with is Navajo County,
12 and to my knowledge, I have only been there two months,
13 there's very little communication between county officials
14 and the tribal judicial officials.

15 Our efforts in the future will be directed mainly to
16 seeing to it that Hopi people that go off-reservation and
17 are somehow involved with the criminal justice system off-
18 reservation, our main concern would be that they're treated
19 fairly and our -- and our main concern will be that they
20 have exercise of all their rights off-reservation.

21 And another area that we're going to work on is
22 cross deputization. I personally am opposed to cross
23 deputization of police officers, mainly because I
24 think it's an infringement upon tribal sovereignty to have
25 officers from off-reservation areas come on.

1 Frankly, I don't mind if it works the other way,
2 but I don't like, I don't like county officials or state
3 officials coming onto the Hopi Nation.

4 Q Do you have any other system that would be much
5 better in line with recognizing the jurisdictional problems?

6 A Right. The -- the Hopi Nation right now is in the
7 process of extending its court jurisdiction to all non-
8 Indians and all, as well as all Indians, and I think with
9 that, we'll eliminate really the need for cross deputi-
10 zation. The main purpose of cross deputizing people,
11 at least to my understanding that the main purpose is so
12 that we can refer non-Indians that are picked up on the
13 reservation to off-reservation courts, and -- because we
14 don't have jurisdiction in some of those matters.

15 But I think with complete jurisdiction taken over
16 all persons on the reservation, the need for cross depu-
17 tization will be eliminated, especially with recent
18 court cases which say that tribal police have jurisdiction
19 over state highways. That will eliminate the need,
20 really, for county and state people to come on.

21 Q To your knowledge, has the Hopi Nation encountered
22 problems of communication and problems in extradition
23 that have been articulated today by some of our witnesses?

24 A As far as extradition goes, since I've been there,
25 there hasn't been any requests for extradition. And I have

1 never heard of any in the recent past. I don't know that
2 there would be that much of a problem. That would be in
3 Navajo County too, mostly, I imagine, and I just am not
4 aware of any requests for extradition at all.

5 Q Do you know whether the Bureau of Indian Affairs
6 has that responsibility?

7 A Yes, I imagine the law and order people from the
8 bureau would be mainly concerned with that.

9 Q We're talking of problems of, primarily as you
10 heard the public defender from Coconino County talk in
11 terms of jurisdictional problems. Do you give us any
12 indication or could we have some of your ideas on what
13 could initiate better cooperation between tribal and state
14 officials in the areas that we have been discussing,
15 particularly in law enforcement?

16 A I would think the main need, really, is to get
17 qualified interpreters in these county and state courts.
18 And I would extend that interpretation not only to just
19 the interpretation of the language but also interpretation
20 of the cultural implications of justice.

21 I think the main problem in the courts is not so
22 much the language, it's understanding the mechanisms. For
23 one thing, our tribal courts operate much differently
24 than county courts do in that they often apply traditional
25 values, traditional ways of going about settling problems.

1 These kinds of settlements are not practiced in
2 county courts. And that, the difference in the court
3 systems really needs to be interpreted to people as well
4 as just the language of the courts. I see that as the
5 main problem.

6 I also -- I see that as a problem with cross
7 deputization,....too, that's why I don't like cross
8 deputization..... because I think when you have people
9 that can't speak the language trying to enforce the law,
10 you run into a lot of problems. And I would think that
11 on areas in reservations that approve of cross deputi- sta-
12 zation, I think the officers from the county that go on
13 or the state ought to be members of that tribe. Because
14 I don't see any other way that it will really work for
15 the benefit of both parties.

16 Q Since you're talking about alterations in the
17 tribal court system and going probably into the probation
18 department, anything that has to do with the criminal system
19 and law enforcement system, would you be talking in terms
20 of building into -- well, would you be talking in terms
21 of better cooperation between the, say City of Flagstaff,
22 the county, Winslow and Holbrook where, you know, there's
23 quite a migration of Hopi people? Or Indian people?

24 Are you talking of better relationships, better
25 understanding?

1 A. Yes. And I think that can only come about with
2 the employment of a lot more Indian people by the counties,
3 because if you look at the population of the counties
4 and the population makeup and then look at the makeup of
5 the court officials, the police officials, you see a great
6 difference in percentage of what, you know, how many
7 Native Americans are employed as opposed to how many are
8 in the county. And only with the employment of more
9 Native Americans in off-reservation courts, I think that's
10 the only way you're going to get good justice for people
11 off reservations, as well as having an education system
12 for the present employees of the court so that they under-
13 stand the customs and the, even some of the language of
14 the people that they're dealing with that are coming from
15 off-reservation.

16 I think it's -- some of the main problems are caused
17 by the fact that you have judges and other court officials
18 sitting on cases and these people do not understand at
19 all, the people that they're relating to, people that are
20 coming into court. I think the -- a lot of the talk today
21 has been problems Indian people have dealing with the
22 courts and I think there's an equal problem with the courts'
23 understanding of Indian people. I think it has to be a
24 two-way education.

25 Q. So you're talking about sensitizing the non-Indian

1 officials that work in the court?

2 A Right.

3 Q We've been talking about the -- most of the problems
4 that the Indian has in that the majority of the problems,
5 incarceration and DWI's, etcetera, are related to alcohol.
6 We would like to, since we've asked other witnesses, I'd
7 like to ask you what effects would legalizing alcohol on
8 the Hopi, including the Navajo Reservation if you want to,
9 have on some of the problems affecting border town areas?

10 A I think -- I think it would alleviate a lot of the
11 border town problems. I think all the problems that
12 alcohol would bring legalizing alcohol would bring to
13 reservations are already there anyway.

14 You've already got a lot of alcoholic people there,
15 with those kind of problems. I don't think that's going
16 to increase on reservation if alcohol is legalized there.
17 I think what it will do, and Mr. Dart was apparently in
18 agreement with this, is that it would stop a lot of fatal
19 accidents. We've had a couple in the last couple months on
20 the highway coming up from Winslow, and those were due to,
21 largely to drinking.

22 And I think if you could eliminate the problem of
23 people traveling while they're drinking, that would cause
24 -- you would lower the arrest rate for one thing, and people
25 going off-reservation, and it would also lower fatalities on

1 the highway. And as far as additional problems to the
2 court system in the justice system on reservation, I doubt
3 very much whether that would have much of a great effect
4 at all. Because, frankly, most of our arrests on the Hopi
5 that are alcohol-related are already DWI and that's because
6 people are coming up from Winslow, if we can eliminate those
7 it would even reduce our court problems related with
8 alcohol-related court problems.

9 I can see no real problems at all with legalizing
10 alcohol.

11 Q And what effect would it have on the border towns,
12 just keep them out of the border towns?

13 A I would think the border towns, it would lower the
14 arrest rate in border towns because most people would, if
15 they were drinking, would probably stay around home, it
16 would lower the incidence of DWI arrests off-reservation,
17 I think, and it would certainly lower the arrests right
18 on alcohol-related crimes.

19 Q Mr. Hennessy, could you explain the changes that
20 have taken place now concerning the court system and
21 jurisdiction, court system on the Hopi Reservation and the
22 jurisdiction over non-Indians.

23 What does the Hopi Nation hope that these changes
24 will do?

25 A I think the main point of taking jurisdiction over

1 everyone and not just -- not just Indians or not just Hopis,
2 the main point of that is to increase and strengthen
3 tribal sovereignty. Also it's just to reduce adminis-
4 trative problems.

5 I think if you can handle people through your own
6 courts who are arrested in your -- in your own land area,
7 that that is going to reduce a lot of administrative
8 problems, a lot of extradition problems, because there are
9 going to be extradition problems both ways now. With
10 the Hopi jurisdiction. It also gives the -- it will
11 give the Hopi Police more control over the things that are
12 actually happening on Hopi lands.

13 Without jurisdiction over all persons, there has
14 been a hesitancy in the past, I think, for tribal officers
15 of -- I would say both the Navajo and Hopi Tribe -- to
16 deal with non-Indian offenders. I think there's been
17 somewhat of a reluctance.

18 Q Well, one question, how do you relate to the
19 Navajo Nation's law enforcement, do you have a cooperative
20 relationship with them?

21 A Since I've been there, yes, there appears to be good
22 cooperation between the officers, and we haven't contacted
23 each other too much administratively so far, but I have
24 been there relatively a short time, I think that will occur.
25 I know the officer cooperation is quite good. We have the

1 additional problem of the joint use area. And the officers
2 from that, and I think, I think both tribes have a little
3 problem in dealing with the officials from the joint use
4 area. And the joint use courts.

5 Q Will the change in the Hopi Nation's court system
6 change your relationship or the tribe's relationship with
7 the border towns? And how will it change?

8 A Well, for one thing, I think it will eliminate the
9 need for cross deputization, and for another, I think
10 it will change in this way, if there are complaints about
11 extradition it may be that we're going to be the ones that
12 are complaining, because it may be that we're going to find
13 it very difficult to have county officials pick up people
14 in their county and get them extradited to the Hopi Nation.

15 Right now I don't think there are many extradition
16 problems as far as the Hopis extradited off the reservation.
17 I think that's going to change the relationship quite a bit,
18 I think we're going to be in a position of having complaints
19 about getting, you know, non-Indians to come up to our
20 courts and function in the Hopi court system, and it's
21 going to create -- I think with the jurisdiction over non-
22 Indians, I think the courts in the county that are non-
23 Hopi are going to be sensitized a little bit more to the
24 complaints of Indian people because I would imagine that
25 there are going to be non-Indians that are going to be

1 coming back to the county officials saying, we can't
2 deal with Hopi courts because we can't understand what
3 they're doing. And maybe if people complain from that
4 angle, we can get our complaints heard from the other
5 standpoint and say well, we have just as much trouble in
6 your courts.

7 And that may be the only thing that will sort of
8 touch off a mutual cooperation in understanding both
9 court systems.

10 MS. McCULLAH: I have no further questions.

11 MR. LEVIS: I have two short questions.

12 Q (By Mr. Levis) Mr. Hennessy, you indicated that the
13 Hopi Nation does not yet have jurisdiction over non-Indians.
14 What problems are you running into to get this jurisdiction?

15 A To get this jurisdiction? Well, what happened is
16 we passed an ordinance that took jurisdiction over non-
17 Indians, and the solicitor from the Bureau of Indian
18 Affairs disapproved that ordinance, saying that it was
19 counter to the Hopi Constitution. There is some debate
20 among the tribe's attorneys as to whether it really runs
21 that counter to the constitution. However, to speed up the
22 process rather than have a court suit over the matter,
23 we're going to amend the Hopi Constitution and then send
24 both the amendment to the constitution and the ordinance
25 back to the solicitor for his approval.

1 Q Briefly for the committee, since you've only been
2 in your position for two months, could you go over your
3 past qualifications in this area?

4 A I worked for DNA Legal Services in Mexican Hat, Utah,
5 for two years, and up in the course of working there, I
6 became very familiar with off-reservation systems of justice,
7 especially in Utah, I have very little knowledge of other
8 than just hearsay knowledge of the justice system in
9 Arizona so far.

10 THE CHAIR: Any other questions by any member of the
11 commission?

12 If not, thank you very much, Mr. Hennessy.

13 Is Mr. Kelly Hocker in the audience? Or Don Kofford?

14 Lt. Jenkins, will you come forward, please? And
15 Capt. Nez?

16 Capt. Nez, for the -- our benefit, will you state
17 your name, your address and your occupation?
18

19
20 CAPT. TINCER G. NEZ
21

22 A (By Capt. Nez) My name is Tincer G. Nez, I am a
23 captain with Navajo Division of Law Enforcement, stationed
24 at Tuba City. My address is Box 5904, Tuba City, Arizona.

25 Q (By the Chair) We've been receiving some testimony

1 this morning regarding jurisdiction of non-Indians as well
2 as extradition and the whole issue of interpreters in the
3 courts. As Captain of the Navajo Police, in Tuba City,
4 how do you handle these kinds of problems?

5 A On extradition?

6 Q On -- specifically, yes, non-Indian jurisdiction,
7 extradition, interpreters in the courts?

8 A Okay. Well, on the reservation most of the
9 officers are bilingual, they are Navajo-speaking and
10 English-speaking officers. Most of the time when they
11 are testifying in court, if it's against a non-English-
12 speaking Navajo, then they'll have to testify in Navajo.
13 But there is bilingual people then they can testify in
14 English, or in Navajo.

15 And when the extradition, Chief Dart went through
16 most of the procedures. We did have some extradition
17 that we had in the tribal courts, not only from the
18 counties but from other states, whereas an Indian committed
19 the violation of the state, and they came back onto the
20 reservation and the warrants were issued from that state
21 and we went through the proper procedure and the extra-
22 dition procedures.

23 Q Do you have a history of serving warrants from
24 any of the contiguous cities? Particularly Flagstaff,
25 Page?

1 A Well, we have not received too many warrants.

2 Q Is this true for Coconino County?

3 A Right. Any warrants that we receive, either at
4 the district or at the headquarters, are usually logged
5 in and if we get it in Tuba City we get the information,
6 we log the names, charge, warrant number, address, any
7 other identification, and we forward this warrant, the
8 original warrant to Window Rock where they go through the
9 same process and from there, after they record all the
10 information they send it back to us and then we serve the
11 warrant.

12 Q We'll be asking you in some cases the same questions
13 or similar questions that we asked Chief Dart because we're
14 looking for shades of interpretation of areas that we think
15 are rather critical. What is your relationship with city,
16 county, state, officials?

17 A Well, I think our relationship is excellent. I've
18 been working with the department of public safety, and with
19 the Coconino County Sheriff and I have worked in Page
20 myself, I live off-reservation but work on the reservation.
21 I have been stationed down in Page for over a year and
22 assisted the ranger there who had some DPS officers that
23 were stationed in Page.

24 Q Now, are these official relationships or just merely,
25 just the power of your personality, the fact that you,

1 Capt. Nez, relate personally with other individuals or are
2 these formal relationships?

3 A Well, these are formal.

4 Q These are formal relationships. Let me ask a
5 specific question, Capt. Nez. Why do you no longer
6 assist Flagstaff Police during the Pow Wow?

7 A During the Pow Wow?

8 Q Yes.

9 A Previously we did receive a request from the City
10 of Flagstaff requesting for manpower from the Navajo
11 Police Department to assist in the patrol of the Pow Wows.
12 But as time progressed, and the cost of maintaining some
13 outside force, it creates, and I think that's one of the
14 reasons why they did not request for our assistance, it
15 was costing a lot of money.

16 Q What is that time frame?

17 A It stopped about three years ago.

18 Q About three years ago. Has there been a -- an
19 increase in the number of Navajos who were arrested during
20 Pow Wow time since then?

21 A I have no idea if it's increased or decreased or --

22 Q So, therefore you couldn't answer my next question
23 regarding the relationship between possible increase and
24 the involvement of persons from the Navajo Police Department?

25 A Well, I really don't know how many people get arrested

1 during the week. On a year to year basis --

2 Q. Is that kind of information informally exchanged
3 through any kind of organization?

4 A. No.

5 Q. We note that you have some responsibilities to the
6 Northern Arizona Peace Officers Association. Could you
7 describe those and how they affect your duties as a
8 Navajo Police Officer?

9 A. Okay. Every month, the members of the Northern
10 Arizona Peace Officers Association gets together. This
11 includes the county attorney, the judge, the highway
12 patrol, the FBI, city police, game wardens, national park
13 service, Hopi Police and members of Navajo Police Depart-
14 ment. We get together, usually there is one department
15 that hosts the whole thing. And there are questions that
16 are brought up pertaining to problems that are in existence
17 with one department and how it relates to other depart-
18 ments. Even on joint use, we have talk about, I think
19 we talked about the extradition, we had meetings here at
20 Flagstaff, we had it in Williams, we had it in Grand Canyon,
21 we had it in Kayenta, we almost had it all over the
22 northern area.

23 But we didn't have it in Window Rock.

24 Q. We've heard charges that the Navajo Police will not
25 serve warrants on the reservation. Have you heard that

1 same charge?

2 A Well, in the newspaper I read that allegation made,
3 I read it in the newspaper that the Navajo Police Depart-
4 ment refused to serve warrants. And this is not the case.

5 Q What could be done to put that charge to rest,
6 do you have any recommendations, Capt. Nez?

7 A Well, whoever wants a warrant to be served from
8 outside area, they have to send us a copy of the warrant,
9 to -- either to Tuba City or to Window Rock, it can go
10 through the procedure of extradition. And there is no
11 problem in us in executing the warrant.

12 Q Some of the questions that, specific questions
13 that we have been asking, somewhat add up into a conclusion
14 that we get some feelings about, and we're trying to
15 probably tease out of the information afforded, you know,
16 what happens or what are practices on the reservation in
17 the courts compared to practices within the urban areas,
18 along specific guidelines, so I'd like to ask you a series
19 of specific questions to help those.

20 Are Indian prisoners accorded the right to make
21 a telephone call after their arrest on the reservation?

22 A Right.

23 Q Always?

24 A Well, if they ask for it.

25 Q If they ask for it?

1 A Right.

2 Q Do they generally ask for it?

3 A Not usually.

4 Q How long after their arrest are they accorded this
5 right, if one asks if immediately or -- is there some
6 standard policy about the time that --

7 A There is no set standard. The request for a tele-
8 phone call is normally, if it's a local call we just dial
9 the number for them, but if it's a long distance call,
10 we let them have it as long as the other party can accept
11 the collect call.

12 Q Let me ask the related question, roughly what
13 percentage of the arrests made by your department are
14 of Indian people?

15 A About 95%.

16 Q Pardon?

17 A About 95%.

18 Q And what are the most frequent charges? Or maybe
19 you can just give me an array of the charges and the per-
20 centages of them?

21 A Okay. For drinking, say about 60%, 70%, there.

22 Q Now, this behavior after drinking or just drinking,
23 period?

24 A Well, I noticed that off the reservation drunkenness
25 is not a violation, but on the reservation it is still a

1 violation. So most of those drunkenness which is not a
2 violation outside the reservation is a violation inside
3 the reservation.

4 Q Roughly 60%?

5 A About 70, 60, 70.

6 Q And others? Other percentages of --

7 A About 15% are DWI's, liquor-related, so most of the
8 arrests pertaining to liquor should hit about 75 to 80%.

9 Q What is your practice of -- how do you go about
10 communicating with an Indian person who does not speak
11 English? In the courts? On the reservation, tribal courts?

12 A Well, the courts have their own personnel that speak
13 fluently in Navajo and English.

14 Q Okay. So the problem of interpretation really is
15 not a serious one?

16 A No, it's not a problem because the judge himself
17 knows the languages too.

18 Q And so the problem of interpreters, then, is unique
19 to off-reservation --

20 A Right.

21 Q -- rather than on the reservation.

22 Could you describe for us, Capt. Nez, the paralegal
23 program that you are aware of or programs for the training
24 of interpreters? And give us some idea of the period of
25 time that these programs have been operative?

1 A I -- well, I wasn't aware of the one that they have
2 here. I know there are some training in Navajo language
3 in, I think they have one in the Navajo Community College.
4 But there is a little bit of difficulty, you know, to
5 translate information from English to Navajo and from Navajo
6 into English. So when we're talking about an interpreter,
7 I think they'd have to be trained, really be trained.

8 Q Do you feel a city or county court would be less
9 hostile to a Navajo person who's been charged with a crime
10 if there was someone there who was accountable to the
11 judge who could interpret and -- bilingually?

12 A I really don't know.

13 Q Let me ask it another way, could an interpreter,
14 bilingual interpreter in the city and county courts,
15 help Navajo prisoners understand their rights?

16 A I think so, but then again you have to get into
17 the consideration, how many percentage of the arrests are
18 Indians. Hopis or Navajos. If there is a bigger per-
19 centage of -- that is being arrested, then I'd suggest
20 that an interpreter be selected.

21 Q And you know people who could serve in both positions
22 and have those skills?

23 A Yes, on the reservation.

24 Q In the Navajo Nation?

25 A Yes.

1 THE CHAIR: Fine.

2 Are there any questions by any other member of the
3 panel for Capt. Nez?

4 Q (By the Chair) One other question, Capt. Nez.
5 What effect would legalizing liquor on the reservation have
6 on border town arrests and your responsibilities?

7 A Well, as the case is now, we have too many bootleggers
8 on the reservation. As you know it is illegal to have
9 liquor on the reservation. Or to be in possession, whether
10 it be in the possession of Indians or non-Indians. And
11 the case is that lot of people go off the reservation to
12 Winslow, Flagstaff, Page, Mexican Hat, Gallup, you name it,
13 they'll buy liquors and as previously stated, some of
14 them get loaded while they're still out of town.

15 And then the problem is driving back. We have too
16 many DWI's and our fatality rate has been high on the
17 reservation but it's -- it's slowly declining. Even though
18 we have been working on these bootleggers on the reser-
19 vation, people are still bringing in liquors.

20 Q Would you recommend the legalizing of liquor on the
21 reservation?

22 A Well, even if it's illegal, it's still there, but as
23 previously pointed out, financial, maybe financial support
24 for some other departments or organizations or facilities
25 could be operated, fine. But I'm sure that within the certain

1 numbers of years, this will decline, the inclusion of
2 alcohol, if it's on the reservation, and a lot of people
3 just go in there, buy what they need to buy, go home and
4 drink it, but I'm sure if there's three, maybe three to
5 five years we won't have a problem.

6 Q So you would recommend the --

7 A Right.

8 Q -- or what would be your recommendation?

9 A Right. Well, I'd recommend that they have on the
10 reservation.

11 Do you have any suggestions, Capt. Nez, for methods of
12 improving relationships between your office and the city,
13 county and state officials?

14 A Well --

15 Q Within the administration of justice?

16 A Well, probably get together more, you know, meetings
17 every month or every two weeks. To explain or bring
18 across to each other the problems that we are confronted
19 with, either off-reservation or on the reservation.

20 Q Are steps being made to initiate those kinds of
21 meetings?

22 A I -- not at this time. The only one we have is that
23 peace officers association.

24 Q And that is not an agenda item at this stage?

25 A Well, it's not. It's generally the -- for the whole

1 departments to bring out the problems that they have that
2 might be related to the DPS or Navajo Reservation or
3 relating to jurisdiction and so on.

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

6 If not, Capt. Nez, we would welcome your remaining,
7 we certainly want to thank you for your testimony, but
8 we do understand how busy you are, particularly now, and
9 you're free to go if you wish.

10 And thank you very much.

11 Q. (By Mr. Williams) Lt. Jenkins, would you, for the
12 record, give us your name, address and occupation?

13
14
15 LT. W.R. JENKINS

16
17 A. (By Lt. Jenkins) I'm Lt. W.R. Jenkins, I'm lieu-
18 tenant in the department of public safety. I'm district
19 commander for the highway patrol division, district two.

20 And my district comprises approximately Coconino
21 County.

22 I live in Flagstaff at 385 Burger.

23 Q Could you give us a description of how your duties
24 with DPS are relevant to the issues under question today?

25 A As I stated, my district comprises approximately

1 Coconino County and part of this includes the Navajo
2 Reservation. A portion of it. I have officers stationed
3 on the reservation, we do enforce both tribal and state
4 laws on and off the reservation.

5 We do make arrests of Indian subjects off the reser-
6 vation that would probably relate to your discussion.

7 Q Are you in favor of cross deputization?

8 A Yes. I think it's necessary under our present
9 system of criminal justice as the dual systems that we
10 have, the tribal and state.

11 Q How does the working relationship of your officers
12 on the reservation, how does it work with the Navajo
13 officers? I mean the formal relationship and the working
14 relationship?

15 A Well, I think the day to day operation of that, that
16 relationship is very good. Officers in law enforcement
17 works have a tendency to work closely together, no matter
18 what department or jurisdiction they work for. And I
19 would describe our relationship as good with the Navajo
20 Police Department.

21 Q When was the Northern Arizona Peace Officers
22 Association started, and who, how many members do you have
23 and who is comprised with the membership?

24 A I'm not sure exactly when it started, I wasn't in
25 Flagstaff at that time. The county attorney started the

1 organization, the purpose being to have a meeting of the
2 administrators and supervisors of various departments
3 to discuss mutual problems and mutual projects that we
4 were involved in.

5 Q Lieutenant, could you speak up a little? Act like
6 you're arresting somebody.

7 A The membership is, it's an informal organization,
8 as I stated, and the membership is probably 12 to 20 people
9 at this time. I'm not real sure.

10 Q How often do you have meetings?

11 A Average, monthly.

12 Q Can you give us an idea of what issues are dis-
13 cussed and what kind of results or tangible results are
14 gotten from the meetings? What do you accomplish with the
15 organization?

16 A Probably the biggest accomplishment is an informal
17 socialization of the department administrators. If a
18 department is experiencing a particular problem or if
19 we're experiencing a mutual problem, it is discussed at
20 the meeting and some results formulated, some solutions.

21 Q What kind of -- I mean just the working relationship
22 of the administrators is a positive result of this organi-
23 zation?

24 A Yes, and the operational problems of the departments.

25 Q What changes in the organization would you like to

1 see, if any?

2 A Personally, we could probably accomplish more if we
3 were a little more formal with -- in structure, as far
4 as organization, officers, have agenda items, we also try
5 to include a guest speaker at these meetings to -- with
6 a topic of interest to law enforcement.

7 Q Can you give us an idea of your opinion as far as
8 the effect in the border towns and on the reservation in
9 the legalizing of liquor on the reservation?

10 A I think from my standpoint primarily of traffic
11 safety, it would be a positive effect. A large percentage
12 of our accidents, our fatal accidents are caused by DWI
13 drivers. And the large percentage of these are in transit
14 from the reservation to the border towns, and hopefully this
15 would reduce the -- I think that the Indian reservation
16 residents should not be treated as immature wards of a
17 government and unable to govern themselves in these areas.
18 I think that they can handle the liquor problem adequately.
19 It would make a lot of bootleggers mad, and probably a
20 lot of the border taverns that derive their livelihood
21 from the reservation residents.

22 The effect, overall, I feel would be positive.

23 Q Does the organization that the Northern Arizona
24 Peace Officers Association or DPS and your office get
25 complaints from people as far as the mistreatment of these

1 individuals when they're arrested either by the Navajo
2 officials or by the county or city or state officials? Do
3 you get those kind of complaints? Of harassment or --

4 A. I can't recall any specific complaints that we've
5 had from any of these people.

6 Q. So you don't get non-Indians who are complaining
7 about being arrested on the reservation, for instance?

8 A. By the Navajo Police Department?

9 Q. Yes.

10 A. Or by our office?

11 Q. By the Navajo Police officers?

12 A. No, I can't recall any specific complaints.

13 Q. Would complaints of that nature be handled in a
14 forum such as the organization that you belong to?

15 A. No, I think they would probably be handled in-
16 ternally by the department involved. If it was a complaint
17 on one of our officers we would handle it through our in-
18 ternal system.

19 Q. How does DPS handle the DWI Indian, reservation
20 Indian? Do you handle him any different than any other
21 citizen of Arizona?

22 A. An Indian arrested on the reservation for DWI?

23 Q. Well, both on and off the reservation?

24 A. Okay, our officers are commissioned as Navajo Police-
25 men. If we arrest an Indian on the reservation for DWI, he

1 is cited into the tribal court system and he appears in
2 the tribal courts and it's handled through that system.

3 If he's off the reservation he is cited into the
4 state courts and it's handled through that system. We
5 perform a dual function, we function both as tribal police-
6 men while we're on the reservation and off the reservation
7 as state officers.

8 Q (By the Chair) May I ask a related question there?
9 And you may not be able to answer this. How long have
10 you been a police officer, Lt. Jenkins?

11 A Fourteen and a half years.

12 Q Could you give me an estimate, and you may not, of
13 what percentage of the action of a police officer is
14 discretionary where he has some discretion to warn or to
15 act or what? Are there discretionary areas that a police
16 officer has and is it a large percentage of his time or
17 a small percentage or --

18 A A number would be difficult, yes. I would say it
19 would be a large percentage of his time.

20 Q A large percentage?

21 A A large percentage.

22 Q The reason I ask that, because it seems to me that
23 the administration of the criminal justice system begins
24 one to one, the police officer and a person, and when we
25 think in terms of cross deputization, between departments

1 and administrations it seems to me that the views of the
2 persons towards this other group is very important, is just
3 absolutely critical. I know in my own life experience,
4 I've been arrested a number of times, in fact not too long
5 ago, and I told the police officer my name was Dr. Warren,
6 and he told me yes, and his was Dr. Livingston. He told
7 me to get my fanny in the car. And I -- and what we later
8 found out, that he did not like Black folk, he just
9 didn't, and he had discretion because it was a very minor
10 offense, presumably I had struck some other Black person
11 in the community and we'd had a fight and so forth, so the
12 nature of the crime, the offense did not justify that kind
13 of behavior.

14 I was wondering if the cross cultural kinds of
15 interactions that would be demanded, particularly if those
16 discretionary times are very, very broad. Do you under-
17 stand what I'm --

18 A. Yes.

19 Q. -- what I'm getting at? And the county attorney
20 yesterday alluded to cross cultural interaction, it would
21 be very important where there's kind of mutual respect,
22 mutual interaction, mutual support across culture, which
23 seems, that we're teasing out of these hearings these
24 couple of days as being just very, very critical --

25 A. The discretionary powers of a police officer is

1 limited sometimes when he's acting on a direct complaint
2 or administering warrants. Sometimes he's acting more
3 directly from another authority. But a huge percentage of
4 his time he is acting on his own authority. His own
5 discretionary powers.

6 THE CHAIR: Thank you. I'm sorry --

7 Q (By Mr. Williams) Lieutenant, along those lines,
8 you mentioned that if a person's arrested on the reser-
9 vation he goes to the tribal court, off he goes to the
10 other criminal justice system.

11 A Yes.

12 Q A couple questions in that regard.

13 In your experience do you find any disparity at all
14 in the sentencing or the results of the people going
15 through the two different justice systems for the same
16 charge?

17 A In the past couple of years, I think the disparity
18 has lessened. Years ago, the tribal courts had a tendency
19 to leniency and lax in their administering of fines and
20 levying imprisonment. I don't know if there's been any
21 comparison made about the two systems, about the equality
22 of it, but there is a tendency, I think, for the tribal
23 courts to be more or less in line with the state courts or
24 vice-versa on the equality of fine for a specific charge, for
25 a specific crime.

1 Q Do you find the borders are specifically laid out
2 in a manner that your officers know exactly whether or
3 not that person who is arrested was at that point in time
4 on the reservation or off-reservation?

5 A They're very distinct.

6 Q So you don't really have a problem with the boundaries?

7 A No.

8 Q In your experience, can you give us an idea of what
9 you feel is the most significant problem facing the Native
10 American in the border towns today, in the criminal justice
11 system?

12 A Probably one of being able to communicate with the
13 system and one of being able to understand the system.

14 Q What do you do when you have, if one of your
15 officers stops a person who doesn't speak English and he
16 doesn't speak Navajo, how do you go about communicating
17 with that particular person, or how does DPS, what pro-
18 cedure do they follow to insure communication is possible?

19 A It's pretty well up to the individual officer to
20 resolve this problem when he confronts it. An officer,
21 a highway patrolman, is usually acting on a direct violation,
22 something that he observes to occur and he's reacting to
23 that. If he has trouble communicating and if it's im-
24 possible, I'm sure that a lot of times the infraction is
25 overlooked or probably gives up in total exasperation in

1 trying to communicate. If it is an arrest situation, and
2 it's imperative that he have communication to insure under-
3 standing, then we try to either make contact with the
4 Navajo Police Department to come to the scene and to help
5 us to interpret, or generally the officers that work on
6 the reservation are knowledgeable of some person that is
7 bilingual and can help them to interpret.

8 Q Would you feel from your experience that interpreters
9 in the court system would be imperative to insure the
10 rights of the person, the defendant, the Native American
11 defendant?

12 A I think in both instances, both off and on the
13 reservation, for non-Indians on the reservation and for
14 Indians off the reservation.

15 MR. WILLIAMS: Any other questions?

16 Q (By Ms. Lyon) I have one question. I have one
17 question, Lt. Jenkins. You mentioned that your officers
18 are commissioned as tribal police officers. Does this
19 fact completely eliminate any potential jurisdictional
20 problems? In terms of apprehending a suspect?

21 In other words, could you, your officers and the
22 tribal police, if necessary, arrest both an Indian and a
23 non-Indian in any part of the reservation?

24 A Yes. A state officer with the tribal commission
25 can function anywhere on the reservation. Generally we

1 limit our activity to the state highways, and traffic
2 violations. If we are called to assist the Navajo Police
3 Department we may function in an off-highway capacity.

4 But generally, we limit ourselves to traffic
5 enforcement.

6 Q I see. Now, supposing that you were pursuing someone
7 on a state highway that left the state highway and went
8 off the main road into the reservation area, would you
9 follow that person?

10 A It would depend entirely on the circumstances
11 and the seriousness of the violation.

12 Q I see.

13 A A minor infraction I would say no.

14 Q In other words, let's say that you were following
15 an Indian suspect who left the state highway, you would
16 then not follow him any further?

17 A If it was just to issue a speeding citation, I
18 doubt it. For one thing, we've got to protect the patrol
19 cars and some of those reservation roads are pretty rough.

20 Q Would you say that there are any jurisdictional
21 problems at all?

22 A The problems of serving warrants on the reservation
23 has been discussed this morning. And in the past, there
24 has been a reputation and a feeling among all of the
25 off-reservation officers that it was a futile effort to try

1 to get a warrant served on the reservation.

2 In the past year or year and a half, I think this
3 situation has changed somewhat and there is getting to
4 be more of a feeling among -- of confidence among officers
5 off the reservation that you can serve a warrant and
6 extradite a subject from the reservation. And I think that
7 this problem is probably being solved. It's going to take
8 some instilling of confidence in the off-reservation
9 officers, though, before it's totally accomplished and I
10 think that it still probably exists.

11 Most of the law enforcement officers off the reser-
12 vation feel that once the suspect or the arrestee has gone
13 back to the reservation it is -- you can't retrieve him.
14 And that, I would still identify, as a problem.

15 We have, as I can recall, only had one instance
16 where we've had a warrant served on the reservation. That
17 was for a manslaughter suspect.

18 Q Well, in this case, would this not be a federal case?

19 A It was a state, the violation was committed off the
20 reservation.

21 MS. LYON: I see. Thank you.

22 Q (By Ms. McCullah) Lt. Jenkins, I'm kind of inter-
23 ested in the association of Northern Arizona Peace Officers
24 Association. Primarily I'd like to know how many Native
25 American -- American Indian police officers are members of

1 the association?

2 A We send out invitations to Chief Dart and we ask him
3 to advise all of his command officers and supervisors that
4 they're welcome to attend the association, and again,
5 when we're talking about membership there is no membership
6 list in the association, the way the procedure works, and
7 I more or less take this responsibility myself of sending
8 out notices once a month to the various chiefs of police
9 or administrators and ask them to advise their command
10 officers and supervisors of the meeting.

11 And the turnout varies. Ten to 12 members of the
12 reservation, various reservation law enforcement agencies
13 have shown up at these meetings, Hopi, Navajo and --

14 Q Could you give me a --

15 A Hualpai Tribe.

16 Q How many Navajo officers during the past year, you
17 meet once amonth I understand?

18 A I could give you a guesstimate.

19 Q Did you say about ten to 12 or --

20 A I'd say it would average six to ten total membership.

21 Q I also understand that this is an informal associa-
22 tion and that the primary function is to encourage in-
23 formation exchange, discuss mutual problems and projects
24 in -- all in an effort to create socialization and friendli-
25 ness, whatever that is. Do you feel that since it's in-

1 formal and formalization of the association would in fact
2 initiate an interest in the Native American peace officers
3 to become members of the -- of the association, therefore
4 bringing some kind of influence to bear on, you know, the
5 problems that we're talking about, such as a lack of under-
6 standing, cultural problems, language problems, just, you
7 know, administrative problems?

8 A It's possible.

9 Q Do you think it would be helpful to you, the non-
10 Indian police officer, as well as to the American Indian
11 police officers, a varied amount of exchange?

12 A I think any time that peace officers on this level
13 can get together and discuss problems, and solicit solutions
14 from their fellow officers that it's beneficial. Creating
15 an awareness of problems is the first step in solving them
16 and unless your fellow officers are aware of your par-
17 ticular problem, you can't get much help from them.

18 MS. McCULLAH: Thank you.

19 Q (By Mr. Levis) Lt. Jenkins, who hosts these meetings,
20 are they hosted only by your department or are they rotated
21 among the members?

22 A It's rotated on a voluntary basis, usually the one
23 that don't attend gets the meeting the next time.

24 Q So that would include the Navajo Tribe, possibly the
25 Hopi Tribe too?

1 A Yes.

2 Q Has this been done in the past?

3 A Yes. I think our last meeting hosted by the Navajo
4 Tribe was at Tuba City, Capt. Nez hosted it.

5 Q Is your organization a member of the state county
6 attorney's and sheriff's association?

7 A No, it isn't.

8 Q Are the police officers in this part of the state
9 affiliated with that organization? The state organization?

10 A The sheriff's department would be the only one, sir.

11 Q How many Indian officers does DPS have in this
12 district? Out of how many officers total?

13 A I have 30 commissioned officers at this time, and
14 two of those are Navajo officers. One is a Hopi, one's a
15 Navajo.

16 Q We heard testimony yesterday about the fact that in
17 the City of Flagstaff, that when a reservation Indian is
18 arrested for a minor traffic offense, at least in the past,
19 he or she had to post bond at that time. Is that also
20 true for minor traffic offenses outside Flagstaff that
21 the DPS is involved in or do you just issue citations to the
22 person who's arrested?

23 A Our department policy is to issue citations for
24 traffic infractions, minor traffic infractions.

25 Q For reservation and non-reservation residents?

1 A. Yes.

2 Q. (By Ms. Lyon) Lt. Jenkins, we heard testimony yes-
3 terday that it apparently is difficult to recruit Indian
4 staff for positions related to law enforcement, and you
5 mentioned you had two Indian patrol officers. Have you
6 encountered any difficulty in recruiting Indian staff?

7 A. Yes, we have encountered difficulty. We've taken
8 positive action to try to recruit members of the -- both
9 the Hopi and Navajo Tribe as law enforcement officers.
10 Some of the positive steps we've taken, we've gone onto
11 the reservation and administered our entrance examinations.
12 But I would say generally we have had difficulty recruiting.

13 Q. Could you identify some of the specific problems?

14 A. It's a little out of my area. All of our recruit-
15 ment is handled by our personnel department, but my per-
16 sonal knowledge of it is, it would be difficult to identify
17 any particular problem. I really couldn't pinpoint what the
18 problem is.

19 I think one of the problems is a reluctance to leave
20 the reservation and since we are a state-wide organization
21 our officers are stationed all over. I've heard some
22 of the applicants state this. The -- other than that I
23 couldn't really identify the problems.

24 MS. LYON: Thank you.

25 Q. (By Mr. Williams) Lieutenant, I believe I asked you

1 about legalization of liquor, just for the record, do you
2 want to restate your position on that particular issue?

3 A I would be in favor of it, I think it would have a
4 positive effect in reducing the fatality rate on the
5 highways.

6 MR. WILLIAMS: Any other questions?

7 THE CHAIR: Any other questions?

8 Thank you, sir.

9 Is Mr. Fritz Aspey in the audience?

10 Will you come forward, please, sir?

11 Q (By Mr. Levis) Would you please state your name,
12 address and occupation?

13
14
15 MR. FRITZ ASPEY

16
17 A (By Mr. Aspey), Fritz Aspey, 2659 North Fremont,
18 Flagstaff, Arizona. I'm an attorney.

19 Q Could you describe your duties as public defender
20 for Coconino County?

21 A First of all, Coconino County is such a small county,
22 population-wise, that we don't have a full time public
23 defender or county attorney. As such, the presiding
24 judge of the superior court this year has entered into an
25 agreement with our law firm to provide services for the

1 indigent who can't afford to hire an attorney when they're
2 charged with a crime, and so in a sense we're a de facto
3 public defender.

4 Q How many members are there in your law firm and how
5 much is this contract for with the Coconino County for
6 public defender work?

7 A There's three members in our firm, Harold Watkins,
8 myself and Louis Diesel. We represent all indigents in
9 superior court who are charged with felonies, we represent
10 all indigents in justice courts in Coconino County who are
11 charged with misdemeanors, we do civil commitments, we also
12 handle department of economic security matters, such as
13 when a mother's rights are about to be severed and things
14 of this nature.

15 Our agreement is that the county pays us \$47,000.00
16 per year to provide these services.

17 Q How long is this contract for?

18 A It's for one year, July 1st of '75 to July 1, '76.

19 Q Now, this does not include city court work, magistrate
20 court work?

21 A No, it's my understanding that in city court Judge
22 Brady appoints lawyers from the local bar at large to rep-
23 resent the people charged with crimes.

24 Q Are you on that list, is your firm on that list?

25 A Yes.

1 Q Have you ever been called to act as public defender
2 in city court?

3 A I believe I have on two occasions, I'm sure my
4 partners have on more occasions.

5 Q Was this before or after you entered into the
6 contract with the county, county work?

7 A After.

8 Q Who supervises your work on the county level?

9 A Overall, I would say the presiding judge, Judge
10 Brooks. We are paid out of the superior court budget, and
11 as presiding judge he has the -- he's charged with the
12 duty of providing indigent defense, so I would say that
13 we're subject to his approval.

14 Q Do you feel that this contractual relationship
15 you've had to enter into with the county is sufficient to
16 insure defendants a fair trial?

17 A Well, I think the ideal situation would be to have
18 both a full time county attorney and a full time public
19 defender.

20 Q Would this have to be done by state statute or how
21 would it happen?

22 A Yes, as I understand it at this point in time, our
23 county population is such that by state law we can't have
24 a full time public defender. Perhaps the state law should
25 be amended to provide that the county, at their option, could

1 provide a full time public defender.

2 Q How do you react to criticism that since you are
3 paid a dollar amount for public defender work, that you
4 may not have the motivation that a full time public
5 defender would have and I've heard the argument the other
6 way, too. What is your feeling concerning that?

7 A Well, it's difficult to respond. We just try and
8 do the best job we can, I'm sure there's going to be
9 criticism from people who are unhappy. My feelings, a
10 full time public defender would be the best alternative,
11 because we would be staffed more; for example we can't
12 hire an investigator to go out and investigate things for
13 us, we're not entitled to hire, say a lot of expensive
14 psychiatrists to examine someone, say that's raising an
15 insanity defense, there are just a lot of areas wherein
16 we don't have the money to go out and do perhaps as good
17 a job as a full time public defender might.

18 Q Since you've been public defender, have you run into
19 any special areas of concern that affect Native Americans?
20 I'm talking, I think particularly about jury selection?

21 A Right. I think I spoke with you earlier this year
22 about that. At one time I thought there was a real problem
23 with the bonds, if I could speak about that first?

24 Q Sure.

25 A I felt that perhaps many of the Native Americans were

1 having to post bond merely because they were living on the
2 reservation and there was a problem extraditing them back
3 to their hearings and that was a very real problem.

4 Since that time I think Judge Garcia and Judge
5 Brady have negotiated an agreement with the Navajo Tribe,
6 which has, in my mind, solved that problem. They have more
7 communication now and they're able to get the people back
8 to appear for their appearances, and so I don't think that
9 the bond is as big a problem as it was in the past.

10 Q Excuse me, why has the situation changed?

11 A Well, like I say, Judge Garcia, Flagstaff Justice
12 here and Judge Brady, as I understand it, went to the
13 tribal court in the Navajo Nation and entered into an
14 agreement whereby they would extradite people back from the
15 reservation to appear at their hearings, and I think this
16 is -- this has really helped because now the judges are
17 more inclined to release someone on their own recognizance
18 whereas in the past they knew that if they released them,
19 there was a real possibility they wouldn't show up for
20 the hearings.

21 Q The one question I still have in that area is when
22 we talked to Judge Brady yesterday, said that still in minor
23 cases, he will not go through the extradition process be-
24 cause he doesn't feel it's worth it, even after going up to
25 the Navajo Nation two months ago.

1 A That may be, I'm just --

2 Q You're not aware of it?

3 A I can't react to it.

4 Q The other issue, then, we talked about, is jury selec-
5 tion in the Delvecchio case and --

6 A That's right, I was appointed to represent Fred
7 Delvecchio who's now known as Fred Walking Badger, and he
8 elected to proceed in pro se, propria persona, and I was
9 appointed to serve as his adviser.

10 He raised a challenge to the jury selection process
11 here or system here in Coconino County. And I think the
12 results were quite surprising. At first we thought that
13 perhaps-- well, Arizona follows the system whereby jurors
14 are selected from the voter registration list. You may
15 have had testimony on this earlier, but we thought at
16 first that perhaps the voter registration was discriminating
17 against Native Americans because perhaps the fact that
18 they didn't register in the same numbers that the Anglos
19 did off the reservation.

20 We had quite an extensive hearing and I was surprised
21 to find that this was not so. That the percentage of
22 Native Americans registered to vote was comparable to the
23 percentage of Anglos living off the reservation which I
24 think was a -- largely due to efforts of Pat Favor (Phonetic)
25 our former county recorder. The -- we did find an area,

1 though, that I think is a problem and that is at the clerk's
2 level, the clerk is obligated to send out juror questionnaire
3 sheets to the potential jurors to be filled in and returned.
4 And what would happen is that they would send out these
5 information sheets and they would either not be returned
6 or returned saying, don't speak English. Or they would
7 be returned with an address from a very remote part of
8 the reservation.

9 And this posed problems for the clerk because the
10 clerk is frequently required on short notice, say 24 hours,
11 to summon and empanel a jury. And so the clerk, I think,
12 would have a tendency to perhaps not call these people
13 that were out on the reservation.

14 It wasn't, in my mind, an intentional exclusion of
15 Native Americans from the jury system, but because of the
16 fact that the Navajo people didn't have phones because
17 of the fact they lived in a remote area, because of the
18 fact that a lot of times they didn't send in their ques-
19 tionnaires, they were, in effect, excluded from the panel.

20 We raised this and Judge Mangum denied our motion
21 to quash, finding that there were justifiable reasons why
22 Native Americans were not serving on the panel in the
23 numbers that perhaps Anglos were. Fred went on to trial
24 and was found not guilty and so we weren't able to raise
25 it any further than the court system. I understand now that

1 in a case that's pending, state versus Lucero, my partner
2 and another attorney, Steve Erkamp (Phonetic), are raising
3 the same issue and that may go up in the appellate courts.

4 Q Have jury procedures changed since the Delvecchio
5 case, to the best of your knowledge?

6 A Right, there's been a change in clerks, Bill Yost
7 was the former clerk and now Jo Wycoff's the current clerk.
8 I understand from talking to Jo, that she's tried to --
9 tried to get the Navajo Police to attempt to locate these
10 people, to try and get their juror questionnaires in to
11 her office so they can be processed.

12 It's a real problem because there's an attorney
13 general's opinion which says that our courts do not have
14 the right to -- with power of contempt, subpoena people from
15 the reservation in to make sure they fill out these sheets.
16 And yet, at the same time, the Native Americans are citizens
17 and they have a right to serve on a jury. So the court is
18 in the unique position of trying to get the Native Americans
19 on the jury but not having any way to require them to,
20 and it's a problem and I really don't know how to -- how
21 to solve it.

22 Q Two suggestions that have come to the committee's
23 attention, include one that was brought by Chief Dart of
24 the Navajo Nation, that is using the Navajo Police as
25 substations, to deliver the warrants and the requests, I'm

1 just wondering what you thought about that, plus I think
2 you mentioned to me a couple of months ago using the rolls
3 from the department of motor vehicles, I wondered if that
4 would be helpful?

5 A Right. I've always thought that perhaps the
6 voter registration list in Coconino County could be
7 supplemented by maybe the motor vehicle registration list
8 or perhaps the census list that's kept in the Navajo Nation.
9 In order to get more Native Americans on the juries.

10 In addition, if there could be an agreement worked
11 out with the Navajo Police Chief, whereby they would go
12 out onto the reservation and try to deliver these
13 questionnaires, maybe make an attempt to get the people
14 in to Flagstaff to serve on the juries, you have to
15 realize there's a real problem, many of the people live
16 maybe 300, 400 miles from here, and the roads are very
17 bad and the only way you can even get hold of them is by
18 letter and that's usually delivered to a trading post and
19 they don't live near the trading post, it's just a real
20 communication problem. I'm sure that would help.

21 Q So, what you're advocating, I assume, is more co-
22 operation between the Navajo Tribe and the Coconino County
23 Clerk's Department?

24 A That's right, and I might add I think Jo's doing a
25 real good job, she's trying to do this, I'm sure she'll

1 continue.

2 Q Getting back to the ruling of the superior court
3 judge, Judge Mangum, on what basis did she hold that the
4 selection process was legal at the time of the Delvecchio
5 case or was it White Walker?

6 A Walking Badger.

7 Q Walking Badger, when the statistics show, I think,
8 that well, the percentage of Native Americans who were on
9 the voter registration list was about 16%, those on the
10 final jury list was under 3%.

11 A Well, she went through the -- or I should say we
12 went through the jury questionnaires, individually, and
13 she felt that there were justifiable reasons, such as the
14 fact that they couldn't understand English, they were in
15 a remote part of the reservation, didn't have a telephone,
16 they were elderly, had a hard time coming in, from the
17 outlying parts of the reservation.

18 There were just a lot of reasons which she felt
19 justified the fact that there was a disparity. And like
20 I say, we weren't able to take it up on appeal, so it's
21 not been finally resolved.

22 Q I take it you would argue the state would have to
23 show a compelling reason under the 14th Amendment for such
24 a selection concept?

25 A Right, it's my feeling that even though everyone was

1 acting in good faith and there wasn't an intentional dis-
2 crimination against the Native Americans, that the cultural
3 differences between our culture and the Native American
4 culture were such that the current procedures resulted in
5 them being discriminated against. Not because people were
6 trying to do it but because of the fact they didn't have
7 telephones, because they live so far out there, they
8 don't speak English as well as the jurors here in Flagstaff,
9 that was the problem, and --

10 Q We're talking about effect, then, and not really
11 intentionalness?

12 A Sure.

13 Q How would a public service or public relation group
14 in Coconino County, either attorneys or just paralegals or
15 an agency that people can go to, assist people in knowing
16 their rights?

17 I'm just wondering if this should be set up, let's
18 say about jury selection, about other issues such as, you
19 know, do we have the right to a public defender, would that
20 assist the county? Could that be set up?

21 A Well, I'm sure it would help the Native Americans
22 that run into problems here in Coconino County. For
23 example, we work with NACA a lot, and a lot of times I'll
24 receive phone calls from DNA up on the reservation and there
25 seems to be a big communications problem, I think.

1 Q So there's really, you need an agency to coordinate
2 all these other agencies or have an umbrella agency?

3 A I hate to see the bureaucracy expand like that,
4 but perhaps that would be helpful.

5 Q Testimony the last two days gets to communication
6 more than anything else and the need for interpreters,
7 the need for funds, and I -- to the best of your knowledge,
8 has anyone approached state planning commission or LEAA
9 concerning some of these problems?

10 A I really don't know. Mike Flournoy, I know, is
11 on the board.

12 Q State board or the LEAA board?

13 A The LEAA board.

14 Q Yesterday afternoon, Judge Brady discussed the ACLU
15 report at great length, great detail, and he talked about
16 a letter that your office sent in support of his procedures,
17 and I just wondered if you wanted to say anything at this
18 time concerning that?

19 A I think on occasion there have been problems in
20 the court, but by and large I think Judge Brady is a fair
21 man, an honest man and he's sincere in his work. And I
22 think he was offended by the report. And because I know he's
23 conscientious and we -- we have felt that he's doing as
24 good a job as he can.

25 Q Do you think there should be attorneys appointed as

1 city magistrates or justices of the peace?

2 A Well, that's a possibility. The rules of criminal
3 procedure are changing constantly, in fact, the state bar
4 this year is considering allowing lawyers to specialize
5 and hold them out as specialists in the field of criminal
6 law. And it's -- it wouldn't hurt to have an attorney be
7 a justice -- justice of the peace or presiding judge in
8 the city court.

9 I know that there's a legislative committee that's
10 considering this right now.

11 Q Have you practiced before the assistant magistrate
12 also?

13 A Judge Brown? Yes.

14 Q What are your feelings concerning the ACLU report
15 and the information contained in there concerning him?

16 A I -- my own reaction to the report, I did read it,
17 was that parts of the report were true and a large part
18 of the report were not. I think that Judge Brady has done
19 as good a job as he can, he is sincere, I'm convinced of
20 that. He has a genuine regard for people and a lot of
21 common sense, and I think that that's the prerequisite for
22 a lower court magistrate.

23 However, on occasion, I know that there have been
24 problems down there. I don't know how I can explain it
25 any more.

1 Q When you talk about problems, what do you mean,
2 specific problems, general problems, or --

3 A Well, perhaps an individual might not know that he
4 has a right to pay a fine in installments rather than all
5 at once, or you know, if there were an interpreter present
6 maybe that would help him understand that. See, you have
7 to realize that there are only two judges down there, and
8 they process an incredible amount of complaints, and I
9 think perhaps with more staff, more money, they might be
10 able to improve the communications.

11 Q What percentage of the defendants in superior court,
12 to the best of your knowledge, are Native Americans?

13 A It's hard to say. I would estimate maybe ten, 15%
14 of our caseload. Ten to 20%, something like that.

15 Q And do you know the percentage of the county that's
16 American Indian?

17 A As I recall from Delvecchio, I think it was around
18 -- I don't recall at this time, I just can't recall.

19 Q Twenty percent, 25%?

20 A Yes, something like that.

21 Q Does that include the reservation?

22 A Yes, I believe so.

23 Q Do you have any other concerns in the area of
24 criminal justice of American Indians that we should be
25 alert to?

1 A. Yes, I think we have a real problem with the public
2 intoxication. Our legislature has decided that public
3 intoxication is no longer a crime, and established local
4 alcohol reception centers. But in their wisdom they failed
5 to fund it. And so we have a real problem in that a lot of
6 Native Americans would come to Flagstaff, go to the local
7 bars, become intoxicated, and then the city court, par-
8 ticularly, has to deal with the problem. Lot of times in
9 the winter it's very cold, you might find a Native American
10 severely intoxicated, maybe laying, literally laying out
11 in the street somewhere, and so the police officers are
12 faced with the fact that they don't have a LARC to take
13 these people to so they may arrest them on a crime which
14 is really not appropriate for what's happening.

15 And the purpose, to actually get him off the streets,
16 and where it's warm. And it's a real problem. I think
17 that the state needs to fund the LARC's, and that when
18 there's an intoxication problem these people need to be
19 taken to a LARC and dealt with in a humane manner.

20 I know I've talked to Judge Brady about this and it's
21 a real problem.

22 Q What effect, if any, would the legalization of alcohol
23 on the reservation have on this situation?

24 A My own feeling is that it would help. Because at
25 least now a lot of the Native Americans from the Navajo

1 Tribe will come into Flagstaff and become intoxicated and
2 then Flagstaff is supposed to deal with the problem. I
3 think maybe if they were able to purchase liquor on the
4 reservation that they might -- but I'm sure the problem
5 here in Flagstaff would at least be lessened to a con-
6 siderable degree.

7 Q We've heard testimony from just about everyone about
8 the need for interpreters. Is this a major problem
9 especially in the city court?

10 A Yes. It's a problem with us in our law firm. The
11 usual case I'll get will be a person charged with DWI on
12 a revoked license, Native American, and he'll come into
13 my office and he won't speak English very well, and a lot
14 of times the family will come in with him and not too many
15 of them will speak English and we have a tremendous com-
16 munications problem. There's no doubt about it.

17 Q One final question. In superior court cases when do
18 you generally get involved, is it the initial appearance, the
19 arraignment or when?

20 A Under our law, within 24 hours of the individual's
21 arrest he's entitled to be taken before a magistrate, have
22 the charge read to him, advised of his rights, specifically
23 his Miranda rights and then have an attorney appointed to
24 represent him. Normally, we will receive an order appointing
25 our firm to represent the individual anywhere from a day to

1 two days later and then my usual first contact with him is
2 either in the county jail or in my office about three days
3 after their arrest.

4 Q So this is before the arraignment but after the
5 initial appearance?

6 A That's right, the arraignment normally occurs after
7 the preliminary hearing or after an indictment has been
8 handed down by the grand jury. It's normally, oh, ten,
9 20 days after the arrest.

10 Q (By the Chair) I have one question.

11 Mr. Aspey, in referring to the city court, twice
12 in the last five minutes or so you said that Judge Brady
13 was doing as best he could, and what crossed my mind is
14 that either personal or institutional or both constraints?

15 A In my mind, Judge Brady's an honest, hard working,
16 sincere individual and he's not out to deprive anyone of
17 their rights, including the Native Americans, but they
18 are understaffed down there, there is a presiding judge and
19 a part time magistrate, Judge Brown. Like I say, they --
20 they process an incredible amount of complaints, probably
21 over 10,000 complaints a year. The courtroom is inadequate,
22 there are no interpreters, budget for public defenders, to
23 my mind, isn't adequate and I think if the city would
24 increase its budget perhaps another magistrate, perhaps an
25 interpreter, I'm sure that the problems that were alluded to

1 in the report would be improved.

2 Q Are the attorneys organized in Coconino County?

3 A We have a local bar association, yes.

4 Q And do you address yourself to that point?

5 A We have not at this point.

6 Q Should you?

7 A I think perhaps we should.

8 THE CHAIR: Thank you.

9 Q (By Mr. Williams) You said Judge Brady was doing
10 as best he could, you didn't say that about Judge Brown.

11 A I really can't comment on Judge Brown because I've
12 only appeared on one case before him. And I didn't notice
13 anything out of the ordinary.

14 Q (By Ms. Lyon) I have one question, Mr. Aspey. Did
15 any of the defendants, the Indian defendants with whom
16 you have dealt, ever relate to you any complaints, either
17 about the jail conditions or treatment by law enforcement
18 personnel?

19 A On occasion I've had clients complain of being
20 roughed up during an arrest. I won't say that this has
21 happened a lot, but I can recall maybe three or four cases
22 in the last couple of years where the people have com-
23 plained about this.

24 Q Could you be a little more specific about your in-
25 terpretation of the term roughed up?

1 A Well, lot of times an officer I think has to make
2 an arrest where the person's intoxicated or in a highly
3 emotional state, and the individual, perhaps, doesn't under-
4 stand what's happening and he might react violently and
5 then the officer will react accordingly and then it just
6 sort of escalates into a fight, and lot of times the people
7 will be, you know, perhaps struck and manacled in a rough
8 manner, something like that. And I think you're always
9 going to have those problems.

10 I don't think that it's ever really going to be
11 solved. I think that the department of public safety and
12 the sheriff's department do as good a job as they can,
13 they're real fine agencies.

14 Q We heard testimony yesterday from an Indian individual
15 who stated that he was forcibly removed from his vehicle
16 and was injured in the process. Is this standard procedure,
17 to your knowledge, to remove an individual forcibly if he
18 does not, of his own free will, leave his vehicle?

19 A I don't know. I've never heard of an incident like
20 that. I just can't react to that.

21 I know that on occasion when I do receive a complaint,
22 my advice to the client is to either direct a letter to
23 the, Sheriff Richards or Bud Jenkins, who earlier testified.
24 They seem to really focus in on the problem and follow up
25 on it.

1 Q To your knowledge, has an Indian defendant ever
2 done that?

3 A I don't know.

4 Q Apparently someone made the observation that, quote,
5 Navajo drunks are almost always very easy to handle, un-
6 quote. Have you any observations on that subject?

7 A No, I don't.

8 Q Do you have any additional observations that would
9 help us to form a clearer picture of problems or needs in
10 the area of administration of justice for Indian people?

11 A Well, the three areas I think I mentioned this to
12 Bill earlier, that I was concerned with was jury selection
13 and bond issue and the fact that public drunkenness is no
14 longer a crime and yet we don't have a funded LARC in
15 Coconino County. I think the bond problem is being re-
16 solved, and in my mind the jury selection could be resolved
17 by perhaps these other methods we've been talking about,
18 having Navajo Police assist in summoning the people.

19 The final problem in my mind is the public intoxi-
20 cation, and I think that the state needs to fund the LARC's
21 and that would solve that problem.

22 Q To your knowledge, is there any concentrated com-
23 munity effort to bring this funding about?

24 A Well, the -- we have a local community guidance
25 center in the, the Coconino Community Guidance Center, and

1 they have made an effort with the state to get funding for
2 this year. As I understand it they've received \$70,000.00
3 from the state to fund the LARC, commencing next month,
4 but I'm sure that they need more money and this is only
5 a temporary thing.

6 Q In your opinion, would a LARC staffed by Indian
7 people be more likely to be successful in working with
8 Indian clients than a LARC that would handle all ethnic
9 groups?

10 A Well, I think there's some truth to that. We have
11 an alcohol problem in the county at large, but because of
12 the fact that drinking is illegal on the reservation, a
13 lot of the Indians do come into Flagstaff to drink and
14 a lot of the alcohol problems do involve the Native Americans
15 and I'm sure if they had their own people treating them
16 they'd probably feel more at ease and it would be better.

17 MS. LYON: Thank you.

18 THE CHAIR: Any other questions?

19 If not, thank you much for your testimony, Mr. Aspey.

20 Is Mr. Canez in the audience?

21 We're going to recess until 12:45, okay?

22
23 (Luncheon recess)
24
25

1 AFTERNOON SESSION

2 November 18, 1975

3
4 THE CHAIR: Mr. Canez, will you come forward, please?5 Q (By Ms. Lyon) Mr. Canez, for the record, would you
6 please state your name, address and occupation?7
8
9 MR. TIBALDO CANEZ10
11 A (By Mr. Canez) My name is Tibaldo Canez, I live at
12 609 East Oxford Drive in Tempe, and I'm a public health
13 center trainer with the Arizona State Department of Health
14 Services.

15 . You'll have to excuse me, I have a bad cold.

16 Q Well, we appreciate your being here.

17 Mr. Canez, you had occasion to investigate the con-
18 ditions of a number of jail facilities in the State of
19 Arizona. Could you tell us what caused you to make this
20 investigation?21 A Well, my department was requested by the U.S.
22 Commission on Civil Rights to do a survey of a number of
23 inspections around the state, near the reservations.24 Q And could you tell us in general what you found
25 during your inspection?

1 A Well --

2 Q For instance, perhaps you would prefer to go by
3 county?

4 A In general, the jails in -- well, the Coconino
5 County Jail, Page Jail and the Winslow Jail were in pretty
6 good shape as far as sanitary facilities are concerned.
7 The Winslow Jail was overcrowded. The Pima County Jail
8 was -- had problems with ventilation and overcrowdedness
9 and some plumbing fixtures, in need of repair.

10 Safford City Jail was, or the county jail, they had
11 lighting problems, ventilation problems, cleanability,
12 plumbing fixtures and overcrowded. The Holbrook City Jail
13 had, well, there was also plumbing, ventilation and -- the
14 overcrowding, it was also very overcrowded and the worst
15 one was the Navajo County Jail and that was very -- the
16 inspection was bad, construction was bad, it was very old,
17 plumbing fixtures were not, most of them were not working
18 or were not operating right. It was very overcrowded, the
19 lighting was very poor, and the ventilation was poor.

20 Q For the record at this point, we will submit into
21 the record Exhibits 9 through 13, and these are reports made
22 by Mr. Canez on inspections of the Page City Jail, Winslow
23 City Jail, Coconino County Jail, Holbrook City Jail and
24 Navajo County Jail.

25 A I think I forgot the Globe City Jail, and that was

1 also overcrowded, and the sanitary -- you know, the un-
2 sanitary conditions like broken plumbing and dirty, you
3 know, it was just --

4 Q (By Mr. Williams) Mr. Canez, just for this session
5 if you could limit your discussions to the five jails in
6 the northern half of the state, that is eliminating the
7 Globe Jail, the Safford Jail and the Pima County Jail, we'd
8 appreciate it.

9 A Okay.

10 Q And for the Court Reporter, we'll just number them
11 consecutively as Ms. Lyon read them into the record.

12 Q (By Ms. Lyon) Mr. Canez, for the record again, would
13 you tell us when these jails were visited? I don't mean
14 the precise date but how recently?

15 A They were done in the last two weeks of October.

16 Q In other words, the report that we are introducing
17 into the record is very recent?

18 A Right.

19 Q Right.

20 What action will your department take as a result of
21 these visits?

22 A Well, county jails or city jails as a rule or coming
23 under the jurisdiction of the county health departments
24 and the reason I did this survey was because it was re-
25 quested by the commission. We will follow up on a few of

1 these jails with reinspections and will generally try to
2 get voluntary compliance.

3 We do have means of, you know, there's state rules
4 that you can go to the attorney general or something and
5 have a cease and desist notice and all that, we can con-
6 demn things, but it's rarely used and it's very complicated.
7 So I -- what I know it's never been done.

8 Q I see. On most of these inspection visits, were
9 you accompanied by staff of the county health department?

10 A Roughly half of them. In the north I was -- I went
11 to the Page, the Winslow, the Holbrook and the Navajo
12 County by myself and I was only accompanied to the Flagstaff
13 Jail.

14 Q I see. And after each of your inspections do you
15 make a report immediately to either the sheriff or another
16 officer of the county?

17 A I try to get hold of the sheriff or the chief of
18 police or whoever is in charge at the time, and briefly
19 verbally go over my findings and just tell them about the
20 main problems. And notify them that an inspection will
21 be forthcoming.

22 Q I see. What are the minimum standards set by your
23 department that must be met by all jail facilities?

24 A Well, we are lacking in standards, specific standards
25 for jails. The only standards that we have concern food

1 service. And everything else is more or less recommended.
2 You know, except for maybe cleanability, you know, sani-
3 tation conditions. But everything else is recommended.
4 We really don't have a set standard.

5 Q Which agency or department would be responsible for
6 the establishment of such standards?

7 A Either corrections or justice planning. I really
8 couldn't say.

9 Q Has your department ever attempted to bring about
10 the establishment of such standards?

11 A Not to my knowledge.

12 Q Would you consider that this type of action would
13 be beneficial?

14 A Oh, sure, it's -- it's, like I said before, it's
15 one of the things that really is lacking.

16 There's a lot of areas where standards are needed
17 and it's just a matter of trying to get them passed.

18 Q You mentioned that the conditions in the Navajo County
19 Jail were especially poor. Could you go into more detail
20 on that?

21 A Well, the jail is about 80 years old and it was
22 really run down, I mean there was -- let me see if I can --
23 it was completely overcrowded, I think if you look at the
24 report, the -- you know, the area that the -- the space per
25 inmate was something like 25 square feet per person. Our

1 recommendation is something like 60 to -- 60 square feet
2 per person and on a temporary emergency can go down to
3 50. The commodes in the lavatories, the sinks, the
4 showers, were very dirty and most of them were not working
5 properly. Or leaking, taps were missing. The area around
6 the main tank, in the section -- the catwalk, what we call
7 catwalk, I couldn't believe it when I went in there because
8 it was -- it was, you could tell it hadn't been cleaned
9 for weeks, you know, it was just -- the lighting inside
10 the cells was very poor.

11 I had a lightmeter and generally five foot candles
12 of light power is what we consider adequate for cleanability
13 purposes and for eye strain and -- and my lightmeter
14 wouldn't even register in some of those cells, it was so bad.

15 Most of the lighting is a window lighting, the light
16 bulbs, many were missing, the wiring was frayed or peeling,
17 it was actually a fire hazard.

18 That's, you know, the kitchen facilities were --
19 there was lot of things to be done, a lot to be desired,
20 they had no hand-washing facilities in the kitchen, it was
21 -- it was very dirty, it had contaminated food, it had no
22 really way of ventilation.

23 I think in the women's section, the only ventilation
24 was some perforated holes in this steel cover over the
25 windows, you know, there were just small perforations,

1 that was the only area that they really got, which is
2 really not adequate. It was, like I said before, there was
3 a lot of leaking plumbing and problems. They even, some
4 of the inmates even complained about rats in the place.
5 I didn't see any but they did complain about it.

6 Q Following that inspection of the Navajo County
7 Jail, did you have an exit interview with the sheriff of
8 Navajo County?

9 A Right. I was talking to Sheriff Gillespie and he
10 told me that they have a new facility being constructed
11 now, it should be built by July of '76. He indicated that
12 he really couldn't do anything about my inspection report
13 because he doubted that the board of supervisors would give
14 him the money to do the necessary repairs and since they
15 already have a new facility under construction, that they
16 probably wouldn't do anything.

17 I informed him that as far as cleanability, that
18 hasn't anything to do with it, you know, they could maintain
19 the jail in a clean state without really having to go
20 into -- into much debt or anything, I mean you didn't have
21 to pay very much for that.

22 Q And what was the response you received to that
23 suggestion?

24 A Well, he indicated that, you know, that you can't
25 force the inmates to do the cleaning, and a lot of it was

1 that problem. I informed him that in all the jails that
2 I've gone, that some are dirty, some are clean, you know,
3 and yet they all have the same kind of cleaning procedures
4 so it's just a matter of motivation or supervision.

5 Q So, in general, you felt that your recommendations
6 would probably not bring about any changes?

7 A Not as -- in the Navajo Jail I doubt it, because of
8 the fact that that new facility is being constructed. And
9 I don't think that they'll bother to spend any money on it.

10 Q So we're talking about another six or seven months
11 during which the old facility would continue to be used?

12 A Right.

13 Q During any of your inspection visits in the jail
14 facilities in northern Arizona, did you notice a number of
15 Indian inmates?

16 A Oh, there was quite a few Indians.

17 Q Did you happen to notice whether the facilities were
18 assigned on differing bases, in other words, did it appear
19 to you that perhaps one ethnic group had better facilities
20 than another ethnic group?

21 A Not in the Page Jail or the Coconino County Jail.
22 In the Holbrook City Jail, there was four juveniles or --
23 four female juveniles, they had two Indians and two Whites,
24 that was the only place I could imagine it. There was the
25 two Indian girls had the cell with the, you know, the worst

1 facilities, they didn't have a shower, their sink I think
2 was not functioning right. They did -- you know, the
3 drinking fountain wasn't working, it was broken so they
4 had to more or less use their cupped hands to drink water.

5 The Anglo juveniles were provided with a drinking
6 cup, the Indian girls were not. I really don't know
7 whether it was because of, you know, they just failed to
8 ask for it or anything, I really can't say.

9 Q I see. Was this the only facility where you noticed
10 apparently differing assignment of facilities?

11 A Well, in the northern jails, the Winslow Jail, one
12 of the cells was predominantly Indian, and the other one
13 wasn't. I think that the one that had the Indians was the
14 one that was overcrowded too.

15 Q I see.

16 A They had -- the one that was predominantly Indian
17 had 18 beds and 18 inmates, while the other one had, I
18 think it was only six inmates.

19 Q I see. In other words, all the Indians were kept
20 in one enclosure and the non-Indians in another?

21 A Right. They also had a section for the illegals,
22 you know, the Mexican illegals, and they were also in a
23 separate cell, but I was informed that that's a contract
24 with the federal government, and that they have to be kept
25 separate.

1 Q I see. Did you observe, in any other facilities,
2 whether there appeared to be more Indian inmates per en-
3 closure than Anglo inmates? In other words, would Indian
4 inmates be given less space according to your observation,
5 in some of the other facilities?

6 A Well, the other facility, the only other facility
7 up there was the Holbrook City Jail, but that was only one
8 tank. So it was all mixed in there, it was just that the
9 majority of the inmates were Indian.

10 Q I see.

11 A But there's really no way of -- that jail is con-
12 structed so there's no way of separating them.

13 Q What recommendations would you make for the record
14 that would improve some of the conditions that you have
15 reported to us?

16 A Well, probably stricter county inspection of the
17 facilities would alleviate a lot of the problems. The
18 counties really are responsible for it and they -- they
19 have the facility, the travel facilities and everything
20 else to take care of it. They could insure that things get
21 done while we at the state level, we're down in Phoenix,
22 we don't get up here very often.

23 Like -- that's about the only thing that can be done
24 at this time.

25 Q I see.

1 MS. LYON: Do any of the committee members have
2 further questions?

3 MR. LEVIS: I do.

4 Q (By Mr. Levis) Mr. Canez, were any of the police
5 officials notified in advance of your inspections?

6 A No, nobody was notified, not even the county health
7 departments were notified.

8 Q Is this standard procedure?

9 A It's standard for us to notify county health depart-
10 ment a day before. But in this case, nobody was.

11 Q Now, as I understand it, in 1972, the federal court
12 in Phoenix found the Winslow Jail to be in violation of
13 federal law. And that the state department of health
14 services was then ordered to make unannounced inspections
15 at, I think ~~their~~ initiative. Is this being done at this
16 time or was this the first inspection of the Winslow Jail
17 in a long time?

18 A It was the first inspection for the state level in
19 a long time. I -- we really don't have a program for
20 county jails, to do routine inspection.

21 Q This was a -- this is a city jail in Winslow, I
22 mean the city jail? Winslow?

23 A Okay, Winslow. We don't have really a program for
24 doing county or city jails. The only institutions that we
25 cover on a routine basis would be state institutions.

1 Like I said before, it's really a responsibility
2 of the jurisdiction that belongs to the county health
3 departments.

4 Q How did Chief Mall (Phonetic), in Winslow, and
5 Chief Lane in Holbrook, react to your reports concerning
6 the segregation of inmates and some of the other problems
7 that you've pointed out in those two jails?

8 A Well, I really don't point out, you know, I just,
9 this is just my observation, but I really don't get into
10 the segregation because that's not part of our inspection,
11 we just look at sanitary facilities. This was just a --
12 this was just, you know, my observation. When I sent in my
13 report I stressed the overcrowded conditions in one cell
14 so that, you know, he should have enough sense to shift
15 people around, to get rid of that problem.

16 Q But you don't have the authority, then, to file
17 lawsuits or to hold them in contempt or anything such as
18 that?

19 A Well, the procedure would be to -- you more or less
20 would have to find a place that would have a, really a
21 health hazard or be a nuisance or something like that. And
22 you would have to go through hearings and, you know,
23 cease and desist and it's really a complicated matter to
24 try to get compliance.

25 Q How did they react generally in Winslow and Holbrook,

1 to your reports, were they favorable reactions or did they
2 say they were unable to do it because of funding?

3 A In Winslow, there wasn't much except for the over-
4 crowdedness, you know, there wasn't any problems.

5 The City of Holbrook, really nothing was said, I
6 mean it was -- you know -- I told them about my main
7 findings and I told them that I was going to -- the in-
8 spection report would be, you know, would be sent, and
9 they really didn't promise, you know, whether anything was
10 going to be done or anything, there was no really --there
11 was acknowledgement but no response, let's say that much.

12 Q I've made a tour of the Holbrook Jail and I just
13 wondered if that jail is similar to the other jails you
14 visited? Just in its setup, that is with the big holding
15 facility and the solid door except for the air holes in it?
16 Or is each jail different in that respect?

17 A Are you talking about the city or the county?

18 Q This was the city jail in Holbrook.

19 A No, I don't think it's a typical jail, they had
20 too many problems in there, it's not really -- most jails
21 have a holding tank and they have -- they have several
22 cells. This is probably one of the few ones that I've
23 seen that have just the one main minimum security cell.
24 Most jails do have more than one, you know, dormitory, let's
25 say.

1 Q Do they have solid doors like that in most jails too?

2 A Well, it depends on the size. Many jails have bars,
3 you know, just the cages-type construction. That's -- the
4 usual thing is to have the bar-type construction, this
5 was -- this was kind of not the usual type of jail, no,
6 it isn't.

7 Q Do you have any particular points you'd like to
8 bring up about the Page City or the Coconino County Jails
9 and the reactions of the police officials in those two
10 towns?

11 A Well, in the Page Jail, the chief of police wasn't
12 in there, I just talked to whoever was in charge, they
13 received me very well. I had no problems. The Coconino
14 County people were very courteous, I had no problems getting
15 information or being shown around or anything.

16 Q I was interested to note, I think either in three
17 of the five or in four of the five jails that you visited,
18 one of the -- the two biggest problems, correct me if I'm
19 wrong, seem to be overcrowding and then plumbing facilities?

20 A Right. There seems to be a lack of routine main-
21 tenance of quite a bit of the -- in a number of the jails,
22 it seems like only the big jails have a routine maintenance
23 program, probably because they can afford a janitor, a
24 full time janitor, or a plumber or something. Most small
25 jails do have many problems. The Holbrook Jail in particular

1 had problems with their plumbing, there was a couple of
2 repairs that were done on the commodes and the backflow
3 prevention mechanism was left out so that theoretically
4 you could have cross contamination, sewage with drinking
5 water.

6 And I stressed that very -- quite a bit because that's
7 very important. I also stressed the fact that they didn't
8 have no -- the inmates were not provided with a drinking
9 fountain or drinking facilities, they all have to use a
10 common cup, common drinking cup. Which is, you know, very
11 bad practice.

12 Q Could the commode back up into the holding tank in
13 Holbrook too, is that possible?

14 A Yes, there was a drain though, there was a floor
15 drain, so --

16 Q So it could back up and then they have a solid door
17 at least half-way up, as I remember?

18 A Well, I don't understand your -- what you're trying
19 to say.

20 Q I'm just, I was concerned because of the fact that
21 you said there was a possibility of overflow.

22 A Well, what I mean is that all these plumbings have
23 to have a backflow prevention mechanism so in case it
24 plugs up and it overflows or whatever, there's no back
25 siphoning into the drinking water. And that was lacking

1 in those, in two of the commodes that were repaired, so
2 theoretically you could have a cross contamination of the
3 drinking water. That was my biggest worry there.

4 MR. LEVIS: Thank you.

5 A I'd like to say that the kitchen was, you know, in
6 the Holbrook City Jail, was just not constructed like --
7 like institutional-type kitchen it was more like a home-
8 type kitchen and they lacked a lot of the public health
9 standards that should be met.

10 THE CHAIR: Any other questions of Mr. Canez?

11 If not, we want to thank you very much, sir.

12 Is Mr. Ernest Taliman in the audience?

13 Q (By Ms. McCullah) Do you pronounce your name Mr.
14 Taliman?

15
16
17 MR. ERNEST TALIMAN

18
19 A (By Mr. Taliman) Taliman.

20 Q Mr. Taliman, would you please state your name,
21 address and occupation?

22 A My name is Ernest Taliman, from Fort Defiance,
23 Arizona, presently employed as a welder.

24 Q And, sir, would you please state your name, address
25 and occupation?

1 MR. ERIC EBERHARDT

2
3 A (By Mr. Eberhardt) Yes, my name is Eric Eberhardt,
4 I'm an attorney with DNA People Legal Services, Window
5 Rock, Arizona.

6 Q Sir, would you speak up a little?

7 A Surely.

8 Q Mr. Taliman, would you please describe the incident
9 of July 14, 1974, when you were arrested?

10 A (By Mr. Taliman) I was near the premises of
11 Big Arrow Trading Post, talking to a friend and we were
12 approached by Apache County Deputies, which -- well, I guess
13 they more or less singled us out and asked us to leave the
14 premises. I informed them that I had a car parked there,
15 but they just told me to leave then unless I wanted to get
16 arrested. So we proceeded walking down the road for a few
17 hundred yards and I just turned back around to get my car,
18 I went around the back of the building and were met there
19 again by them, and they charged us with trespassing behind
20 that building.

21 Q And then your arrest took place outside of the --
22 outside?

23 A Yes.

24 Q Around the building?

25 A Behind the building.

1 Q And you walked away and you left your car close to
2 the building?

3 A Yes, it was parked near the building but I went
4 back to get it.

5 Q And you were arrested there?

6 A Yes.

7 Q When you were warned or when you were arrested,
8 were you, in your own mind, on or off the reservation?

9 A Well, it seemed to me like I was on.

10 Q You look like you want to --

11 A (By Mr. Eberhardt) No, no.

12 Q You seemed like you were on the reservation, and
13 these were county, Apache County officers that were arresting
14 you?

15 A (By Mr. Taliman) Yes.

16 Q How did you make a determination you were on the
17 reservation?

18 A Well, there was no fence or signs that said this
19 is the reservation boundary. I just assumed that it was.

20 Q Then there were no clear delineations of boundaries
21 to indicate that you were on or off?

22 A No.

23 Q When you were arrested what were the charges and
24 were you read your legal rights?

25 A The charges were trespassing at first and I don't

1 believe they did read us our civil, or our rights.

2 Q You don't believe you were read your legal rights
3 then?

4 A No.

5 Q Well, could you tell me what transpired, what did
6 they say to you and what did you say to them, did they lead
7 you off, then, or put you in the car and take you off?

8 A Well, they grabbed us by the hair, threw us against
9 their car, and while one held us the other one searched us,
10 and they handcuffed us in the back, put us in their -- in
11 the back seat of their car, of one of their cars, and we
12 sat there maybe an hour and they came back and took us
13 down to the substation.

14 Q Where is the substation?

15 A That's in Lufton.

16 Q Is that on or off the reservation?

17 A It's on the reservation. It's Navajo Police sub-
18 station. And they took us there and detained us for a few
19 more hours, then they came back later with two more other
20 prisoners and put two of us or all four of us in back,
21 still handcuffed behind, and we proceeded down to St.
22 Johns. Well, we stopped at Van Kent's and they had coffee
23 for a half an hour or so and we left again and went on to
24 St. Johns.

25 Q When you were detained at the substation at Lufton,

1 was there any exchange between you and the county sheriffs?
2 What happened, what occurred at the facilities, specifically?

3 A Well, we were just taken in and searched again,
4 they went through our pockets and took our possessions,
5 put them in a little bag and put us in the cell, which was
6 already overloaded. There was only standing room.

7 Q And then you proceeded on, how long was it before
8 you proceeded on to St. Johns?

9 A About, approximately three hours later.

10 Q What occurred when you were before the magistrate?

11 A She just asked me what my plea was and if I had a
12 bond or if I had some money to pay for a bond. And I told
13 her no and I pleaded not guilty and I said I can always
14 take the DNA, they'll handle it.

15 Q And this was in the St. Johns --

16 A No, this was at Sanders.

17 Q At Sanders?

18 A Yes. They took us from St. Johns back to Sanders,
19 we were arraigned there.

20 Q Okay, you started at Lufton, you were incarcerated
21 at Lufton, you proceeded down to St. Johns?

22 A Yes.

23 Q What happened at St. Johns?

24 A Well, we were searched again there and they took our
25 possessions and put us in a cell there overnight.

1 Q And then you were taken back to Sanders?

2 A Yes, the next morning.

3 Q Well, what happened at Sanders?

4 A Sanders is where we were arraigned.

5 Q Arraigned. That's where you went before the
6 magistrate, that's where you pleaded not guilty?

7 A Yes.

8 Q Were you released on your own recognizance?

9 A That evening, Monday evening.

10 Q Monday evening?

11 A Yes.

12 Q Let me backtrack a little bit. When did this --
13 when did your arrest occur?

14 A Sunday, Sunday evening.

15 Q About what time?

16 A Around 8:00 o'clock at night, or 7:00.

17 Q And when were you -- you were arraigned in Sanders
18 on what day?

19 A Monday evening. Monday afternoon.

20 Q Monday afternoon. Could you tell us why your charges
21 were dropped?

22 A It was through lack of jurisdiction.

23 Q Whose jurisdiction, being the county sheriff's
24 jurisdiction?

25 A Yes.

1 Q Arresting you at Lufton?

2 A When we got down to St. Johns they changed the
3 charge to disorderly conduct and dropped the trespassing
4 charges.

5 Q But you were picked up on trespassing charges and got
6 to St. Johns and the charges were --

7 A Changed.

8 Q -- changed to --

9 A Disorderly conduct.

10 Q ~~On~~ disorderly conduct, and you pled not guilty under
11 disorderly conduct at the magistrate's office?

12 A Yes.

13 Q And then you were -- then the charges were dropped?

14 A Yes.

15 Q On jurisdictional -- on the question of jurisdiction?

16 A Yes, because it was fee patent land.

17 Q Did you have counsel during your period of being
18 transferred back and forth between jurisdictions?

19 A No, no.

20 Q Were you advised of your right to counsel?

21 A No.

22 Q (By Mr. Levis) I just wanted to clear up a few points
23 but if there are other committee members like to ask a
24 question first -- okay.

25 Mr. Taliman, you indicated you were originally

1 arrested on trespassing. Where were you at the time that
2 you were supposedly trespassing?

3 A I was behind the building, or behind this gas
4 station near Big Arrow Trading Post.

5 Q And the building was on the reservation or off the
6 reservation?

7 A It was the exterior boundaries.

8 Q Which means that it's on the reservation for juris-
9 dictional purposes, to the best of your knowledge?

10 A (Witness nodding head affirmatively)

11 Q Were you a student at the time of the arrest?

12 A No.

13 Q Excuse me?

14 A No, I was employed for the Navajo Nation.

15 Q Is Sanders on or off the reservation? Where you
16 were arraigned before the magistrate or the initial
17 appearance was before the magistrate?

18 A I believe it was off, off the reservation.

19 Q In Apache County? When did you go to DNA, was that
20 after the initial appearance, before the charges were dropped
21 or after the charges were dropped?

22 A It was before the charges were dropped.

23 Q But after the initial appearance when you were re-
24 leased on your own recognizance?

25 A (Witness nodding head affirmatively)

1 Q Based on your experience, what do you think should
2 be done and can be done to make sure that such an incident
3 does not occur in the future?

4 A Well, we should be -- or Lufton should be placed in
5 the hands of the Navajo Police Department.

6 Q Lufton?

7 A Yes.

8 Q So that if you were arrested where you were you
9 would be going before the tribal police, is that what
10 you're indicating?

11 A Yes.

12 Q Now, is it common for the Apache County Sheriff to
13 patrol the area you were in? At the time you were
14 initially arrested?

15 A Would you say that again?

16 Q Is it common for the sheriff's police to be in the
17 area they were in when you were initially arrested?

18 A I suppose so, I've seen them there several times.

19 Q Is it still true?

20 A (Witness nodding head affirmatively)

21 Yes, it is.

22 Q Am I correct in stating that there is presently a
23 lawsuit involving this arrest?

24 A Yes, there is.

25 MR. LEVIS: I have no further questions.

1 Q (By Ms. McCullah) I'd like to ask your attorney,
2 without really going into, I guess the lawsuit against
3 the police, we heard testimony this morning from the
4 department of public safety and a Lt. Jenkins, I believe
5 the witness was, stating that he is the sheriff's knew
6 the boundaries, one constitutes the boundaries, in the
7 case of this particular incident, are you able to determine
8 whether in fact Mr. Taliman was arrested off the reservation
9 or on the reservation?

10 A (By Mr. Eberhardt) Well, it's our legal position
11 that he was within the exterior boundaries of the Navajo
12 Nation. He was on what's known in the law as federal land
13 within those exterior boundaries. By that I mean he was
14 on land that is privately owned by a non-Indian. Nonetheless,
15 it is within the exterior boundaries of the reservation.
16 And it's our position that federal law precludes state or
17 local law enforcement on that kind of land. Law enforcement
18 either must be carried out by the Navajo Nation Police
19 Department or the federal authorities. State and local
20 authorities have no jurisdiction once they cross the
21 exterior boundary line of the Navajo Nation.

22 Q We also heard testimony this morning that there was
23 cross deputization between the county officials and
24 the Navajo Police and in fact they were commissioned as
25 private policemen to go onto the jurisdictional, or in the

1 jurisdiction of the Navajo Nation?

2 A To the best of my knowledge and apparently to the
3 best of the sheriff's knowledge for Apache County, none of
4 his officers are cross deputized... into the Navajo Nation.

5 Various state patrolmen are cross deputized into
6 the Navajo Nation and vice versa for Navajo Police officers
7 into the state police force.

8 But in documents filed with the court by the
9 sheriff's office, in Mr. Taliman's lawsuit, he specifically
10 states that none of his officers are cross deputized...
11 into the tribal police.

12 Q There seems to be a contradiction. Mr. Taliman
13 stated that Lufton is -- substation is on the reservation.
14 Why would a county official take, you know, defendants,
15 Indian defendants, whatever, to a substation that is on
16 the reservation, why couldn't they just have taken them
17 down to Sanders or wherever, St. Johns, if this was in
18 fact off the reservation?

19 A I really can't answer that. I just don't know why
20 they would do that. It makes no sense to me either. I
21 just -- I don't know.

22 Q In your opinion, I'd like to have some comment from
23 you on your observation, we've heard quite a bit of testi-
24 mony on the problems of jurisdiction, one of them happens
25 to be the problem of extradition, and the other one is whether

1 or not in fact county officials can go into the boundaries
2 of the reservation for any arrest or warrant, whatever.

3 Do you see that jurisdictional problem a barrier
4 to, you know, probably some dialogue that might clear up
5 this whole area of contradictions and jurisdictions?

6 A In a very cursory sense, yes, it is a barrier.
7 But I think that the jurisdictional disputes are merely
8 a symptom of much more deeply-rooted problems between both
9 the law enforcement agencies and the various cultures that
10 happen to clash on an artificial border that perhaps
11 wasn't there a 100, 200 years ago, but only, I think the
12 honest response to your question is that the jurisdictional
13 issue is only in a very, very surface kind of way.

14 The real issue at hand. My impression from having
15 represented many defendants charged with violations of
16 both state and tribal law and having worked very, very
17 closely with the Navajo Nation Police Department, is that
18 there is almost no cooperation between the tribal law
19 enforcement authorities and particularly county law en-
20 forcement authorities, in the reservation areas.

21 That's true in all of the states that border on the
22 Navajo Nation, not simply Arizona. But all of the states.
23 And the jurisdictional issue is kind of a scapegoat in
24 that, it's not really the issue. The issue is a question
25 of who has the power to do the job and what is the job that

1 needs to be done. And I think the Navajo people have
2 traditionally seen the job that needs to be done much
3 differently than the Anglo people who control the law
4 enforcement establishment in the counties.

5 Q In your opinion, do you feel that the case of Mr.
6 Taliman is a typical case in regards to the American
7 Indians that are -- that are off the reservation?

8 A Yes, I think it's very, very typical. The --
9 again there are just a multitude of examples of the kind
10 of overreaching authority that Mr. Taliman was subjected
11 to in his situation. My own experiences as an attorney
12 happen to be concentrated mostly in McKinley County in
13 New Mexico, so I can't speak with a great deal of authority
14 about the Arizona situation.

15 But I do know from some first-hand experience that
16 his case is very typical, very typical.

17 Q Could I have just one point of clarification con-
18 cerning jurisdiction?

19 As I understand the testimony this morning, while
20 DPS and other agencies are cross deputized,if they
21 arrest an Indian on reservation land, they must bring the
22 Indian to the tribal courts. Not, as I understand it, to
23 the county?

24 A That's correct.

25 MR. LEVIS: I don't think that was made clear and

1 that's the only thing I wanted to raise.

2 THE CHAIR: Any other questions?

3 If not, thank you very much.

4 MR. LEVIS: If I could, at this time, we have set
5 aside in the agenda, a time for an open session at the end
6 of the next testimony. And what we'd like to do is any
7 persons at this time who would like to discuss the issues
8 that we've been talking about, should contact a member of
9 the staff or one of the committee members to be inter-
10 viewed in advance so that we can determine whether it deals
11 with the issues at hand and also we have some obligations
12 by statute dealing with possibly defamatory information.

13 There are approximately, four members of the staff,
14 Maria Pares is in the first row, and any member of the
15 committee or I am available also to talk to anybody at
16 this time.

17 And then, after a brief recess, we'll go back with
18 the last panel.

19
20 (Short recess)

21
22 THE CHAIR: Will Mr. Arthur Lee and Perry Allen please
23 come forward?

24 And if Mr. Mack Frost and Mr. Roy Lane are here, if
25 you'd come forward also, please?

1 Q (By Ms. Madrid) For the record, would you state
2 your name, address and occupation?

3
4
5 MR. PERRY ALLEN

6
7 A (By Mr. Allen) My name is Perry Allen, I'm the
8 chief prosecutor for the Navajo Nation, Window Rock, Box
9 622.

10
11
12 MR. ARTHUR LEE

13
14 A (By Mr. Lee) My name is Arthur Lee, Apache County
15 Sheriff, Box 518, St. Johns, Arizona.

16 Q At this time, do you have any comments on the alle-
17 gations brought against the Apache County Sheriff's Depart-
18 ment by Ernest Taliman? And if so, would you please
19 comment?

20 A No, Ma'am, I can not comment because at the current
21 time, I'm being sued by Mr. Taliman and the DNA and my
22 attorney is not present and we haven't been to court,
23 so I really can't say anything.

24 Q What problems, if any, has the police department
25 faced concerning treatment of Native Americans in border

1 areas in Apache County?

2 A. Would you restate that, please?

3 Q. What problems, if any, has your department faced
4 concerning treatment of Native Americans in border areas?

5 A. I don't think we've had any problem, really.

6 Q. None at all? In all of Apache County? I don't
7 mean just St. Johns.

8 A. No, we have no problems. You mean with mistreatment
9 of the Indians or what?

10 THE CHAIR: Or any, any treatment, any charges that
11 have been leveled against the department?

12 A. Yes.

13 THE CHAIR: Whether formal or informal.

14 A. Yes, we've been investigated for arrests that we've
15 made in the Lufton area four times, I believe, for civil
16 rights violations. And there have been charges brought
17 against us as a result of the investigation.

18 Q. (By Ms. Madrid) By who were you investigated?

19 A. The FBI.

20 Q. Why do you think St. Johns or Apache County, for
21 that matter, doesn't have any problems like some of the
22 other counties that have testified before?

23 A. Why don't we have any problems?

24 Q. Why do you think you don't have those problems?

25 A. Our number of arrests since the public drunkenness law

1 went out, our number of arrests on the Indians is way down
2 as opposed to non-Indians.

3 Q And what is your relationship between the -- your
4 department and the Navajo Police Department?

5 A As far as I'm aware, they're good.

6 Q But I mean you haven't ever had to go in after
7 anybody or -- that they haven't appeared in court, you've
8 never had this problem?

9 A No. No, we haven't had occasion to extradite
10 anyone off the reservation since I've been in office.

11 Q Are any of your officers cross deputized,
12 that question was brought up earlier.

13 A No. We are not cross deputized... with the
14 Navajo Police Department because we do not make arrests
15 of Indians on the reservation. We make arrests only of
16 non-Indians on the reservation.

17 Q So then, I assume that you have no problems with
18 the Indians that don't speak English, or do you have some-
19 body that can translate?

20 A I've never had too much of a problem, I speak
21 enough Navajo to get by myself.

22 Q Say that you wouldn't be there at the time.

23 A I'm sure there's been occasions where an interpreter
24 was needed, yes.

25 Q Do you feel that there would be a need to hire an

1 interpreter? For your department in Apache County?

2 A Well, the geographical area of the county, it
3 wouldn't be feasible to hire an interpreter, no. We're
4 about 300 miles long, and you never know where you'd need
5 a guy.

6 Q And what is the most common charge against the
7 Indian suspects or the ones that are brought in or arrested?

8 A I would say probably DWI, and these DWI's are mostly
9 handled by the department of public safety. My department
10 works very little traffic.

11 Q And roughly what percentage of arrests made by
12 your department are Indian?

13 A Disorderly conduct.

14 Q I said, no, what percentage are Indian?

15 A What percentage of arrests are Indians?

16 Q Right.

17 A I couldn't tell you off the top of my head, but I
18 would imagine probably no more than a third of the arrests
19 are Indians.

20 Q Do you have any Indian officers in your staff, on
21 your staff?

22 A No, I haven't been able to get enough appropriations
23 to hire one. I've been trying ever since I've been in
24 office.

25 Q What do you mean, appropriations, at the time that

1 you went in there, you already had your staff?

2 A. Right.

3 Q. And you -- is this the only problem, just the lack
4 of money? Do you think you could find one that was
5 qualified, we've been hearing here lately that they don't
6 seem to be able to find a qualified person.

7 A. I have a man lined up to go to work right now, if
8 I could get the money, I'd have him on board.

9 Q. And how do you feel about legalizing liquor on the
10 reservation? How do you think this would affect the
11 criminal justice in Apache County?

12 A. Well, I don't know, really, how it would affect the
13 criminal justice in Apache County, I feel like that it
14 would probably keep the traffic quite a bit, fatalities
15 down, exposure gets down, and it would definitely hamper the
16 bootleggers and create a valuable source of revenue for
17 the Navajo Tribe.

18 MS. MADRID: I have no further questions.

19 Q. (By Ms. Lyon) I have a number of questions.

20 First of all, you mentioned that your knowledge of
21 the Navajo language was adequate for you to communicate with
22 a Navajo whose knowledge of English might be limited?

23 A. Very basic, Ma'am.

24 Q. I see. Well, for instance, would you be able to
25 give the individual a statement of his rights in the

1 Navajo language?

2 A I would not.

3 Q Then how would you proceed under those circumstances?

4 A If it were a serious crime I would immediately
5 obtain an interpreter.

6 Q And where would you obtain your interpreter from?

7 A Well, I have a number of friends who work for the
8 welfare department that are Navajo people, who, that's
9 part of their job is to speak the Navajo language in
10 the course of everyday assignments.

11 Q But would this mean, in effect, then, that you
12 would arrest the individual and take him to the county
13 seat and then get an interpreter?

14 A That would depend a lot on the circumstances, de-
15 pending on the seriousness of the crime. Perhaps murder
16 I would not take the individual to the county jail until
17 I had acquired an interpreter, had him appear before a
18 magistrate.

19 Q Well, if you arrested a suspect out on the highway,
20 miles from the nearest town, what procedure would you
21 follow then?

22 A What procedure would I follow?

23 Q Yes.

24 A The same. Regardless of the trouble they're required
25 to go through to get an interpreter, you just have to do

1 whatever is necessary, call somebody out of bed or some-
2 thing. We have a very small department.

3 Q (By Ms. McCullah) What is necessary, in your
4 definition?

5 A Well, call somebody out of bed or get the dispatcher
6 to call someone out of bed.

7 Q (By Ms. Lyon) In other words; you would stay with
8 the suspect wherever this happens to be and radio in
9 for an interpreter to come to the scene?

10 A Well, probably to an office, probably not to the
11 scene, no.

12 Q Then how could you insure that the suspect would
13 also appear at this office?

14 A Well, the suspect would accompany me to the office.

15 Q And you would be able to convey that to him in
16 Navajo?

17 A Oh, yes, I can tell him come with me or whatever.

18 Q I see.

19 You stated that you only deal, or you only arrest
20 non-Indians on the reservation. Would this be as a result
21 of being notified by the tribal police of the need for your
22 traveling to the reservation and making an arrest?

23 A It would not be necessary for me to notify anyone
24 that I was going to the reservation to arrest a non-Indian.

25 Q I believe you misunderstood my question, sir. Would

1 your going to the reservation to arrest a non-Indian be
2 usu -- usually be the result of a report you received
3 from the tribal police?

4 A We receive reports various number of ways. People
5 call in on the phone to report the crimes, we have in the
6 past been notified by the Navajo Police that a crime has
7 been committed by a non-Indian against an Indian, yes.
8 There are various number of ways that you receive reports
9 of crimes.

10 Q We've heard testimony this morning regarding cross
11 deputized.....in Coconino County and you've already
12 told us that there was no need for that in Apache County,
13 in your opinion.

14 Who made that decision that such a procedure should
15 not be established, do you know?

16 A Yes, Ma'am, I made the decision.

17 Q I see. Then you do not feel that it would be to
18 the advantage of your department and the Navajo Tribal
19 Police to have this kind of cooperative relationship?

20 A Well, I don't see where you would need the cross
21 deputization..... in order to have cooperation.

22 Q I see.

23 We've also heard this morning that Navajo Tribal
24 Police officers, because of their status as peace officers,
25 are within their authority to apprehend non-Indians in

1 Coconino County in areas off the reservation, would the
2 same be true in Apache County?

3 A Yes, they're recognized peace officers anywhere in
4 the State of Arizona.

5 Q I see. Do you regularly inspect the jail facilities
6 in St. Johns?

7 A Do I regularly.--

8 Q Inspect the jail facilities?

9 A Yes, Ma'am.

10 Q You do. Do you provide equal facilities for all
11 prisoners regardless of ethnic group?

12 A Yes, Ma'am, we only have one facility, and that's
13 where everybody goes.

14 Q I see.

15 MS. LYON: I have no further questions at this point.

16 THE CHAIR: Any further questions?

17 Q (By Mr. Levis) I just have two brief questions.

18 And I was out of the room for part of this so if these
19 have been asked, if you'd tell me I'd appreciate it.

20 Has Apache County had any difficulty in insuring that
21 reservation defendants who are released on their own
22 recognizance appear for trial?

23 A No, we haven't had any problems.

24 Q You haven't had the problems that have been dis-
25 cussed by the justice of the peace or the city magistrate

1 in Flagstaff, with persons going back to the reservation
2 and then not appearing for trial?

3 A No, we -- we find in Apache County that the Indian
4 people are more dependable about showing up for the
5 trial than the non-Indians.

6 Q For both on and off the reservation?

7 A Absolutely.

8 Q What accounts for this, based on the testimony
9 received earlier concerning the reservation Indians, we
10 received the opposite testimony earlier in other counties?

11 A Well, in my county, I generally know most of the
12 Indians that come into the jail there, and they all show
13 up for court if you ask them. If it's explained to them
14 that they need to show up a certain day, they're more
15 dependable than non-Indians, in my experience.

16 Q Now, it's my understanding that St. Johns is off
17 the interstate highway that most of these other border
18 towns are on, is that correct?

19 A Yes, we're 53 miles south of Interstate 40.

20 Q Has that made a difference, do you think, in some
21 of the problems that have been discussed by other counties
22 or do you feel that there's just more communication between
23 your police department and residents?

24 A I don't think that the location of the county seat
25 has anything to do with it, because prior to moving to

1 St. Johns, I lived right on the border of the reservation
2 for three years and worked as a deputy, and I never had
3 any problems at that time, either.

4 Q Do you know, then, what accounts for the dif-
5 ferences that we're hearing?

6 A No, I couldn't tell you what the difference is.

7 Q We've also heard problems concerning jurisdiction
8 and you might have answered this question, but is the
9 jurisdictional boundaries easily definable in reservation
10 areas? I understand there's a friendly lawsuit going on
11 right now about that. Or is it a problem?

12 A Yes, it's a problem. It's not as big a problem now
13 as it has been in the past, because it is in litigation.

14 Q So what do you do if there is a question of juris-
15 diction at this time?

16 A There has been no circumstances that -- we try to
17 find out immediately what the jurisdiction is and then we
18 notify the respective agency if we don't have jurisdiction.

19 Q Is it hoped, then, that this lawsuit will resolve
20 these problems?

21 A I sure hope so, yes.

22 Q Do you have anything to add concerning other prob-
23 lems that we should be aware of or other information that
24 the committee should be aware of concerning our study at hand?

25 A No.

1 MR. LEVIS: I have no further questions.

2 Q (By Ms. Madrid) I had one more question.

3 On this case, and all I want to know is why would,
4 is it a common practice that when they pick somebody up
5 they take them to Lufton first before taking them to
6 St. Johns?

7 A No.

8 Q Why was that done at that time?

9 A I can't answer any further, Ma'am.

10 MS. MADRID: You can't, okay.

11 THE CHAIR: Any further questions of Sheriff Lee?

12 If not, thank you.

13 Q (By Ms. Madrid) Would you, Mr. Allen, would you
14 describe your duties as Navajo Chief Prosecutor?

15 A (By Mr. Allen) My job as a prosecutor, I guess, is
16 similar to a district attorney on the border towns. It's
17 relatively new, no other tribes, that I know of, have the
18 prosecutor there, each district, and this is the reason,
19 some of the reasons that you find complications that you'll
20 find in border towns, that this type of an office would be
21 located in the reservation.

22 Further, only Indian members that I know of that
23 belong to the National District Attorneys Association.
24 And we're the only Indian people that I know of that belongs
25 to the American Bar Association. So these things are all

1 new to everybody and I think they're trying to get used to
2 a lot of these things.

3 By virtue of several questions on some of these
4 things, it has a lot of basis to it, if you know the back-
5 grounds of these things, I think that if the border towns
6 would like to listen to some of these things I'm pretty
7 sure it can be cleared up. It's just a matter of misunder-
8 standing and a lack of communication in different areas.
9 This can be straightened out.

10 Q What procedure does your office go through when it
11 receives a bond or warrant from an Arizona city or county?

12 A I have never received anything particularly, just
13 mostly gossip that I hear from the border towns, you know,
14 they're having problems of getting extraditions off the
15 reservations, I hear testimony that it's hard to get
16 Indians off the reservation, and I think that if you will
17 -- if you know why the reason is, the border towns would
18 not like to change. See, this thing goes back to 1960,
19 at that time I called it bootlegging Indians off the
20 reservation. They used to take Indians off the reservation
21 without extradition. They were -- the way it was done I
22 think there was a permission made between the border town,
23 either cities or counties, transporting Navajos off the
24 reservation.

25 My office came into being in 1971, we put a stop to

1 this. And we made clear that each border town is to follow
2 the procedures of the Navajo Tribe.

3 We called a meeting of every town and border town
4 to meet with us to discuss the extradition proceedings.

5 Flagstaff never showed up, Holbrook never showed up,
6 Winslow, somebody showed up from there, but other than that,
7 these other people never showed up as to how you process
8 extradition on the reservation. And if they would -- if
9 they would listen, I have sent letters to these border
10 towns, to the mayors, chief of police, informing them what
11 we need from each one of these people.

12 The reasons why you receive lot of these complaints
13 is for instance from here, there's a judge here in town
14 that sent a warrant to my office, so I told him I need
15 the warrant. I called him and I said, look, I need some
16 more information, can I talk to you? He informed me that
17 he didn't have time to talk to me. That I would talk to
18 his clerk, who sent out the warrants.

19 I said I have to talk to you. As a judge, you signed
20 the warrant. If you want these people off the reservation
21 I need to talk to you. I can not talk to your clerk.
22 You're the one who wanted these people off. And I need
23 certain procedures to follow, I need certain documents to
24 follow.

25 He wouldn't listen to me so he referred me to his

1 secretary or a court clerk. And the conversation ended.

2 If he didn't want to take the time to listen to what
3 I needed, I'm pretty sure that he didn't want the person
4 off the reservation.

5 We had one extradition from Prescott one time, the
6 man was sent into jail, he spent three days in jail, after
7 he was picked up on an extradition. And he was ready
8 to go before the trial, we called Prescott, sheriff's
9 department, and we told them the man is ready to be extra-
10 dited, would you send somebody up here to identify this
11 Indian? Make sure that this is the right Indian you want
12 off the reservation. We told him that don't forget, we
13 have 30, 40, 50 Yazzie's on the reservation,
14 same way holds true with Smiths. That we have to have a
15 certain identification from these people, would you bring
16 in the merchant or whoever is complaining so he can
17 identify this Indian.

18 He said I'll get back at you. He called me an hour
19 later, said, hell, it's too much trouble, just let him loose.
20 So we released him.

21 So it's the problem of the border towns to make sure
22 that these things are followed. They do not want to change
23 their ways of doing things, now they said the Navajo Tribe
24 is at fault. If they want these extraditions we have laws,
25 we have procedures, they're going to have to follow these

1 procedures. And this holds true with the chief of police
2 here as well.

3 Now, if they want extraditions of these Indians off
4 the reservation, we have to have a certified copy of the
5 warrant, we have to have identification, census number,
6 some identification of the name, we don't receive these.
7 And this is the reason why they don't want to take the time
8 to go look up to see what the Indian's identification is.
9 And this is the reason why you have a lot of problems.

10 THE CHAIR: Are those the only two items you're
11 talking about?

12 A No, I can sit here all afternoon and name you
13 several things that has happened from border towns. Now,
14 I don't have too much problem with Farmington, they go in
15 and follow what we wanted. There's a certain procedures,
16 if they were probably look in their drawers where we sent
17 them procedures to follow, and if they will look at it
18 it just tells them what to send, but they never take time
19 to do this.

20 And if they would take time as to what we want, after
21 all, that we have laws just like they do. We have to
22 follow them as well, just because he's a judge or a state
23 judge doesn't mean we're going to have to break some of our
24 laws to comply with his. He's going to have to comply with
25 some of ours also.

1 So there's got to be a mutual understanding between
2 towns, counties, and the states. We are cooperating, we're
3 there, there's no problem. But they have to come forward.
4 So lot of these things is done is a misinterpretation of
5 different things that they don't have.

6 Q (By the Chair) When you speak of mutual understanding,
7 am I safe in interpreting that as mutual willingness?

8 A Willingness on my part. Whether or not on his part
9 is something else again.

10 Q To sit down and negotiate?

11 A Right, like I said, I called a meeting they
12 didn't come on in. My willingness began, like in 1964 I
13 came up here, I was a public relations director for the
14 tribe. At the Pow Wow committee, I wanted to meet with
15 them. I got down here to the chamber of commerce and I
16 got into the office, and I said I'm supposed to meet with
17 the board. And the secretary called around and says some-
18 body's watering their lawn, they can't be bothered, they
19 can't come out and see you.

20 They called another board member, I'm sorry, he's
21 taking his wife to the grocery store, he can't be bothered
22 either, for the time being. Now, I traveled clear from
23 Window Rock to come over here to work with these people,
24 now if they don't want to work, and cooperate with us,
25 there isn't much we can do.

1 Q What's the source of the -- this kind of behavior,
2 in your view, Mr. Allen, is it misunderstanding or
3 arrogance, disrespect?

4 A No, it's just -- it's hard to change people. Don't
5 forget that it's hard to swallow that an Indian tribe right
6 in the middle of a state and right smack in the middle
7 of the -- I've had a district attorney tell me why should
8 I read you an extradition for a county of my own? I'm the
9 district's attorney for this county. Why should I have an
10 extradition? It's my county. I don't have to have it.

11 I said your laws stop right at this borderline.
12 right here, until you give me an extradition order you're
13 not going to take that Navajo off the reservation. They
14 have been doing this prior to this before our office came
15 into being. And this is the hard thing for them to break,
16 that they have to follow what we have.

17 It's a set pattern that they have been doing for
18 years and years, and also don't forget that these people
19 are elected on four-year basis and some of them disappear
20 and come back in again. The sheriff that just testified
21 here has been only elected recently. There was another
22 sheriff before him, same way with Sheriff Richards here.
23 These are some of the new people coming in. So some of
24 these old people are set in their ways, will not change and
25 comply with what we want.

1 Q Do you have any suggestions, based upon your ex-
2 perience in the last six years, of ways of, I use mediating
3 for lack of a better term, the culture? What's the --
4 where is the meeting ground?

5 A Well, the happy medium ground, I think they'll have
6 to understand the culture of the Navajo people. This is
7 an ancient culture that somebody's got to understand, and
8 I think the Indians, partially anyways, some of them
9 understand the White society, our modern democracy which is
10 taught in school, we understand that part of it.

11 We understand that when you get off the reservation
12 you have to -- you're just like anybody else, you obey the
13 laws in that sense. And we understand that much. And I
14 think they're going to have to come across half-way and
15 understand that we live differently too.

16 You know, we don't eat steaks and baked potatoes
17 every night, you know, we have to live on our fried bread
18 and beans out there. So these are the things they're going
19 to have to understand.

20 The cross culture that if they don't understand, there
21 should be a happy medium. If they were so concerned and
22 if they were not -- if they were so concerned, why
23 doesn't Flagstaff have an Indian center? Why don't they
24 have an interpreter in each court? There's enough money
25 spent in each town here that if you take a dime out of

1 every dollar that's spent with the merchants, you'll have
2 enough money in there for an interpreter for the whole
3 town. Or Indians being hired in different departments.
4 Higher echelons, wherever you want to.

5 Now, I think it's a poor excuse to say we need
6 federal money to hire Indians. If towns can find money
7 to buy other things, I'm pretty sure they can find Indians
8 to be employed in their respective areas.

9 Q Has there been a forum for you to articulate these
10 views in exchange with perhaps the county legal group or
11 the -- or other organized business and professional
12 groups? As a speaker or --

13 A Yes, I've set schedules several of the towns to
14 hold seminars to explain the Navajo laws, our statutes as
15 well as what the merchants have to comply with. And you'll
16 find, you'd be surprised how many of these people will show
17 up and you will find that these people will not show up
18 as long as there's an Indian involved in this thing, that
19 is teaching this particular lesson or whatever you want to
20 call it.

21 And we have a hard time getting these people to come
22 in to try to understand them.

23 Now, I'm sure if these people here in Flagstaff
24 were interested they'd be sitting out here wondering what's
25 going on. I'm sure if the chief of police wanted, he would

1 have met me or met the chief of police that was here this
2 morning. Chief Dart's been here all morning, was here
3 yesterday. To try and work out some of these problems.
4 And sorry to say, but I don't see the chief of police
5 sitting here and neither is the mayor. That goes to show
6 you how much they want to cooperate.

7 I traveled clear across the country, clear across
8 Arizona to come over here for this hearing, this is my
9 sincerity of coming here. That's how much I'm concerned
10 about it. That I want my people to be treated right here
11 in these border towns. And I will continue to travel
12 these miles to see that the Navajos are treated right.

13 All I'm asking is that they meet us half-way.

14 Q (By Ms. Madrid) What kind of relationships do you
15 have with the judges, the county attorney and the police
16 in the -- out of the reservation?

17 A Which county?

18 Q No, the counties? I mean any, the judges or the
19 county attorneys or the police?

20 A I work pretty closely with most of the county
21 attorneys, I'm on the Arizona Governor's Review Board on
22 LEAA in Phoenix with the county attorney here in this town
23 and I have met with him for the last three years, he's been
24 on the same board with me. And I have asked him, is there
25 any problem in the area, is there anything we can discuss.

1 His answers have been to me that everything is fine, no
2 problem at all. And they're going to have to realize,
3 you know, if they've got problems they're going to have
4 to bring them forth. We can't read their minds, if they've
5 got problems they should let us know about it.

6 But as far as working with county attorneys, I don't
7 have too much problem with them. If we prosecute some of
8 these cases in the county level we work pretty close to-
9 gether.

10 Q So you feel that they are cooperative? Most of
11 them?

12 A Most of the time. It depends on what kind of a
13 case again. The same holds true with -- now if you take,
14 maybe a complicated case that you want to register with
15 the county, well, if the county attorney doesn't want to
16 accept that particular case, let me give you one illus-
17 tration.

18 We had problems in the Hopi area, this is before
19 the joint use area came into being where it is now. We
20 had a problem, we had assault and battery in that area.
21 We referred the case to the FBI, FBI says no, I'm sorry,
22 it's a civil case. So we referred the thing to the county
23 attorney, we had assault and battery in that area.

24 There was an Anglo and an Indian, a Navajo involved
25 in it. They did not want to prosecute this particular Anglo

1 in the county attorney's office. So depending on what you
2 can get and what they will prosecute, the same holds true
3 with those 14 major crimes.

4 We have the same problem with the United States
5 Attorney. We have the problem of trying to get our cases
6 prosecuted in the federal courts. And we are down the
7 bottom of the totem pole every time we mention that we
8 want some prosecution done on the reservation. And this
9 holds true again in the conflict.

10 Q What do you think about legalizing liquor in the
11 reservation?

12 A We were talking about legal liquor?

13 Q Being able to sell it, yes.

14 A I was just going to say you got more liquor on the
15 reservation here than you have in the state, on the reser-
16 vation. I have maintained that liquor should be legalized
17 a long time ago.

18 Let me give you background as to why this has never
19 happened. This has been put on the agenda several times,
20 on election you have people ran for that particular area,
21 for the particular item to have legalization of liquor.
22 But you find these do-gooders such as church people blocking
23 this area, you'll find the people in the surrounding towns,
24 the bar owners footing the bill to defeat such a thing.

25 As long as you got bars, along the edges of the

1 reservation, footing the bills to defeat that particular
2 item, you will never have it legalized. We're fighting
3 an organization that we probably couldn't combat, because
4 of the money problem that they can throw into it. But
5 as far as legalizing, I would like to see them legalize
6 it. It will save a lot of lives, it will save us a lot
7 of work.

8 Q Why do you think alcohol-related crimes are so preva-
9 lent in border areas?

10 A Pardon me?

11 Q Why do you think alcohol-related crimes are so
12 prevalent in border areas?

13 A I guess the problem is idle time. You find people
14 that will go into town to drink and in order to not take
15 it back or whatever you want to do with your liquor, you
16 consume it. So I think the problem is, on given time,
17 lot of these Navajos don't have time to come in except on
18 week ends. And don't forget that these bars are so close
19 together that we can't pass one, especially in Gallup,
20 without having to go by a bar to go shopping anywhere
21 else. So it's just like throwing water to plants out
22 there, there's a bar on every corner, this holds true
23 right down 66. Every time you mention do you want to do
24 away with the bar, you'll find maybe the legislative body
25 getting involved in it, some political organization.

1 So I think it's more or less an idle time, nothing
2 to do but to drink.

3 MS. MADRID: I have no further questions.

4 Q (By Ms. Lyon) My only other question would be,
5 Mr. Allen, whether you would have any additional recom-
6 mendations, observations or remarks that you would make
7 for the better understanding of the committee, and for the
8 purposes of our transmitting your recommendations on to
9 the commission on civil rights?

10 A Well, as far as the commission is concerned, I think
11 that if the commission is really sincere about holding
12 these hearings, I think any violation that you find, make
13 sure that these are investigated, if there's investigation,
14 or clearly cut violations of civil rights, that these
15 civil rights should be filed in federal courts. Then we
16 know the intention of the commission is to correct some
17 of these problems. But I think that my recommendation is
18 in, in the prior report from Farmington is that the
19 commission submitted a report to the public and that was it.

20 You get a lot of criticism, don't forget that any
21 time you release that type of report, criticizing the town
22 or criticizing the mayor, you are hurting the small people,
23 you're hurting the small Navajo people in that area.

24 The Anglo people in that area has turned against the
25 Navajo people as of today because of that report. The

1 commission that made the recommendation to the mayor in
2 Farmington where the mayor was so upset about it, and said,
3 you know, he's not going to do, he's not going to have
4 anybody tell him how to run his town. So I think the best
5 way that the commission can really serve its purpose is
6 some of these things be filed in federal courts, any vio-
7 lations, and then the sincerity of the commission would
8 be taken, but if you just release another report like
9 you have in Farmington, we're just creating another problem
10 again.

11 No matter how much of recommendations you make to
12 the town, the town can turn around and say, you know, the
13 heck with it, I'm not going to do this, nobody's going to
14 tell me what to do.

15 So, unless you have some sort of an arm to twist,
16 which is the federal courts, make sure that these are
17 filed, the investigation, the proven allegations that are
18 made against the towns, otherwise it doesn't do any good.

19 Q (By Mr. Levis) If I could just for one second, just
20 to clarify a point which is mentioned in the opening state-
21 ments both days, but I think should be made clear again,
22 the commission on civil rights does not have any enforcement
23 power. And that would preclude or prohibit the commission
24 from filing any such charges in federal court.

25 And that was made clear in the opening statement.

1 The only power that the commission does have, and
2 the advisory committees, is to conduct investigations
3 and to issue reports. And to make recommendations.

4 Q (By Ms. Lyon) I was going to ask, in line with
5 what Mr. Levis said, Mr. Allen, is there a mechanism or
6 an office within the Navajo Tribal Government structure
7 that would be able to advise individual tribal members of
8 avenues available to them to pursue this type of action?

9 A We have just created the human rights -- or human
10 rights committee recently, and I think when this committee
11 starts in that we would be able to help the Indian people
12 on the reservation. This goes back again, you have people
13 like DNA, you got legal aid people on reservation to do
14 this type of work. You'll find that most of the offenses
15 that happen, happens on the border town, so it takes
16 the jurisdiction away from the Indian tribes again, and
17 anything that happens on the border towns is referred to
18 the district attorney's office, and chances are nothing
19 will be done about it.

20 So, anything that happens on reservation is taken
21 care of by these legal aid societies. But in the border
22 towns where you don't get the help of these people to come
23 in town, nor do they understand that these things are
24 available to the Indians just as well. And a lot of things
25 that the states have and the Indians are entitled to, but

1 the information is never given to the Indians when they
2 need to know these things.

3 Q What organization or agency would you consider would
4 have the responsibility to make this information available?

5 A Well, like I said a while ago, I think the towns
6 themselves are sincere about it, could create such a thing.
7 Why can't a town or -- Flagstaff have an Indian commission?
8 Why can't they have some sort of a social services where
9 all these problems can be referred to?

10 Now, these are the problems of the towns themselves.
11 And the towns going to have to realize that these problems
12 have to be taken care of by themselves. We can't be
13 reaching in from the reservation saying here, Farmington,
14 Flagstaff, do this. They're going to have to do these
15 things on their own.

16 Only thing I can say, and how far it will get I
17 don't know, but these things can be done, but it's up to
18 the towns to do so.

19 Q I understand the Navajo Tribe has established a
20 civil rights office, is that correct?

21 A Yes, we have.

22 Q And what is the function of that office?

23 A The function is similar to yours, I'm a member of
24 the commission, and we do the same thing as you're doing,
25 we hold hearings and we've held hearings in different areas,

1 and the commission, I guess like yours, don't have any en-
2 forcement powers either. Anything we have we have to do
3 through my office, the prosecutor's office, to prosecute
4 some of these cases.

5 But, again, we don't have the money to investigate
6 some of these complaints, we receive a lot of complaints.
7 But we just don't have the staff to do it.

8 Q Have you encountered any difficulty with individuals
9 who may have been aggrieved being willing to file suits in
10 federal court or having the avenues to file such suits?

11 A If, in Farmington area when we held the hearings,
12 there was several of them that could have been followed up,
13 and I understand this was turned over to the New Mexico
14 side of the commission. I don't know how far it got, but
15 some of these could have been filed in federal courts, and
16 how far it's gone, I don't know.

17 Q Well, are you or your commission available to counsel
18 individuals, then, on the procedure they should follow if
19 they should wish to file suit?

20 A Yes, we are.

21 Q And I just have one more question. And that is
22 whether you would be willing to participate in a followup
23 conference sponsored by the commission or in workshops with
24 law enforcement officials of border towns to discuss issues
25 of common concern?

1 A Well, let me make the same statement I made a while
2 ago, that I'm available and I'm willing to do it or travel
3 anywhere to help my people whenever I can. This means in
4 holding meetings, if I have to drive that far I'll go ahead
5 and do this.

6 Q Thank you.

7 A But on my willingness to participate, to help my
8 people, I want to do.

9 MS. LYON: Thank you.

10 THE CHAIR: Any other questions?

11 I have one question, Mr. Allen.

12 Q (By the Chair) Over the past two days we have asked
13 a number of persons to offer their views regarding the
14 legalization of liquor on the reservation. And the pos-
15 sible effects. We've also noted the relationship in the
16 border towns between alcohol and certain kinds of behaviors,
17 problems with the police. Most persons have indicated that
18 they favored the legalization of alcohol on the reservation,
19 there have been a couple of persons indicated there probably
20 would be some problems over a period of time, and we
21 didn't follow up on that.

22 But the question that I want to ask you, can you
23 describe for me, because of your familiarity with the Navajo
24 Nation, particularly, those kinds of cultural sanctions or
25 devices or mechanisms for controlling, over a period of time,

1 the use of alcohol?

2 A Well --

3 Q Just, I mean it's a related kind of question, I
4 don't know whether you've given any thought to it or not,
5 just --

6 A Well, I have, on several occasions, have made my-
7 self available, my opinion as to why. And what it would
8 do. And over a period of time. I think we will probably
9 go through the same process as the Apaches went through
10 over a period of a year or two years, where you had liquor
11 on-reservation and it was consumed to the point where you
12 had drunks laying around all over the bar, around the bars
13 or anyplace else.

14 Now, I think the thing that will probably erase
15 or whatever you want to call it, whoever opens liquor on
16 the reservation, if it's controlled by the Navajo people,
17 the Navajo Tribal Government themselves. Now, the money
18 that is derived from that thing could be millions and the
19 money that's derived on that thing could rehabilitate those
20 people that have drank before, and I think some of these
21 things can be worked out and they can -- it's functional
22 and I'm pretty sure that if the state and Navajo Tribal
23 Government could control the liquor establishments like the
24 Utah State does, and they have done an outstanding job in
25 controlling there, and if you have that type of control,

1 I'm pretty sure that it will work.

2 Q Are there factors in the religion and the -- in the
3 church, in the relationships or whatever that also would
4 lend itself to controlling alcohol, protection of the body
5 or whatever?

6 A Well, any church you go to or any preacher you go
7 to, you know, would come to a conclusion that anything you
8 do wrong is going to kill you, not matter how.

9 Q I thought that was a Black phenomenon.

10 A No, we have it in the Navajo, too. And this is
11 their attitude, and not changed, and I think the thing is
12 that once they get used to the idea that, you know, that
13 the legalization is saving lives rather than taking it,
14 and the idea is that you keep the people home to do this
15 and they're going to have to realize, you know, that we're
16 not transporting these people, that if they want to drink
17 they're going to get it in Gallup or anyplace else.

18 You can not prevent or deny a person, if he wants
19 to go get it, if he has the money he'll travel clear across
20 country and get it. So you bring it home, let him have it
21 in that area, let him get used to it, it's just the idea
22 that, I guess in probationary in any of the states, when
23 you first open liquor you have people that are, you know,
24 that consume it as fast as you can get it and you'll have
25 the same problem on the reservation for a while, sure.

1 This is going to, you know, hurt the tribe for a
2 while, but it's just the idea they're going to have to get
3 used to it. And I'm pretty sure that if they would take
4 into consideration how much lives it's saving, that it
5 would work.

6 THE CHAIR: Fine. Are there any other questions
7 by any member of the commission, of Mr. Allen?

8 If not, thank you kindly, sir.

9 Two persons have indicated a desire to appear before
10 the commission and discuss and clarify some question, Mr.
11 Freddy Howard and Mr. Evans Nuvamsa. If those persons are
12 in the audience, will you come forward, please?

13 May I have, beginning with you, Mr. Nuvamsa, your
14 name, address and occupation, please?

15
16
17 MR. EVANS NUVAMSA

18
19 A. (By Mr. Nuvamsa) Evans Nuvamsa, I'm working as an
20 Indian justice specialist for the State of Arizona, Phoenix.

21 Q. (By the Chair) And your home address, did you give
22 us that?

23 A. My -- not my office.

24 Q. Your home address.

25 A. Seven-two-two-five West Camelback, Phoenix.

1 Q Can you describe your duties with the Arizona State
2 Justice Planning Agency?

3 A Yes, my primary responsibility is to administer the
4 LEAA funds to Indian tribes in the State of Arizona in
5 providing technical assistance to the tribes as well as to
6 various different universities within the southwestern
7 region. The area, providing information to university on
8 American Indian and criminal justice systems.

9 Q All right, you mentioned LEAA --

10 A That's the Law Enforcement Assistance Administration.

11 Q Has any grants been made within this region, Flagstaff,
12 Winslow, Page and so forth, for the purpose of assisting
13 with any of the issues that we raised here today, for
14 example, public defender funds and interpreters and
15 so forth? Has any funds been issued, grants been made in
16 this area, to your knowledge, that would help?

17 A I would have to say no. And I want to volunteer the
18 information on that basis, that most of these border towns,
19 you know, mainly Flagstaff, Holbrook, Winslow, Prescott,
20 Tucson and all those places, you know, where they have
21 Indian populations, they are using these urban area Indian
22 populations as part of the appropriations in receiving
23 their dollars from LEAA each year, but I have yet to see
24 any program developed by any one of these border towns just
25 for the purpose of promoting programs to address Indian

1 problems within those cities.

2 Q (By Ms. McCullah) Let me raise a point, I want to
3 hear you right. Did you say that your department has not
4 given any allocation to this region?

5 A No, what I mean is that, you know, each fiscal year
6 the State of Arizona receives its annual appropriation
7 based on the overall state population, including Indian
8 tribes.

9 Q Right.

10 A But for the purpose of promoting Indian programs
11 within the -- within our office, when the state receives
12 its appropriation the first quarter of the total appropriation
13 is taken off for use by all various state agencies in
14 the criminal justice system, but prior to any further break-
15 down of those, the remaining three quarters, the Indian
16 portion is taken out according to the overall state Indian
17 population, that's only referring to the reservation popu-
18 lation, not the cities and towns.

19 But the remaining portion of that appropriation is
20 broken down according to population including Indian
21 residents within those cities.

22 See, each region receives their appropriation in-
23 cluding Indian -- to include Indian population but what I
24 meant was that even though they have received their appro-
25 priations and count Indian population, I have yet to see any

1 project application come in our office for the purpose of
2 addressing special Indian problems within those cities and
3 towns.

4 Q But this region has been funded by LEAA?

5 A That's right.

6 MS. McCULLAH: That's what I wanted to know, thank
7 you.

8 Q (By the Chair) I asked the specific question re-
9 garding the availability, I suppose, of funds for some of
10 the issues that we raised today regarding funds for in-
11 terpreters, or public defender funds.

12 A Well, that's -- that's what I meant, you know, we
13 are aware of those problems, the need for special interpreters
14 within the various superior court systems but we have yet
15 to receive any applications from the region, within where
16 these problems exist, to come to us, you know, for financial
17 assistance, is what I said.

18 Q (By Ms. McCullah) Mr. Navumsa, would you interpret
19 your role or your function as a specialist in the justice
20 department, as probably making some recommendations,
21 some very strong recommendations?

22 A Yes.

23 Q To these agencies that they really look into these
24 areas of need and that their next proposal, you would like
25 to see some of these issues addressed?

1 A That's right. I can -- I can only say that out of
2 our total five, six regions within the State of Arizona,
3 only one region had some Indian involvement, I don't know
4 how successful they are in their efforts to bring these to
5 the awareness of the rest of the COG's members, and
6 that's region three, and Perry Allen can back me up on that.

7 Q Let me get this clear in my mind, I know the allo-
8 cation process, I also know the formulas used. In allo-
9 cating funds, who gets the funds in the region, did you
10 mention the council of governments? They get the funds?

11 A Uh-huh.

12 Q They write up a proposal, submit it to your office?

13 A No, the various cities and towns and Indian tribes
14 -- well, you know, it used to be handled that way, the
15 Indian tribes were included in the regions but since, you
16 know, because of the problems, what I mentioned that, you
17 know, these COG's have not been promoting any of these things
18 in project applications so the ASJP, justice planning
19 agency, for that matter, had reestablished their policies
20 to make my office to serve as the region in treating the
21 application, that's only for reservation Indians now,
22 but I'm hoping, I've been hoping and I've been taking, you
23 know, different measures to make these Indian problems,
24 you know, border town Indian problems, to the awareness of
25 the regions. But, you know, nothing has come across yet.

1 Q (By Ms. Lyon) Mr. Nuvamsa, should your earlier
2 statement regarding the population statistics in each
3 county planning district, which include the Indian popu-
4 lation, be interpreted as meaning that out of the funds
5 allocated to that county or that planning district, for
6 purposes of law enforcement, that body or that county should
7 be able to fund the type of position we have discussed
8 earlier, such as a court interpreter?

9 A That's definitely correct.

10 Q In other words, in your opinion, then, it would not
11 be necessary for them to submit separate applications for
12 this type of program, they should be able to fund that out
13 of their existing allocation?

14 A They could go either way, you know. But -- well,
15 I'll have to rephrase that.

16 Yes, because, you know, the appropriation that is
17 definitely designed for Indian programs can not be used in
18 any urban area Indian programs, you know, if something
19 should be developed, because they are -- they're definitely
20 defined as reservation implementing programs.

21 That was -- that's the basis of my statement by
22 saying, why not develop Indian programs for urban Indians?
23 You know, whatever areas of problems there may be as far
24 as criminal justice is concerned. Juvenile delinquency pre-
25 vention programs, LARC's, and especially Halfway Houses for,

1 you know, exoffenders, exoffender programs and stuff like
2 that, see?

3 Because my knowledge, with my dealings with the
4 inmates at the state prison, definitely indicates that
5 neither one of those persons that are up for release have
6 any desire of returning back to the reservation because
7 they are nothing, absolutely nothing that they can look
8 forward to in going back to the reservation, but they
9 hope to -- they are strongly requesting, you know, my
10 involvement in developing something like that, especially
11 in the Phoenix metropolitan area, you know, to establish
12 rehabilitation, work release or exoffender programs, be-
13 cause that's the area for -- I mean that's the place where
14 they strongly desire to look for employment when they get
15 released.

16 Q Would off-reservation Indian organizations be
17 eligible for such funding from LEAA?

18 A That's right.

19 Q To your knowledge, have any such organizations in
20 Arizona made use of this avenue?

21 A Okay, I'll answer that one yes and no. The organiza-
22 tion is not Arizona-based but they have utilized one of the
23 Arizona tribes as a conduit and in order to receive national
24 scope Indian LEAA funds. And that's through the Gila River
25 Indian Tribe, for what they term as the Court Reform Project.

1 But that's a national scope project.

2 Q I see. But it is possible, say for an incorporated
3 off-reservation Indian organization to be eligible for
4 funding from LEAA?

5 A That's right.

6 Q And to your knowledge, none has submitted a direct
7 proposal for such funding?

8 A None that is Arizona-based, no.

9 Q What agency or representative of elected government
10 in the off-reservation area would you feel has the responsi-
11 bility to fund this type of program or seek funding for
12 this type of program? Would it be the county, the muni-
13 cipality, or would it be a private corporation?

14 I mean we're talking in terms of support services
15 funded by LEAA for off-reservation Indians?

16 A Okay, those are the projects we term as regional-
17 type projects. You know, it can either be funded out of
18 national scope federal discretionary funds, Indian funds,
19 or if two or more tribes would join together to make one
20 application for a regional-type of project, then it can
21 be located -- located off the reservation. If that is --
22 if that is their desire, or it can be located in any one
23 of the reservations that join together to make such an
24 application.

25 Q For example, what avenue would the City of Flagstaff

1 have if the city government states they do not currently
2 have the funds to fund a position of court interpreter and
3 fund the training for this person, would such a city have
4 any avenues to obtaining additional funding for this type
5 of project?

6 A They don't necessarily have to be asking for addi-
7 tional funding because, like I say, you know, they have
8 already utilized the Indian population. All it takes,
9 you know, is all the counties that are included in the
10 NACOG, like for region three, it takes Yavapai, Coconino,
11 Navajo, and Apache Counties to make NACOG. So either one
12 of these counties can serve as an applicant, through
13 region three funding.

14 Q Now, we heard testimony yesterday by a judge in
15 the City of Flagstaff, that he had requested this type of
16 funding but that apparently the city council had a higher
17 priority. And so what you are saying, then, it really
18 is, it's at the whim of the respective governing body how
19 these funds are used, right?

20 A Okay, I think you know, I -- I don't think that
21 there's that much problem in obtaining part of the regional
22 allocation, you know, to fund such a project out of the
23 NACOG allocation, but if it means, you know, convincing the
24 City of Phoenix -- I mean the City of Flagstaff Council,
25 then I think, you know, those -- those Indian tribes that

1 have larger population here in the City of Flagstaff should
2 seek the support of their respective tribal council to
3 address the City of Flagstaff, you know, for such a project.
4 I think if it means that -- that, then it will have to go
5 that manner.

6 Q (By Mr. Levis) Mr. Nuvamsa, it's my understanding
7 that NACOG, is that Northern Arizona Council of Governments?

8 A Right.

9 Q Is there any community control over what NACOG
10 proposes to you or what the tribes propose to you? Under
11 certain guidelines?

12 A It operates basically under the same guidelines as
13 our office does, you know, because the regions only
14 serve as planning regions, you know, they have to, each,
15 you know, each city submits their plans to the region
16 and then, you know, if they work the same as we do then
17 they set up their priorities, you know.

18 Q But does LEAA have guidelines that these COG's
19 have to follow?

20 A That's right.

21 Q (By Ms. McCullah) Such as community participation
22 in the planning process?

23 A Right, definitely.

24 Q (By Mr. Levis) Would you send those guidelines to
25 us? Because I think they would assist us in making recom-

1 mendations to the various officials involved?

2 A Sure, certainly.

3 Q How often are these programs up for review, is it
4 yearly or is it --

5 A Yearly. Because they have to -- all regions and
6 all Indian tribes have to submit their planning input
7 to our agency around July and August for, to give us time
8 to -- you know, to consolidate these plans into one state
9 comprehensive plan through which, you know, we, the
10 State of Arizona, receives its allocation from LEAA
11 annually.

12 Q What avenues do individuals have if they feel that
13 the COG's or the tribal governments are ignoring the
14 problems in the area? Do they file a complaint with you
15 or do they go to federal court, or what must they do to
16 insure that the programs that are needed are proposed?

17 A Well, I'll have to hold myself on that, answering
18 that question, I'd like to consult my director on that.

19 Q I'd really appreciate that, because it's a concern
20 I think I have and maybe some other members of the committee
21 has, is that the individuals or the people in some of the
22 problems are sort of lost in the shuffle.

23 We've read stories, I think nationwide, where LEAA
24 funds have gone to machine guns and -- you've heard the
25 stories too, and it's a big concern, I think, of individuals

1 in the communities. Do you give moneys directly to jails
2 and courts or does this have to go through the COG's?

3 A In my area, all the grants go directly to the --
4 to the tribes, you know, tribal councils.

5 Q And to the various COG's?

6 A Yes, to the COG's, you know, then they in turn sub-
7 mit their applications to them, then on to us. You know.

8 Q So Judge Brady's proposal --

9 A Judge Brady's proposal will have to be signed by
10 the city mayor.

11 Q Then that would go --

12 A It doesn't go to the jail or it doesn't go to the
13 court or corrections, no, it goes to the unit of local
14 government.

15 Q I think that's why the LEAA guidelines would be most
16 helpful.

17 MR. LEVIS: I have no further questions.

18 THE CHAIR: Any other questions of Mr. Nuvamsa?

19 If not, Mr. Howard, will you give us your complete
20 name, address and occupation, please?

21

22

23

MR. FREDDY HOWARD

24

25 A (By Mr. Howard) My name is Freddy Howard, I'm a

1 Navajo language broadcaster from KOAI-TV, television. And
2 I've previously been associated with three law service
3 agencies on the Navajo Reservation. Number one, the Navajo
4 Legal Aid Service, in Window Rock, and the DNA Legal
5 Service, Tuba City, and also with the office of the prose-
6 cutor under Perry Allen.

7 Q (By the Chair) It's my understanding that you want
8 to address yourself to the qualification for translators
9 in state and city courts, do you have something about that?

10 A Well, I have my own feelings about the qualifica-
11 tions of interpreter in court, because I've made a lot
12 of interpretations, not only in tribal courts but also in
13 federal courts and also in state courts. And also in public
14 hearings and local community hearings.

15 And interpretation isn't just as simple as some --
16 you know, somebody might think, because you just can't --
17 you just can't take anybody, any Tom, Dick and Harry, off
18 the street and expect him to interpret, say the Arizona
19 Code of Traffic Regulations or maybe constitutional rights
20 or any other law. You can not do it. And, you know,
21 I've noticed here in Flagstaff, you know, the -- in the
22 city court where they might just take a trustee, maybe
23 somebody that's not having even finished high school, and
24 they will bring him to the court and try and make him in-
25 terpret some of these laws, like their constitutional rights.

1 And the average Navajo can not do that. Because before
2 they -- before they can make any interpretation they'll
3 have to study this. You just can't grab a piece of paper
4 like this and then read it off to a non-English-speaking
5 Navajo. Because as far as he's concerned, a lot of these
6 laws do not exist for him. He's never been associated
7 with them, he's never heard it before, I mean he's been
8 raised on the reservation and, you know, the only thing
9 he knows is his own culture and his own heritage and his
10 own family laws or whatever he might have. Or his own
11 morals.

12 But when you bring him to the city and then read
13 him a traffic code or his constitutional rights, it doesn't
14 make any sense to him. You have to explain, you have to
15 go back in retrospect, explain when these laws were made,
16 and what they mean to him, and what the consequences will
17 be if he doesn't understand these.

18 See, this is where it really hurts. You know you
19 can read a piece of paper to a Navajo but it won't make
20 any sense to him because it doesn't exist for him.

21 You have to go back and explain why these things exist
22 in order for them to understand it and this is the main
23 problem in these courts that I've seen. I mean you can
24 take an Indian in there and then you can say do you under-
25 stand this and he'll just -- he'll just mumble yeah, without

1 him really understanding the consequences of it. This is,
2 you know, a problem that I see here in Flagstaff. I mean
3 you have to have a really qualified interpreter to make
4 these non-English-speaking Indians understand what, you
5 know, what is involved here.

6 Q Are there sources for developing those skills?

7 A I think the Navajo Tribe would be able to train
8 these type of individuals. I mean I know the state doesn't
9 have any, I don't -- I don't find any sources where they
10 would be trained but I know the Navajo Tribe can train
11 somebody in this field. Because it takes, you know, just
12 like me, I -- now I've been associated with interpreting
13 for about, close to four to five years, and it takes this
14 long to really develop a good, you know, interpretation
15 method because sometimes, you know, you have to explain
16 things backwards, you know, start from the tail end and
17 then work yourself backwards in order for people to under-
18 stand. This type of thing.

19 Q What was your special training, Mr. Howard?

20 A I didn't really have any special training, most of
21 it -- you know, most of my association with these legal
22 service offices has been in the field of paraprofessional
23 legal counselor or adviser, and what I did was I represented
24 people in court, you know, on the Navajo Reservation where
25 you can speak Navajo, you know. For a hearing. And also,

1 you know, represent people on; you know, something like
2 domestic problems, or stuff like that, family problems,
3 domestic problems, probates.

4 THE CHAIR: Any other questions of Mr. Howard?

5 Q (By Mr. Levis) Mr. Howard, do you think inter-
6 preters should also be paralegals, is that a prerequisite
7 to being an interpreter?

8 A Yes, I do, because like I said earlier, you just
9 can't take anybody off the street and expect him to do
10 a substantial job in interpreting rules and procedures or
11 even the law enforcement procedures and stuff like that,
12 or constitutional rights, because he can't do it. Because
13 he doesn't even understand what he's talking about. So
14 he has to be trained in this particular area, you know,
15 not maybe as a paraprofessional legal assistant, but they
16 have such a program here at Northern Arizona University.
17 That's the only one that I know of.

18 I don't know if they offer it down at ASU or Navajo
19 Community College or anyplace else.

20 Q Did you attend such a program?

21 A Yes, I am in that field right now.

22 Q Do you think it would be helpful for the rights that
23 Judge Brady passed out yesterday that are read, to all
24 the individuals, if these were translated into Navajo? And
25 if so, would you or do you think NAU should be willing to

1 do it? I think it would be very helpful.

2 Dr. Warren's going to give you a copy of those right
3 now.

4 A Yes. I did quite a bit of interpreting here in
5 town, you know, for attorneys, they usually call me and if
6 they have Navajo clients then I usually do interpreting
7 for them, and as far as the city or the county or justice
8 of the peace, they've never given me a call or anything,
9 even though I've mentioned to them before that I would be
10 available. But from what I've seen, they could just grab
11 anybody and they might --they herd them in front of a
12 court and they might say something like, because anybody
13 in here not understands English, and you know, the -- they
14 won't say anything, I mean they'd announce this in
15 English.

16 And you know, it's very hard for a Navajo or an
17 Indian that doesn't speak English to come forward and say
18 that I don't understand English. It's pretty hard for
19 them. Because they, all they know is that they know they've
20 gotten caught, they know they're being railroaded down the
21 road.

22 Q (By the Chair) Is there a relationship between the,
23 just inability to speak English, and the larger percentage
24 of those who plead guilty?

25 A Yes, I believe there is. Even though I don't have

1 no statistics or anything, but I've -- I've been in jail
2 before, and I've talked to a lot of people, you know, that
3 were in jail, and most of the ones that didn't understand
4 a word of English pleaded guilty, there was one guy that
5 was thrown in jail for eating a sandwich in a parking lot
6 here in Flagstaff.

7 Q What was the offense?

8 A Eating a sandwich in a parking lot. I mean this,
9 I mean this -- this is the truth. There was this guy
10 here that didn't understand a word of English that got
11 thrown in jail for eating a sandwich in a parking lot.
12 Evidently there was such a law here in Flagstaff, and I
13 just happened to be in jail with him at that time, and the
14 next day after he got thrown in, that police officer that
15 arrested him came back and said, hey, what are you doing
16 in here? I thought they let you go. And, you know, to the
17 even officer's amazement this guy got ten days in jail for
18 eating a sandwich in a parking lot.

19 Q But did the officer explain why he had arrested the
20 individual to begin with?

21 A Well, I asked him there, I said how come you arrested
22 him? He said, I don't know, I just -- I thought the judge
23 would just let him go.

24 Q How many years ago was that?

25 A This was, about six months ago. And I didn't

1 believe it. You know, to the officer's own amazement, you
2 know, I didn't think you were going to get ten days.

3 Q When you interpret for attorneys, is this done on
4 a fee basis or is this voluntary work or what?

5 We heard testimony earlier that the public defender
6 doesn't have any funds to hire interpreters.

7 A Mostly it's done on a fee basis.

8 Q Fee basis?

9 A Yes, because I go to school here and I also do my
10 broadcast and I have to squeeze in what little time I have
11 into interpreting, sometimes I can't do it.

12 Q Could you supply the committee at your convenience,
13 the information about that case that you've discussed,
14 about eating a sandwich in a parking lot? It doesn't have
15 to be done now, we'd prefer if it were done in writing.

16 A Oh, yes. Yes.

17 Q So we can check with the city concerning it.

18 A I don't remember the person's name but I can
19 recognize it.

20 Q If you remember the date after thinking about it.

21 A Yes.

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

23 THE CHAIR: Any other questions?

24 Thank you, Mr. Howard.

25 MR. LEVIS: We've received one written statement

1 which I'd just like to enter into the record as Exhibit 14,
2 from the law firm of Ward, Hufford, Blue and Withers
3 concerning a statement, concerning their observations, that
4 is in the area of the administration of justice as it
5 affects American Indians in off-reservation areas.

6 THE CHAIR: On behalf of the Arizona Advisory
7 Committee, thank you for attending and contributing to
8 this open meeting in Flagstaff.

9 We have heard testimony from groups and individuals
10 concerning the administration of justice as it affects
11 American Indians in off-reservation areas. We have heard
12 that approximately 90% of American Indian arrests are for
13 alcohol-related offenses, that almost all of these arrests
14 are for misdemeanors and that American Indians rarely
15 exercise their legal right to plead not guilty.

16 Tribal officials, as well as city and county officials,
17 have explained problems American Indians have with regard
18 to jurisdiction. American Indians are often victims of a
19 double standard -- of a double system of justice which
20 subjects them to prosecution by federal, tribal and local
21 city and county officials for the same offense. American
22 Indians are less represented on juries in Arizona and as a
23 result they rarely are judged by a jury of their peers.

24 There are few rehabilitative facilities available
25 for American Indians who have an alcohol problem and are

1 arrested for an alcohol-related offense. In fact, we have
2 heard testimony that has shown that local alcoholic recep-
3 tion centers, LARC's, in Arizona, have closed recently due,
4 in part, to the lack of public and governmental interest.

5 Solutions to problems mentioned these past two
6 days are not simple but we heard testimony that some tribal
7 city, state and county law enforcement officials are
8 willing to initiate new attempts.

9 If anyone in the audience is concerned about the
10 testimony of the past two days and wants to correct or add
11 to it, he or she may call the Mountain States Regional
12 Office of the U.S. Commission on Civil Rights, at area code
13 303, 837-2211. Or myself, Morrison Warren, Chairperson
14 of the Arizona Advisory Committee to the U.S. Commission on
15 Civil Rights, at area code 602, 965-6529, or write to the
16 commission at 1726 Champa, C-h-a-m-p-a, Street, Denver,
17 Colorado, 80202. Or Morrison Warren, 1061 East Magdalena
18 Drive, Tempe, Arizona, 85283.

19 Thank you much.

20
21 (Hearing adjourned at 3:30 p.m.)
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25