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OKLAHOMA ADVISORY COMMITTEE
UNITED STATES COMMISSION ON CIVIL RIGHTS
NATIVE AMERICAN CIVIL RIGHTS ISSUES
FORUM

September 1, 1988

Lincoln Plaza Conference Center
Oklahoma City, Oklahoma

* * * * *

ADVISORY COMMITTEE MEMBERS PRESENT:

- MR. CHARLES FAGIN, Chairman
- DR. EARL MITCHELL
- MR. CHARLES PURDY
- MR. JOHN DULLES
- MR. KERRY MORGAN
- MS. PHYLLIS FIST
- MR. WALLACE JOHNSON
- MS. SWANNIE TARBEL

ORIGINAL

REPORTED BY: BRENDA SCHMITZ, C.S.R.

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1 * * *

2 MR. FAGIN: I'm going to call the meeting to
3 order, we're here. We may be missing some of our panelists
4 from time to time, so we will have kind of a hit and miss
5 session. We will make some entries into the record and if
6 necessary, then take short breaks until we are ready to
7 proceed, similar to the way the congressional committees
8 work, if I watch them on CNN.

9 I do have a statement to be read for the
10 record.

11 I am Charles Fagin, I am Chair of the Oklahoma
12 Advisory Committee. The purpose of today's meeting of the
13 Oklahoma Advisory Committee is to obtain information on
14 current civil rights issues affecting Native Americans in
15 this state.

16 Specifically, this committee hopes to obtain
17 information, opinions and observations relating to Indian
18 sovereignty, relating to federal, state tribal relations,
19 relating to employment, the administration of justice,
20 health services, education and representation of Native
21 Americans in the public policy decision making.

22 This Advisory Committee is especially
23 concerned with the responsiveness of governmental agencies
24 and governmental policies to the unique cultural and
25 historical concerns of Indian people in Oklahoma.

1 The Advisory Committee receives information
2 and makes recommendations to the U.S. Civil Rights
3 Commission in areas which the committee or any of its
4 subcommittees is authorized to study.

5 Members of this committee in attendance during
6 the meeting are Phyllis Fist, Wallace Johnson, is Rosa King
7 here yet? Not yet. Earl Mitchell, Charles Purdy and
8 Swannie Tarbel. There may be other members of the
9 committee who will be here shortly.

10 I might mention that Dr. Mitchell is
11 vice-chair of this committee and is a former chairman,
12 chairperson of the Advisory Committee and I believe was on
13 the committee at the time in 1974 when a similar forum and
14 report was held on Indian civil rights issues in Oklahoma.
15 This is the first time, I think, this committee has again
16 addressed that issue since that report.

17 With us today, also, is staff member John
18 Dulles, II, who is from the Commission's western regional
19 office in Los Angeles, to which Oklahoma is assigned. He
20 is our staff coordinator, our staff person.

21 Also with us is Kerry Morgan, a staff attorney
22 with the U.S. Civil Rights Commission and you're based in
23 Washington, D.C., is that correct?

24 MR. MORGAN: Yes.

25 MR. FAGIN: This forum and consultation is

1 being held pursuant to Federal Rules applicable to state
2 advisory committees, and under regulations promulgated by
3 the U.S. Commission On Civil Rights.

4 The Commission is an independent agency of the
5 U.S. government established by Congress in 1957. It is
6 directed to investigate complaints alleging that citizens
7 are being deprived of their rights to vote by reason of
8 their race, color, religion, sex, age, handicap or national
9 origin or by reason of fraudulent practices.

10 The Commission is further directed to study
11 and collect information concerning legal developments
12 constituting discrimination or a denial of equal protection
13 of the laws under the constitution, because of race, color,
14 region, sex, age, handicap or national origin or in the
15 administration of justice.

16 The Commission is further directed to appraise
17 federal laws and policies with respect to discrimination or
18 denial of equal protection of laws.

19 The Commission further serves as a national
20 clearing house for information about discrimination and
21 finally, the Commission is authorized and directed to
22 submit reports, findings and recommendation to the
23 President and to Congress for action.

24 I want to emphasize that this is a
25 consultation, a discussion, it is not an adversary

1 proceeding. Individuals have been invited to come and to
2 share with this committee information relevant to the
3 subject of today's inquiry. Each person who will
4 participate has voluntarily agreed to meet with the committee
5 and we are deeply appreciative of that.

6 Since this is a public meeting, the press,
7 radio, television stations, the media are invited, public
8 notice is posted, individuals and the public are also
9 welcome.

10 Persons who are meeting with the committee who
11 will be presenting testimony may make specific requests
12 that they not be televised should there be television here,
13 that may or may not occur. If they do not want to, why,
14 let us know and we will comply with their wishes.

15 Members of the Advisory Committee only and the
16 staff may question the panels, the panelists; we are not
17 permitted to have questions from the floor.

18 We are concerned that no defamatory material
19 be presented to this meeting. In the unlikely event that
20 this situation should develop, the Chair will call this to
21 the attention of the person making these statements and we
22 will see that that does not continue. And such information
23 or any defamatory remarks will be stricken from the record,
24 if necessary.

25 We've made every effort to invite persons who

1 are knowledgeable in the area to be dealt with here today.
2 We have invited tribal, state and federal officials, as
3 well as representatives from urban Indian organizations to
4 address the Advisory Committee.

5 In addition, we've allocated time between 3:00
6 p.m. and 4:00 p.m. to hear from anyone who wishes to share
7 information with the committee about civil rights issues
8 affecting Native Americans in Oklahoma.

9 At that time, each person or organization will
10 have five minutes to speak to the committee and may submit
11 additional information in writing.

12 Those wishing to participate in the open
13 session must contact Mr. Dulles prior to 3:00 and give him
14 their name so that they may be put on the agenda. I'll try
15 to remember to mention this several times during the day in
16 case there are any people that come in who may want to
17 appear.

18 The record of these hearings will remain open
19 for a week or so following the forum so that if there is
20 anyone who wishes to submit a written paper, they will have
21 a week or so to do that and it will be included as part of
22 the report.

23 As I mentioned, we can have some problems with
24 timing depending on when our panelists are here and how
25 long they will take, so we may have to have short breaks

1 and some sitting in between.

2 The proceedings today are being transcribed by
3 a court reporter and we will ask everyone to speak one at a
4 time and slowly so that the court reporter can get the
5 information and I'm sure that Ms. Schmitz will interrupt
6 us, will you not, if we are talking two at a time or if you
7 you need for us to slow down or need change paper and so
8 forth, so we can have a complete transcript.

9 REPORTER: I will.

10 MR. FAGIN: Very good. It is not quite 10:00.
11 Our first panel, the Tribal Leadership Panel is to begin at
12 10:00. I do not know whether Edgar French or Wilma
13 Mankiller are either of them here yet? Not yet. So we
14 will take a short break until they hopefully appear. We're
15 off the record.

16 (Whereupon a recess was here taken.)

17 MR. FAGIN: We're going to again call to order
18 and resume our meeting today. For the record, I will state
19 that we are reconvening the Oklahoma Advisory Committee to
20 the U.S. Civil Rights Commission. I am Charles Fagin, I am
21 the Chair of the Advisory Committee.

22 We are here today to take testimony to obtain
23 information on current civil rights issues affecting Native
24 Americans in this state. We are interested in obtaining
25 information relating to issues of Indian sovereignty,

1 federal-state tribal relations, employment, the
2 administration of justice, health services, education and
3 representation of Native Americans in public policy
4 decision-making.

5 Our committee is also concerned with any
6 information we can get on the responsiveness of
7 governmental agencies and the governmental policies
8 affecting the cultural and historical concerns of the
9 Indian people in Oklahoma.

10 The 11:00 panel, entitled an Urban Indian
11 Panel, I believe at least four of the five presentors are
12 here, I'll ask them to take their seats at the table here.

13 Dennis Belindo, who is the Executive Director
14 of the Indian Tribes Community Development Association;
15 Douglas Dry, Staff Director of the Oklahoma Indian Legal
16 Services; L. David Lester, the Oklahoma City Urban Indian
17 Ad Hoc Committee.

18 Is Ms. Mary Smith here? Hopefully she will be
19 here later, she is the Executive Director of the Urban
20 Indian Health Project, but is not here yet. And last,
21 Virginia Sutter, Executive Director of the Native American
22 Center, Oklahoma City.

23 We actually presented you in alphabetical
24 order, if you wish to make your comments in the order in
25 which you were called, that will be just fine. If you have

1 some other preference, that's fine, also. We are very
2 appreciative of all of you being here today and being
3 willing to share with us your observations today.

4 Would you each one, for the record, since we
5 are transcribing, please state name and the position which
6 you hold again?

7 MR. BELINDO: My name is Dennis Belindo, I'm
8 the Executive Director of the Indian Tribes Community
9 Development Association. We are an association of 23
10 member tribes in Kansas, Oklahoma, Louisiana and Texas.
11 There are 44 federally recognized tribes in a four state
12 area.

13 ITCDA provides training and technical
14 assistance on a request basis as well as on an as-needed
15 basis to tribes in the region in order to assist them in
16 improving community development projects. We are funded by
17 Housing Urban Development under a cooperative agreement
18 with that agency and we're moving into our second year,
19 preparing for the second year of activity.

20 In that role as executive director of that
21 particular organization, I have the opportunity to visit
22 and interact with various members of the tribal community
23 in a four state region, and particularly tribes which a
24 resident of Oklahoma, residents of Oklahoma and have
25 observed several of the various problems, the barriers to

1 and the advantages, for that matter, regarding tribal
2 economic development, tribal political and infrastructural
3 development, tribal physical development, physical and
4 infrastructural development also.

5 There are a number of things that are going on
6 in the region, particularly in the State of Oklahoma. One
7 of the -- I think one of the big problems facing the state
8 in general is the -- of course, we all know the economic
9 problem, having to do with the turn down in agriculture and
10 the oil market and the effort on the part of various people
11 in the state to bring in industry.

12 I think today is the opening day of the
13 Remington Park activity and of course, this is another
14 method of bringing in income to the state. Hopefully these
15 types of things will continue.

16 In regards to the question of tribal activity,
17 at this point it's rather minimal, very much in the
18 planning stages yet. I've observed several of the projects
19 around the State of Oklahoma and many of the projects are
20 still in their developmental stages.

21 There are many, many problems having to do
22 with economic development of Indian tribes. Probably the
23 most fundamental of problems having to do with that
24 particular situation is an underdeveloped legislative and
25 judicial function.

1 Tribal sovereignty, of course, as we all know
2 of an Indian tribe is really the exercise of that
3 sovereignty, and in particular, the exercise of judicial
4 authority.

5 Back in years, following the Little Chief
6 Decision, the Attorney General of the State of Oklahoma
7 said that there was a vacuum or there was a breakdown in
8 law enforcement in the civil, in the civil area.

9 Criminal acts are covered by the Thirteen
10 Major Crimes Act in Indian country, but other acts that are
11 criminal were not covered at that time. So criminal
12 jurisdiction did not extend to the state as a result of --
13 the State of Oklahoma as a result of the Little Chief
14 Decision.

15 And there was a delegation of people who went
16 to Washington D.C. during those days, I was a member of
17 that delegation. At that time, I was a tribally elected
18 official and we approached the Secretary of Interior to see
19 if we could get funding for an interim court and that
20 eventually became the CFR Court system in the State of
21 Oklahoma.

22 The CFR system is still alive and well in the
23 State and is a court system that is funded by the
24 Department of Interior. And the problem is is that the old
25 dependency syndrome has set in, where tribes, now that they

1 have a CFR Court system, in many cases, are not willing to
2 develop their own system.

3 And so part of the entire problem, actually I
4 would say probably the most important problem facing Indian
5 tribes today in the State of Oklahoma is the lack of
6 adequate court system. I'm talking about the trial court
7 and the Appeals Court and the Supreme Court and the access
8 to the court by various entities.

9 The reason why I say that is because one of
10 the first problems that someone who would want to do
11 development in Indian country in Oklahoma would look at is
12 the political infrastructure.

13 In other words, if there were a cause for them
14 to bring a cause in any court system, they probably could
15 not get relief because they wouldn't have access to any
16 court system other than the CFR Court.

17 And there are some questions, at least in my
18 mind, regarding the jurisdiction of the CFR Court and I
19 think the CFR Court is assuming jurisdiction in many cases
20 which I do not personally believe they have the authority
21 to do so.

22 The question of whether or not the State has
23 jurisdiction has been, as was stated earlier, has been
24 decided by the Western District several times, the latest
25 one having to do with the Employment Securities Commission.

1 The Employment Securities Commission brought
2 an action against, I think, five tribes in the State of
3 Oklahoma to -- I don't know whether it was to enjoin them
4 or what, but they were trying to force them to pay
5 unemployment insurance to the State of Oklahoma. And the
6 tribes pleaded sovereign immunity and the case was
7 dismissed.

8 So in every instance, in most instances,
9 anyway, when a tribe is sued in state courts, sovereign
10 immunity is raised and the State can't get past that one
11 question.

12 The Supreme Court has reiterated over and over
13 that in regards to sovereign immunity, that the tribe,
14 unless the Congress specifically acts to waive that
15 sovereign immunity or the tribe, itself, acts to waive the
16 sovereign immunity, then the tribe cannot be sued by the
17 State.

18 And so that puts everything in, so far as a
19 State is concerned, puts everything into an adversarial
20 situation and it's problematic in the sense that tribes
21 then become very skeptical and begin to focus primarily on
22 the adversarial relationship, rather than on a cooperative
23 attitude or cooperative relationship to the State of
24 Oklahoma. So this gives rise to some of the basic problems
25 of skepticism and inability of the tribes to relate to the

1 State.

2 Now the State, on the other hand, is willing
3 to utilize the Indian culture for whatever advantage that
4 may be forthcoming from the utilization of that cultural
5 identity.

6 For example, this past November, 1987, I
7 painted a tepee which was given by the Governor of the
8 State of Oklahoma to the prefectural government of Kyoto,
9 Japan.

10 In making that presentation, part of the whole
11 effort was to attract some industry from Japan to the State
12 of Oklahoma, which I'm sure that all Indians are delighted
13 and I'm sure that all citizens of the State, and we are
14 citizens of the State, are delighted to be a part of.

15 However, it seems that that is the one
16 interest that the State has, is to utilize the Indian
17 culture as an attraction to industrial development, which
18 would be brought in from other -- other governments, other
19 countries and other investors.

20 We probably have not given a whole lot of
21 thought as to the value judgments which might surround
22 that. I've talked to some Indians who have said that they
23 didn't appreciate that and others who have said that, well,
24 it's about time that the State recognize that we're here.
25 So I think that in those regards, the State is willing to

1 work with the tribes.

2 I've found that some of the things that are
3 going on in the State are, as I was talking earlier about
4 economic development, some of the things that are going on
5 in the State on the Indian front have to do with economic
6 development.

7 And in talking to the people in Japan, some of
8 the people in Japan regarding whether or not they would do
9 business in Indian country, the response that I received
10 there was that the tribes that have come to Japan have not
11 been ready for development.

12 And probably one of the basic reasons why they
13 have not been ready is because of an inadequate political
14 Indian structure. This has to do with courts, law
15 enforcement, the guarantees that the State -- I'm sorry,
16 that the tribe could give to a corporation that was going
17 to locate in Oklahoma.

18 One of the problems that they had was that
19 they wouldn't have anyplace to bring a cause of action in a
20 court situation, whether or not the tribe has a tax code,
21 has a law and order code, criminal code, these types of
22 things was basic to that problem.

23 Also, in regards to the Indian Child Welfare
24 Act and various -- the various problems that are involved
25 in that particular situation having to do with, say, child

1 abuse.

2 I know of a case that occurred in one of our
3 outlying cities, I shouldn't say cities, towns, larger
4 towns, not quite metropolitan in size, where an Indian
5 child was placed in a home, primarily non-Indian home and
6 the child was abused, taken by the feet and slammed against
7 a wall, severe brain damage, lacerations to the vaginal
8 area. And the problem was, was that the child was placed
9 in a home that probably wasn't adequately given a home
10 steady.

11 In the case, if we were to apply the same
12 situation to another circumstance, wherein the Tribal Court
13 was the court that decided where to place this child and
14 what to do in terms of placement of the child, whether in
15 foster care or permanency or whatever, it may have been
16 that the Tribal Court would have been more sensitive to the
17 needs of a child, may have placed the child in, say, an
18 extended family situation, rather than in the placement
19 that was made.

20 And as a result of the breakdown of the tribe
21 not having a court system to adequately serve this
22 function, one life has been essentially lost, because the
23 child is in a state of being a vegetable at this time.

24 The problem is not just in those particular
25 situations, but it has to do with, I think, that tribes

1 need -- and this is on the tribal side of the coin, need to
2 take a closer look at some of the things that are -- some
3 of the problems, some of the social, economic and those
4 types of problems that are going on within their own
5 situation, and then taking action which addresses those
6 particular -- those particular concerns.

7 Last week I think it was, I made a short
8 presentation to the Oklahoma Security -- Employment
9 Securities Commission and made a recommendation to them
10 that -- and I'd like to make the recommendation to the
11 panel today, that we begin to have some negotiation efforts
12 on the part of the State of Oklahoma and on the part of
13 Indian tribes in relationship to some of the disputes that
14 have been going on.

15 I think that the adversarial lawsuit, court,
16 model, as far as dispute resolutions not working. I also
17 do not think that the continued dependence of the tribes
18 upon the CFR Court system is a good model to follow and for
19 the tribes to be truly sovereign and for the tribes to
20 truly address the problems that they are having, they're
21 going to need some assistance.

22 And I would recommend to the panel that
23 funding for Tribal Court systems be forthcoming as soon as
24 possible. It's very possible that the State may be
25 interested in assisting in that development, because

1 oftentimes when state courts try to relate with Tribal
2 Courts or CFR Courts, there's no governing regulations,
3 there's no place for interface between the two systems.

4 And it's just merely the goodwill of the
5 people who are involved in working in the systems and their
6 attitude toward cooperation that probably is the reason why
7 we don't have as many problems as we probably would have if
8 the attitudes were different.

9 The State, of course, is -- has many interests
10 and I'm sure that they're interested in collecting their
11 taxes and I'm sure they're interested in enforcing the law
12 and making sure that whatever is their mandate to citizens
13 of the state be fulfilled and I'm sure that they recognize
14 the problem, also.

15 But the problem is not just the states. The
16 problem, for example, of unemployment insurance is a
17 concern of the tribes, because the tribes don't want people
18 who are terminated from their jobs to have to go without
19 that little assistance that gets them over to the next job.
20 I'm sure that the tribes, in some cases, may have relatives
21 who are involved in that particular situation and
22 therefore, would have a great deal of interest in seeing
23 that that type of insurance is provided.

24 Tribes are also concerned about their ability
25 to continue their efforts in the exercise of their

1 governmental activities, so therefore, they are interested
2 in collecting taxes, too.

3 So you have two coexistent governments within
4 the State of Oklahoma that have same or similar interests
5 and yet are in some ways, when they meet on a question of
6 which entity has a jurisdiction, get into a dispute.

6
7 And the dispute resolution model, what I'm
8 suggesting today, is one of negotiation and one wherein
9 both of the parties are assisting one another in finding
10 solutions, rather than focusing on whether or not one has
11 jurisdiction over the other and is able to force the other
12 one to do something that perhaps they don't want to do.

13 And of course, I'm talking about all of the
14 various aspects of this whole problem, cigarettes, bingo
15 and what have you. I don't want to take too much time, but
16 I just want to ---

17 MR. FAGIN: We just have a few more minutes to
18 get all of our speakers in.

19 MR. BELINDO: I just wanted to say this, if
20 there is a discrimination situation, since we're talking
21 about civil rights, in relationship to TARO activity and
22 TARO stands for Tribal Appointment Rights Organizations,
23 these are tribal organizations which encourage contractors
24 who are working within Indian jurisdictions to hire Indians
25 and there are some problems that have to do with that. And

1 with that, I think I'd better be quiet and get on to the
2 next presentor. Thank you very much.

3 MR. FAGIN: I notice that Mary Smith is here,
4 also ---

5 MS. SMITH: Yes.

6 MR. FAGIN: --- and that fills out our panel,
7 she's Executive Director of the Urban Indian Health
8 Project.

9 Our next speaker is Douglas Dry. If you would
10 again state for the record your position.

11 MR. DRY: My name is Douglas Dry and I've been
12 elevated a little bit by your list, I'm not the staff
13 director, Susan Work is and she was unable to be here today
14 and asked that I step in.

15 The comments that I wish to give the committee
16 were presented and helped prepared by Henry Ware, Leah
17 Harjoe and Susan Work, the director. Henry Ware and Leah
18 Harjoe are also staff attorneys, they are with the Oklahoma
19 Indian Legal Service.

20 Pursuant to the request of August 1st of the
21 United States Commission in Civil Rights, the legal staff
22 members of Oklahoma Indian Legal Services present the
23 following comments to the Oklahoma Advisory Committee:

24 Since OILS is not an Urban Legal Aid office,
25 but rather provides a variety of legal services statewide

1 in areas such as child welfare, national resources, housing
2 and tribal sovereignty, OILS, is our nickname, comments will
3 focus on issues which occur statewide, rather than just in
4 the urban city.

5 In the field of tribal sovereignty and tribal
6 state relations, more than 150 years ago the United States
7 Supreme Court recognized that tribal -- that Indian tribes
8 possess a certain sovereign governmental status as domestic
9 dependent nations.

10 In the leading Indian case law of Worcester
11 versus Georgia, during that period of history in the 19 --
12 in the 1830's, the so-called Five Civilized Tribes were
13 forcibly removed from their homes in the Southeast to
14 Indian Territory, which is now the State of Oklahoma.

15 These tribes established sophisticated
16 government systems, built schools and existed as separate
17 nations within the United States until after the Civil War,
18 at which time they were forced into entering into new
19 treaties, which reduced the domains and forced them to
20 crowd into what is now eastern Oklahoma.

21 Following the Civil War, the five tribes
22 continued to exercise extensive governmental powers over
23 their citizens until the time of statehood in 1906. Due to
24 the erosion -- intrusion of non-Indian settlers who were
25 not subject to tribal rule, Congress forced the allotment

1 of the five tribe plans and attempted to strip them of
2 government powers in the process.

3 From the time of statehood until the late
4 '70's, Indian tribes in Oklahoma continued to maintain
5 their cultural and governmental integrity.

6 Many adopted tribal institutions pursuant to
7 the Oklahoma Indian Welfare Act of 1936. However, it was
8 not until 1978, when the Oklahoma Court of Criminal Appeals
9 recognized the existence of Indian country in Oklahoma in
10 State versus Little Chief. The tribes began to regain some
11 of their legal footing which they had temporarily lost in
12 the twentieth century.

13 The Little Chief case established that
14 Oklahoma State courts do not have authority to exercise
15 criminal jurisdiction over Indians committing crimes
16 against Indians on trust allotments in western Oklahoma.

17 It lead to the creation of CFR Courts or
18 courts of Indian offenses in western Oklahoma. They hear a
19 variety of civil cases including Indian child welfare
20 cases, as well as misdemeanor cases arising in Indian
21 country in western Oklahoma. These courts contribute
22 significantly to the expansion of the tribal sovereignty of
23 the tribes in western Oklahoma.

24 The Little Chief case was followed by other
25 decisions recognizing the absense of state criminal

1 jurisdiction in other types of Indian country, including
2 the Five Tribes Allotments in eastern Oklahoma in State
3 versus Brooks.

4 That case was cited in 1986 and is currently
5 on rehearing before the Oklahoma Court of Criminal Appeals
6 and that was at -- that is on rehearing at the urgency of
7 the United States Department of Interior.

8 The Department of Interior has historically
9 resisted the exercise of judicial powers by the Five Tribes
10 and its attack on the Brooks decision is another example of
11 the apparent continuing battle by the Interior to restrict
12 Five Tribe sovereignty.

13 The Interior recently lost this battle on
14 another front, the Muskogee Creek Nation versus Hodel, a
15 case in which the United States Court of Appeals from the
16 District of Columbia held that the Muskogee Nation, which
17 is one of the Five Tribes, has the power to exercise the
18 fullblown judicial powers over its citizens.

19 Those tribes, at least two of those tribes, I
20 know now, are in the process of setting up their own tribal
21 courts.

22 In summary, the recent legal developments
23 affecting Indian tribes in Oklahoma in the course of the
24 last ten years have resulted in increased tribal activities
25 in a variety of areas, both governmental and economic,

1 enhancing the self-sufficiency of tribal members in their
2 ability to determine their own futures.

3 Talking about tribal and state relations. In
4 recent years, tribes have been involved in an ongoing
5 battle with the Oklahoma Tax Commission. In Indian
6 Country, U.S.A. versus State decided in 1986, the 10th
7 Circuit Court of Appeals held that the State of Oklahoma
8 has no authority to regulate bingo operations by tribal
9 enterprise in Indian country.

10 In spite of that decision, the Oklahoma Tax
11 Commission has continued to demand recognition of its
12 taxation authority in a variety of cases, most notably
13 cases involving Indian smoke shops.

14 The United States Supreme Court detailed --
15 denied cert. on the State's request for review of Indian
16 Country-U.S.A. case this summer.

17 On the positive side, the Oklahoma State
18 Legislature has recently passed a law during this past 1988
19 session designed to improve tribal state relations by
20 authorizing negotiations of tribal state agreements and has
21 passed a law designed to improve the working relationship
22 between the tribe and the State with regard to economic
23 development.

24 In the field of tribal federal relations:
25 After the oil boom passed in Oklahoma, starting in about

1 1984 through 1987, there have been serious violations of
2 the federal statutes designed to protect the land held in
3 trust by the United States on behalf of the Indian. This
4 office became aware of serious violations in August of
5 1987.

6 During our investigation, we have found well
7 over 100 mineral deeds involving trust land signed over to
8 a non-Indian investment company. There are other land
9 speculators as well, but due to our limited resources, we
10 only researched the one company involved with four clients
11 that we've picked up.

12 Under Title 25 U.S.C. 345 provides that any
13 conveyance made of allotted Indian trust land or any
14 contract made concerning such land, before the land is
15 taken out of trust, that that conveyance and contract is
16 void.

17 And to enforce that statute under Title 25
18 U.S.C., Section 202, it specifies that it's unlawful for
19 any person to induce any Indian to execute any contract,
20 deed, mortgage or other instrument purporting to convey any
21 land or interest held by the United States in trust for
22 such Indian.

23 Conviction of such an offense is punished by a
24 fine not exceeding \$500 for the first offense and by
25 imprisonment up to one year for a second conviction.

1 In the case of our four clients, the
2 investment company would give cash, have our clients sign a
3 promissory note, a mineral deed conveying their interest in
4 the trust land and help the clients fill out a fee patent
5 application all in the same day.

6 The clients would receive their fee patent
7 some months later before they would receive -- and in some
8 cases, even before they received an appraisal from the
9 government on the true value of those mineral interests.

10 Even when the appraisal was received before
11 the fee patents arrived, in some cases, the appraisals
12 weren't fully explained to allot -- to the Indian, so that
13 the government knew that the Indian was aware of how much
14 his interests were worth.

15 The local agency that was involved in the
16 violation of the BIA policy, by granting fee patents to
17 undivided interest in trust land, so now today we have a
18 situation where you may have three-fifths of the mineral
19 interest in a particular plot of land held in trust by the
20 United States of behalf of Indians and two-fifths of that
21 land interest is held out of trust by non-Indians.

22 This certainly adds to the confusion of
23 monitoring the royalty interests of the Indian allottees by
24 the government. Without going into the current class
25 action suit by our office today on behalf 28,000 Indian

1 allottee mineral owners on the western side, we have a case
2 against the Department of Interior for violations of its
3 trust responsibility and the Federal Oil and Gas Royalty
4 Management Act of 1983.

5 I would just like to mention that the
6 government has its hands full with trying to monitor the
7 royalty interest of these 28,000 individuals without also
8 being hampered by the added complexity of mixed non-Indian
9 interest in that Indian land.

10 As a result of many Indians realizing that
11 they were not receiving adequate compensation for their
12 mineral interests, some refused to deliver to the
13 investment company their fee patents. Finally, in April of
14 1987, the Indian agency quit issuing the assembly line fee
15 patents.

16 As a result of this non-Indian mineral company
17 not receiving those fee patents, they subsequently filed
18 small claims suits, 30 of them, in Blaine County in
19 District Court, based on those promissory notes that were
20 signed.

21 The suits were based on the illegal promissory
22 notes, and the reason I say they're illegal, in addition to
23 federal law that the particular investment company was not
24 a licensed supervised lender and was also, therefore, in
25 violation of the Oklahoma Consumer Credit Code.

1 The end result was 25 default judgments, four
2 judgments against whom the Legal Aid of Western Oklahoma
3 had represented for the allottees and raised questions of
4 tribal trust land and federal jurisdiction was denied by
5 the court, didn't want to hear the argument, looked at the
6 promissory notes and assumed that the Indians owed the
7 money and the judgments were issued.

8 Our office, fortunately, was able to work with
9 the Oklahoma Attorney General's office and the Oklahoma
10 Consumer Protection Office to get these judgments vacated,
11 based only on the violations of the Oklahoma Consumer Code.
12 And these were, by representing our four clients and we
13 were -- the other 26 individuals involved just kind of
14 reaped the windfall from our action, basically, with the
15 four clients.

16 Our concern today is that there's still many
17 Indians whose title to their land and mineral interest that
18 needs to be cleared up in the western part of this state.
19 This office met with both the FBI and the U.S. Attorney's
20 Office to ask that they investigate the violation of
21 federal law. We were unsuccessful in getting either agency
22 involved.

23 They felt that the civil action was best since
24 the particular statute in Section 202 of Title 25 had not
25 been used in Oklahoma and were not sure that it's been used

1 elsewhere either at this time.

2 Our office wasn't aware that a statute had to
3 be used first before an agency of the government could
4 enforce the law. It seems to be a Catch-22 situation.

5 This office does not have the investigative
6 resources to enforce such a statute on a large scheme.
7 However, we have been notified recently that the
8 solicitor's office has finally began to take some action in
9 this area.

10 In the area of Indian child welfare, I would
11 just like to mention that something the Commission might
12 look into is the problems involving getting many of the
13 state district courts to comply with the Indian Child
14 Welfare Act. This is often a very difficult process for
15 the Indian community to gain the rights and protections of
16 the Indian Child Welfare Act through the state courts.

17 I'd just like to add to Mr. Belindo's
18 comments. He spoke of a child, Indian child that was
19 placed, a placement problem where that child was injured
20 and perhaps the home study was not as it should be.

21 I would just like for the Commission to
22 consider what would have happened, what negative impact
23 would have happened if that had been a Tribal Court or the
24 placement had been conducted by a tribe. The criticism
25 would have been extreme and it would have been -- we would

1 have had more hearings on whether or not the tribes were
2 capable of handling that situation.

3 OILS concurs with Mr. Belindo's comments that
4 the Tribal Courts and the tribes have the best interest of
5 their children, because that's the future of the tribes and
6 that if they're looking out for the tribal interest,
7 they're going to take more interest in those particular
8 children than perhaps the state is capable of doing,
9 because it's such a large scale statewide.

10 In the Administration of Justice area, Tribal
11 Courts have realized the importance of due process and
12 equal protection guarantees of the Indian child --
13 correction, the protection guarantees of the Indian Civil
14 Rights Act and have done their best to staff with competent
15 personnel.

16 All Tribal Courts currently have lawyers in
17 position as judges and prosecutors. Tribal Court, under
18 tribal law, operates within their original reservation
19 boundaries and upon areas within the definition of Indian
20 country.

21 The law, itself, is based upon traditions and
22 customary law. A few tribes have developed comprehensive
23 codes drafted to serve the particular health, education,
24 and welfare needs of its members. Certain tribes have
25 developed taxing ordinances and land use controls. The

1 emphasis is placed on resolving issues in the Tribal
2 Courts, rather than under the Anglo standard of finding a
3 victor or a winner and loser.

4 Tribes using courts of Indian offenses have
5 a -- some do not have criminal codes. They must, by
6 analogy in civil matters, they use the laws of other
7 jurisdictions, including the State of Oklahoma. However,
8 there are no voids when it comes to protecting individual
9 rights in these Tribal Courts. It is conceivable that
10 these tribes will make the transition to full Tribal Court
11 status.

12 We're talking about the tribes that are still
13 under the CFR Courts. Currently, we have six tribes that
14 have their own Tribal Courts, one of which is just the
15 Comanches which have the Children Tribal Court.

16 The economics factors has prevented these
17 tribes from developing their own tribal codes and some of
18 the tribes developing their courts. Tribal Court existence
19 predates Oklahoma statehood and yet it is only recently
20 that there is a Tribal Court recognition.

21 The Indian wars are still alive in Oklahoma
22 and take place in the courtrooms of federal, state and now
23 Tribal Courts. Judicial conferences between the three
24 sovereigns have become a reality and great strides are now
25 possible.

1 Recent developments before the Supreme Court
2 of United States in the case of National Farmers Union and
3 Iowa Mutual Insurance Company has confirmed a position that
4 tribal advocates -- what the tribal advocates have said all
5 along in that the proposed Indian Civil Rights Act
6 Amendment of 1988 seeks to undo these advantages and
7 advancements that have been made.

8 It is more disturbing to note that the
9 sovereign rights of all Indian nations are being attacked
10 under the guise of protecting individual Indian rights.
11 The impact here in Oklahoma is to destroy the progress made
12 by the tribes.

13 Tribal Courts, from our experience, do not
14 violate civil rights of defendants. The provision of
15 Indian -- of the Indian Civil Rights Act are applied in
16 tribal courts. If there were instances, it is well-known
17 that the habeas corpus relief is readily available to both
18 tribal and federal courts.

19 Efforts are currently underway to provide
20 legal assistance to those, who through their economic
21 status, are in need. Legal service groups provide needed
22 services subject to their office policies and procedures.

23 Clinical programs with varying law schools
24 have been tapped as a potential source and a Tribal Court
25 Bar Association has, in recent years, made court

1 appointments on criminal and civil matters.

2 I might add that Oklahoma City University of
3 which I'm a recent graduate has just now implemented a
4 program of interns into the field of Indian law and plan to
5 work closely with the tribes in developing training for the
6 tribal court systems.

7 Our recommendations: If the Civil Rights
8 Commission is looking for civil rights violation, their
9 best bet is to move their focus on tribal governments --
10 from the tribal governments to the cities, Anadarko,
11 Watonga, Oklahoma City and Tulsa. These towns and cities
12 have high Indian populations.

13 County officials are quick to respond to
14 allegations of wrongdoing when the complainants are
15 non-Indian. However, complain and being an Indian, and
16 you'll see bureaucracy at its best and justice come to a
17 grinding halt.

18 If the Civil Rights Commission is truly
19 concerned about individual Indians, they should recommend
20 that more money be appropriated to the BIA judicial systems
21 and services. This money can be used to develop tribal
22 codes by the many tribes currently under the jurisdiction
23 of the Court of Indian Offenses.

24 Tribal Courts still need to strive to better
25 themselves, this is true, but the Commission can recommend

1 that more money be made available to the judicial staff,
2 training and the hiring of additional staff in law
3 enforcement members.

4 In conclusion, directly on point to the
5 purpose of this Commission is the tribal administration of
6 justice and the implementation of the Indian Civil Rights
7 Act of 1968, which prohibits tribal governments from
8 infringing upon the Constitutional rights of tribal
9 citizens and others who are subject to the Tribal Court
10 jurisdiction.

11 Otherwise, tribal governments are not subject
12 to the constitution of the United States. The current
13 state of the law is that the remedy appointed persons
14 subject to Tribal Court jurisdiction is to request a Writ
15 of Habeas Corpus to the Federal District Court if he or she
16 is in tribal custody in a criminal action. Otherwise, the
17 violations of other rights of the ICRA are adequately
18 reviewed by the Tribal Forum.

19 In recent years since the passage of the
20 Indian Civil Rights Act, there have been many isolated
21 allegations of violations of civil rights in the tribal
22 governments.

23 In August, Senator Orin Hatch introduced
24 legislation into Congress which would amend the Indian
25 Civil Rights Act and take Tribal Court decisions directly

1 reviewable by federal courts. No such direct review of
2 state court exists.

3 Those of us in Indian country see this
4 legislation as a throwback to the nineteenth century, when
5 measures to remedy some procedures of justice would once
6 again move in and take away additional sovereign powers of
7 the various tribes.

8 Today we are in an era of self-determination
9 in a government-to-government relationship. The policies
10 of the government-to-government relationship as adopted by
11 the Reagan administration and since the first Nixon
12 administration.

13 The proposed legislation is directly contrary
14 to the policies of self-determination and
15 government-to-government relations. Perhaps the remedy
16 would not for Congress to undermine and diminish tribal
17 sovereignty, but to infuse additional funding to enhance
18 the quality of justice administered by tribal governments.

19 The most Congress should do is to further
20 study the issues before emasculating tribal governments.
21 Our practice has revealed more violations of rights of the
22 entire class of Indian people perpetrated by local, state
23 and federal governments far outweighing any isolated
24 complaints of civil rights violations in the tribal
25 governments. Thank you.

1 MR. FAGIN: Thank you. We are going to run a
2 little short on time. I hope we can go a few minutes over.
3 I apologize and will ask that the remaining panelists try
4 to limit the comments to about ten minutes, if we have a
5 chance for questions, we'd like ten minutes each or so.

6 Also, if there are written statements that can
7 be left with us, that would be helpful if there are written
8 statements.

9 And I want to mention also, we announced
10 earlier before the panel was here, that the record will
11 remain open for a week or so after this. So if there are
12 other written statements which the panel members or others
13 with your organizations or other people wish to present,
14 that they can see us and we will see that you have
15 information as to where to forward those so that they can
16 be a part of the record.

17 Next is David Lester, if you would state your
18 name again and position.

19 MR. LESTER: My name is Limon David Lester and
20 I represent the Oklahoma City Urban Indian Ad Hoc
21 Committee.

22 The Ad Hoc Committee was formed recently
23 because of the shortage of services here in the Oklahoma
24 City area. It's not confined to the Oklahoma City area,
25 but this is the primary.

1 I have submitted needs analysis and
2 statistical information that is too vast to be able to
3 cover over this microphone. My primary purpose in coming
4 here is twofold. Number one, I wanted to go on record for
5 the Ad Hoc Committee to the Civil Rights Commission as to
6 the needs of urban Indians. And number two, I have an area
7 of concern and a recommendation that I'd like to make,
8 okay?

9 It is a fact that half of all Indian people in
10 the United States live in urban areas. Tulsa and Oklahoma
11 City combined make up the largest urban population. Los
12 Angeles is number one as far as population of urban
13 Indians.

14 One quick example of the situation is that
15 recently in June of this year I was in Washington D.C. and
16 I visited with the Director for Urban Indian Health
17 Programs and was told that urban Indians receive
18 approximately one percent of Indian Health Service budget.

19 Now, you're talking about half the population
20 receiving one percent of their budget and some data that I
21 left with you states that that's less than \$100 per person
22 per year for Indian people living in the urban areas.

23 Also, while I was in Washington D.C. in June,
24 I visited with the Civil Rights Commission, their
25 representative for Indian issues and I shared with this

1 person the concerns that we have living in the urban areas.

2 She showed me a stack of reports that the
3 Civil Rights Commission had put together on Indians here in
4 the United States, and I said, "You know, it's really
5 funny, you put all of these reports together, but the
6 conditions get worse. What's going on here?"

7 And she said, "Well, we're not a lobbying
8 body, nor are we an advocacy. All we do is submit this
9 information to Congress to congressional offices."

10 Well, I challenge that. I challenge that
11 because last year, I think it was in January or February of
12 last year I read on the front page of the Oregonian, they
13 had the Chairman of the Civil Rights Commission and I can't
14 quote him verbatim, but I can tell you what I got from it.

15 He said that the Civil Rights Commission had
16 lost credibility on the Hill. They were virtually looking
17 at possibly being defunded and that the Civil Rights
18 Commission had to have a new vision and the word "black"
19 was used eleven times. We need to start looking at black
20 youth, black families where women are head of the
21 household. Eleven times it was used. And the front liner
22 with that is that's discussing policy nationally and that
23 is advocacy.

24 And my recommendation to the Civil Rights
25 Commission would be that if they really want to help Indian

1 people in the United States, that they hold a national
2 press conference and they tell the public at large, because
3 it's the public at large that is a big part of the problem,
4 the ignorance and the myths around the American Indians.

5 So I recommend, number one, that they hold a
6 national press conference. Number two, I recommend they
7 hold a national press conference on Hispanics and they hold
8 a national press conference on the Asian community. And
9 that's all I have to offer.

10 MR. FAGIN: Thank you very much. Will you
11 have -- will you have any kind of a written statement on
12 paper?

13 MR. LESTER: I submitted it already.

14 MR. DULLES: I have it.

15 MR. FAGIN: Okay, thank you. Next we'll call
16 upon Mary Smith.

17 MS. SMITH: My name is Mary Helen Smith and
18 I'm the Executive Director of the Oklahoma City Indian
19 Clinic. I'm a member of the Kiowa tribe and I am also half
20 Creek, although I am denied citizenship in that Muskogee
21 nation.

22 We're talking about sovereignty, federal land
23 issues and my first question would be, because of the urban
24 Indian status, is the question of dual citizenship. It is
25 allowed, non-Indians, if you were born in America and your

1 mother was French, for instance, you can be both American
2 and a French citizen, until at some point you have to
3 choose.

4 Yet if you are born of a person, such as I, of
5 the Kiowa tribe and the Creek tribe, we must choose which
6 nation we wish to be a citizen of. And of course, my
7 parents chose the Kiowa. That can pose some problems for
8 urban people, particularly in this -- in today's society.

9 In the 1950's, the United States government
10 began the relocation process and that was to assimilate the
11 Indian people with a non-Indian Community. They took large
12 numbers of people from the reservation areas and moved them
13 into large cities such as Los Angeles, Chicago, Oklahoma
14 City, Cleveland and different areas around the United
15 States.

16 What they didn't provide for them, although
17 they provided a lot of money and housing and job training,
18 but they didn't provide them some living skills and coping.

19 When you go from the Hopi Reservation or the
20 Navajo Reservation, that is very far from what we know as
21 civilization to the middle of Chicago. There is what you
22 call culture shock. And people were not prepared to cope
23 with those kinds of things.

24 In Oklahoma City or in the State of Oklahoma,
25 that kind of thing is even doubled, because we do not have

1 reservations. The federal laws talk about tribal and they
2 talk about reservations.

3 We do have tribal governments in Oklahoma, as
4 Mr. Dry said, are finally now being recognized. However,
5 we do not have reservation areas because of the Allotment
6 Act that happened here in Oklahoma. And those further
7 complicate the situation for the urban Indians, as Mr.
8 Lester said, over half.

11
9 In the 1980 census, 1.5 people identified
10 themselves as American Indian. Over half of those people
11 live in urban areas across the United States. And yet,
12 because of the way the federal laws are written and the
13 statements that are made in them, many federally protected
14 rights of Indian people, such as the right to health care
15 and education are denied them because they live in urban
16 areas.

17 My own tribe, if I don't live in and around
18 Carnegie, I cannot take advantage of many of the rights or
19 the advantages that my other Kiowa people can take
20 advantage of, such as housing and other programs that they
21 have like that.

22 In the health areas, you know, we've had to
23 fight very hard. It's true we only get one percent of the
24 health care dollars, even though 750,000 of us live in the
25 urban areas.

1 The -- You know, we know that we are Indians
2 and that we have a Congress, and yet it seems very
3 difficult that our individual rights are ruled by money,
4 listening to Mr. Belindo and Mr. Dry, we look at the civil
5 rights that are being violated and it's money. That's all
6 it is, is money. The urbans and the tribal people are
7 turned against each other by the government, I feel,
8 because of money.

9 The tribal status, how much money you get as a
10 tribe to run your programs depends upon your head count.
11 And so they count the Indians, but yet if you live outside
12 of the tribal area, you're not allowed to take advantage of
13 those programs, so then you've got a fight there.

14 And then Indian programs such as ours, who,
15 right needs assessments and talk about the services that
16 are needed by Indian people living in the urban areas are
17 sometimes denied or only given a small part of the pie to
18 address those needs, such as health and education and
19 social services and legal services, because we live in the
20 urban areas.

21 Then the tribes look at us and they say,
22 "Well, you're taking all of our money." And we say, "But
23 we're part of you. You know, I've got a card, I'm a
24 registered member of this tribe, I vote." And a lot of the
25 Indian people do. So we're set at each other, you know,

1 divide and conquered, it's happened to us since 1492 and
2 it's happening today.

3 And the Indian child welfare, again, it comes
4 back, those kinds of problems. We just received funding to
5 have an Indian Child Welfare Program at the clinic, because
6 we realize that 100 percent of our people are affected by
7 the problems associated with alcohol and substance abuse.
8 And those lead to family violence, child abuse, sexual
9 abuse, spouse abuse, all the kinds of things, the neglect
10 that happened to the children within the families.

11 And yet the children are caught now between
12 the tribal courts and the Department of Human Services and
13 there's a struggle and they will maybe respond to a
14 recognizable Indian child, but what about the
15 non-recognizable Indian child, with all the intermarriage?

16 I have a niece that has cotton top hair and
17 blue eyes, but she's Indian and she feels Indian and she
18 thinks Indian, but she doesn't look Indian.

19 And if she were caught in that court struggle,
20 she could possibly be placed with a non-Indian family, even
21 though all of her feelings and all of her upbringing may be
22 Indian. And something needs to be addressed so that those
23 kinds of things are looked at.

24 I don't know, you know, there have been
25 recommendations and I really don't know what to recommend

1 at this particular point, except that to look at the fact
2 of where the struggle really lies and to look at urban
3 Indians and the problems that we have that are compounded,
4 like I say, in Oklahoma.

5 You know, when we go to Washington and we
6 present testimony, it's like, you know, all across the
7 country, oh, yes, in Oklahoma, because Oklahoma is
8 different, because of the allotment, because of the urban
9 Indian status and because of, you know, the many different
10 kinds of tribes that are here.

11 And I would just hope that there would be a
12 continuing dialogue between the Civil Rights Commission and
13 between the Indian people, both tribal and urban, because
14 we're Indian people, too. Thank you.

15 MR. FAGIN: Thank you. Ms. Virginia Sutter.

16 MS. SUTTER: I'm Virginia Sutter and I'm the
17 Executive Director of the Native American Center. Mary
18 Smith has just almost taken my whole presentation. No, not
19 really. She has addressed a lot of the things that we are
20 faced with every day at the center.

21 I feel like these gentlemen have covered their
22 areas very well and the problem that I find is the
23 individual Indian that we deal with every day at the
24 Executive -- at the Native American Center.

25 We have people come in there with problems

1 that they have absolutely no idea where to start. They are
2 urban Indians, but they are maybe from another state that
3 has reservations, they don't understand the system in
4 Oklahoma where we have 30 some tribes, I think, 35 tribes,
5 and yet there are no reservation boundaries that say that
6 you can do this or that within a jurisdictional area.

7 Another thing that I see as an individual
8 problem, they don't really know where they belong. They
9 don't know what their rights are.

10 They have come to the City, perhaps, for
11 employment purposes to make a better life for their family,
12 their unemployment in the Indian community is, as you know,
13 very high and they feel like that in coming to the City,
14 they have a better chance to be employed and they may have
15 better access to the agencies that they may need help from.

16 But when they get to the City, they're faced
17 with a lot of things that are so different from their
18 community center, they really don't know what their rights
19 are when they're employed.

20 They have a paycheck, there are certain
21 deductions from this paycheck, they're not really sure if
22 they have to take the deductions, if they, in fact, could
23 not pay a labor union, credit union, et cetera, if they
24 have to take the insurance or if it's just offered, if they
25 have an option. They're not real sure what their rights

1 are in that area.

2 Another thing that we have with urban people
3 is the education process of scholarships. They may have
4 children that are eligible to go to school, but the process
5 is so confusing to them, they are told that they have to go
6 to their -- to their regional office such as, for instance,
7 when I came to Oklahoma, I had to deal with the Northern
8 Agency, which is in Billings, Montana. I could not deal
9 with an agency here.

10 Now, I'm from the Wind River Reservation in
11 Wyoming, so all the educational process that I went
12 through, I had to either long distance to Billings,
13 Montana, I certainly could not afford to travel there.

14 A lot of the students are faced with this
15 problem that they have to interact with their regional
16 district to determine where they are eligible for a
17 scholarship.

18 It becomes very confusing to them, because
19 they really don't know that there are a lot of scholarships
20 available there, because they have to go through so many
21 processes to get to the scholarship money.

22 Other areas that we're concerned about at the
23 center is the fact that often people come in and they are
24 concerned about becoming involved with different agencies
25 within the City and within the State, because they don't

1 know what their rights will be as far as the different
2 things that they may become involved in.

3 For instance, as I have talked before about
4 mental health, the State may say that you need to do thus
5 or that with a child or a person who has a mental health
6 problem. The families are concerned that if they go to
7 Tribal Court, that whatever decision is made there may not
8 be recognized by the State.

9 The State is also concerned that they're not
10 real sure exactly where they stand with the Tribal Courts
11 and I think that they approach that very well that there is
12 real concern about the court system and I'm talking down to
13 the individual level.

14 They are concerned because they don't really
15 know where they stand in the court system. Do they have
16 the protection and support of the tribe and the Tribe Court
17 system, or because they live in the City, do they have to
18 be dependent entirely upon the city government or the state
19 government?

20 Those are some of the problems on an
21 individual level that we are faced with every day. We do a
22 lot of referrals to the OILS organization, because we do
23 not have a legal department at the Center and we feel like
24 that the best thing we can do is to send them to people who
25 deal with these issues every day. And I can understand

1 their concern of wanting more interaction from your
2 committee as to solving some of these problems.

3 I would suggest, and it would be a
4 recommendation, that the individuals are recognized as
5 having problems as well as the tribes.

6 We have tried to have the tribes establish an
7 office at the center where the members of these various
8 tribes could come in and talk to them and not lose track of
9 what's going on with their tribe and to determine what
10 tribal rights they might have, even though they live in the
11 city or in the urban area, because they're not sure.

12 They hesitate to call the tribal agency for
13 fear they'll get referred right back to the City and then
14 when they're -- they go to a city agency, the agency often
15 says, "Well, you are of this or that tribe, you need to
16 talk to your tribal --" and they're caught in a situation
17 where they go back and forth and by the time they come to
18 us, they really don't know who to contact or how to
19 contact.

20 If we could establish the offices at the
21 Center, which we do have, the Creeks are there three days a
22 week and has been a real role model, because there are a
23 lot of members who go in and out of that office and it's a
24 very good contact for them within the area and also within
25 the tribal agency.

1 That's one of the recommendations that I would
2 have that you think about the individual as well as the
3 tribal groups and the other agencies, because after all,
4 they are made up of the individuals and at the Center,
5 that's who we deal with every day are the people, the one
6 and two people that come in sometimes as a family or as an
7 individual person, because they do not have the information
8 of what their rights are within the City as urban members
9 of the City. Thank you.

10 MR. FAGIN: Thank you. It is 12:00 now, but
11 let me take just a few minutes to see whether there are
12 questions from the panel.

13 MR. PURDY: I'd like to ask a question, if I
14 may, to ---

15 MR. FAGIN: State your name, please.

16 MR. PURDY: I'm Mr. Purdy, Charles Purdy, to
17 Mr. Belindo and to Mr. Dry jointly. If I understand your
18 positions, I thought perhaps there might be a slight
19 conflict in your positions.

20 You were advocating, Mr. Belindo, perhaps
21 advocating, perhaps not, that there be some extention of
22 state laws that would benefit, for example, unemployment
23 insurance.

24 I assume that would also expand to other state
25 protective laws like workman's compensation instead of

1 injuries and things of that sort in order to attract
2 industry and activities in the trust lands.

3 And then perhaps, Mr. Dry, in your
4 presentation, you indicated that such would be invasions
5 and you are not in favor of that as advancement to civil
6 rights of Native Americans. Just a little explanation
7 there to help me. I appreciate it.

8 MR. BELINDO: Okay, in regards to the
9 unemployment insurance question and the workman's
10 compensation question. These are programs which are
11 focused upon the needs of the worker and necessary
12 programs, and the tribes recognize that and are willing to
13 participate.

14 The recommendation that I made to the
15 Employment Securities Commission is that in view of the
16 fact that there's this jurisdictional dispute, which
17 preceded any negotiation that the Employment Securities
18 Commission take a step back and begin a negotiation process
19 so that the tribes could access that system.

20 My point was, was that when you begin a
21 relationship, no matter what type of relationship it is, if
22 you start being an adversary to begin with, then the
23 communication barriers are broken and it becomes a win/lose
24 situation, rather than a cooperative negotiating type
25 relationship.

1 And under the bill which has passed the
2 Oklahoma House, it's very possible for tribes and the state
3 to enter into tribal-state agreements and this has been
4 done, for example, in some of the Indian child welfare
5 situations and it could been done in terms of taxation.

6 I think that one of the things that's going on
7 in the Sauk and Fox Nation, for example, some of the tax
8 money that goes to Sauk and Fox was used to buy police
9 uniforms for the City of Stroud and also to work with the
10 County Commissioners on improvement of some of the roads.

11 So it's not that the tribes are disinterested
12 in the provision of governmental services, even if they
13 overlap with cities and counties and what have you, but
14 they are hesitant when the state begins the entire process
15 with a lawsuit.

16 And there's a basic underlying attitude there
17 that the state has to take a certain amount of
18 responsibility for. And that is that they enter the
19 relationship immediately with the lawsuit and that's why
20 the tribes are rather reticent to sit down and talk with
21 the state, because the next day they can be served with a
22 summons.

23 MR. PURDY: I understand you would be in favor
24 of these state protective statutes if they're negotiated?

25 MR. BELINDO: If they're negotiated and if

1 questions such as enforcement -- See, the state, first of
2 all, can't get past the threshold question of whether they
3 can sue the tribe in the first place, because of a
4 sovereign immunity question.

5 And District Court of Western Oklahoma has
6 determined in that particular case that they can't, that
7 the tribe has not waived sovereign immunity, therefore,
8 they cannot be brought into court. So they've dismissed
9 the case for that reason.

10 Let's assume that something in terms of, say,
11 by some quirk of the imagination, that a federal statute
12 was interpreted to enjoin the tribe in a particular
13 situation having to do, say, with unemployment insurance,
14 taking the Feud Act, for example.

15 And in the Feud Act, it does say that the
16 state shall have jurisdiction to enforce agreements that
17 are made in that particular situation under that act in,
18 on, it doesn't make any difference whether it's on
19 federally held land or federally regulated land or
20 whatever.

21 Now, let's just say that somehow we can get
22 past the sovereign immunity question and get into the
23 interpretation of that statute, which is a federal
24 question. If it was determined that the State of Oklahoma
25 could do that, the State still doesn't have the authority

1 to enforce that decision, which would come down from a
2 federal court, because they cannot put a lien against
3 tribal property, there's another jurisdictional thing
4 there, also, because they cannot pre-empt federal authority
5 in that particular situation.

6 So it's a problem that is so complex in trying
7 to provide the service, in other words, what I'm -- my
8 point was that the focus was taken off of the person who
9 was unemployed and the person who was injured on the job,
10 the focus has been taken off of them and put onto the
11 adversarial situation having to do with the State versus
12 the inner tribe and the inner tribe versus the State.

13 And what I'm saying is that that model needs
14 to be dispensed with and a more negotiating type of an
15 attitude on both sides of the question needs to be
16 encouraged and that's the recommendation I make back to
17 you, is that that type of attitude be transferred to the
18 State of Oklahoma.

19 MR. PURDY: Thank you. Mr. Dry, do you agree
20 with that?

21 MR. DRY: I agree with his ideals of starting
22 off with a position of negotiation. First of all, the
23 State needs to recognize, so we can get this cooperation
24 going, that the tribes are sovereign and they are here in
25 the State and from the standpoint the tribes have their

14

1 individual member's best interest at heart, maybe they're
2 not in the position to provide all of these services.

3 But a lot of the -- whether it's unemployment
4 insurance or whatever, if they start from the standpoint of
5 negotiation and not forced into it, I might add that not
6 all entities within this State are covered by unemployment
7 insurance. I know, for instance, there's several school
8 districts that are not covered under Social Security, for
9 instance.

10 I mean, I don't see an attack at the school
11 districts to get them to comply under -- fall under Social
12 Security. So there's other state agencies that are not
13 guaranteeing all of their employees various other rights
14 that private industry are forced to comply with.

15 I might add that Garcia was a case that
16 overruled League of Cities, which talked about the
17 municipalities paying overtime. Now, that was overruled.
18 Garcia, they were going to make the cities do it, Congress
19 came back, passed a law and said, "Well, let's modify
20 this." We can't bankrupt the municipalities and the cities
21 into doing this, we'll let them come back with comp time.
22 Things like that has got to be recognized from the tribes.

23 A lot of times they're not in positions to
24 offer some of these services, but Indian citizens and
25 employees of the tribes, number one, are citizens of the

1 state and the country and have a unique status of being
2 citizens of the tribes. I just don't feel like the tribes
3 have to be forced into all these things. But I do agree
4 with Mr. Belindo that a cooperation spirit could be
5 negotiated.

6 DR. MITCHELL: Following up on this line of --
7 is this on? I presume it is -- on the questioning. It is
8 very clear that historically the states have never had a
9 relationship with the tribes in terms of any jurisdiction
10 whatsoever and that continues to be reaffirmed by the state
11 court, the Supreme Court continues and district courts,
12 federal district courts continue to reaffirm that.

13 I guess the question I'm raising is, and I
14 understand the process of negotiation in eliminating the
15 adversarial aspect between the state and tribes, but if
16 tribes and states enter into any kind of a negotiation,
17 does that not establish a relationship between states and
18 tribes in which continues to exacerbate the problem of
19 states thinking they have jurisdiction over tribes, because
20 since the Judge Tainey Decision on the movement of the
21 Cherokee from the east to the west and Tainey stated that
22 that was not a proper decision to be done, but Andrew
23 Jackson said, "Let Tainey enforce it and move them anyway."

24 We've had courts reaffirming this for 150
25 years, but there seems to be a problem, so the question I'm

1 raising, is there really -- or should there be a
2 relationship between the states and tribes?

3 I know we have to co-exist together, the state
4 and the tribes, but is there really legal jurisdiction in
5 any form or fashion between the state, without going
6 through the federal entity, itself? And that's a question
7 I raise.

8 MR. DRY: I don't see why a -- there is some
9 under Section 2 that the Secretary of Interior has an
10 approval power over a lot of the contracts that the tribes
11 make. I think it's getting to the stage, though, where,
12 with self-determination, that they're allowing the tribes
13 to go out there and venture into areas without necessarily
14 running back to the Secretary of Interior for his approval.

15 I will say that -- I mean, it's got,
16 economically, for the benefit of the state and the tribes,
17 there's got to be agreements made and for the problems
18 of -- some of the jurisdictional problems that they are
19 having, cross-deputation, various other things, recognizing
20 each other's court decisions.

21 I don't see any difference between the Sauk
22 and Fox Nation entering into an agreement with the state on
23 various things, than I do with the State of Oklahoma
24 entering into an agreement with Texas for some type of
25 benefits, maybe around the people around Lake Texhoma or

1 the people in the Panhandle entering to -- the state --
2 some kind of medical service agreement or cross service
3 agreement between the State of Colorado, New Mexico or
4 Texas.

5 MR. FAGIN: Let me call on Kerry Morgan for
6 some questions. Mr. Morgan is counsel, staff counsel with
7 the U.S. Civil Rights Commission in Washington D.C.

8 MR. MORGAN: Thank you. I just have a
9 question or two for Mr. Belindo first. You seem to be
10 suggesting that the desire of the tribes is to move
11 business into this community or communities in this area,
12 is that right?

13 MR. BELINDO: Right.

14 MR. MORGAN: And part of the impediment to
15 that, you've discussed in terms of the workman's comp and
16 these kind of things already addressed.

17 It seems that the crucial item, however, was
18 the lack of a viable judicial system that corporations
19 would not want to come here if that was not existent. Is
20 that correct?

21 MR. BELINDO: That's true.

22 MR. MORGAN: Now, you spoke of the CFR Courts.
23 Why wouldn't the CFR Courts provide that viable system to
24 encourage these corporations to come into the community?

25 MR. BELINDO: CFR Courts are not a Tribal

1 Court. Tribal Courts are established by the tribes
2 themselves. In other words, you have ---

3 MR. MORGAN: Yes, but a CFR Court does have
4 jurisdiction over Indian matters, don't they? I understand
5 that they're interim type courts, but for the telling of
6 the guy that's saying to the corporation, "Why don't you
7 come in and do business?"

8 There's a court that can handle potential
9 problems, a CFR Court can handle potential problems that
10 arise, so it's not relevant whether we have an Indian
11 Court. What's wrong with that reasoning? I just don't see
12 it.

13 MR. BELINDO: The fact that the tribe is
14 exercising its sovereignty is the first thing that has to
15 be thought about. The methodology that the tribe chooses
16 to exercise that sovereignty is on the tribal side of the
17 question.

18 The tribe, whether it's through its
19 constitution or whether it's through its governing
20 resolution or whether, in the case of the Navajo Tribe, has
21 none of that, they have no resolution, they have no
22 constitution. They merely exercise their sovereign
23 authority to do so.

24 However, the tribe chooses to exercise that
25 sovereignty is, as I said, the tribal question. If the

1 tribe sets up court, then obviously, it's a Tribal Court.
2 But in the establishment of CFR system, the tribes did not
3 establish the court, the Bureau of Indian Affairs and the
4 Department of Interior did it as a -- as a result of a
5 recommendation from the tribes that until they're able to
6 establish their Tribal Courts, we need to address the
7 question of what the Attorney General then called a state
8 of lawlessness in the State of Oklahoma.

9 So in order to distinguish one court from the
10 other, the -- you have to work your way back to the people,
11 the governing document, usually the people in a referendum
12 vote, established very similar to the United States
13 Constitution, the judicial authority of the United States
14 is in the Supreme Court of the United States and any of the
15 subordinate courts which your Congress may from time to
16 time establish.

17 MR. MORGAN: But my question is more specific.
18 What does a corporation, a third party corporation coming
19 in from the outside care whether it's a Tribal Court or a
20 CFR Court, as long as they can get some kind of remedy?

21 I mean, I can understand from your point of
22 view why you would want a Tribal Court, but from the point
23 of view of bringing in outside corporations -- Maybe I can
24 be illuminated on that a bit later.

25 Let me address one other question. You

1 indicated that as part of the exercise of that tribal
2 sovereignty, the tribes would promulgate certain
3 protections for these corporations or certain things that
4 would induce them to come in.

5 That raises the question of sovereign immunity
6 which we have been discussing here already today. Would a
7 corporation, in your opinion, be more inclined to come or
8 to stay away if the tribe had a propensity of asserting the
9 defense of sovereign immunity in an action against the
10 tribe via such a corporation?

11 In other words, don't you think that a
12 sovereign immunity defense, if too broad would be a -- push
13 people away and if it was narrowly drawn, that it would
14 attract them? Do you see what I'm saying?

15 MR. BELINDO: Yes, ordinarily, the tribes that
16 are encouraging investment, say, from a foreign country,
17 ordinarily will waive that strict sovereign immunity,
18 they'll waive sovereign immunity in that strict sense. In
19 other words, a contractual relationship between Company A
20 and the tribe, the tribe can waive that sovereign immunity
21 in enforcement of contracts area, for example.

22 If that's good enough for the corporation
23 that's coming in, then that applies only to that specific
24 corporation and that specific question insofar as the
25 waiver of sovereign immunity is concerned and that's the

1 way the tribes induce companies to come in.

2 MR. MORGAN: Does it strike you odd, it does
3 me, that a foreign corporation would have greater
4 protection than the tribe's own people with respect to
5 suing the tribe?

6 MR. BELINDO: Well, the protection of the
7 individual rights of the tribe is up to the tribe. The
8 tribe can pass any ordinance that they want to to protect
9 the individual rights of the tribe, which can be enforced
10 in Tribal Court. And again, the model that we're talking
11 about in the theoretical base of the model has to be
12 adopted by the tribe. It can not be, as Mr. Dry has said,
13 that it cannot be forced upon the tribe.

14 In other words, it's almost as if the State of
15 Oklahoma is talking to France, saying, "Why don't you guys
16 waive your sovereign immunity so that Indian tribes can
17 come in there and set up businesses? Why don't you French
18 people do that, it's good for you, you know."

19 And tribes have, from the beginning of the
20 relationship with the United States government have heard
21 nothing but that. And so in historical perspective, the
22 tribal mind-set today is such that it is, that we are going
23 to negotiate and we are going to self-determine our future
24 and no matter who it is that comes in and says, "Okay,
25 fellows, here's what you should do", we're really going to

1 save that option for ourselves.

2 So there's a certain mind-set that goes on and
3 of course, mind-sets are extremely important, because on
4 the subject of discrimination, for example, there is
5 discrimination, probably worse than there ever was in our
6 culture today and it is a matter of a mind-set.

7 It is a -- I think that people today probably
8 discriminate more up here against minorities, against
9 women, against gays, against everyone else, than they ever
10 did in the history of our country.

11 MR. MORGAN: Now, are you referring to
12 discrimination by tribal governments, as well as other
13 governments against Indians?

14 MR. BELINDO: No, I'm just speaking of
15 discrimination in general. I think that it seems to be
16 heightened in our society today. Maybe it's because of me,
17 I don't know. But in regards to discrimination, itself, in
18 regards to Indian people, what my point, bottom line, I
19 suppose, is that there still is discrimination in the State
20 of Oklahoma.

21 And the TARO case I was talking about, for
22 example, western farmers in Anadarko, Oklahoma is unwilling
23 to hire Indians. And as told the TARO people there, we are
24 not going to hire any Indians. And you know, it's -- that
25 situation still is around and their reasoning is that

1 Indians are undependable, they're alcoholics, they're lazy,
2 the whole stereotypical attitude against Indians. That
3 continues to exist.

4 MR. MORGAN: Thank you.

5 MS. TARBEL: We need a matter of
6 indentification down here. What are CFR Courts?

7 MS. SUTTER: Code of Federal Regulations.

8 MS. TARBEL: They are what?

9 MR. BELINDO: CFR is the Code of Federal
10 Regulations and they're established pursuant to 25-CFR,
11 which goes to Indians.

12 MR. FAGIN: There was one more comment, then
13 we're going to have to recess to lunch.

14 MS. SMITH: I think in taking all of this into
15 consideration, I think that some of the -- that the calls
16 that we get at the clinic, that there is a lot of
17 misunderstanding by the non-Indians, particularly in
18 Oklahoma and probably across the country ---

19 AUDIENCE: Could you please use the
20 microphone?

21 MS. SMITH: In taking everything into
22 consideration, I think that the discrimination, at least in
23 Oklahoma that I can see and maybe across the country, but
24 more particularly here, is heightened by the talk of
25 sovereignty and particularly the oil, you know, talking

1 about the Anadarko area.

2 Again, it comes to money, that the non-Indian
3 community views the Indian as getting a check from the
4 government every month and they call the clinic and want to
5 know where they can sign up. And we tell them, "When you
6 find out, let us know, we'll go sign up, too."

7 And they come thinking Indians get everything
8 free, that we get a card, we can just go everywhere and get
9 everything free, you know, Baptist Hospital, the Mayo
10 Clinic, you know, whatever and we'll get everything free,
11 get our nose fixed, our hair dyed, whatever.

12 So there's those kinds of attitude and
13 particularly, you know, with the sovereignty, they see that
14 Indians are treated different.

15 The Title Four Programs in public schools and
16 I'm president, I've been president of the Title Four in
17 Putnam City for a number of years. I had a very difficult
18 time getting through the school administration because they
19 resented Indian students getting anything special simply
20 because they were Indian, not taking into consideration why
21 Title Four was established in the first place.

22 So it's those special kinds of things, even
23 though they're really not all that special and it's very
24 difficult to get even the basic needs taken care of with
25 these special things that have been set aside for Indian

1 people because of our trust status. It's those
2 misconceptions about those things that heighten the
3 discrimination and the prejudice in Oklahoma.

4 In Oklahoma, it's becoming more blatant, but
5 the prejudice in Oklahoma has been very subtle and that's
6 really difficult to fight. But the closer you are to
7 Indian country, the higher that is.

8 MS. SUTTER: I have just one brief comment,
9 please. About your state and tribal negotiations and
10 getting an agreement together, the Sioux people are known
11 to be very traditional and they do not care to have a whole
12 lot to do with the state, as you know the problems they've
13 had in the past. Yet there is a tribe up in the northeast
14 corner of South Dakota, the Wampanog, who have had in
15 place for over ten years a state and tribal agreement
16 regarding Indian child welfare issue that's been very
17 successful.

18 You would think that this would be a role
19 model and it would encourage other state and tribal
20 agreements to be put into place. However, none of the
21 other Sioux tribes will even negotiate with the state
22 because on the basis of past experiences, they don't want
23 to deal with it.

24 So even though you have one good state and
25 tribal agreement in place does not necessarily mean that it

1 will be a model for the other tribes to -- that will be
2 encouraged by that. So I think the State of Oklahoma needs
3 to look at other examples of successful state and tribal
4 agreements and what made them successful and how did they
5 address the sovereignty of the tribes involved and take
6 that into consideration.

7 MR. FAGIN: We thank you very much for being
8 here. I know that we have just begun to hit the surface, I
9 know that of the subjects in which you touched, but they're
10 very informative and I think you're very helpful to us and
11 very educational to us and we very much appreciate your
12 being here. Thank you.

13 We're going to be recessed until 1:00, we will
14 promptly resume then. Thank you.

15 (Whereupon a recess was here taken.)

16 MR. FAGIN: We're going to declare the recess
17 over and the Oklahoma Advisory Committee to the U.S. Civil
18 Rights Commission will reconvene.

19 This meeting, I'll reiterate, the purpose of
20 today's meeting and forum is to obtain information on
21 current civil rights issues affecting Native Americans in
22 this state, in Oklahoma.

23 We are addressing a number of issues including
24 Indian sovereignty, federal, state, tribal relations,
25 employment, the administration of justice, health services

1 and representations of Native Americans in public policy
2 decision-making.

3 We are concerned especially, I think, with the
4 responsiveness of governmental agencies and with
5 governmental policies in dealing with the Native Americans.

6 Our panel this afternoon is two parts, first
7 dealing with representatives from state government from
8 various areas and the second panel at 2:00, dealing with
9 the representatives from the federal government of
10 agencies.

11 We'd invited three panelists, I believe that
12 Chief Clyde Cox, the Chair of the Oklahoma Indian Affairs
13 Commission is not here, so we will proceed with Stephen
14 Lamirand representing Robert Henry from the Office of the
15 Attorney General, State of Oklahoma and Ronald Lee Johnson,
16 the Director of the Oklahoma Human Rights Commission.

17 If you all will take a seat, we will proceed.

18 We're following rather an informal format and
19 just in the orders that you were listed on the agenda,
20 perhaps, Mr. Lamirand may wish to proceed first with his
21 remarks.

22 Let me also mention in case either of you
23 gentlemen or anyone in your office wishes to submit
24 additional written comments, the record will remain open
25 for about a week, so if there are additional comments in

1 writing you care to submit, if you'll let us know and we'll
2 let you know where to send it. Thank you.

3 MR. LAMIRAND: I'm Steve Lamirand, I'm the
4 Assistant Attorney General with the State of Oklahoma and
5 Attorney General Robert Henry asked me to apologize to the
6 committee for not being here this afternoon. He had a
7 situation arise which required his presence, so he sent me
8 in his place.

9 And I would also apologize to the committee if
10 my presentation is a little bit disjointed or not exactly
11 what you want, since I didn't know that I was going to be
12 presenting anything until this morning.

13 And if there's anything I should address or
14 not address that you would like to hear from our office on,
15 please let me know and I'll do my best to address that
16 issue.

17 MR. DULLES: You might get just a little
18 closer to the microphone or bring the microphone to you,
19 actually. I think it will move.

20 MR. LAMIRAND: One of the first issues that
21 was mentioned in your agenda was the issue of Indian
22 sovereignty in Oklahoma. We, in the Attorney General's
23 office would certainly recognize that each federally
24 recognized tribe, nation or band in Oklahoma is a sovereign
25 entity and that they possess all the attributes of

1 sovereignty of which they have not been divested by the
2 federal government.

3 We also recognize that the sovereignty of the
4 Indian tribes predates the sovereignty of the United States
5 government and is not derived from the United States
6 government's sovereignty, but rather is a sovereignty
7 unique to the Indian people as being the original
8 inhabitants of this continent.

9 But even given that, Congress has complete
10 authority over Indian tribes in all matters and can
11 regulate, prohibit, whatever, in regard to the Indian
12 tribes.

13 In regard to the issues of sovereignty, we
14 believe the State of Oklahoma should work with the tribes
15 and nations on a government-to-government basis in a spirit
16 of cooperation to enhance and promote both the tribes and
17 the State in their respective governmental functions,
18 rather than going into situations in an adversarial
19 position which results in litigation which lasts over many
20 years and is costly to both the State and the tribe and
21 which often does not resolve very many questions after it's
22 all finished.

23 In regard to federal, state, tribal relations,
24 there really is no formal relationship between the State of
25 Oklahoma and any of the Indian tribes in Oklahoma.

1 Relations between the tribes and the State of Oklahoma have
2 been pretty much on an Ad Hoc basis as problems have
3 arisen.

4 There's never been any formal structure for
5 this state agency or this state agency to sit down with a
6 particular tribe or nation and confer and try to reach some
7 kind of an agreement, rather than again, going to
8 litigation.

9 And as I said before, many times the only
10 relationship between the state and the various tribes has
11 been litigation when it's arisen from some particular
12 problem.

13 Again, the State of Oklahoma needs to work in
14 a spirit of cooperation with the tribes to try and solve
15 problems before they escalate to litigation. And this
16 could be accomplished, at least in part, if the State of
17 Oklahoma worked more directly with the tribes in efforts to
18 settle disputes with the tribes, rather than waiting until
19 it finally winds up in federal court, something I believe
20 could be avoided in many situations if we could just sit
21 down around a table and work things out between the state
22 and the tribes.

23 The Attorney General's office has tried to
24 foster this type of approach, negotiation and settlement,
25 rather than litigating issues. As a matter of practice, if

1 you litigate an issue with one particular tribe, you may
2 settle that issue with that one particular tribe, but that
3 leaves you the other 38 or 39 tribes in Oklahoma where the
4 issues still may be open and could have a different result,
5 based on the legal history, treaties and statutes governing
6 that particular tribe.

7 The area of employment is something that the
8 Attorney General's office is not involved, but we do note
9 that unemployment among Indian people in Oklahoma is much
10 greater than either the state unemployment average or the
11 national unemployment average and in some areas of the
12 state it probably runs 50 percent among Indian people.

13 In the administration of justice, this is an
14 area which has improved in some respects as more tribes
15 have been able to create their own courts and their own law
16 and order systems for their jurisdictional areas. We view
17 that as a very positive occurrence in Oklahoma and hope
18 that it continues.

19 An area of great concern for the State of
20 Oklahoma right now is the fact that generally speaking, the
21 State of Oklahoma does not have criminal jurisdiction over
22 Indian people when the crimes occur in Indian country or on
23 Indian land. And there are several different types of
24 Indian land in Oklahoma.

25 But since the State generally does not have

1 jurisdiction if Indian people are involved, then there's a
2 gap left there where there is no law enforcement presence
3 unless the tribe has its own law and order system or unless
4 the federal government steps in to prosecute and
5 investigate.

6 Ordinarily, the federal government only
7 prosecutes the crimes listed under the Major Crimes Act,
8 which are very serious crimes such as murder, rape, arson
9 and those are very limited. I believe there's twelve of
10 them now where the United States government will prosecute
11 in Indian country.

12 But other than those crimes, if there's no
13 Native American law and order system or court system for
14 that area and the state lacks jurisdiction in that area,
15 there's effectively no law enforcement there. And that is
16 a very undesirable situation for Indian people in Oklahoma.
17 They effectively do not have any protection, any law
18 enforcement protection in certain parts of Oklahoma. There
19 simply is no presence of law enforcement.

20 This is a problem which may need to be
21 addressed by federal legislation, perhaps by some agreement
22 with the State among the various tribes. During the last
23 session of the legislature, a bill was introduced and
24 passed which authorizes the State of Oklahoma, via the
25 Governor's office to enter into cooperative agreements with

1 the various tribes in Oklahoma.

2 So I believe that opens up many possibilities
3 for cooperation between the State and the various tribes in
4 many situations, not only law enforcement, but many other
5 situations, also.

6 As to the representation of Indian people in
7 public policy decision making, until recently, the State of
8 Oklahoma very seldom solicited input from Indian people
9 prior to taking actions which impacted on Indian people or
10 Indian tribes.

11 And of course, that engendered a good deal of
12 hostility between the State and the various tribes, because
13 they felt they were being left out in the cold, which I
14 believe in the past in many instances was true. They were
15 not consulted, not considered before decisions in the
16 public policy arena were made.

17 I think currently there's a trend in state
18 government towards more active involvement with the various
19 Indian tribes in soliciting their input prior to making
20 decisions which will affect Indian people in Oklahoma, but
21 there's still a long, long ways to go in that regard.
22 There's still much less input from Indian people on Indian
23 affairs than there should be in Oklahoma.

24 And again, the Attorney General's office has
25 taken the position that we want input from Indian people

1 when we're dealing with issues that affect Indian people.
2 We want to know what their thoughts are, what their
3 feelings are, what they feel the law is in this area when
4 we're working on a situation that involves a tribe or
5 tribes or individuals.

6 And we have kept our office open to Indian
7 people and to the tribes so that if at any time they want
8 to give input to the Attorney General's office on a given
9 matter that may be before the Attorney General, we welcome
10 them and encourage them to do so.

11 We feel that it's very important that they be
12 given as much input as possible in these public policy
13 decision-making areas. And that's all I have, ladies and
14 gentlemen.

15 MR. FAGIN: Thank you. If you would state
16 your name and again, your office for the record, please.

17 MR. JOHNSON: My name is Ronald Lee Johnson,
18 good afternoon, Chairperson and members of the Advisory
19 Committee for the United States Commission on Civil Rights.
20 I see some friends here today, also, that I'd to say hello
21 to and like to let you know that I very much appreciate the
22 opportunity to come before you today to speak briefly with
23 you regarding the issues that we're here on today.

24 First of all, I'd like to just start off by
25 introducing myself to a certain extent and the agency with

1 which I work. My name, as I stated, is Ron Johnson and I
2 am an attorney and the Executive Director of the Oklahoma
3 Human Rights Commission.

4 We have a nine member commission and of that
5 nine member commission, we do have American Indians
6 represented on the commission. And we have a 25 staff, I
7 have a staff of 25 with two offices, one in Oklahoma City
8 and one in Tulsa and I have American Indians represented on
9 my staff.

10 For those of you, I'm sure, who are familiar
11 with my agency, we are the state counterpart to EEOC and to
12 HUD. We are what is considered to be a Title -- a 706
13 agency for our employment practices. Our jurisdiction
14 mainly comes and derives from our state agency under Title
15 25 of Oklahoma Statute Section 1101 and following, as well
16 as Title 74, Sections 951 and following.

17 We were created, and it's very -- I'm very
18 happy about this, we were created and brought into
19 existence 25 years ago this year, by Governor Bellmon who
20 signed the agency into existence. So we're commemorating
21 our 25th year and I look forward to working with the
22 Commission and the staff and the people of Oklahoma
23 relative to what jurisdiction we have, which I'll go into
24 briefly in a minute.

25 Our law, under our law, we have jurisdiction

1 to entertain complaints which are filed by all individuals
2 of the state alleging, first of all, discrimination in
3 employment as well as in housing and in public
4 accommodations and handicap cases.

5 So we have -- we have not exclusive
6 jurisdiction, but at least jurisdiction here in the State
7 of Oklahoma to investigate all complaints filed by anybody,
8 any citizens in the State of Oklahoma as relates to
9 employment and housing and public accommodations.

10 I had my staff this morning, I was, in
11 preparation for this testimony, I was trying to get as much
12 information as I could. I'm not by any stretch of the
13 imagination an expert in this area, I've just come on board
14 with the Human Rights Commission as of January of this
15 year, but I have been able to make contacts with various
16 people across the state, some on our Commission, some
17 people who were not, some on my staff and so forth.

18 And one of the things that I discovered this
19 week is that the information that's available to us
20 relative to the American Indian situation as it relates in
21 Oklahoma is that we have very little updated data, which is
22 supposedly correct and accurate.

23 In speaking with one of my commissioners over
24 in Tulsa by the name of Ms. Ellen Stevens, she advised me
25 that according to the latest census data that we had in

1 1980, that there were, I suppose, according to the latest
2 census data, there were 171,000 Indians in Oklahoma,
3 according to that report.

4 However, she advises me that's an
5 underrepresentation, just as it has been with blacks and
6 other minorities. The census people have not been able to
7 get an accurate count. She estimates there may be closer
8 to 500,000, but no one knows for sure at this point.
9 That's something that needs to be addressed, I would think,
10 in terms of just population and general graphics of the
11 American Indian in Oklahoma.

12 She also advised me, she works with OTAP and
13 advised me about the problems and concerns she has with
14 employment for American Indians, especially in Tulsa,
15 because as she advised me also, that Tulsa is the second
16 largest urban Indian area in the United States, second only
17 to Los Angeles. Los Angeles has more Indians in an urban
18 setting than Tulsa.

19 And she's very much concerned, as am I and the
20 Commission about the employment statistics that are
21 atrocious here as it relates to American Indians and that
22 can be accounted for.

23 A number of reasons or a number of reasons for
24 that, one of which are as she has alluded to, as well as
25 the staff people and other individuals I've spoken to about

1 the stereotypical attitudes that society has toward the
2 American Indian in terms of seeing the American Indian as
3 being alcoholic or lazy and so forth. So these
4 stereotypical attitudes are still prevalent here in
5 Oklahoma as relates to the American Indian and other
6 minorities.

7 In an effort to try to find out what we're
8 doing as a state agency in terms of assisting American
9 Indians related to employment and housing, I had my staff
10 to run through the current case inventory that we have,
11 which consists of about 1500 cases on the computer. And I
12 had no open cases as of this morning.

13 I talked with one of my staff investigators
14 just before coming here and was advised that she had, did
15 in fact have one employment case involving an American
16 Indian just this year that was closed out successfully,
17 which was in the western part of Oklahoma.

18 And it was a case where the respondent, and I
19 won't give names or anything, but it was a case where the
20 respondent, the individual complaining party filed a
21 complaint last year based upon a bad evaluation where her
22 supervisor had come in and within six weeks from the date
23 of her supervisor coming back in, her evaluation went from
24 excellent to substandard.

25 So as a result of that evaluation and being

1 placed on a probation and all of the other little tricks
2 that are being played and the attitudinal games that were
3 played, this individual filed a complaint with our office,
4 and we were successful in that we investigated the
5 complaint, found that there was cause and then were able to
6 successfully reconcile that complaint for the woman and
7 it resulted in a very good settlement for her in terms of
8 back pay, approximately \$5600 that she was entitled to that
9 she received, as well as an expungement of the record to
10 any negative or derogatory remarks that were made as a
11 result of the evaluation.

12 I did not find any other open cases in the
13 employment side, but I'm sure that we have some. When I
14 found out that we only had that one, I then, asked why, and
15 was advised that by and large, we don't get that many
16 complaints by American Indians as related to employment
17 discrimination, but the ones that we do, we diligently
18 investigate them as we do all complaints filed with our
19 office.

20 Another aspect of my office in which we deal
21 with is that of housing. And in 1985, the legislature
22 amended our Act to expand our jurisdiction to investigate
23 and conciliate and conduct cases or conduct hearings on
24 housing discrimination complaints, which is similar to the
25 Title 8 of the Federal Statute under which HUD operates.

1 So we also conduct housing investigations for
2 the State of Oklahoma and have at this point an 84 case
3 contract with the regional office of HUD out of Fort Worth
4 to investigate 84 cases for this current year.

5 I've got to let you know that as far as with
6 EEOC, we have a 349 case contract for the current year,
7 which deals with Title 7 cases and age, AEDA cases, of
8 which we're about to complete in October. And we'll begin
9 a new fiscal year in '89.

10 But as relates to housing, we've had very few
11 complaints also in that arena filed by American Indians.
12 But one thing that I'd like to just bring to your attention
13 or invite to your attention this afternoon is that we also
14 are in the process of conducting a statewide audit in the
15 housing area, as relates to discrimination. And that is a
16 follow-up audit or study that was conducted in '85. But at
17 that time, the only race that was tested at that point was
18 black and white.

19 Now, hopefully this information that I'm
20 giving to you won't be spread out too much at this point,
21 because we're still in the process of conducting this 500
22 test audit throughout the state.

23 And at this point, we have completed 353 --
24 tests, of which 33 of the tests have come back what we
25 consider to be positive.

1 Of those 33 tests that were considered to be
2 positive or at least indicative of some differential
3 treatment being accorded to individuals going out to test,
4 of the 33, thirteen of those -- thirteen of those were
5 American Indian, fifteen were Black and five were Hispanic,
6 because in '87, when we conducted -- while we were
7 undergoing this audit, we expanded our testing by race to
8 Black, Hispanic and American Indian.

9 So it's a preliminary study now, we hope to
10 complete it, it's a year and a half project that we got
11 from HUD for \$145,000 and we have a project going on now.
12 That's one phase of what the audit will do.

13 We also have subcontracts with a couple of --
14 with O.U., the Sociology Department as well as the Oklahoma
15 Human Relations Department of Southwest Center, okay, and
16 we are doing a questionnaire, hopefully, and we'll be able
17 to get approval from OBM, Office Budget Management, which
18 we will send out to 5,000 households throughout the State
19 to get some kind of feel to what the attitudinal atmosphere
20 is in Oklahoma as relates to housing discrimination here.
21 So those are some things that we're doing in relation to
22 the American Indians in Oklahoma.

23 I also talked with several other staff and we
24 have been active in the past in terms of interceding and
25 working with various tribal leaders and tribes and American

1 Indians to resolve whatever problems there may be as they
2 relate to our jurisdiction, either in housing, employment,
3 to a certain extent, and education, because of the
4 extensive dropout rate among American Indians and the lack
5 of professional people who are Indian in the educational
6 system.

7 I understand that there is a concern there,
8 still is and probably will be for some time. So those are
9 some areas that we are looking into. We're not going to be
10 able to solve all the problems overnight because obviously,
11 they did not -- they were not created overnight, but you
12 can be assured that the Oklahoma Human Rights Commission is
13 very sensitive to this area.

14 We are willing and able, and hopefully will be
15 able to work with anybody and anyone we can to address the
16 issue, not only because we are, it's under our
17 jurisdiction, because it's the law.

18 And as long as I'm there as the executive
19 director, we will do everything we can to work with
20 agencies, individuals and groups to bring about what our
21 mission is, which is to promote unity and harmony among the
22 people of Oklahoma.

23 I'd like to give the Attorney General's office
24 a plug at this point, because I can say, at least the
25 limited time that I've been on board, that Robert Henry has

1 been very supportive of the efforts of the Human Rights
2 Commission concerning the resources and time that he has to
3 give to it.

4 But he has provided my office with excellent
5 staff and dedication and commitment, not only just for the
6 overall picture, but any types of issues that we are
7 running across. So I'd like to at least let you know that
8 we are working together and I think we're on one accord and
9 hopefully, we can do some things that would be very
10 positive for the State as well as for the nation.

11 It's my considered opinion in the short time
12 that I've been there, that I have an excellent staff, I
13 have an excellent Commission.

14 And from the few trips that I have made
15 outside of the State of Oklahoma, we are no better or no
16 worse, necessarily, than anyone else across the country.

17 And from talking with the executive directors,
18 my counterparts throughout the country, as well as people
19 on the federal level, EEOC and HUD, I really, truly believe
20 that our agency has the potential to become one of the best
21 706 agencies in the country.

22 And I'm not -- I speak with all sincerity, I
23 hope that it will come about soon and we would welcome and
24 entertain any help and support from your distinguished
25 body, as well as anyone else.

1 But I truly believe that with the staff that I
2 have and with the commissioners I have, that we will become
3 a very good 706 Agency, which will address the needs of all
4 citizens of Oklahoma, including American Indians.

5 So I appreciate the time that you've afforded
6 me, if you would like to ask me some questions, which I
7 have the answers to, if I have them, I'll be glad to take
8 questions. Thank you.

9 MR. FAGIN: Thank you very much, Mr. Johnson,
10 we appreciate your comments. I'd also like to take just a
11 minute to give a plug also to the office of the Attorney
12 General.

13 I have met with Robert Henry on numerous
14 occasions where he has addressed issues of civil rights and
15 specifically been involved in specific civil rights abuse
16 cases.

17 And we have appreciated very much that he has
18 committed personally to it, he has committed the office of
19 the Attorney General to that.

20 But I would like to ask one question, if I
21 could, of Mr. Lamirand, and that is, do you know whether or
22 not the -- at least during your time with the Attorney
23 General, whether they have addressed specific issues
24 involving civil rights violations or concerns of the Indian
25 community?

1 In the numerous experiences I've had, there
2 have been other violations that have not directly involved
3 Indian civil rights violations and I guess I'm wondering
4 whether they are utilizing that facility and that interest
5 in the community. '

6 MR. LAMIRAND: No, sir. To the best of my
7 knowledge, they have not. I've been with the office about
8 four years and to the best of my knowledge, no, that has
9 not been done within the office.

10 MR. FAGIN: Okay. We are open for questioning
11 from the Advisory Committee members. And for the panel of
12 information, also, you may have met Mr. Dulles, who is a
13 staff representative from Los Angeles, the regional office
14 to which we are assigned, and Mr. Morgan, Kerry Morgan is
15 the staff attorney with the U.S. Civil Rights Commission
16 from Washington D.C. The remainder of us are members of
17 the Oklahoma Advisory Committee.

18 MS. TARBEL: I just have a general question
19 which has nothing do with the particular subject of today,
20 but yet it does, too.

21 He has contracts for 85, what, housing
22 discrimination suits in a year, is that it? And if you
23 have 86, that person is out of luck, or what? I mean, I'm
24 just curious.

25 MR. RONALD JOHNSON: Okay, fine. Let me

1 explain what I'm saying then on contracts. We enter into
2 an annual contract with both EEOC and HUD in what we
3 consider to be dual filed. We have a capability of
4 handling, we consider to have the capability of handling 84
5 cases per year. The other cases that are filed are then
6 worked by HUD or EEOC, our counterpart. Yes.

7 MS. TARBEL: Thank you.

8 MR. WALLACE JOHNSON: I noticed you said the
9 relationship between the tribes and the Attorney General's
10 office. Is an effort being made by the Attorney General to
11 get them to participate in bringing about understandings of
12 the tribes and their sovereignty?

13 MR. LAMIRAND: Yes, sir, very much so. We've
14 encouraged the tribes and ourselves solicited input from
15 the tribes on issues that have come in our office that
16 directly affect the Indian people and Indian tribes in
17 Oklahoma.

18 MR. WALLACE JOHNSON: Do you find them
19 cooperative?

20 MR. LAMIRAND: Yes, very much so. I think
21 that the attitude in the past, generally in the state
22 government toward Indian people was not particularly
23 positive. I think that's changing and I think that Indian
24 tribes and people in Oklahoma are very receptive to that
25 type of change and will eventually result in a lot of very

1 beneficial cooperation between the State and the tribes in
2 Oklahoma.

3 MR. PURDY: I have a question. Mr. Johnson,
4 do you have a feeling whether or not you think that the
5 Native American Indians are not utilizing the facilities of
6 your office and perhaps the EEOC through some social
7 problem or just lack of complaints or what would you --
8 You indicated that you don't have many complaints by
9 Indians and that might indicate that there's still some
10 problems out there that need to be addressed by individual
11 complaints and that they're just not being filed.

12 Would you have any comments about that?

13 MR. RONALD JOHNSON: Well, I know that there
14 are problems out there and the reason why they're not being
15 filed, there are probably a number of reasons and I'm not
16 really able to address, I don't think, but I think -- I
17 really couldn't say, other than the fact that maybe they
18 feel, the American Indian, who has been discriminated
19 against, because of employment or so forth, maybe feels
20 there is another method to go about it.

21 And I have an old report that we did sometime
22 in '77, but it talks about the reception in terms of the
23 dual citizenship also, which, as you know, the American
24 Indian occupies a unique situation in terms of citizenship,
25 because of affiliation with the tribe, as well as with the

2

1 state or the United States, being a citizen of both.

2 And sometimes I think that it may be a result
3 of going through another arena, but we would welcome and
4 encourage, if anyone feels that they are the victim of
5 discrimination in whatever area, housing or employment or
6 public accommodation, we would encourage them to file that.

7 It may take a little bit more community
8 relations on the part of the office, ourself, we only have
9 two people, and really only one now, who are in the
10 community relations department, but I really don't have a
11 hard and fast answer for that. I don't even know if I
12 answered the question. My answer was, I don't know.

13 MR. DULLES: I must say it troubles me a
14 little bit. I know I was working on a project out in Four
15 Corners country in New Mexico, and EEOC, when we went to
16 interview them said, "Well, we just haven't had any
17 complaints from the Indian community." When the Civil
18 Rights Commission went out and held three days of hearings
19 and that EEOC representation, for the following several
20 months they were inundated by employment discrimination
21 cases.

22 So I'm wondering if it's not an obligation of
23 state government in terms of outreach -- in other words,
24 you express the attitude, we encourage people to file and
25 the Assistant Attorney General said the same thing, we

1 encourage people to come in and to talk with us.

2 But is it not, in fact, at least in part, the
3 obligation of state government to go out and take the
4 initiative and find out, "What are the problems?" "What
5 are the issues?" "Here are our services, here's what we
6 can provide."

7 And I would think especially if I was the
8 Director of the State Human Rights Commission and had only
9 one employment discrimination complaint filed by a Native
10 American, I would want to find out why that was, in view of
11 what seems to be persistent testimony over the years of
12 continuing problems in discrimination.

13 So I guess I would ask the question to both of
14 you, because I was very, very encouraged by the statement
15 of the Assistant Attorney General, in terms of your opinion
16 that Indian people had had insufficient participation in
17 policy decision-making. I can see that's a very
18 progressive statement coming from the Attorney General's
19 office.

20 Is there something structurally, some
21 initiatives that could be taken to say, let's propose a
22 structure to formalize or institutionalize of this
23 involvement of Indian people in decision-making in state
24 government?

25 MR. RONALD JOHNSON: In response to what you

1 were saying, first of all, I had two people -- do you want
2 me to turn this over for you?

3 MR. DULLES: I'll take care of it. You go
4 ahead. No, no, don't do that, because that's side two.
5 Keep talking. We have a court reporter here.

6 MR. RONALD JOHNSON: Anyway, in response to
7 what you're saying, it's not that we aren't going out, as I
8 said, I just started in January and that is not an excuse
9 and I'm not making any. What I will advise you about this
10 is, is that we're doing everything that we can humanly
11 possibly do to let people, not only American Indians, but
12 everybody in the State of Oklahoma know that we're going to
13 enforce the law if there are violations, period.

14 The individual who works on my staff now is
15 American Indian who's in the community relations
16 department. The reason why I only have one is because the
17 person who was the community relations specialist
18 supervisor just retired in July of this year and I have not
19 replaced that position. But I have not replaced that
20 position because of some structural changes that I'm going
21 to make there, which will be in the best interest of the
22 agency.

23 And as far as us doing everything that we can
24 do, we have done everything possible that we can do to
25 educate, orient, intervene and intercede, not only with

1 American Indians, but all people who are in the protective
2 classes under Title 25 and Title 7. So I beg to differ
3 about the intensity there. My staff is doing everything
4 they can do with the resources that we have.

5 Another problem that we have had in the past,
6 even though we've been in existence for 25 years, and the
7 Attorney General's office helps us to a certain extent, is
8 that we do not have a staff attorney.

9 And I feel that that's very much needed if
10 we're going to enforce that law effectively. So as a
11 result of that, I've been doing everything that I can to
12 increase my staff.

13 I was very fortunate this year to have the
14 support of the -- of Bob Fulton, who is the Cabinet
15 Secretary of Health and Social Services to help me with it,
16 as well as the legislature, to give me two additional
17 FTE's, full-time employees, as investigators, but I also
18 have on my slate of agenda for the fiscal year '90, to
19 increase the staff.

20 And maybe I don't need to tell you, but I
21 will, since we're dealing with this in terms of resources,
22 that I want to add an attorney, if it's possible, I want to
23 also add another community relation specialist and then
24 some more support staff.

25 So it's not that we are not concerned about

1 the issue regarding the lack of complaints and you
2 misunderstood what I said. I said that we had one open,
3 one charge that had been worked this year. There are more
4 complaints that were in the system, but I did not get those
5 until I got here.

6 But you can be assured that I'll do everything
7 that I can to protect anybody's rights who are afforded
8 under that Title 25 that we operate on, and any help that
9 you can give me would be greatly appreciated.

10 MR. DULLES: I have some suggestions. Mr.
11 Lamirand, could you respond to my concern?

12 MR. LAMIRAND: Yes, sir. I believe it is
13 incumbent upon the State to go out and solicit
14 representation and input from Indian people in Oklahoma,
15 whether it be in regard to economic development, civil
16 rights discrimination, any number of issues. I think it's
17 incumbent upon the State to go out and involve Indian
18 people and not take the attitude that we're the state and
19 we're going to do whatever we want to.

20 Unfortunately, that has been kind of the
21 prevailing attitude in the past. I believe that's
22 changing, but as I said, it's got a long ways to go, but in
23 response to your question, yes, I think it's incumbent upon
24 the State to go out and seek the advice and input of the
25 Indian tribes in Oklahoma.

1 MR. DULLES: Do you have any concrete
2 recommendations on how this could be accomplished, any
3 specifics?

4 MR. LAMIRAND: I think one of the
5 possibilities would be, we have the Indian Affairs
6 Commission, which is a State agency in Oklahoma. However,
7 that agency has always been underfunded and undermanned and
8 just did not -- does not have sufficient resources to reach
9 out to Indian people in Oklahoma.

10 I think bolstering that agency's abilities and
11 facilities and staff would be a step in the right
12 direction. With all of the various branches of state
13 government, there's no one person that can make the change,
14 that can say, okay, this is the way we're going to go from
15 now on.

16 I think it's going to have to be a decision
17 that's made by various level officials in state government
18 and something they'll have to pursue on their own for their
19 agency or for the state, to go out and get this input and
20 get this advice. But no, sir, I do not have any concrete
21 proposals in that regard.

22 MR. RONALD JOHNSON: If I could respond to
23 some concrete proposals, too. One thing, from what my
24 community relations people tell me is that they're doing
25 the work of three agencies. The gentleman here, you're

1 with the Justice Department, is that correct?

2 MR. MORGAN: No, U.S. Commission on Civil
3 Rights.

4 MR. RONALD JOHNSON: My understanding is that
5 there are three agencies, federal agencies, which my
6 community relations people do. And one of the suggestions
7 I would have and I concur with Stephen in terms of the
8 Indian Affairs Commission, I think that that does need to
9 be strengthened and we would work closely with them. I'm
10 on the same cabinet with the Indian Affairs Commission,
11 we're in the same cabinet. But I do think that does need
12 to be an increase there.

13 In addition to that, I think closer relations
14 between the federal and state and the opportunity to
15 dialogue, as we're doing now, will help, as well as
16 receiving additional funds from the federal system as well
17 as the state level will help.

18 And I know that money doesn't always solve
19 problems, but if you have some money along with innovative
20 ideas and thoughts and a chance to get together and
21 dialogue, as we are doing now, then I think that some
22 things can come about that will be very positive.

23 And I'm not saying -- I would like to work
24 ourselves out of existence. I would be hopeful that we
25 wouldn't even, in this date and time, have to have a Human

1 Rights Commission or an EEOC Commission, but we do, because
2 racism exists in this country.

3 And as long as it does, we need to work
4 together, because we've all got a common mission, and any
5 innovative approaches or whatever, I'd be receptive to
6 working with those people.

7 MR. MITCHELL: The Attorney General's office
8 has been very cooperative in terms of working with the
9 tribes, in terms of the number of different kinds of
10 issues, but one of the real questions surrounds other state
11 agencies which sometimes view the tribes as not being
12 sovereign and particularly the Tax Commission, Employment
13 Security Commission.

14 And the question of sovereignty has been
15 answered over and over and over by the federal courts, even
16 the state court has answered it through the Employment
17 Security Commission.

18 What is the Attorney General's office doing to
19 make sure that these agencies understand the proper
20 position of state government with the tribes?

21 MR. LAMIRAND: Well, education. It's very
22 difficult, Mr. Mitchell, to change attitudes that have been
23 prevalent in Oklahoma since statehood. Up until ten years
24 ago, Indian tribes in Oklahoma were considered by the state
25 government to be not much more than local affiliations of

1 people, like a Moose Lodge or an Elk Lodge or something
2 like that.

3 In the last ten years, because of various
4 court decisions and other events that have taken place, the
5 State has come to realize that the tribes here in the State
6 are sovereign entities. But that doesn't mean that the
7 particular agencies in state government like that, they --
8 that they are in favor of that sovereignty.

9 You mentioned the Tax Commission, their point
10 of view is that Indian, and I'm not really authorized to
11 speak for the Tax Commission, but when I've spoken with
12 them, their attitude is, "Well, Indian businesses which
13 aren't taxed by the State of Oklahoma are eroding our tax
14 base in a time of economic hardship."

15 What I think the state agencies don't take
16 into consideration is the fact that hundred of billions of
17 federal dollars flow into Oklahoma every year to the Indian
18 tribes and those dollars eventually go into Oklahoma's
19 economy. They may turn over once or twice in Indian
20 country, but they're eventually going to go into the
21 economy here in Oklahoma.

22 And also the little bit of income that is
23 being lost to the State of Oklahoma by these untaxed
24 enterprises, the estimation I've heard is four to six
25 million dollars. Well, considering the budget of the State

1 of Oklahoma and the amount of federal dollars that comes
2 into Oklahoma, that's negligent. That's not much of a
3 loss.

4 But to those people who do not wish to accept
5 the sovereignty of Indian tribes, until they can be either
6 educated or administrations changed, it's going to be very
7 difficult, because state government is separated into many
8 departments. The Attorney General's office, as I said, is
9 very receptive to Indian input and Indian problems.

10 But the -- there are other state agencies that
11 have, for all practical purposes, closed their doors to
12 Indian people. And that, coupled with the fact that Indian
13 people, for so many years when they came to the State
14 Capitol and to state government to talk, to ask for
15 assistance or try to work out problems, basically the doors
16 were slammed in their face. And that still lingers. It
17 doesn't happen as much as it used to, but those memories
18 linger.

19 And I think that's one of the reasons that you
20 don't get as many complaints at the Human Rights Commission
21 as you probably should, is because Indian people, in their
22 dealings with state government in the past, have not had
23 favorable results or been met with favorable reception. I
24 think that may be a part of the problem.

25 MR. FAGIN: Thank you very much. We need to

1 conclude this panel, I notice the Federal Bureau of
2 Investigation agents are anxiously awaiting their turn. We
3 very much appreciate you gentlemen appearing before us, you
4 were very helpful.

5 MR. RONALD JOHNSON: Thank you.

6 MR. FAGIN: We'll take a two minute break,
7 only two minutes, then reconvene.

8 (Whereupon a recess was here taken.)

9 MR. FAGIN: Ladies and gentlemen, we are back
10 in session. For the benefit of those who came in, I might
11 just mention, I am Charles Fagin, I am Chair of the
12 Oklahoma State Advisory Committee. The people at the front
13 table here are members of the Oklahoma State Advisory
14 Committee to the U.S. Civil Rights Commission.

15 Mr. Dulles, who is a staff member from the
16 Western Regional Office in Los Angeles assigned to Oklahoma
17 and Kerry Morgan, who is staff attorney with the U.S. Civil
18 Rights Commission from Washington D.C.

19 I will mention we have just finished the state
20 government panel. It did include, for the record, I will
21 note the Office of the Governor was invited to send a
22 representative and declined to at this time.

23 We are beginning with a federal government
24 panel. The Bureau of Indian Affairs was also invited and
25 declined to send a representative at this time.

1 There is in the federal government panel a
2 statement of Walter Mills, the Anadarko area director of
3 the Bureau of Indian Affairs, who, while did not appear,
4 did submit a written statement which will be affixed to the
5 record.

6 Also, I will mention, again, if there are any
7 newcomers in the room, that from 3:00 to 4:00 or somewhere
8 shortly after 3:00, if we're on time, there will be an open
9 session and if there are people here who desire to address
10 the Advisory Committee who have not seen Mr. Dulles yet, to
11 get their names on the list, will you please do so? We're
12 allowing five minutes or so per speaker if there are people
13 on the open forum at 3:00.

14 We're proceeding now -- Well, let me again
15 announce, for the record, our purpose here today, we have a
16 new panel, which is to obtain information on current civil
17 rights issues affecting Native Americans in this state.

18 The issues are broad, they can include issues
19 of Indian sovereignty, federal, state, tribal relations,
20 employment, the administration of justice, health services,
21 education and the representation of Native Americans in
22 public policy decision-making.

23 The Advisory Committee is particularly
24 concerned with the responsiveness of governmental agencies
25 and of governmental policies in dealing with the unique

1 position of the Native American in Oklahoma. So we're
2 particularly pleased to have a federal panel at this time.

3 With us is Dr. Clark Marquart, Chief Medical
4 Officer of the Oklahoma City Area of Indian Health Services
5 of the Department of Health and Human Services.

6 We have William S. Prise, United States
7 Attorney, Oklahoma Western District, we are very pleased
8 that, Mr. Prise, you took the time to be with us today.

9 From the Federal Bureau of Investigation, we
10 have Chuck Choney, Special Agent, we have Roy Foreman,
11 Special Agent, I believe who is especially signed to civil
12 rights matters, in the area of civil rights matters. And
13 we also have have Mr. Hank Gibbonss, who is Counsel to the
14 Federal Bureau of Investigation, I presume in Oklahoma
15 City.

16 MR. GIBBONS: That's correct.

17 MR. FAGIN: We might start out, with the one
18 who is not involved in law enforcement and save the others,
19 Dr. Marquart.

20 DOCTOR MARQUART: Yes, I'm pleased to be here
21 today. The Area Director, Dr. Townsley, had been invited,
22 but was unable to attend and I'm the Chief Medical Officer
23 of the Oklahoma City Area Office of the Indian Health
24 Service and pleased to represent the area.

25 I would like to preface my remarks with a

1 statement that while I have been involved in Indian health
2 care for some time, since 1974, I have been in the Oklahoma
3 City area for only about six weeks now.

4 This is a limiting factor in terms of
5 specifically answering some of your questions, perhaps, but
6 I would be more than happy to respond to any that I don't
7 know the answer off the top of my head at the moment, I
8 would be glad to respond later, looking into issues you
9 might want to know more about.

10 The Indian Health Service, under limitations
11 of its funding, provides as much services as possible to
12 Native Americans and Alaskan Natives throughout the United
13 States. This varies from region to region and basically
14 the IHS is divided into area offices.

15 The Oklahoma City area covers all of the State
16 of Oklahoma, as well as a couple of facilities that we
17 operate in the State of Kansas. There, likewise, is some
18 involvement with Indians in the State of Texas, although we
19 have no direct patient care facilities there.

20 In the State of Oklahoma, the Indian Health
21 Service directly operates five hospitals encompassing a
22 variety of inpatient and outpatient services and the tribes
23 themselves operate two hospitals.

24 Indian Health Service -- Indian health care is
25 divided, actually, in two phases, those direct services

1 provided by the IHS and those services which tribes have
2 assumed control of and operate themselves under the Indian
3 Health Service Self-Determination Act.

4 One of the charges to the Indian Health
5 Service is to assist tribes in any manner possible in
6 assuming control of the resources designated by the federal
7 government for care of their members and in this neck of
8 the woods, there's quite a bit of that going on.

9 Two hospitals, as I say, are fully operated by
10 the tribe. One of the service unit areas, and there are
11 nine such areas in which this area office is divided. One
12 of the service unit areas is entirely operated, both
13 hospital and the clinics in that area, by a tribe.

14 The IHS operates some 22 direct service
15 clinics and there are quite a number of clinics and health
16 service -- health centers operated by the tribes themselves
17 as well.

18 There is an ongoing effort to focus the Indian
19 Health Service resources in a manner specific to health
20 status problems known to be at play within the persons and
21 populations they serve.

22 Part of the process, for example, of the
23 federal government setting the year 2000 goals in terms of
24 health promotion and disease prevention, involves
25 specifically looking at tribal needs and the tribes

1 themselves are going to be more involved in these setting
2 of goals for the year 2000, than they were, for instance,
3 in 1980, when the 1990 goals were being set.

4 Health promotion and disease prevention, in
5 particular, is receiving a lot of increased emphasis in the
6 United States and the Indian Health Service has been viewed
7 by outsiders as in many ways leading the way in programs
8 and activities related to health promotion and disease
9 prevention.

10 I say leading the way, because long before it
11 became a popular notion in many areas to devote resources
12 to this, the Indian Health Service was tangling with
13 difficult health status problems that could not be
14 addressed adequately without a specific health promotion
15 disease prevention effort and focus.

16 An example of some ways in which the IHS
17 cooperatively approaches problems is the current effort
18 between the Indian Health Service, the Bureau of Indian
19 Affairs, the Red Cross and perhaps others, to establish an
20 AIDS curriculum for teaching in the VIA Schools at the K
21 through Twelve grade levels. This effort has begun, it is
22 far from complete, but looks like a promising sort of
23 cooperative effort.

24 Now, I'd like to turn now to something a
25 little more specifically related to what you gentlemen may

1 be interested in in terms of civil rights as Indians are
2 involved with their health care.

3 I wish that there were no problems in the
4 Oklahoma City area in relation to getting every person
5 eligible for Indian Health Services and services they need,
6 but with the funding limitations, we do see that problems
7 occur.

8 IHS is not, with all of its facilities, able
9 to always provide the care directly or travel program
10 provide the care directly within its own facilities.

11 Some types of care must be performed at what
12 is known as tertiary care centers or higher level hospitals
13 than the IHS has and this care generally is purchased under
14 a system known as Contract Health Services. A certain
15 amount of funds are set aside for Contract Health
16 Services's uses.

17 Unfortunately, the money is never sufficient
18 for the need, the care is rationed in the manner in which a
19 higher priority problems are approved for payment, lower
20 priority problems are not approved.

21 One extreme would be the absolute life or
22 death critical emergency occurring which nearly always gets
23 paid for. And the opposite extreme would be elective sorts
24 of surgery, cosmetic surgery, which, to my knowledge,
25 virtually never gets paid for.

6
1 In the middle is a wide range of things which
2 can occur and unfortunately, even when the Contract Health
3 Service funds are limited to life or limb types of
4 emergencies, emergent and urgent care alone, the money
5 still runs out.

6 I had worked in a different area of the Indian
7 Health Service, the Aberdeen area of the Indian Health
8 Service, where perhaps this problem was in the past, even
9 more critical. There, the funds were given to each service
10 unit at the beginning of the year, fiscal year, and up
11 there ours sometimes ran out in March or April and that was
12 it for the rest of the year.

13 You could not guarantee any outside physician
14 they would ever be paid for any care or any hospital for
15 any care delivered to an IHS eligible patient. Down here,
16 the problem has not been so severe, but it appears to be
17 increasing.

18 The funds are not allocated in an annual
19 manner, but in a quarterly basis. And virtually all of the
20 service units have been recently experiencing a running out
21 of these funds before the quarter is over.

22 What that does is create a situation in which
23 private hospitals, often, whom have been very helpful in
24 the care of Indian people, because they have levels of
25 services available or they're closer to an emergency where

1 something occurred, those hospitals toward the end of each
2 quarter, likewise, cannot be guaranteed payment for any
3 services they render.

4 I don't think you have to think too deeply to
5 see what kind of a situation this creates. One situation
6 that it creates is hard feelings, ill feelings between the
7 Indian Health Service personnel at times and staff of
8 private hospitals, many of which are having funding
9 difficulties of their own.

10 It is fairly widely known that a number of
11 rural hospitals in the State of Oklahoma, perhaps a sizable
12 number of rural hospitals may or may not in the relatively
13 near future need to close their doors if they cannot
14 support themselves on a more sound financial basis.

15 It's difficult for any private doctor, it's
16 difficult for any private hospital to provide care that
17 they are not paid for. It is difficult when there are
18 lengthy delays in being paid their just due, even if they
19 are ultimately paid.

20 And is very difficult on patients to face the
21 possibility of being treated in a different manner, because
22 they're Indian and that hospital might wish that the IHS
23 would take care of the bill.

24 There are some incidents which have occurred
25 in which a patient, I'll give you one quick example. A 70

1 year old gentleman, not too long ago, was involved in an
2 auto accident. He was picked up by an ambulance, in shock
3 with multiple tramatic injuries.

4 He was taken to the nearest hospital,
5 appropriately, there is nothing else you can do in a
6 situation like that, apparently was in shock when he
7 arrived.

8 That hospital, fearing that they would never
9 be paid for their services and also realizing that they
10 were not the level of care hospital desired for the nature
11 of injuries, immediately tried to transfer him to an Indian
12 health facility.

13 They did call the doctor at the Indian Health
14 facility, that hospital, unfortunately, was in no better
15 shape to take care of the patient's injury of this nature
16 than the hospital he was already at.

17 They refused the transfer of the patient on
18 that basis, saying that he should, instead, go to a
19 tertiary level hospital, a higher level of care hospital.
20 He, nonetheless, was sent by ambulance to the Indian Health
21 facility and this either borders on or meets criteria for
22 what is known as dumping of patients.

23 The details of this case have only recently
24 been made known to me, I don't care to go too much more
25 into detail without investigating a little further myself,

1 but the end result of this sad story is that the elderly
2 gentleman was found at the Indian Health Service Hospital
3 to have put multiple pelvic fractures, essentially a
4 crushed pelvis, to be in shock on arrival, to have I.V.'s
5 running with medications in those I.V.'s designed to treat
6 shock and still apparently not doing well at all. There
7 was very little that hospital could do in addition to aid
8 his treatment.

9 He was sent again, this is now the third
10 ambulance trip, to a tertiary facility for care, where he
11 either died shortly prior to arrival or shortly after
12 arrival. Now, that's a difficult situation.

13 I think that's the kind of thing that your
14 Commission is likely interested in. What does it all mean?
15 What are the solutions to it? Well, more money, again, is
16 likely the solution.

17 One cannot exactly fault the private hospitals
18 who find the only way to improve their financial situation
19 being -- trying to minimize the treatment of non-paying
20 patients.

21 One cannot exactly fault the Indian Health
22 Service who has run out of money and by law cannot spend
23 more than it is given by Congress. So we are left with a
24 dilemma, but it is a dilemma in which a form of artificial
25 racism, I would call it, can be created for fiscal reasons

1 alone.

2 Patients who are Indian might be treated
3 differently at the emergency room than a patient who
4 arrives, again, with no private insurance, no MediCare, no
5 Medicaid, but is not Indian. You know, the first thought
6 in that situation isn't, "Let's send this patient to an
7 Indian hospital."

8 I'll just leave it at that and answer any
9 questions that you folks might have about such matters.

10 MR. FAGIN: Okay.

11 MR. JOHNSON: That's not only true with
12 Indians, that's true with all ethnic groups, if you don't
13 have insurance.

14 DOCTOR MARQUART: Yes, that's right.

15 MR. DULLES: Dr. I just have a question on
16 eligibility. If I'm a Navajo from Shiprock, New Mexico,
17 I'm traveling in Oklahoma, I get injured or I am sick, can
18 I receive -- am I eligible to receive care at any Indian
19 Health Service facility that's nearest where my illness or
20 injury occurred? What are the policies on that?

21 DOCTOR MARQUART: I'd love to give you a
22 simple answer. I can answer your question today and it
23 might change to some degree if new eligibility criteria,
24 which have been published in the Federal Register, go into
25 effect.

1 The answer today, to my understanding, is
2 that, yes, you would be eligible at any Indian Health
3 Service facility for care, and that's care within the
4 abilities of that facility to provide.

5 There is a difference between that and being
6 eligible. At this point in time, there's a difference
7 between that and being eligible. You can be referred by
8 that facility to another facility using Contract Care
9 Funds.

10 The current regulations read more along the
11 lines of must be a resident of a defined service area or a
12 resident of a contingent county to that service area to be
13 eligible for Contract Funds. That is not the case for
14 direct services.

15 The published proposed changes in eligibility,
16 published in the Federal Register, will unify criteria for
17 both direct services and contract services, this has been a
18 longstanding problem in the care of Indian people.

19 MR. DULLES: But you expect it to be rectified
20 if the new regulations go in force? Will that take care of
21 the problem?

22 DOCTOR MARQUART: Yes, it should take care of
23 that problem. Whether the new regulations will be going
24 into force or not is still a matter of some doubt. The
25 Congress, at this point, has postponed implementation of

1 the published rules and there is some sentiment, to my
2 understanding, still in Congress for further postponement,
3 while certain of the changes are studied for effect.

4 One such change is a requirement of
5 eligibility in a federally recognized tribe. The matter as
6 it stands now is more along the lines of being able to
7 prove Indian descendancy, which is not the same as a
8 membership.

9 MR. DULLES: All right.

10 MR. FAGIN: All right. I think we'll proceed
11 then with our -- the rest of our panel members.

12 Do you want to be called on in some order or
13 do you have your own presentations? We have a listing
14 that, perhaps, is alphabetical, if you will look at the
15 agenda.

16 MR. PRISE: That's probably as good as any
17 other. Attorneys are more longwinded, so I can start off
18 here. It's easier to cut me off.

19 Thank you very much for the privilege of
20 appearing before this Commission. Essentially, with me
21 today are three representatives of the FBI in Oklahoma that
22 are all deeply involved in this, in the particular criminal
23 justice issues that involve Indian rights in western
24 Oklahoma, in particular.

25 I might just predicate by at least giving the

1 Commission a little bit of idea. I understood that the
2 last meeting may have occurred back in 1974, and to give
3 you a rough idea of how things have changed since 1974, at
4 least in the criminal justice system, it's like night and
5 day, the difference between how the criminal justice system
6 as it involves Native Americans has evolved over that
7 period of time.

8 It really comes from that Little Chief Case
9 and we were trying to, your Chairman and I were trying to
10 figure out the exact date of that, but it was sometime
11 about in 1978, in which for the first time everybody
12 figured out, I guess, what should have been obvious for 50
13 or so years, but no one had ever analyzed it very deeply,
14 which was that the federal government, not the state -- not
15 the state government, had jurisdiction over allotment
16 lands.

17 And for as long as everybody could ever
18 remember, no one had realized that and all crimes committed
19 on Indian allotment lands previous to that date had always
20 been prosecuted by the local authorities.

21 And that was -- that was apparently concerned
22 to be an established law of the land until that time and it
23 probably is just a quirk that a defense attorney in a case
24 in state court had determined that there really was a
25 question about the jurisdictional basis and raised it. And

1 then there was a federal judicial decision that it was
2 under the exclusive jurisdiction of the United States.

3 At that point in 1978, I was an assistant at
4 the office and I started seeing that obviously there became
5 an influx of cases involving Indian allotment lands in
6 Oklahoma. I think the thing to realize is we're a little
7 unique, just geographically, in comparison to all the other
8 states that have this kind of jurisdiction.

9 Most other states, let's say if you're in New
10 Mexico, you have a Navajo Tribe, which is a rather large
11 geographical area that can develop a rather substantial
12 tribal structure that is rather easy to administer a
13 criminal justice system that works rather well.

14 When you're looking at western Oklahoma and
15 especially the allotment lands, you're talking about what I
16 would describe as a checkerboard pattern. It's like every
17 other section of land. I had a police officer show me one
18 day a stretch of road in which it's like every other half
19 mile was Indian country, non-Indian country, Indian
20 country, non-Indian country.

21 And if he stopped somebody for speeding on the
22 areas called Indian country, he couldn't give them a
23 ticket. And if the person was sharp enough to figure that
24 out, the speeder, he'd be in deep trouble, because he would
25 have acted outside his jurisdiction. And so you have to be

1 a surveyor to be a very effective law enforcement person in
2 many cases in western Oklahoma.

3 And quite often, days are even, you know, a
4 significant amount of time goes by in which they're
5 surveying to figure out on which section of land, on which
6 side of the particular arbitrary map that the body is found
7 on a murder type situation or where the assault occurred,
8 in comparison to an assault might have occurred partly on
9 Indian country and partly not on Indian country.

10 And you're literally talking about thousands
11 of different pieces of allotment land where an Indian
12 citizen might have received his original allotment. That
13 is federal jurisdiction, especially if you're involving an
14 Indian defendant and just right a few feet away is not.

15 And it is also complicated by the fact that
16 you're talking about 30 some odd tribes. You're not
17 talking about one tribal unit that can establish a tribal
18 authority in across that area, you're talking about a large
19 number of tribes that are going to have to, each of them,
20 interface with the problem within their tribal area and
21 their tribal areas might stretch into several counties of
22 each tribe.

23 So you are looking at a far more complicated
24 situation than you would in any other state in the country.
25 I wouldn't hesitate to say I don't think any other state

1 constitutes that kind of law enforcement problem.

2 Obviously, we try the best we can, I think the
3 FBI does an outstanding job and I think our office does an
4 outstanding job of trying to prosecute the cases that get
5 presented.

6 And essentially when I was there as an
7 assistant, I saw something lacking on a few of the cases in
8 that some of the assistants handling these cases were not
9 experienced State D.A.'s and that's what you really need on
10 the kinds of cases we're talking about.

11 Not someone that can prosecute a complex white
12 collar case, but someone maybe that has prosecuted a large
13 number of assault cases and murder cases and there's
14 particular expertise that comes from having been a former
15 Assistant D.A.

16 So I think in our office currently, the people
17 that handle these cases are very experienced former D.A.'s,
18 they prosecute the exact kind of case that they're
19 prosecuting here.

20 It's really a question that you need to look
21 at is whether the -- whether the Indian community is better
22 served one way or the other by having it in the structure
23 that it is. And there is pros and cons to it.

24 Most states, like California, I was noticing,
25 the federal laws, California has a federal statute turning

1 over all jurisdiction to the state. The argument against
2 that, in many cases, might be that if there's prejudice in
3 that particular community, then that would be unfair to
4 have the local community make a judgment on the
5 jurisdiction, in that that local jurisdiction might be
6 unfair in its administration of justice.

7 On the other hand, you have many instances
8 that I saw as an Assistant, which the victim was sitting
9 there scratching their head, trying to figure out "why am I
10 here?" This was an assault between my family and this
11 other family and I have to drive hundred miles to Oklahoma
12 City to Federal Court to solve this essentially very local
13 situation. And they were -- they were in a quandary as to
14 why the statutes were put that way. They couldn't see any
15 logical reason for it.

16 So there is a question and I'm not proposing,
17 necessarily, the answers to those questions, but a question
18 of whether possibly concurrent jurisdiction is conceivable,
19 so that the federal government could prosecute those cases,
20 in which there was concern about the civil rights of
21 individuals.

22 And maybe on some other cases in which that
23 concern was not as important in which there was really a
24 very fair forum in the state, that they could be prosecuted
25 in the state level.

1 So that is at least something to consider as a
2 possibility. That would require federal changes in the
3 law, I realize, and one of my predecessors went up and
4 lobbied to Congress to try to change the -- add Oklahoma to
5 the list that included California and a number of other
6 states. And that requires changing the constitution. I
7 believe in the State of Oklahoma, that requires tribal
8 approval and all kinds of things.

9 But it is certainly the issue that you need to
10 be concerned about is whether or not the system serves
11 justice well or not and there's definitely pros and cons to
12 either way.

13 Concurrent jurisdiction would simply mean that
14 you would have a choice. You can do it either way. And
15 most drug cases -- in fact, a huge number of our cases are
16 concurrent jurisdictions in which you can make a choice one
17 way or the other.

18 The FBI is assisted in Oklahoma by the
19 various -- especially the -- the various tribal police
20 officers, in most cases by the BIA investigators. There's
21 only like, I believe, three BIA investigators in western
22 Oklahoma.

23 There are problems to look at along the lines
24 of in emergency situations, sheriff's offices or police
25 officers are asked to come in to help in those situations,

1 by tribes. And oftentimes, they resist coming in, and part
2 of it is due to the Attorney General's opinion, again, I
3 notice the State Attorney General's office was represented
4 in an earlier thing, were glad to provide, Hank Gibbons
5 supplied me with a copy of that AG's opinion. I see why
6 they are concerned, because there's a real question about
7 their ability to come in in emergency situations.

8 There's some tension along the lines of many
9 of the tribes who would desire to keep that jurisdiction
10 within their tribe, but they'd like to be able to, in
11 emergency situations, bring in local people that could
12 operate on emergency.

13 There's a real problem in a vast geographical
14 area in western Oklahoma. You're never going to have --
15 the limited group of, let's say, a few FBI agents out of --
16 out of Woodward, Oklahoma, let's say, they will probably
17 have to travel a very substantial distance. It's going to
18 be very difficult for them to provide as total backup
19 emergency situations just because of the simple numbers and
20 the geographical problems.

21 Anyway, I think each of the people here will
22 have things to say concerning those matters, I just want to
23 touch very quickly on two other things, which is one source
24 of tension, too, is obviously in the gambling area, in the
25 bingo operations.

1 And we're trying to contemplate whether --
2 we're constantly raising issues that involve whether a
3 gambling -- a proposed gambling operation is regulatory or
4 prohibitive. And it gets into all the legalese.

5 What it amounts to is, let's say you have
6 bingo and you also have pull tabs, for instance. Is pull
7 tabs a totally different kind of gambling than is bingo?
8 If it is, then we have an obligation to follow the law and
9 to prohibit that and to prosecute under the misdemeanor
10 statutes, individuals that are -- that are involved in that
11 conduct. If it is not, then we have a -- then we shouldn't
12 be, obviously.

13 There is a considerable amount of doubt in
14 these areas about which -- which activities fall within
15 which area and also whether Congress is going to make up
16 its mind about these areas of bingo, in particular.

17 And lastly, I wanted to touch on an issue, I
18 think, of concern, a great concern for me, personally.
19 Just the other day, I appeared before the United Indian
20 Nations and at least thought this Commission, when we're
21 dealing with health issues and such, would like to know of
22 some positive things that may be going on that might be of
23 interest.

24 We are -- we have been working -- I started
25 about two and a half years ago in an organization called

1 the Oklahoma Alliance Against Drugs, which has been a
2 nonprofit organization I set up to basically seek to
3 educate young people on the dangers of drugs and alcohol in
4 particular and in all drugs in our society and try to do
5 prevention work among young people.

6 We've had about three or four conferences in
7 which we've typically had 5,000 to 6,000 young people
8 throughout the state. And we have leadership training for
9 400 or 500 leadership kids that go back to their community
10 and start Teens Against Drug clubs and seek to turn around
11 the peer group pressure, unfortunately, that occurs in our
12 schools throughout the State of Oklahoma.

13 I just thought it would be of interest to note
14 that the -- in my meeting the other day with the United
15 Indian Nations, appeared along with us, was a lady that was
16 a representative of the American Indian Institute and we've
17 been working with the American Indian Institute for the
18 last year to do programs specifically for the Indian
19 community.

20 In fact, this last summer, we put on one of
21 our youth leadership training in which we had very much
22 geared toward Indian problems, Indian cultural things were
23 presented throughout, so it made maybe more of an impact on
24 recruiting large numbers of Indian youth to work in this
25 capacity.

1 And I was also very pleased at the reception
2 the other day from this group, this represented all of the
3 tribal leaders throughout the state and they were so
4 enthusiastic, they want to make sure that there's one
5 representative in each of those tribes throughout the State
6 of Oklahoma that's interfacing with the alliance and making
7 sure that the Indian -- that the finest youth leaders in
8 the State of Oklahoma are highly involved in that.

9 Because I feel that ultimately, changing
10 people's attitudes when they're ten, eleven, twelve,
11 thirteen years old about decisions of substance abuse may
12 be the most critical thing we do in this country.

13 And all we do in law enforcement is many times
14 solve the much later problems that are created by our
15 negligence of not attacking problems of substance abuse at
16 that age level.

17 So I thought that at least we got a tremendous
18 response from Indian youth leadership. I think we trained
19 150 or so Indian youth leaders and we hope that we'll get
20 literally hundreds of youth leadership at all future
21 conferences.

22 And that concludes my remarks, they were
23 probably too lengthy to begin with, but lawyers typically
24 do. Hank Gibbons is here on behalf of the FBI. Why don't
25 I turn it over to Hank next.

1 MR. FAGIN: Mr. Gibbons, would you state for
2 the record, again, your position with the FBI?

3 MR. GIBBONS: Yes, my name is Hank Gibbons,
4 I'm the principal legal advisor for the Oklahoma City
5 Office of the Federal Bureau of Investigation. I
6 appreciate you allowing us to make some comments concerning
7 the civil rights issue as it relates to the Native American
8 Indians in Oklahoma and elsewhere.

9 The FBI is the investigative -- main
10 investigative branch of the Department of Justice. It
11 deals with civil rights complaints from individuals,
12 including Native Americans, who feel like their rights have
13 been violated in some degree or other. Usually that could
14 be in the housing, but more often than that, the complaints
15 that we would receive would be primarily in the police
16 brutality area.

17 These are a priority case with the FBI, U.S.
18 Attorney's Office and the Department of Justice. The FBI
19 will always conduct the preliminary investigation into
20 these allegations. These allegations are then forwarded to
21 the United States Department of Justice, Civil Rights
22 Division, where prosecutive opinions are rendered and
23 requests for additional investigation are made.

24 Civil rights cases are referred to us in a
25 myriad of ways from individuals walking in complaining that

1 their rights have been violated to referrals by defense
2 attorneys and other members of the various community that
3 the person whose rights have been violated would call us
4 and we would refer to them. We also monitor the newspapers
5 to see if there's any violations that we might have missed
6 or haven't been referred to us.

7 In addition to the civil rights investigations
8 that the FBI conducts, the FBI, also, is a criminal
9 investigative agency and as it relates to Indian country
10 here in Oklahoma, I can only echo Mr. Prise's comments that
11 there is a jurisdictional problem that's very real, when
12 your jurisdiction is based upon whether or not a piece of
13 land is in Indian country, then to look and see if the
14 perpetrator is Indian or non-Indian, if the victim is
15 Indian or non-Indian, if the crime is victimless, who
16 refers if there's -- there's oftentimes a real emergency
17 and local sheriff's departments are confused about making
18 an emergency response that maybe could save somebody's life
19 or prevent a crime from progressing to a state where it's
20 harder to handle and harder to resolve.

21 In addition to the Major Crimes Act, which we,
22 as a priority in the FBI, those would be crime, there's
23 sixteen enumerated crimes, but we prioritize them where the
24 ones we give the most investigative resources to are the
25 crimes where there is a real serious personal injury,

1 murder, rape, things of that nature.

2 Secondary priority would be the property type
3 crimes, the burglary situations that we also investigate
4 those and present those cases to the U.S. Attorney's
5 office.

6 Additionally, the FBI, under the General
7 Crimes Act, also investigates other criminal activity in
8 Indian country, and we also place a very high priority on
9 corruption that could take place in tribal government, not
10 picking out tribal government, we do that with any
11 corruption we find, whether it be federal, local, state,
12 anything. We feel that that's one of our priorities to
13 investigate, good government filters down to stopping
14 corruption.

15 We also, as Chuck will address here, the FBI
16 is very active in affirmative hiring of Native Americans,
17 very, very active in that area in trying to recruit Native
18 Americans into the FBI so that that group can get better
19 representation in our agency.

20 I can give this to Chuck.

21 MR. CHONEY: Thank you for inviting me to this
22 panel.

23 MR. FAGIN: Could you state your name, please?

24 MR. CHONEY: Yes, Chuck Choney.

25 MR. DULLES: You are a special agent?

1 MR. CHONEY: Yes, a special agent with the FBI
2 in Oklahoma City. I want to make a few remarks this
3 afternoon on the investigations in Indian country, some of
4 the problems we have had in the past and some of the
5 measures that we have taken to eliminate these problems.

6 Several years ago, in about 1977 and 1978,
7 when the so-called Dougherty Ruling was put into effect,
8 which brought the FBI and the federal government into the
9 investigation and prosecution of the fourteen major
10 felonies in Indian country, we had a lot of problems with
11 local law enforcement.

12 Once word got around that it was exclusive
13 federal jurisdiction, we had a lot of problems with the law
14 enforcement officials out in rural areas saying, "We don't
15 have jurisdiction out there, therefore, we're not going to
16 send people out there."

17 But what we had to do, we had to literally
18 meet with each and every county District Attorney, we wrote
19 them letters, we sat down and had dialogues with them. We
20 had to educate these individuals and we have to continually
21 do this all the time, because the District Attorney will
22 seek other offices or he will be removed through the
23 election or whatever, so his predecessor will come in or
24 his successor will come in. Again, we'll have to reeducate
25 them again.

1 Here in the last couple of years, we have not
2 had too many problems, mainly because of this educational
3 effect. We have been able to get the local law enforcement
4 to understand that we cannot get out there to a rural area
5 from Oklahoma City or Woodward or Lawton, it might take us
6 anywhere up to one hour to two hours, sometimes three hours
7 to get out there to the scene of a crime.

8 What we have done, we have worked close in
9 hand with the BIA investigators and also the various tribal
10 police departments. What they will do, they will go out
11 and secure the scene for us.

12 Once that's accomplished and once we get there
13 either from Oklahoma City or one of our resident agencies,
14 then we will start our investigation.

15 During the course of this investigation, one
16 of the first things we have to determine is do we have
17 jurisdiction? And by meaning do we have jurisdiction, is
18 this Indian land? Is this trust land? If it's not, well,
19 we don't have jurisdiction and we'll turn the matter over
20 to the local authorities. But if it is Indian trust or
21 allotted property, then we do have jurisdiction. From that
22 point on, then we conduct our normal investigative duties.

23 Another avenue we're trying to do is active
24 recruiting, we're trying to get more Native Americans or
25 Indian people involved in law enforcement. And one of my

1 additional duties is recruitment.

2 We'll travel to the various universities and
3 colleges in Oklahoma, talk to a student who is in the
4 process of graduating and I'll try to get him involved or
5 interested in the FBI. A few instances, it has paid off.
6 We have some semblance of success in recruiting, I would
7 like to have more.

8 When I came into the FBI in 1976, we had
9 eighteen special agents who were Native Americans, now we
10 have 40 and it's a slow increase, but the increase is
11 there. At this time, I'd like to turn it over to Agent
12 Foreman.

13 MR. FOREMAN: My name is Roy Foreman and I'm a
14 special agent with the FBI and have been so since 1966.
15 And I worked a lot of Indian reservations as the
16 investigating agent and at the current time, I'm a relief
17 supervisor on the desk that supervises civil rights, I also
18 work civil rights cases.

19 Fortunately, in the State of Oklahoma in the
20 last few years, we've had very few overall civil rights
21 matters. We range from about five to eight police
22 brutality type cases in the state at any time, which I
23 consider very, very good. We also have the more minor type
24 violations, somebody yells at a policeman, the policeman
25 yells back, they want to make it a matter of record, so,

1 all right, that's also put down by us.

2 We've got Indians, we have Blacks, we have
3 Mexican people, we have whites, I would say that the
4 majority of the complaints are by white people as far as
5 police brutality goes, because, of course, there's a
6 majority of white people.

7 Any decision as to prosecution goes back to
8 Washington D.C., the Department of Justice. We do the
9 investigation, complete the investigation, send it back to
10 Washington D.C. and they make any decision as to the
11 prosecution.

12 We do contact one of the Assistant United
13 States Attorneys and ask them if they believe that
14 additional investigation is necessary, and then we complete
15 our report and forward it to Washington D.C.

16 In the past few years, we have taken, as I
17 recall, two cases to court and we've had one conviction,
18 maybe two convictions of persons who have actually violated
19 a person's civil rights by police brutality. One of them
20 was a sheriff out of Chandler, I believe, and then we had
21 another police officer that was taken to trial and
22 acquitted.

23 But I would say that we have very little
24 problem as far as police brutality, actual police brutality
25 goes.

1 MR. PRISE: Questions?

2 MR. FAGIN: Have we got questions from the
3 committee?

4 DR. MITCHELL: I have one.

5 MR. FAGIN: Mr. Mitchell.

6 DR. MITCHELL: Does this thing work? I guess
7 it does work. This morning we had testimony from a Mr.
8 Douglas Dry in regards to an investment company which
9 had -- let me get it straight now, which had been involved
10 with securing mineral rights and deeds on Indian trust land
11 and apparently the allegation or alleged violation of Title
12 25, U.S. Code 202 and there's another code here, and U.S.
13 Code 348, Section 348, which is specifically unlawful for
14 persons to induce Indians to execute any contract, any
15 mortgage or instrument prepared to convey any land or
16 interest held by the United States in trust for such
17 Indians.

18 And one of the questions here that I need to
19 ask is that there was an approach to the U.S. Attorney's
20 office for assistance and it was denied.

21 Are you familiar -- this particular -- and I
22 guess we'd like to know, particularly, if there's any
23 special reasons? This has to do with, in particular, the
24 trust in terms of Indian lands which, I would guess the
25 Federal -- well, the Department of Justice would be the

1 place to prosecute, if there is. Or you'll investigate,
2 not necessarily prosecute.

3 MR. PRISE: Let me understand better. To be
4 frank, it doesn't ring any bells as far as a case I'm
5 knowledgeable of. I know you said it involves Indian trust
6 land. What did they do and what's the allegation and who
7 are the people?

8 DR. MITCHELL: Well, it's an investment
9 corporation.

10 MR. PRISE: Is this involved in something
11 called SISCorp, which is a gigantic white collar crime case
12 that we may have had some involvement with and I can't ---

13 MR. GIBBONS: I recall there was some -- the
14 only thing I can recall ---

15 DR. MITCHELL: Well, it may be -- if you don't
16 have this before you, you don't ---

17 MR. PRISE: Yeah.

18 DR. MITCHELL: But it is a question that I
19 think needs to be addressed, because in the testimony here,
20 this statement will be part of our record and perhaps and
21 also, we have time to enter anything that might later --
22 the record will be open for how long?

23 MR. FAGIN: Just a week.

24 DR. MITCHELL: So it might be well if you just
25 took this and look at it and make a statement.

1 MR. PRISE: I'll obviously be glad to and if
2 there's something that we can submit.

3 DR. MITCHELL: Right, it might more be fair.

4 MR. PRISE: Let me, at the break, I'll get ---

5 MR. FAGIN: Your jurisdiction would extend to
6 it, to the investigation.

7 MR. MITCHELL: Let me -- Yeah. Okay. I guess
8 the question I want to ask is in terms of jurisdiction,
9 which I realize is always a problem in trying to determine
10 whether you do have jurisdiction because of the complexity
11 of the trusts, the land, the relationship between the
12 federal government and the tribes.

13 Would you have jurisdiction in terms of any
14 problem in terms of Indian allotment land trusts or allotted
15 land that -- alleged violations of any statute as such? I
16 mean, how would you handle that?

17 MR. PRISE: Well, it may depend on more
18 information than what I have there, because there is --
19 it's not one of the list of major crimes that we typically
20 prosecute. It may fall within any number of different
21 conceivable statutes. So it would depend on knowing a
22 little more facts. That's my problem.

23 MR. MITCHELL: Because it's not ---

24 MR. PRISE: Not every crime involving -- that
25 somehow has a relationship to intentionally to Indian trust

1 land is going to necessarily be a federal crime, but some
2 would be.

3 DR. MITCHELL: Okay. But I guess I'm more
4 concerned about investigation procedures or if someone were
5 to come to you with a problem or even alleged problem, what
6 would be the procedure for handling it?

7 MR. PRISE: I think the type of situation
8 you're talking about is perhaps somebody saying that
9 somebody perpetrated a fraud on that individual and somehow
10 stole the Indian trust land from them, okay?

11 And my memory is and again, most all white
12 collar crime cases we would investigate to try to determine
13 whether or not we can -- usually we can find jurisdiction
14 in any case or at least in a substantial number of them.
15 There's a mailing, there's an Interstate phone call,
16 there's some kind of way in which we can attach on
17 jurisdiction in white collar crime cases.

18 And again, that sounds like what this is
19 that's being presented and I'd just have to factually look
20 at it. But we'd investigate anything that would be a
21 fairly large amount, too.

22 We do have a cutoff on white collar crime that
23 is rather substantial and if it's smaller, then it's
24 deferred to the state for prosecution and simply because,
25 basically, we have ten Assistant U.S. Attorneys for 40

1 counties and the majority of the State of Oklahoma with a
2 caseload of number two in the nation per person. And so
3 therefore, we obviously have to have guidelines.

4 That's a key fact, too, if you're talking
5 about a white collar fraud case that involved, let's say, a
6 couple of thousand dollars, that might not be investigated,
7 if it had the same jurisdiction in the state level.

8 And obviously you have to, with limited
9 resources, you have to do something to, you know, as a
10 cutoff of those kind of cases, if that is the kind of case
11 you're talking about. I still don't know without looking
12 into the facts.

13 MR. MORGAN: I have some questions for Mr.
14 Gibbons.

15 MR. GIBBONS: Gibbons.

16 MR. MORGAN: Gibbons with a B?

17 MR. GIBBONS: Right.

18 MR. MORGAN: And/or Mr. Prise, regarding
19 complaints received by either of your offices made by
20 Indians alleging violation of their rights under the Indian
21 Civil Rights Act. Have you any familiarity with that or
22 has there been any situations involving that that's come to
23 your attention?

24 MR. FOREMAN: I'm not familiar with a specific
25 Indian Civil Rights Action.

1 MR. MORGAN: Congress passed a law in '68
2 indicating -- enumerating various Constitutional rights,
3 which they indicated that no tribes would be permitted in
4 the exercise of their tribal government to violate and it's
5 a -- is that for me to stop talking there?

6 MR. PRISE: Must have been a bank robbery.

7 MR. MORGAN: -- basically indicating that
8 certain rights which are similar to our Bill of Rights were
9 to be secured basically by tribal governments at least in
10 the first stage and I am interested -- and that's found in
11 25 U.S.C. 1302. I'm just interested whether you've had
12 any ---

13 MR. GIBBONS: No, we haven't had anything on
14 that. Most of our civil rights investigations, unless
15 they're like accommodations or something like that, the
16 brutality cases are all your 241 and 242 of Title 18, which
17 are the -- they were passed after the Civil War, part of
18 the reconstruction acts and they're very, very broad.

19 MR. MORGAN: Yeah.

20 MR. GIBBONS: They call them the old Klu Klux
21 Klan Acts. That's pretty much the basis for most of our
22 civil rights investigations. But we do get into the other
23 ones, but I'm not familiar with any reference under that
24 particular act that we've had here in Oklahoma.

25 MR. MORGAN: I see.

1 MR. PRISE: I might mention, too, there hasn't
2 been any official referrals that I know of under that act.
3 I have heard, unofficially, of one, you know, and again,
4 it's second or thirdhand, in one tribe in particular, there
5 was concern about whether the tribal police might have
6 prohibited, in that particular situation, some people in
7 the free exercise of their -- you know, maybe they were
8 objecting to the tribal government and such and the police
9 were told to clear these people out of the room type of
10 thing.

11 And I did hear something concerning a
12 particular tribe, but again, it was not -- I have not -- I
13 heard that recently, it was not the subject of any referral
14 that I've had.

15 There is a concern, obviously, that -- and I
16 know the FBI tends to do extensive training to try to train
17 local officials, including tribal police, on civil rights,
18 because you obviously want to guard against tribal police,
19 as well as any other kind of police, you know, depriving
20 citizens of their civil rights.

21 One thing to realize, too, in this district,
22 there's been -- the sheriff case that was in particular
23 mentioned, I think was extremely high publicity for a long
24 time that involved prosecutions of a large number of
25 people, basically cleaning out the entire sheriff's office

1 and prosecuting and sending to jail the sheriff for a long
2 period of time and all of his subordinates for depriving
3 people of their civil rights.

4 I think that did, probably notify, about as
5 well as anybody could, the entire state that definitely we
6 are interested in and we swoop down rather fast and the FBI
7 responded extremely fast and the judge responded with a
8 very long sentence for the chief law enforcement person of
9 that county on a police brutality type of case.

10 And so what I'm saying is, that it's a rather
11 good sign that there's a rather small number of complaints
12 that have been filed, especially in light of the fact that
13 it's rather highly publicized that we not only have the
14 power, but we have the will to enforce criminally, civil
15 rights statutes.

16 DR. MITCHELL: In the preventative measures,
17 what does the Department of Justice, if they are doing, in
18 terms of preventing certain acts? For example, there's an
19 increase of these hate groups. Are any groups in Oklahoma
20 that are anti-Native American? I know there are groups
21 against Jews and Blacks.

22 What kind of preventative measures are you
23 doing in terms of community services or community health in
24 term of the Justice Department in preventing actions from
25 occurring?

1 MR. PRISE: I know that the community, I
2 believe it's called the Community Relations Services, I
3 have received, it seems like to me in the last four or five
4 months, I've received especially a large number of items
5 where they're coming up and mediating and seeking to
6 service in their role of trying to solve problems like this
7 within the community.

8 I have not heard of any particular hate group
9 that has voiced actions against Native Americans. We, in
10 the past, have really not had -- the few referrals we've
11 had have been jointly both to us and to the local
12 authorities and we work very closely with local authorities
13 to try to make sure they were apprehended.

14 And then there was a preference, it was easier
15 under the state law, there were stronger statutes and they
16 were very successfully prosecuted. It was kind of a joint
17 effort investigatively, of people under the hate group
18 statutes.

19 But Hank, you might ---

20 MR. GIBBONS: I was just asking Chuck ---

21 MR. CHONEY: I've worked active cases against
22 the area nations, the Covenant Sword and the Arm of the
23 Lord and a few other hate groups. These people, their
24 advocacy is anything that is not white or Protestant,
25 they're against. They're against Catholics, Jews, any

1 minority, regardless of what they are. But I have never
2 run into any actual group, that is their main emphasis is
3 toward Native Americans, I've never seen that.

4 MR. FAGIN: You may have answered this
5 question in terms of budget constraints, but I'm wondering
6 whether there is any kind of liaison involved or whether
7 you all think it would be appropriate that there would be
8 one, either from the U.S. Attorney's office or with the
9 Federal Bureau of Investigation that encourages the Native
10 Americans to bring forward their complaints?

11 So often our concern is that they feel nothing
12 can be done, this community doesn't care and nothing is
13 done. And yet, where there are tribal abuses of civil
14 rights and yet the complaints don't come out or whether
15 there are none.

16 However, I find it difficult to believe. Or
17 where there are people that are on the allotted lands
18 committing frauds on them, whether it's to the Bureau of
19 Indian Affairs or others. Is there any kind of liaison
20 that you know of anywhere, do you think something like that
21 could be helpful?

22 MR. GIBBONS: Well, We do assign agents to the
23 various tribes in Oklahoma, we have -- the FBI has, like
24 here their headquarters office is in Oklahoma City, but we
25 have satellite offices throughout the state and in Lawton

1 where -- Roy was in Lawton for quite a period of time
2 maintaining liaison with the BIA there. We had Jim Elroy
3 in Shawnee, has got a real close working with the absentee
4 Shawnee and some of those other tribes. We have them in
5 Muskogee.

6 MR. FAGIN: I think I knew that.

7 MR. GIBBONS: Agents in Muskogee, Durant and
8 as part of their responsibilities, they're charged with the
9 liaison with the various tribes just for that particular
10 purpose. We also offer, you know, teaching, we teach -- I
11 personally teach civil rights to police officers.

12 We've had -- when they were starting the DIA,
13 some of the first tribal police a few years ago, we were
14 very active in training in that regard. So we do try and
15 keep a presence there with the tribes, at least with the
16 tribal police as well as with the tribal governments.

17 We try, like Chuck does, in talking with the
18 individual members as often as we can and have the
19 opportunity, but that's -- it kind of goes down from the
20 police that we deal with to the government and then to the
21 actual individual tribal members.

22 MR. FAGIN: So presently there is some
23 mechanism in place that ---

24 MR. GIBBONS: Yes, there is an agent that's
25 charged with liaison with that particular tribe and they

1 know him and he knows us.

2 MR. CHONEY: I would like to add that no
3 matter what we do, the Indian people will still not come
4 forward. My hometown is in Lawton and I'll go for the
5 weekend down at Lawton and I'll have some relatives and
6 friends come over and they'll tell me various stories that
7 goes on in the tribal government or out in Indian country.

8 I'll tell them, "Why don't you have them give
9 me a call or call the agency in Lawton or just call
10 Oklahoma City or if you don't want to call the FBI, call
11 the U.S. Attorney's office."

12 But they'll have to come forward, but they
13 don't. And I believe it's a feeling of -- they feel like
14 nothing is going to be done.

15 MR. DULLES: Maybe there's some suspicion or
16 mistrust of the FBI, I mean, that exists. Are there some
17 advocacy organizations such as Oklahoma Indian Legal
18 Services or other Native American groups, community based
19 organizations that may receive the complaints?

20 Because Indians do have some confidence in
21 these organizations that you can work with somehow, maybe
22 communicate with and coordinate to determine whether there
23 are civil rights allegations coming from Indian countries.
24 Is this something you've explored or something that might
25 help make your work more ---

1 MR. CHONEY: I talked to the people over at
2 the Native American Center over in Oklahoma City or at the
3 Native American Corporation in Tulsa.

4 AUDIENCE: Could you speak into the
5 microphone, please?

6 MR. CHONEY: I've talked to the various people
7 over at the Native American Center here in Oklahoma City
8 and the Native American Coalition in Tulsa trying to get
9 them, whenever they receive complaints like this, to
10 contact either me in Oklahoma City or one of our agents in
11 Tulsa and they -- they also try to educate the people who
12 come in to utilize their services, but still, again, you
13 know, we do not receive too many complaints.

14 People are -- they just don't come in, because
15 it's like you said, there is a general mistrust, not only
16 in the FBI, but in the federal government.

17 MR. DULLES: What about the legal services
18 program, Indian Legal Services?

19 MR. CHONEY: They also do the same functions
20 as the -- like at the Native American Center.

21 MR. DULLES: So you consult with them to
22 determine ---

23 MR. CHONEY: Periodically, I'll contact them
24 or they'll call me.

25 MR. GIBBONS: Once again, the agents that do

1 have that responsibility, they do deal with tribal police
2 who also have a better working relationship with
3 individuals. And you'll also get a lot of referrals, you
4 know, if there's a different faction that's fighting
5 against the faction that's in power for a particular tribe.

6 We get a lot of -- I guess for another word,
7 sour grapes, you know the outs trying to give us
8 information.

9 So there is a myriad of ways that the
10 information is coming to us, but you know, we're open to
11 all of them and we have an agent there who is listening and
12 responding to those.

13 MR. DULLES: I know when you talk about
14 distrust of federal government, there's been quite a bit of
15 concern about the effectiveness of the Bureau of Indian
16 Affairs and meeting its obligations.

17 Do you ever receive any complaints that are
18 really complaints about the BIA not doing its job in
19 protecting Indian interests? Have you received any
20 complaints and how are those handled?

21 MR. PRISE: No. In fact, I'd say at least in
22 the law enforcement area, I think there's a real benefit in
23 having -- I've heard nothing but general praise from the
24 agents that worked with the BIA investigators. It is
25 important and very helpful to have -- I believe it's three

1 different investigators, a rather small number of
2 investigators that are familiar with the federal system,
3 that can work with the FBI agents to try to prepare up the
4 case for federal prosecution.

5 It is more difficult to work try to with,
6 let's say, 30 or so different tribal authorities to do the
7 same thing. So oftentimes, it's very beneficial to have
8 BIA investigators that we can work with. So that's the
9 reason why we didn't recommend abolishing the BIA
10 investigators in the State of Oklahoma, they're very
11 useful.

12 Because they do a good job and they -- they
13 are -- you have enough volume of cases to learn the federal
14 system, you know, they're getting three or four, maybe a
15 year rather than just one -- one, let's say, every two or
16 three years. You develop much more expertise that way and
17 so they've been very beneficial and very helpful to us.

18 MS. TARBEL: I'd like to ask a question, since
19 we were greeted as gentlemen by your panel. I'd like to
20 ask Mr. Choney, do you all recruit Indian women?

21 MR. CHONEY: Yes: Four of the 40 Native
22 Americans are women.

23 MS. TARBEL: Glad to hear that.

24 MR. CHONEY: Which one is a Cherokee from
25 Oklahoma, Tahlequah. So if you know anyone out there, have

1 them give me a call.

2 MR. FAGIN: You all have a few more minutes,
3 can you answer your questions? We do have time, as far as
4 our panel, if you have another five or ten minutes.

5 MR. PRISE: Yeah.

6 DR. MITCHELL: One last question for me. This
7 morning we heard some suggestions that one of the things
8 might assist in jurisdiction is to help develop the Native
9 American Indian Tribal Jurisdictional System, so that they
10 can have their own judicial system and that was one of the
11 suggestions from this morning.

12 And that has a meaning, good meaning in terms
13 of a number of different things, not just for criminal
14 justice, but as much for investment and just having a good
15 legal system.

16 Do you have any feeling -- have you worked
17 with any tribal entities that have a judicial system? Have
18 you worked with any or do you have any -- any feelings
19 about it or any comment?

20 MR. GIBBONS: I haven't had any personal
21 dealings with them, I think they're in the early stage of
22 formulation with the CFR Courts and the Tribal Courts that
23 have limited jurisdiction with misdemeanors.

24 I think the CFR Court does have jurisdiction
25 over major crimes, but the most that they can penalize

15

1 anybody is the misdemeanor penalty, a \$5,000 fine and less
2 than a year in jail.

3 I think that -- it seems to be working fairly
4 well at the level they're at, but I think, once again, you
5 have so many Tribal Courts. I guess the CFR Court in
6 Anadarko, getting the people to understand the system and
7 where to go, it all boils back to there's this mass
8 confusion over jurisdiction, where do you go and who can
9 investigate it and who was the perpetrator, who's the
10 victim, is it victimless?

11 And you know, you can take very experienced
12 investigators and they get confused as where to go.
13 Prosecutors, each time these cases come up, they go back
14 and start with Inray Crowdog and work their way up, so they
15 make sure they're correct, you know, in the way they're
16 filing their pleadings.

17 So it's really -- if anything can be done to
18 clarify that situation, I think would really be a benefit
19 in a state like Oklahoma where you don't have a
20 jurisdictional boundary to a reservation or it's a
21 patchwork.

22 Believe me, there's like a dependent Indian
23 community, even the BIA really can't give us a definition
24 of what a dependent Indian community is, which could be,
25 you know, create federal jurisdiction. And you know, the

1 property they acquired and things like that.

2 So we haven't had any problems with the
3 courts, I think they've -- they have filled a vacuum very
4 admirably, I think, since these transitions from the Little
5 Chief case here in Oklahoma, but they are limited and they
6 are misdemeanors.

7 I would think that if they got into the areas
8 of felonies, there would really be a confusing issue there.
9 I think it's probably good the way they have it, but to
10 echo Mr. Prise's comments, we need some more prosecutors to
11 handle it.

12 DR. MITCHELL: Help.

13 MR. GIBBONS: If you want to lower the
14 prosecutive guidelines, you need more help.

15 MR. JOHNSON: I have a question. How many
16 ethnic groups are represented on your special agent Federal
17 Bureau of Investigation? How many different ethnic groups
18 do you have represented?

19 MR. CHONEY: I can answer that. Right now we
20 have, in addition to Native Americans, we have Oriental
21 Americans, Hispanics, Asian Americans and also women are
22 counted as minorities.

23 MR. JOHNSON: You have no Blacks?

24 MR. CHONEY: Oh, yeah, plus we have Blacks.

25 MR. JOHNSON: That's what I was after. I

1 didn't see any represented here, so I thought I'd ask the
2 question.

3 MR. CHONEY: The fact is, I can't quote you
4 the exact number, but it's close to 500.

5 MR. JOHNSON: I just wanted to -- sometimes it
6 might be good to have those minorities show.

7 MR. GIBBONS: I'm Italian.

8 MR. PRISE: The reason for the representation
9 of the various people is this is ones that they have been
10 to Lawton investigating a lot of them and Choney is the
11 fellow that investigates a whole lot of the western
12 Oklahoma cases. I mean we basically picked the -- or I
13 didn't even pick, I guess the FBI, I'm sure, picked the
14 people that knew things about Indian country and had some
15 direct knowledge.

16 MR. FAGIN: If we were seeking information on
17 how well the Tribal Courts or the CFR Courts were
18 functioning at this time, do you know who we might go to
19 for that? Would you all have some experience in those? If
20 there were complaints, if there were concerns, would they
21 have come through the FBI?

22 MR. CHONEY: I would think the BIA in Anadarko
23 would be the proper ---

24 MR. FAGIN: They declined our ---

25 MR. PRISE: You decline to come?

1 MR. FAGIN: You decline our invitation. All
2 right. Thank you.

3 MR. MORGAN: Mr. Prise, just a follow-up
4 question. You might decline, that's fine, it's
5 conjectural.

6 DR. MITCHELL: Can we hear the question?

7 MR. MORGAN: I haven't asked it, I have to
8 give my introduction. If the Tribal Courts became more
9 prominent, you, as a lawyer in the -- in a western system,
10 the American system with its separation of powers I'm sure
11 would look askance on a legislative body removing judges
12 for specific decisions and having reprisals in that
13 respect.

14 Given your knowledge of the tribes here in
15 this state and the particular personnel or individuals, do
16 you think that a judiciary that was not -- a tribal
17 judiciary that was not independent, but is a function of a
18 tribal constitution but was a function of a Tribal Council,
19 that there would still be proper respect defacto there for
20 the decisions of that Tribal Court, even though as a matter
21 of law, they would be subject to the Tribal Council for
22 decisions that were made?

23 MR. PRISE: Are you talking about, perhaps, if
24 there was a total transference of all jurisdiction to the
25 Tribal Court system, including all felonies, all cases of

16

1 all -- of all variety, is that the kind of system you're
2 saying, that maybe that would be the strengthening of the
3 Tribal Court system?

4 MR. MORGAN: No. I guess the question is not
5 to the scope of the jurisdiction of the court, but as to
6 its ability to operate, even giving a more confined scope
7 with the ever present concern that in a given case or
8 controversy, if a tribal judiciary renders a decision that
9 a Tribal Council will come in and basically waylay that?

10 MR. PRISE: Well, I think many of these cases
11 depend on the tribe, completely. I think there are certain
12 tribes that are large enough that there's various -- you
13 know, in very rare cases, there are interrelationship
14 between anyone in tribal leadership and the person on
15 trial.

16 And so, therefore, in those circumstances, you
17 would probably be a rather neutral party, the tribal
18 leadership would be, and there would probably not be even
19 perceived that there was an injustice there.

20 The smaller the tribe is, the less its
21 membership is and the more contentiousness there is within
22 the tribe, within the tribal factions, the more the problem
23 that you're posing comes about.

24 I've heard of some tribes that maybe have, you
25 know, and maybe I'm wrong on my numbers, but at least I've

1 heard that some tribes have maybe 500, 600 members.

2 Obviously, if you have 500 or 600 members and
3 you have an assault or a murder involving two different
4 families, let's say, and you have that small of number, the
5 possibilities and odds of interrelationships of some degree
6 of prejudice in terms of one faction versus another become
7 much more likelihood -- a likelihood in those cases.

8 So I think it vastly differs from tribe to
9 tribe, depending in many cases on size. And I think that's
10 the reason why I wanted to at least predicate my remarks by
11 giving you an idea of how diversified the tribes were in
12 Oklahoma and how many we're talking about when we're
13 talking about the Tribal Court System in Lawton. Also,
14 your ability to have good, well-trained people is largely a
15 function of size.

16 If you have a tiny little tribe that is maybe
17 geographically spread over a huge area, it's much harder to
18 provide very good law enforcement efforts.

19 And if you have a large tribe that is
20 relatively concentrated in an area, you can do a splendid
21 job. So it differs radically depending on your size and
22 geographical scope.

23 And that is a substantial concern on white
24 collar crimes that we do get a lot of groups coming in and
25 accusing one another of stealing from the tribe, the outs

1 and the ins disputes. And in those kind of cases, I do
2 think it is better to have us being able to review it
3 without being the -- it would be awfully hard for a tribal
4 police, for instance, to investigate whether the ins
5 embezzled money or not, that is very difficult to
6 accomplish.

7 DR. MITCHELL: Also, a judicial system would
8 depend upon whether or not that system is pretty much the
9 same as the system you have in the United States, free and
10 independent and makes a final decision, as opposed to a
11 Tribal Council veto. And I think -- is that partly what
12 you were ---

13 MR. PRISE: Yes, I probably didn't address
14 that as much.

15 DR. MITCHELL: I don't think that there would
16 be any problems if the judicial system is set up as an
17 independent agent in which the decision made by the
18 judiciaries is final as opposed to a veto power.

19 MR. PRISE: That's correct. Of course, if you
20 get small enough, everyone is going to know each other to
21 the extent that is going to be very difficult.

22 DR. MITCHELL: And it may not work so well on
23 a very small tribe.

24 MR. PRISE: Yeah.

25 MR. MORGAN: Well, tribes without

1 constitutions, that they have no power above the Tribal
2 Council, posing a particular problem. Mr. Choney, you
3 looked like you were grabbing for the mike there, did you
4 want to add any comments?

5 MR. CHONEY: Yes. Of course, this is going to
6 be my personal opinion.

7 MR. MORGAN: That's what I want.

8 MR. CHONEY: You're going to have to have a
9 separate judicial system with the tribe, there's too many
10 factualism, again it's going to be the outs versus the ins.
11 Anytime the former regime gets voted out, next thing you
12 know, here comes a flood of allegations of embezzlement,
13 fraud.

14 Right now, the current CFR Court in Anadarko,
15 everytime they render a judgment, they come under attack
16 from the people who the judgment goes against. In fact, by
17 claiming, well, they made that ruling because they're the
18 same tribe. And so you're going to have to keep a separate
19 judicial system.

20 MR. MORGAN: You're saying that not because
21 it's quote "Anglo", but because it's a practical solution
22 to an immediate problem, is that true or am I putting words
23 in your mouth or both?

24 MR. CHONEY: A little bit of both.

25 MR. FAGIN: I think we came face-to-face with

1 some of that tribal -- however, we tried to put together
2 tribal leadership to appear before this Committee. So I
3 think we're somewhat aware of that.

4 We very much thank you, gentlemen, for taking
5 the time to be with us and we're very appreciative. Your
6 comments have been really important and helpful to us.
7 Thank you.

8 MR. PRISE: Thank you.

9 MR. FAGIN: Let's not take a recess since
10 we're going to be over by 4:00.

11 (Whereupon a short recess was here taken.)

12 MR. FAGIN: Let's resume with this, please,
13 since we're running late. Resume your seats, please. I
14 think I need a gavel so I can call this group to order
15 again.

16 Thank you, that's what we needed.

17 Because the hour is late, it's 3:35 and we're
18 going to be over by 4:00. Fortunately, we do not have a
19 large panel in terms of a large panel of additional
20 discussion, people who want to appear, in terms of our time
21 constraints.

22 There are two people we're going to call on,
23 first is Sheila Hall. Are you with an organization that
24 you want to identify you're speaking for?

25 MS. HALL: I'm speaking for myself.

1 MR. FIST: I'm sorry, I did not get your name.

2 MS. HALL: My name is Sheila Hall, I'm an
3 individual member of the Citizen Band of Pottawatomie Tribe
4 of Oklahoma, located at Shawnee, Oklahoma, in Pottawatomie
5 County.

6 About fifteen years ago, I accepted an
7 invitation to become a member of the business committee of
8 that tribe and served on the tribe for about seven or eight
9 years in various capacities. About eight years ago, I
10 decided I had to quit working in the tribe in order to
11 devote more time to raising my family. I have two sons.

12 At the time -- I'm going to have to put my
13 glasses on.

14 At the time that I left office, I felt that
15 our tribe was prosperous, it had fledgling enterprises
16 developed, social services were offered to members and the
17 tribe was in the hands of a capable administrator and they
18 had an open and fair administration of elected officials.

19 Tribal sovereignty was in its infancy and I
20 and many others in the tribe were scratching our heads
21 saying, "What is this thing? What do we do? You know, we
22 have dual citizenship, what does it all mean?"

23 However, in the last five years, things have
24 really changed in our tribe and they've changed quite
25 dramatically.

1 A new constitution and ordinances were adopted
2 and armed tribal policeman showed up at our Council
3 meetings. This is something that had never happened in the
4 history of our tribe.

5 The membership, I feel, has been
6 systematically deprived of their civil rights of freedom of
7 assembly, press and speech. They have been intimidated
8 with threats of being jailed, lawsuits and subsequent
9 financial ruin.

10 When the tribal newspaper proudly announces
11 that the tribe has spent \$120,000 suing a former
12 administrator and recovered about \$150 for a set of golf
13 clubs that was given to him for his outstanding work on the
14 golf course, and that tribal members -- and that the tribal
15 member, that administrator also gave a statement to the
16 tribe that he would never run for office or work for the
17 tribe again.

18 When this type of thing happens on the front
19 page of our newspaper, it intimidates people. They're
20 afraid to run for office, they're afraid to even show up to
21 protest anything, they don't even come to Council meetings
22 anymore.

23 Not many of us can withstand a financial
24 onslaught like that. \$120,000 in lawyer's fees? The
25 former administrator couldn't. He lost his home, his wife,

1 his family, he was unable to -- pardon me, could I take a
2 drink?

3 He was unable to find employment, because his
4 former employment was the tribe and he had no references.
5 So it took him a long time to start getting back on his
6 feet again.

7 Our tribal attorney's fees jumped from 10,000
8 to 20,000 a year to over \$180,000 a year. You can buy a
9 whole law firm for that. The mentioned lawsuit was but one
10 of many to follow.

11 A handful of attorneys in this state have
12 established the CFR and Tribal Courts in Oklahoma and in
13 the process, they have become -- they've made a lot of
14 money. They now sit as judges in that system that they
15 developed and that they wrote and they perpetuate the
16 system that they established.

17 I feel that their allegiance is not to the
18 individual members of the tribes, but that they lean toward
19 the tribal officials who paid them these large sums of
20 money to set up this court system and these constitutions.
21 To me, this seems like a conflict of interest and an
22 ethical problem within the judgeships.

23 In our tribe, the judges are not members of
24 our tribe. They are other tribes. I wonder how the
25 Congress of the United States would like to see Russians,

1 Brittons, Australians, Mexicans, Swedish, Canadian,
2 Guatemalan nationals on our national Supreme Court. You
3 know, that's essentially what we have. We say we're a
4 sovereign nation, but we have other tribe's members sitting
5 on our Supreme Court.

6 This system that's been devised by these
7 attorneys is greatly flawed. One of the flaws is that
8 there's no laws in the system regarding election tampering
9 or fixing.

10 If a tribal official interferes in an election
11 or tampers with it or stuffs ballot boxes or whatever,
12 there's -- it's not even a misdemeanor. You know, that, to
13 me, is just defies imagination how that a learned
14 individual could set up a system like that.

15 Well, you know, I'm not trained in the law,
16 I'm not a civil rights activist, I have no training in this
17 area, but even I can see there's something wrong with that.

18 If a recall on official is needed, the
19 petition, if you can get anyone to sign it now days, would
20 have to be presented in court. It would have to be
21 accompanied with a cash deposit of whatever the court
22 determined would be equal to the defense costs of that
23 official. In the Oklahoma economy in its good times, even
24 Indians couldn't do that.

25 An Oklahoma senator, when presented with

1 petitions for his assistance, when this system was being
2 set up, replied with a letter to me -- and there were
3 almost 100 signed petitions, replied with a letter of
4 receipt that basically said, "Hi, got your letter, have a
5 nice day." And that was the end of it.

6 Currently, a state representative office
7 doesn't even know where or what or how to attain a copy of
8 the Indian Civil Rights Act. They don't even know what it
9 is. I call them, they don't know what I'm talking about.

10 In our tribe, access to members is denied,
11 access to lists of voters and elections is denied, even to
12 candidates for office. How are you ever going to get
13 elected if you don't know who the voters are?

14 Tribal officials outside the ruling of
15 majority have been impeached and are impeached for what I
16 feel are nonexistent or minor offenses. The last official
17 impeached appealed to the Tribal Supreme Court. It ruled,
18 this is our Tribal Supreme Court, the Supreme Court Judge
19 and his assistant wrote the system, it ruled that the U.S.
20 Constitution does not apply, it is arguable whether 25-CFR
21 applies and the defendant was not entitled to a fair and
22 impartial hearing. It stated that our Supreme Court was
23 the Court of Last Appeals.

24 The tribe discrimination against its own
25 members in its hiring practices. Now, I'm not talking

1 about discriminating against Indians, I'm talking about
2 discriminating against its own members.

3 The administration's response is that there
4 are no qualified members for the jobs that are needed, that
5 are there. That simply isn't true. I was in office too
6 long to know, that I know that's not true. But there's not
7 an appeal available to the members on this.

8 They cannot appeal to the ruling class,
9 because -- to the ruling administration, because only about
10 a fourth of our membership lives here and the ruling
11 administration is voted in by people who live outside the
12 state.

13 An example of the nonrecognition of tribal
14 member's qualification is our judiciary, none of which are
15 tribal members. However, there is a tribal member who is
16 an attorney, has been an Assistant D.A. in two counties in
17 the state and is currently a judge on the CFR Court. This
18 member was not even considered for the position of tribal
19 judge.

20 Also, an outstanding female tribal member who
21 was employed by the tribe, when she was fired, went to the
22 E.E.O.C. with a sexual harassment charge. They replied
23 that they did not have jurisdiction within tribes, so she
24 had no place to go, even though that she was on a federally
25 funded program when she was fired.

1 A tribal judge recently ruled that he does not
2 have authority to grant immunity from criminal prosecution,
3 so that testimony can be given. He also ruled that
4 non-Indian hostile witnesses cannot be compelled to come
5 into the court in the case, but that the tribal judge did
6 have jurisdiction. What's the defendant to do?

7 The judge cannot imply from the Indian Civil
8 Rights Act that says that you have the right to not testify
9 against himself -- yourself. He cannot imply from that
10 that he had the right to grant immunity from criminal
11 prosecution, but he has publicly stated in an open forum on
12 symposium on Indian law held here in the state that guilt
13 can be imputed to a defendant when no evidence of guilt
14 exists. Now, that's a frightening concept of law and these
15 are our tribal judges. He also sits on a CFR Court.

16 I mentioned a tribal official being impeached
17 recently. His main offense, I felt like, was passing on
18 documents to the FBI, and I wish they were still here, that
19 he passed on these documents that were instrumental
20 apparently in getting an IG investigation of the tribal
21 finances. He put his own finances and his own reputation
22 in jeopardy and he was impeached for it.

23 Now, the U.S. Attorney, as you heard him say
24 here today, has a policy of not pursuing tribal offenses
25 that fall under a dollar value. That dollar value happens

1 to be \$5,000 for tribal officials.

2 But if I stole \$3,000 from another person or
3 from a company and they complained, I'd be prosecuted, so
4 what's the difference between me and a tribal official?

5 Lawsuits have been filed in our tribe against
6 those who have opposed the administration; they've been
7 threatened if we assemble together. A member has been
8 jailed with the charges later dismissed. At the time of
9 his jailing, a state representative was present and he
10 said, "Geez, I didn't know anything like this happened
11 except in Poland."

12 We have a group of sophisticates
13 systematically denying our civil rights to us and we
14 apparently have very little recourse.

15 I am a citizen of the State of Oklahoma, I'm a
16 citizen of the United States and I feel that the Indian
17 court system denies to me the rights and privileges I
18 thought were mine.

19 The gains made by the militant Blacks in the
20 past, the improvements made in Indian civil rights after
21 Aim took a stand at Wounded Knee are denied to me, because
22 a handful of attorneys have found a way to gain wealth and
23 a few sophisticates see a way to use a system for their own
24 benefit.

25 An Indian judge writes that American criminal

1 justice system is a characterized by this statement,
2 "Better that ten guilty go free than one innocent be
3 convicted unadjustly". And that the Indian counterpart is,
4 "Better that a few individuals suffer for the good of the
5 group". I don't know if you find that frightening or not,
6 but I do, because I'm subject to those courts that say
7 that.

8 I read what the judge writes and I asked
9 Congress to help us. Give us full access to federal courts
10 and all -- in all Tribal Court actions.

11 My ancestors fought and some died in World War
12 I and World War II. I have two sons, if they're called on,
13 they will fight for my country and that is the United
14 States.

15 I, myself, was once a member of the U.S.
16 Marine Corps, I'm a good citizen and I don't like to be a
17 second class citizen. The Indian Court system, I feel,
18 simply isn't working and I ask for your help.

19 MR. FAGIN: Thank you, very much, Ms. Hall. I
20 presume this is coincidental, but we do have with us one
21 more speaker who is on the Court of Indian Offenses, it's
22 the Associate Magistrate Arvo Mikkanen. Am I pronouncing
23 your name right?

24 MR. MIKKANEN: It's Mikkanen, but it's pretty
25 close.

1 DR. MITCHELL: Can you spell that us?

2 MR. MIKKANEN: It's A-R-V-O, M-I-K-K-A-N-E-N.

3 MR. FAGIN: Thank you.

4 MR. MIKKANEN: I'm not here officially for the
5 court, but I thought this was a matter that concerned me
6 and I was interested in hearing the testimony and having
7 the opportunity to speak before the Commission and also to
8 offer any information about the court system that I'm
9 familiar with, which is the Court of Indian Offenses, also
10 known as the CFR Court, which serves a number of tribes in
11 western Oklahoma.

12 There are, just for your record, the CFR Court
13 system now serves the Kiowas, Comanches, Apaches, Wichitas,
14 Caddos, Delawares, Ft. Sill Apaches, the Poncas, the Kaws,
15 the Pawnees, the Tonkawas and the Oto Missouri Tribe.

16 At one time, they did serve the Citizen Band
17 Pottawatomie Tribe, the Absentee Shawnees, the Kickapoos,
18 the Shawnees and there's a couple of other tribes, Cheyenne
19 Arapahos, those tribes are now under a true tribal system.

20 Just for your information to explain the
21 structure of the courts, I know it's very confusing,
22 whenever we deal with Indian jurisdictional problems, it's
23 always a maze to try to figure out what jurisdiction
24 applies and what court applies.

25 The reason for that is because here in

1 Oklahoma, we had, at least from the tribe's perspective, a
2 very unfortunate situation at the time of statehood when we
3 lost most of our lands. At one time, the entire State of
4 Oklahoma virtually was Indian land. There were about
5 upwards of 30 to 40 different tribes and we had continuous
6 reservations, which were one large block of land.

7 However, at the time of statehood, various
8 settlers negotiated agreements, usually under coercion with
9 the tribes to forcibly allot out the lands.

10 What that actually resulted in was parcels of
11 land usually 160 acres in size, sometimes larger were
12 assigned to specific individuals at the time of statehood
13 and so people would select their sections out.

14 However, the size of the parcels were so
15 small, that there was a tremendous amount of land that was
16 left over. And that is when you had the Oklahoma land
17 rushes, those were non-Indians taking the residual Indian
18 lands that were not particularly assigned to people.

19 What this all means is that the tribe was left
20 with only a fraction of the land it originally had in a
21 checkerboard pattern, so you don't have one continuous
22 large chunk of land that the tribe can assert jurisdiction
23 over. That was the position of most officials.

24 A lot of attorneys now studying the issue say
25 that our boundaries have never been extinguished and that's

1 a matter that's going to have to be addressed by the
2 federal courts, because it all will turn on the particular
3 allotment agreement. Right now, most people assume that
4 there are no reservations per se in Oklahoma. However,
5 that's an unsettled question as far as myself and a lot of
6 people are concerned.

7 The CFR Court system was established under
8 federal regulations after the Little Chief decision. The
9 Little Chief decision held that the State of Oklahoma did
10 not have jurisdiction over Indian lands, Indian trust lands
11 which were defined as Indian country.

12 The definition of Indian country is found in
13 18 U.S.C. Section 1151. There are three parts of that
14 definition. Number one is all land within the boundaries
15 of a reservation, number two are dependent Indian
16 communities, you've heard some discussion of that. What
17 that usually falls into that category are tribal housing
18 authorities, other federal lands reserved specifically for
19 tribal use or individual Indians use.

20 Now, the third part of Indian country
21 definition is allotted lands and that's where you have the
22 vast bulk of the lands which are now under tribal
23 jurisdiction in the State of Oklahoma. Those are the
24 fragmentated lands that are leftover after the allotment
25 process.

1 After the Little Chief decision, since the
2 State of Oklahoma did not have jurisdiction over the Indian
3 country lands, there is a provision in the code of federal
4 regulations, the CFR, to establish an interim court system
5 until such time as the tribe has the funds and the
6 capabilities of setting up its own Tribal Court.

7 Essentially what the CFR Court is is a Tribal
8 Court that's funded by the federal government and
9 controlled somewhat by the regulations in the Code of
10 Federal Regulations. Therefore, you heard some discussion
11 of the pros and cons of a CFR Court or a Court of Indian
12 Offenses versus a Tribal Court.

13 The code that is contained in the CFR is very
14 old and is very limited in its reach, and therefore, the
15 advantage of having a true tribal system is that you have
16 laws that are derived strictly from the tribal constitution
17 or ordinances the tribe may pass.

18 Now, a CFR Court will recognize tribal law and
19 tribal ordinance passed that are approved so that in the
20 interim until the tribes have enough money and capabilities
21 to have their own justice system, the CFR Court, more or
22 less fills the gap of the jurisdiction, since the state law
23 would not apply.

24 There are a number of tribes that have now set
25 up their own Tribal Court systems, one of which is the

1 Citizen Band Pottawatomie, the Iowa Tribe of Oklahoma, the
2 Absentee Shawnee, the Kickapoo and the Cheyenne Arapajos
3 are now setting up their own Tribal Court systems.

4 Most of the judges in the CFR Court system are
5 all, at this point, are all licensed attorneys and have,
6 just speaking from my own personal knowledge, are well
7 aware of the provisions of the Indian Civil Rights Act and
8 have established procedures in informing defendants in
9 criminal cases of their rights to attain a lawyer and other
10 rights that they have for jury trials and the other things
11 that are secured under the Indian Civil Rights Act.

12 As a matter of fact, in our own court rules,
13 we do have a remedy for habeas corpus within the Court of
14 Indian Appeals, so you can appeal from a decision of the
15 Court of Indian Offenses to the Court of Indian Appeals and
16 seek habeas corpus through that means.

17 However, if you feel that your rights have
18 been violated, you certainly may go to federal court and
19 seek a writ of habeas corpus under the Indian Civil Rights
20 Act proper, which is the remedy that Congress provided when
21 that statute was passed.

22 If there are any other questions that might be
23 of help to the panel, I know it's somewhat confusing.

24 DR. MITCHELL: I want to get one thing
25 straight about the appeal process. If you're going to --

1 the first level of adjudication for any problem is the CFR.
2 Is there any mediation or anything before that point?

3 MR. MIKKANEN: Okay. Well, for a particular
4 tribe, assuming that it's a matter that occurs, in criminal
5 cases, a matter that occurs on trust lands, they would
6 either go to -- well, they would go to the Tribal Court.
7 If they didn't have a Tribal Court and if the tribe is
8 using the CFR as their Tribal Court, that's the first place
9 that they would go.

10 DR. MITCHELL: That's the first place?

11 MR. MIKKANEN: That is the trial level court.
12 That would be comparable to Federal District Court.

13 DR. MITCHELL: To our District Court. Now,
14 from there, where does it go from there?

15 MR. MIKKANEN: Then it would go, within that
16 that system to the Court of Indian Appeals.

17 DR. MITCHELL: The Court of Indian Appeals.
18 And then from there, it can go to the federal courts, or is
19 that right?

20 MR. MIKKANEN: If the federal court has
21 jurisdiction over the case and matter, but that's a matter
22 for the federal court to decide, whether or not it has
23 jurisdiction.

24 DR. MITCHELL: But there is an appeal process.

25 MR. MORGAN: Excuse me.

1 DR. MITCHELL: Yes, I'm sorry.

2 MR. MORGAN: But I don't want to leave the
3 impression, and I don't think you do either, that in
4 violation of the civil rights, the Indian Civil Rights Act,
5 there is an appeal to federal court at this time other than
6 for habeas corpus.

7 MR. MIKKANEN: Right. There is an appeal for
8 habeas corpus.

9 MR. MORGAN: That's the only way you can get
10 into a federal court on an ICRE claim at the present time,
11 since Martinez. The Martinez case in '78 is habeas corpus,
12 that means you've got to be in jail.

13 MR. MIKKANEN: That's what Congress provided
14 for when they passed the legislation initially.

15 MR. PURDY: Is there an appeal done for civil
16 matters?

17 MR. MORGAN: There is no procedures, it's
18 quite limited.

19 DR. MITCHELL: Yeah, the next question, your
20 question, is there an appeal for civil matters?

21 MR. MIKKANEN: An appeal for a civil matter
22 from the Court of Indian Offenses would go to the Court of
23 Indian Appeals for the CFR Court. Now, some tribes have
24 more steps in between, some tribes have District Courts and
25 Appellate Court and have a Supreme Court like we have here,

1 like we have in the federal system. Like the state court
2 of states vary in the number of steps that are in there.
3 It all depends upon the particular tribe.

4 DR. MITCHELL: So it depends upon the tribe in
5 terms of the structure that's been set up?

6 MR. MIKKANEN: That's right. That's the same
7 way the state courts are not uniform across the country,
8 they all have different systems.

9 MR. PURDY: There is no route to federal
10 courts involving civil matters that involve civil rights,
11 it's strictly within -- in other words, unless a person is
12 incarcerated and you go the habeas corpus route, that's the
13 only route?

14 MR. MIKKANEN: Right. But see, you'd have to
15 look to the Martinez, the U.S. Supreme Court decided that
16 issue in Martinez versus Santa Clair Pueblo, which is a
17 ready accessible case.

18 MR. JOHNSON: I have a question. You know, I
19 heard the young lady there this evening tell about a
20 similar situation. I'm wondering what would be her method
21 of approach to eliminate some of the problems she
22 identified and also in addition to that, while we had all
23 of these officials here, why not ask some of those things
24 at that time?

25 MR. MIKKANEN: I'm not familiar with the

1 particular situation that the speaker that addressed you
2 before me was involved with. I have no idea what that
3 situation was.

4 There are various remedies. If a person feels
5 that the judge is not -- I know in the CFR Court system, if
6 the judge is biased in any way, there's a method to get
7 another judge appointed to recuse that judge.

8 We do have standing rules which are contained
9 in the federal regulations regarding if any of the judges
10 have interest in the subject matter of the case, that they
11 recuse themselves or if they're related to parties in the
12 case, that they recuse themselves. Those regulations would
13 control the CFR courts, they would -- we also have a code
14 of -- I mean, in our own court rules, we have provisions
15 for recusal of judges.

16 And actually, we do have a pool of judges,
17 because as was alluded to earlier, if you have very small
18 tribes, you have very small population pool to draw from
19 and therefore, you have a high chance of people being
20 related to one another and that cannot only be between the
21 defendants and the plaintiffs and the prosecutors, but also
22 the judges. So we have turned to a system of a pool of
23 various judges and actually, we have judges from various
24 tribes.

25 I happen to be Kiowa and Comanche and I'm

1 enrolled Kiowa, we do have judges from other tribes. So if
2 that need arises, there's a remedy to either replace that
3 judge or get somebody else to sit for that case.

4 There's also the remedy within the Court of
5 Indian Offenses for a writ of mandamus. I know I used to
6 work in the federal courts, I worked for the -- before my
7 graduation, as a law clerk to two federal judges and we had
8 individuals who would be dissatisfied with the judge for
9 whatever reason and would petition the U.S. Court of
10 Appeals for a writ of mandamus to remove the judge from the
11 case because of whatever their allegations where.

12 So that remedy is available in the Court of
13 Indian Offenses, to appeal to a Court of Indian Appeals,
14 get a writ of mandamus and have that judge changed or
15 removed from that case.

16 MR. JOHNSON: There is a point of
17 clarification for myself, I thought I heard her say that
18 the CFR -- the Court of -- Federal Regulation. I'm
19 wondering, now, I think I heard her say that she had
20 problems at that level.

21 What could be a solution that she could --
22 what possibly could be the next step? She seems to be
23 threatened by a situation in Shawnee and I'm wondering what
24 could been done?

25 MR. MIKKANEN: That particular court is not a

1 CFR Court, it's a Tribal Court, that's the Citizen Band
2 Pottawatomie Tribe, I believe. I'm not sure -- I'm not
3 familiar with their rules. I would assume that they have
4 rules that would be similar to rules that we have in our
5 court.

6 Certainly, there has to be provisions, I would
7 expect, for dealing with a situation where she thought that
8 the judge either had a bias or there was some
9 dissatisfaction on her part with the result of the
10 particular case at hand. I don't happen to know. I can't
11 really speak to that issue.

12 MR. FAGIN: Is it not correct that you cannot
13 go outside the tribe -- there is no appeal outside that
14 tribal area for that particular -- since the tribe has
15 jurisdiction over that issue?

16 MR. MIKKANEN: Unless the tribe decided that
17 they wanted their cases to be appealed to the federal
18 courts. Now, we do have, I mean, the tribe could decide to
19 do that.

20 MR. FAGIN: Other than the tribe decides it?

21 MR. MIKKANEN: No, I think there might be a
22 problem with the federal court, because the federal court
23 is not a court of general jurisdiction and they only have
24 limited jurisdiction over particular subject matters, so
25 you need a federal statute in the federal court in order

1 for them to assume jurisdiction.

2 Now, we do have some tribes, such as the
3 Comanche Tribe, which has taken Indian child welfare
4 matters and put them on a high priority and has a separate
5 Children's Court and the Tribal Court, that deals simply
6 with domestic relations matters.

7 Now, they have designated the Court of Indian
8 Appeals as their appellate court, so that a person who was
9 appearing in the Comanche Nation Children's Court could
10 appeal to the Court of Indian Appeals.

11 MR. FAGIN: I don't want to put words into our
12 prior speaker's mouth, but I think one of the basis of her
13 concerns was that there is no, under the present system and
14 perhaps she's changing the -- there is no ---

15 MS. TARBEL: Place to go.

16 MR. FAGIN: --- place to go, other than within
17 the tribe and that's the tribe itself.

18 MS. TARBEL: But she's also concerned, because
19 a number of the tribe lives someplace and don't realize
20 what's going on in Pottawatomie, is that correct?

21 MR. MIKKANEN: I think that's a function --
22 again, that goes to the question, we have different tribes,
23 we have different situations. I know the Pottawatomie
24 Tribe has a very large number of people that live outside
25 of the state. I think they have about 11,000 tribal

1 members and a very small percentage live within the state.
2 Some other tribes, 90 percent of their members live in a
3 very small community. It varies from tribe to tribe.

4 MS. TARBEL: What she is saying is, though,
5 she is a noncitizen member of her tribe.

6 MR. FAGIN: The concern expressed, I believe,
7 is that there are civil rights violations can occur without
8 a remedy.

9 MS. TARBEL: That's right.

10 MR. FAGIN: Other than the tribe itself
11 decides to bestow.

12 MR. MIKKANEN: Either that or the remedy of
13 habeas corpus under the Indian Civil Rights Act. I guess
14 that would be comparable to, you know, that would be -- our
15 system of last resort would be the U.S. Supreme Court, or a
16 state system, a state Supreme Court. After a certain
17 point, then you just cannot appeal it any higher. I'm not
18 familiar with that tribe. I do believe they have three
19 levels or that they have at least two levels.

20 MS. TARBEL: She says no, two levels.

21 MR. MORGAN: But you're making the argument
22 that as an enrolled member of the Pottawatomie Tribe, she
23 exhausts her remedies as a member of that tribe and if she
24 feels she doesn't have justice, that's the end of the line
25 and by the same token, as an American citizen, we go and

1 exhaust our federal remedies and if we get to the Supreme
2 Court and don't get justice, then that's the end of the
3 line, too. Is that a ---

4 MR. MIKKANEN: Well, the ---

5 MR. FAGIN: Are you suggesting that those are
6 comparable on the basis of what I know?

7 MR. MORGAN: What I'm suggesting is that in
8 terms of the nature of citizenship for each of those
9 entities, you know, it would be the government, which she
10 is a citizen of or an enrolled member of has a limited type
11 of review and these sort of things.

12 MR. FAGIN: I'm going to say that the purpose
13 of our Committee is not to give testimony today, but to
14 find testimony, not to make statements. Rather than get
15 into dialogue with you, I think we'll just culminate that
16 part of the conversation. Are there any questions at this
17 time?

18 MR. PURDY: I have just one brief question and
19 you always accuse me of not being very brief, but I would
20 like to ask. Is there any vacancy on civil or criminal
21 matters that's not addressed by either a Tribal Court or a
22 regulatory designated court?

23 I got the impression that there might be
24 vacancies on misdemeanors and things where there's no court
25 to go to. And then I got the impression that that's not

1 the case and I wondered. And also on civil matters, is
2 there any remedy by way of injunction for damage relief
3 that would not be available like a vacancy that is not
4 available in one of the other court systems?

5 MR. MIKKANEN: On the first question, I was
6 somewhat confused by the statement that there was -- there
7 was no court that you could go to. Now, there's been a
8 recent case which has opened up the eastern side of the
9 state and there's been a long-standing confusion in the
10 area of the law regarding jurisdiction on the eastern side
11 of the state and that may have been what one of the
12 previous speakers was alluding to.

13 I know of Mr. Dry of OILS alluded to and I
14 think specifically cited the case out of the D.C. Circuit
15 that held that the five tribes, the Cherokees, the
16 Choctaws, the Chickasaws, the Seminoles and the Creeks have
17 criminal and civil jurisdiction over their Indian country
18 lands on the eastern side of the state. He may have been
19 alluding to that situation.

20 But as I explained earlier, it was that
21 precise problem, the void of jurisdiction that lead to the
22 creation of CFR Courts or Courts of Indian Offenses in the
23 western side of the state. Now, that may come to pass in
24 the eastern side of the state as well, at some future
25 point.

1 I know that there are judicial bodies operated
2 by the Cherokee, the Cherokee Nation Judicial Appeals
3 Tribunal, I'm not sure what their jurisdiction is. I know
4 that the Creeks have a court and I know that the Chickasaws
5 also have a court. That's a fairly recent decision. He
6 may have been alluding to that situation.

7 But with regard to your second question
8 regarding the civil jurisdiction of -- was your question
9 relating to appeals, civil rights acts?

10 MR. PURDY: No, just the right to go to a
11 court that can hear the matter. Is there a matter -- is
12 there an area of vacancy where I cannot get a civil remedy
13 as a citizen of the United States and as a citizen of this
14 tribe, that if I have a grievance that someone is creating
15 a nuisance, can I go get an injunction? Can I get damages?
16 Is there any area of amount here?

17 I got the feeling that there were levels of
18 jurisdiction or something where there was no remedy for
19 grievances. Does that exist?

20 MR. MIKKANEN: Well, it would depend on the
21 particular tribe and the particular tribe's law. It may
22 exist, I really don't know. I know that some tribes, for
23 example, my own tribe, the Kiowa Tribe, I think people
24 assumed that Indian tribes are operating out there with no
25 checks on their own government or no kinds of rights that

1 they provide.

2 The Kiowa Tribe has not only incorporated the
3 Indian Civil Rights Act, all of those guarantees of civil
4 rights into their constitution and made it Kiowa law, but
5 they have gone beyond that and included other provisions
6 that aren't contained in the Indian Civil Rights Act, right
7 in our constitution, which include rights of assembly,
8 rights of free speech, rights of free exercise of religion,
9 things like that.

10 There may be some tribes out there that either
11 have chosen not to provide for an injunctive relief for
12 damages, that may be the case. That's all, of course,
13 based on the principle of sovereign immunity and we've
14 heard that mentioned several times. And the same way that
15 the states and the federal government were at once
16 sovereignly immuned.

17 In other words, you cannot sue the federal
18 government on certain type of cases. You have to have a
19 statute where the Congress said, "We are going to permit
20 you to sue the government because we perceive that there
21 are wrongs that need to be righted."

22 And for example, the U.S. Congress set up the
23 U.S. Claims Court to address claims against the United
24 States government, claims that were, by Indian tribes
25 against the government were never -- could never be filed

1 until the Congress created the Indian Claims Commission and
2 then after that point, Indian tribes could pursue remedies
3 for past wrongs. But it would depend on the particular
4 tribe whether or not what type of relief that they would
5 choose to provide, whether it would be injunctions,
6 damages, things like that.

7 MR. PURDY: Thank you.

8 MR. FAGIN: Thank you very much, sir.

9 This concludes our forum, our meeting for
10 today, we very much appreciate those who appeared before
11 us, those in the audience who attended this and I
12 appreciate the Committee, the Advisory Committee's patience
13 and endurance and thank you to John Dulles and we're
14 pleased that Kerry Morgan was here also. This concludes
15 our meeting.

16 (End of Meeting)

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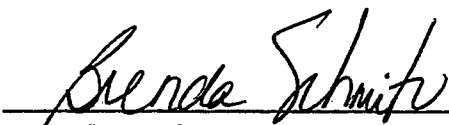
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CERTIFICATE

1
2 STATE OF OKLAHOMA)
3) SS:
4 COUNTY OF OKLAHOMA)

5 I, Brenda Schmitz, Certified Shorthand Reporter and
6 Notary Public within and for the State of Oklahoma, do
7 hereby certify that the above Transcript of the Oklahoma
8 Advisory Committee was by me taken in shorthand and
9 thereafter transcribed, and that the same was taken the 1st
10 day of September, 1988, beginning at 9:35 a.m., at the
11 Lincoln Plaza Conference Center, in the City of Oklahoma
12 City, County of Oklahoma, State of Oklahoma, and that I am
13 not an attorney for or relative of any of said parties, or
14 otherwise interested in the event of said action.

15 In Witness Whereof, I have hereunto set my hand and
16 seal this 7th day of September, 1988.

17
18 
19 Brenda Schmitz, Certified
20 Shorthand Reporter and
21 Notary Public for the State
22 of Oklahoma.

23 My Commission Expires: August 31, 1989
24
25



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
ANADARKO AREA OFFICE
P. O. BOX 368
ANADARKO, OKLAHOMA 73005



SEP 1 1988

Western Regional Office
Attn: John F. Dulles, II, Civil Rights Analyst
3660 Wilshire Blvd., Suite 810
Los Angeles, CA 90010

Dear Sir:

We are hereby providing you a copy of our written statement prepared for the Oklahoma Advisory Committee meeting of September 1, 1988. A copy was delivered to Mr. Charles L. Fagin on September 1, 1988 in Oklahoma City, Oklahoma.

Sincerely,

Area Director

STATEMENT OF WALTER MILLS,
ANADARKO AREA DIRECTOR,
BUREAU OF INDIAN AFFAIRS

On behalf of myself and my staff, I wish to thank the Oklahoma Advisory Committee to the U.S. Commission on Civil Rights for this opportunity to outline the Anadarko Area's position on the administration of law and order within its service area.

In 1978 a "jurisdictional vacuum" was recognized by the Oklahoma Court of Criminal Appeals in its order in the State of Oklahoma v. Littlechief, 573 P. 2d 263 (Okla. Cr. App. 1978). This order and its parent order, U.S. v. Littlechief, No. 76-207-D (W.D. Okla. Nov. 7, 1988), held that the State of Oklahoma had no jurisdiction over criminal acts occurring between Indians in "Indian Country" as defined in 18 U.S.C. §1151.

An estimated 457,861.09 acres of land held in trust by the United States of America for the benefit of individual Indians and tribes were then outside the jurisdiction of the available legal systems. These trust lands are situated in "former reservation areas" under the administrative jurisdiction of four Bureau of Indian Affairs agencies located at Shawnee, Anadarko, Concho, and Pawnee; an estimated 26,809 Indians from 19 federally recognized tribes reside within these areas which include all or parts of 26 counties. These former reservation areas were established prior to statehood when the reservations were allotted to tribal members in trust under the General Allotment Act; surplus land, i.e., that land not allotted, was sold to non-Indians. This process resulted in a checkerboarding of trust property among fee land within Western Oklahoma.

Subsequent to the Littlechief decision, the Assistant Secretary-Indian Affairs established a Court of Indian Offenses (CIO) for the Anadarko Area tribes by publication of his order in the Federal Register on June 22, 1979; the CIOs are created under 25 Code of Federal Regulations section 11.1(b). In 1983 the Oklahoma Supreme Court recognized the lack of state civil jurisdiction in Ahboah v. Housing Authority of the Kiowa Tribe, in which it was held that the state district court had no jurisdiction over forcible entry and detainer actions against Indian defendants who resided on trust lands; it extended the definition of Indian Country to civil matters in Western Oklahoma.

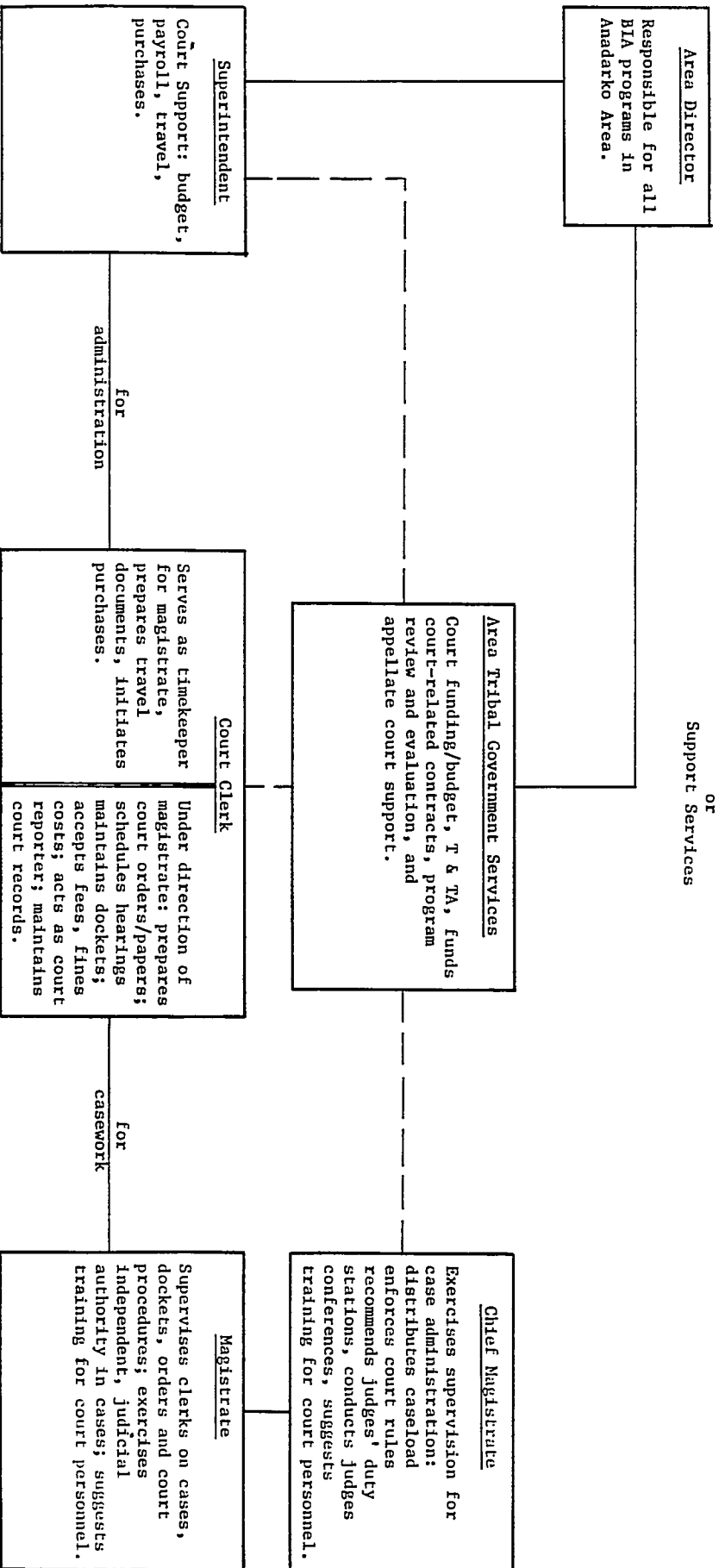
In the Anadarko Area the 3 Courts of Indian Offenses are located at the Anadarko, Pawnee and Concho agencies. The 3 trial magistrates conduct proceedings in civil and criminal matters; 5 Appellate Magistrates are called together as needed to dispose of appeals. The 5 Oklahoma tribes in the Shawnee Agency's service area have tribal courts; there is presently pending a P.L. 93-638 contract application submitted by the Cheyenne-Arapaho Tribes that will implement a tribal court at the Concho Agency.

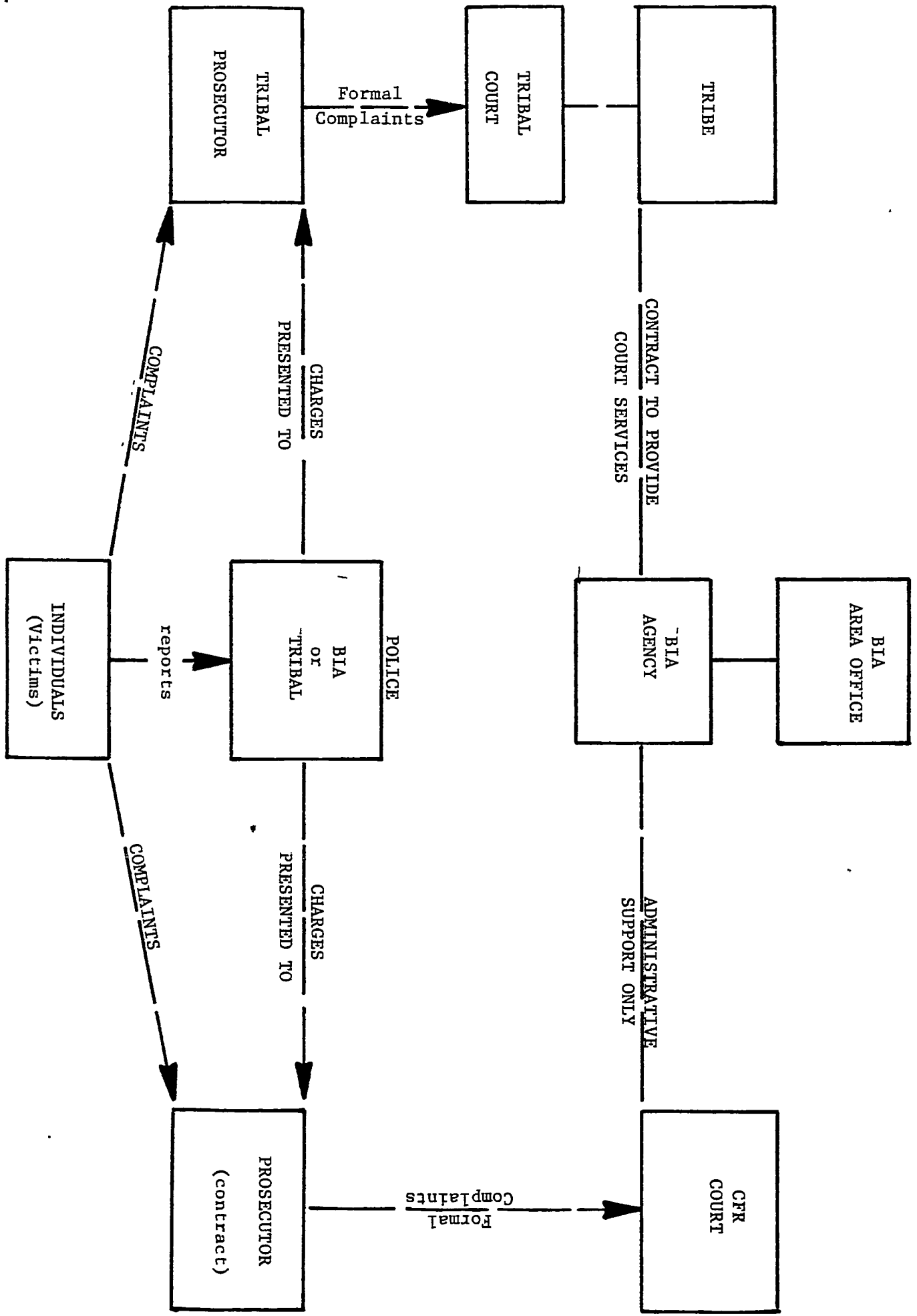
The position of the Anadarko Area Office is to support the function of the magistrates as an independent judiciary. Although the question whether the CIO's are arms of the BIA or simply temporary mechanisms for the exercise of tribal sovereignty has not been resolved by the federal courts, we believe that it can at least serve as a model for tribes and to this end work to promote its freedom from BIA administrative operations. The tribes at some time in the future should have tribal courts that serve in protecting tribal members in a checks and balances system.

We, in the Anadarko Area are serious in promoting the implementation of tribal courts rather than the indefinite continuation of CIO's. The CIO's are interim mechanisms to protect persons, property and rights; tribal courts are truly extensions of legally defined governmental units. With the establishment of their own courts, tribes in the area will take a great step forward as true governments. The primary obstacle to establishing tribal courts at the Anadarko and Pawnee agencies is the fact that these are multiple tribal agencies and the funds available are difficult to apportion among several tribes. Still, we encourage the tribes to adopt their own tribal ordinances as a necessary step to tribal courts. Hopefully, tribal court systems will follow after that.

ORGANIZATION - COURT SUPPORT AND ADMINISTRATION

----- Direct Authority
 - - - - - Technical Assistance
 or
 Support Services





Comparison of Federal - State - Tribal Relationships

