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AMERICAN INDIAN POLICY  
REVIEW COMMISSION

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APPENDIXES TO THE  
FINAL REPORT  
TASK FORCE No. 9  
LAW CONSOLIDATION, REVISION,  
AND CODIFICATION

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VOLUME TWO  
Of Two Volumes



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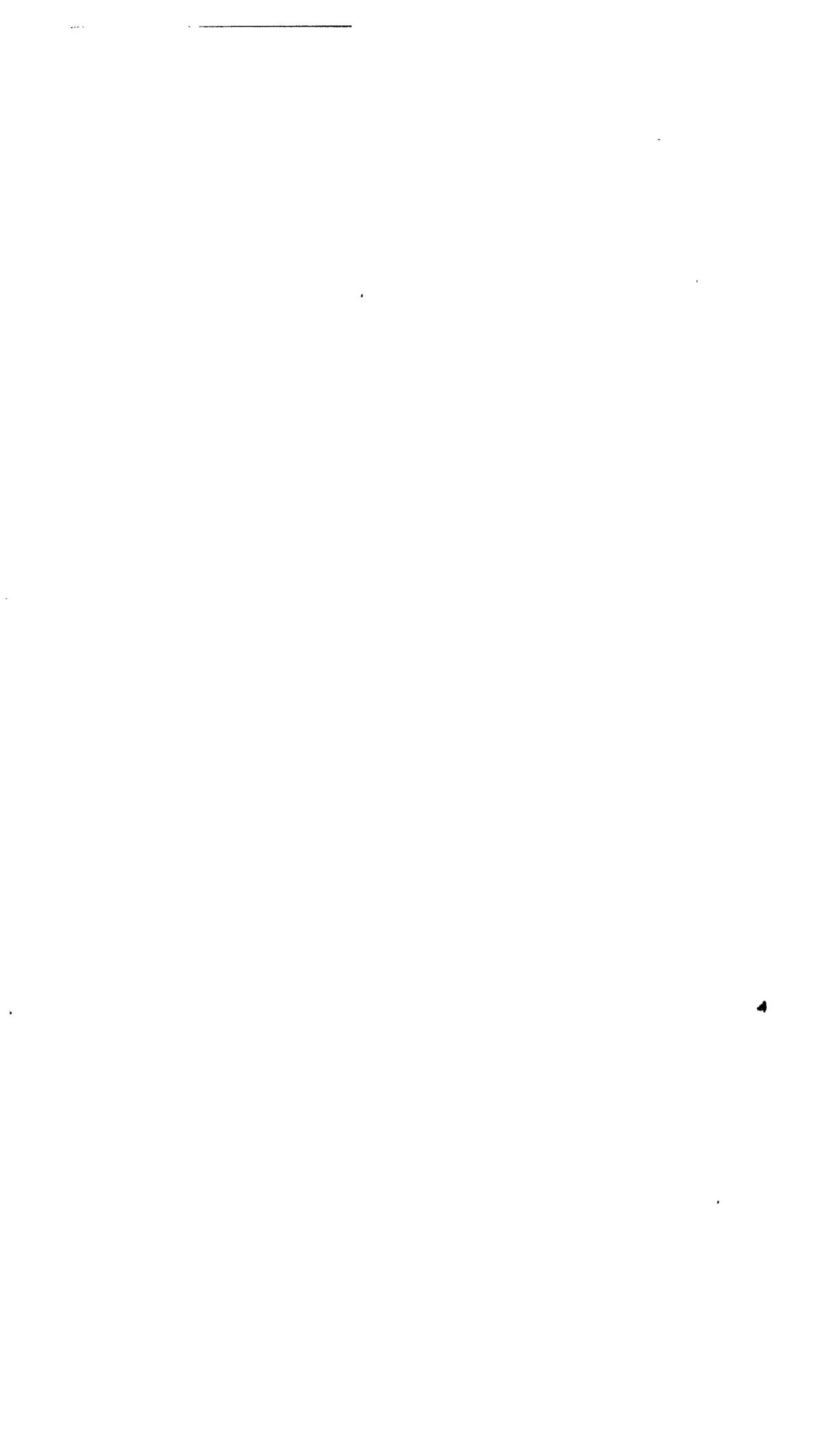
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## APPENDIXES



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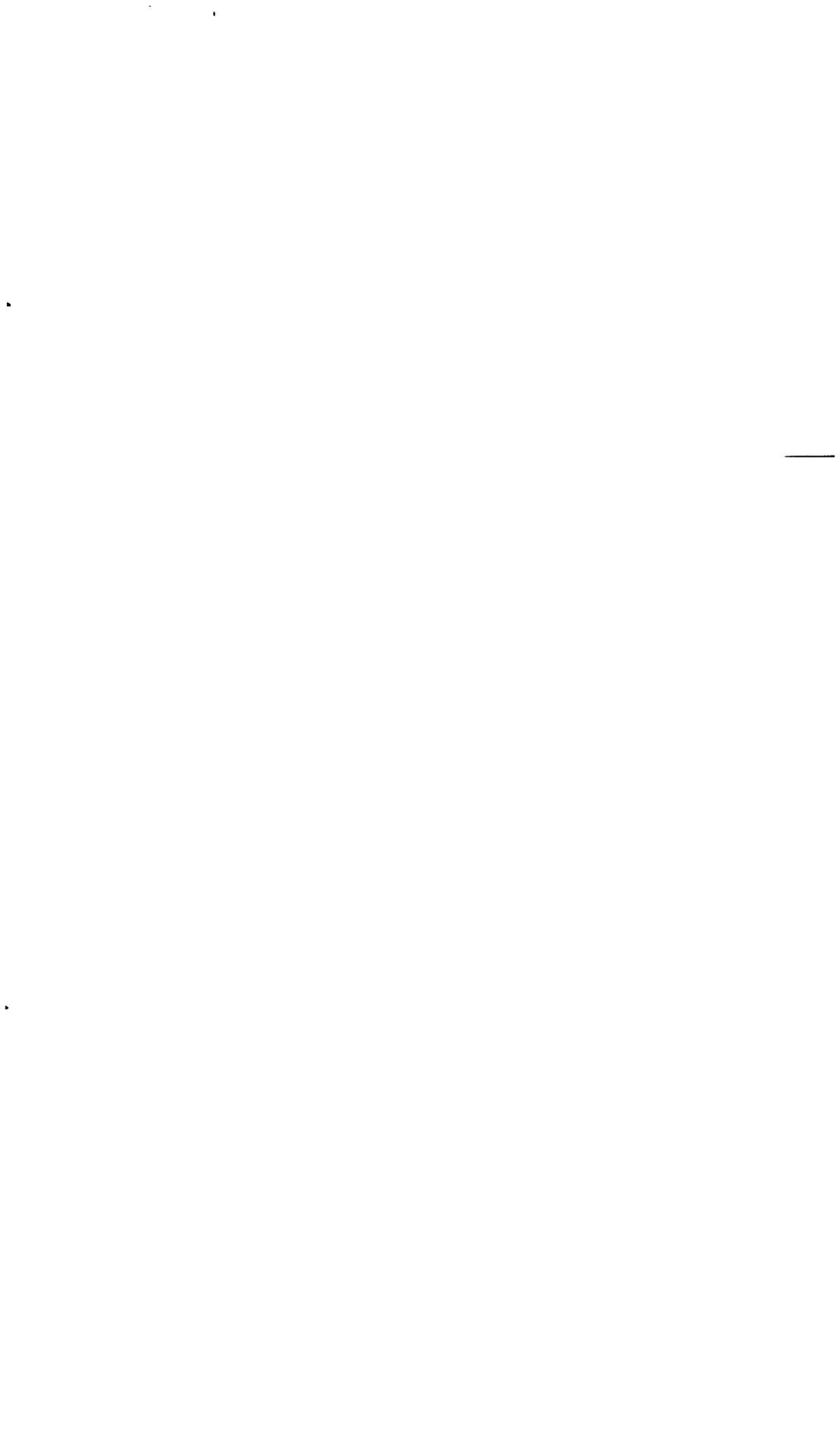
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**APPENDIX I**

**MASTER CHART OF TITLE 25 OF THE UNITED STATES CODE,  
CONSOLIDATION AND REVISION ANALYSIS**

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A P P E N D I X N O. 1

Master Charts\*

\*These charts constitute an analysis of every Section in Title 25 U.S. Code, with our recommendation for retention, amendment, consolidation or repeal. The column titled "Chart Classification" indicates our placement of the particular section in our proposed Code realignment. Notes in the column titled "Task Force Comment" include our analysis with references to back up papers in Part VI or other Parts of the Report which support or amplify on our charted comment.

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Two exhibits appear at the back of this Appendix:

(1) A letter from the Task Force Chairman and Task Force Specialist regarding publication of Interior Department Solicitor's Opinions under the requirements of Section 1341 of this Title, and

(2) A list prepared by Mr. Ralph Reeser, Office of Legislative Development, Bureau of Indian Affairs identifying various Code sections as apparently obsolete. This list is referred to frequently in this Master Chart Appendix.

TITLE 25 U.S.C. CONSOLIDATION AND REVISION ANALYSIS

<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
<u>Title 25 - Chpt. 1 - Bureau of Indian Affairs</u>						
1.	Fed. Adm. - Ch. 1					
1a.	Fed. Adm. - Ch. 1	X				Fed. Adm. Backup Paper (retain with explanation and cross reference to 43 U.S.C. 1451 (note)).
2.	Fed. Adm. - Ch. 1			X		Fed. Adm. Backup Paper
2a.	Fed. Adm. - Ch. 1			X		Fed. Adm. Backup Paper
3.	Fed. Adm. - Ch. 1			X	X	Fed. Adm. Backup Paper (Consolidate with 1341)
4.	Fed. Adm. - Ch. 1					
5.	Fed. Adm. - Ch. 1 (x ref to Lands)			X	X	Fed. Adm. Backup Paper (Consolidate with 25 U.S.C. 11)
6.	Fed. Adm. - Ch. 1			X		Fed. Adm. Backup Paper
7.	Fed. Adm. - Ch. 1					
8.	Fed. Adm. - Ch. 6		X			Fed. Adm. Backup Paper

TITLE 25 U.S.C. CONSOLIDATION AND REVISION ANALYSIS

<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
9	Fed. Adm. - Ch. 1	X				
10	Fed. Adm. - Ch. 1		X			Fed. Adm. Backup Paper
11	Fed. Adm. - Ch. 1 (x ref to Misc. - ch.1)					
12	Fed. Adm. - Ch. 1		X			Fed. Adm. Backup Paper
13	Fed. Adm. - Ch. 8	X				Fed. Adm. Backup Paper
13a	Fed. Adm. - Ch. 8	X				
14	Tribal Funds - Ch. 1	X			X	Consolidate with § 159. See note that section
15	Fed. Adm. - Ch. 7					
16-20	Open					
<u>Title 25 - Chpt. 2 - Officers of Indian Affairs</u>						
21	repealed		1966			

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TITLE 25 U.S.C. CONSOLIDATION AND REVISION ANALYSIS

<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
22	Repealed		1966			
23	Omitted from Code		X			(Section omitted from Code as obsolete) See Reeser list.
24	Omitted from Code		X			(Section omitted from Code as obsolete) See Reeser list.
25	Not charted		X			Fed. Adm. Backup Paper. Section is obsolete.
25a	Not charted		X			Fed. Adm. Backup Paper. Section is obsolete.
26	Repealed		1966			
27	Omitted from Code		X			Section omitted from Code as obsolete.
28-31	Repealed		1966			
32	Omitted from Code		X			Section omitted from Code as obsolete.

TITLE 25 U.S.C. CONSOLIDATION AND REVISION ANALYSIS

<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
33	Fed. Adm. - Ch. 1		X			Fed. Adm. Backup Paper.
34	Repealed		1966			
35	Repealed		1966			
36	Fed. Adm. - Ch. 1			X		Fed. Adm. Backup Paper.
37	Repealed		1966			
38	Repealed		1930			
39	Repealed		1966			
40	Fed. Adm. - Ch. 1		X(?)		X	Fed. Adm. Backup Paper. Chart comment recommends consolidation with Sec. 62, 63.
41	Not charted		X			Fed. Adm. Backup Paper. Section is obsolete.
41a	Not charted		X			Fed. Adm. Backup Paper. Section is obsolete.

TITLE 25 U.S.C. CONSOLIDATION & REVISION ANALYSIS

<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
42	Repealed		1966			
43	Not charted		X			Section is obsolete.
44	Fed. Adm. - Ch. 5		X		X	Fed. Adm. Backup Paper. Chart comment recommends repeal as merged with 25 U.S.C. 472.
45	Fed. Adm. - Ch. 5		X		X	Fed. Adm. Backup Paper. Chart comment recommends repeal as merged with 25 U.S.C. 472.
46	Fed. Adm. - Ch. 5		X		X	Fed. Adm. Backup Paper. Chart comment recommends repeal as merged with 25 U.S.C. 472.
47	Fed. Adm. - Ch. 2				X	Fed. Adm. Backup Paper. Chart comment recommends <u>partial</u> repeal as merged with 25 U.S.C. 472
48	Fed. Adm. - Ch. 5					
49	Repealed		1932			
50	Repealed		1964			

TITLE 25 U.S.C. CONSOLIDATION & REVISION ANALYSIS

<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
51	Repealed		1972			
52	Repealed		1972			
52a	Repealed		1972			
53	Fed. Adm. - Ch. 1			X		Fed. Adm. Backup Paper.
54	Repealed		1966			
55	Repealed		1966			
56	Fed. Adm. - Ch. 1					Fed. Adm. Backup Paper.
57	Fed. Adm. - Ch. 1					Fed. Adm. Backup Paper.
58	Fed. Adm. - Ch. 1		X			Fed. Adm. Backup Paper. The Act of 9/6/66 constituted a partial repeal.
59	Fed. Adm. - Ch. 1		X			Fed. Adm. Backup Paper.
60	Fed. Adm. - Ch. 1		X			Reeser list.

TITLE 25 U.S.C. CONSOLIDATION & REVISION ANALYSIS

<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
61	Fed. Adm. - Ch. 1		X			Fed. Adm. Backup Paper.
62	Fed. Adm. - Ch. 1		X(?)		X	Consolidate with Secs. 40 and 63. Consider repeal as obsolete and unnecessary, See Fed. Adm. Backup Paper comment to Secs. 40 and 63.
63	Fed. Adm. - Ch. 1		X(?)		X	Consolidate with Sec. 40 and 62. Consider repeal as obsolete and unnecessary. See Fed. Adm. Backup Paper comment to Secs. 40 and 62.
64	Fed. Adm. - Ch. 1		X			Section is obsolete and unnecessary
65	Fed. Adm. - Ch. 1		X			Section is obsolete and unnecessary
66	Fed. Adm. - Ch. 1		X			Fed. Adm. Backup Paper.
67	Repealed		1966			
68	Fed. Adm. - Ch. 1				X	Fed. Adm. Backup Paper and Chart comment. Consolidate 68 and 68a. See also comment to 87a.

TITLE 25 U.S.C. CONSOLIDATION & REVISION ANALYSIS

<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
68a	Fed. Adm. - Ch. 1				X	Fed. Adm. Backup Paper and Chart comment. Consolidate 68 and 68a. See also comment to 87a.
69	Open					
<u>Title 25 - Chapter 2A - Indian Claims Commission</u>						
70-70w	Fed. Adm. - Ch. 9					Not dealt with for purposes of amendment, repeal, etc. The Task Force does recommend relocation in newly aligned Code. See Final Report - Part VI, Chapter 9. We further recommend that the life of this Commission and the statute of limitations be extended.
<u>Title 25 - Chapter 3 - Agreements with Indians</u>						
71	Not charted	X				See Final Report, Part VI, Chapter 1 (B).
72	Not charted		X			Reeser list.
73-80	Open					

TITLE 25 U.S.C. Consolidation & Revision Analysis

<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
<u>Title 25 - Chapter 3 - Agreements with Indians:</u>						
<u>Contracts with Indians</u>						
81	Fed. Adm. - Ch. 3 Juris - Fed. Civ. (x ref to Tribal Funds - Ch. 1)			X		Fed. Adm. Backup Paper. Task Force proposes that provision for judicial proceedings be codified in Ch. 9 of newly aligned Code. Cross reference to §§ 177, 450(f), 476. Also consolidate §§ 84, 85 with substantive provisions of this Section. Amend this Section to provide that tribes can override a Secretarial veto. Secretary's trust obligation is to provide full and adequate advice to tribes before they decide. After tribal override, his trust obligation is to provide full and adequate technical assistance and advice.
81a-b	Fed. Adm. - Ch. 3					
82	Fed. Adm. - Ch. 3			X		Fed. Adm. Backup Paper.
82a	Misc. - Ch. 1 (x ref Fed. Adm. - Ch. 3)					
83	Repealed		1948			
84	Fed. Adm. - Ch. 3			X	X	Fed. Adm. Backup Paper. See Charts, recommendation to consolidate Secs. 81, 84, 85.
85	Fed. Adm. - Ch. 3				X	See Charts recommendation to consolidate Secs. 81, 84, 85.

TITLE 25 U.S.C. CONSOLIDATION & REVISION ANALYSIS

<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
86	Misc. - Ch. 1 (x ref to Lands - Allotments and Funds - Ch. 1)					
87	Repealed		1948			
87a	Not charted				X	This is entirely redundant to Sec. 68a being a repetition of the same language from the same statute.
88	Fed. Adm. - Ch. 6					
89-90	Open					
<u>Title 25 - Chapter 4- Performance by U.S. of Obligations to Indians: Purchase of Supplies.</u>						
91	Not charted	*	X			Omitted from Code as superceded by 41 U.S.C. § 5. See Historical Note.
92	Not charted		X			Omitted from Code as superceded by 41 U.S.C. § 5. See Historical Note.
93	Repealed		1940			

TITLE 25 U.S.C. CONSOLIDATION & REVISION ANALYSIS

<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
94	Repealed		1930			
95	Repealed		1939			
96	Fed. Adm. - Ch. 6		X			Fed. Adm. Backup Paper.
97	Fed. Adm. - Ch. 6		X			Fed. Adm. Backup Paper.
98	Fed. Adm. - Ch. 6		X			Fed. Adm. Backup Paper.
99	Fed. Adm. - Ch. 6			X		Fed. Adm. Backup Paper.
100	Repealed		1951			
101	Not charted		X			Sufficient authority exists for payment of these services. Section is obsolete. See Reeser list of obsolete provisions.
102	Not charted		X			Sufficient authority exists for payment of these services. Section is obsolete. See Reeser list of obsolete provisions.

TITLE 25 U.S.C. CONSOLIDATION & REVISION ANALYSIS

<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
103	Repealed		1930			
104	Fed. Adm. - Ch. 5		X		X	Fed. Adm. Backup Paper. Consideration for repeal or merger with Sections 47 and 472 is recommended.
105-110	Open					

Title 25 - Chapter 4 - Performance by U.S. of Obligations to Indians: Disbursement of Monies and Supplies

111	Fed. Adm. - Ch. 10		X			This provision appears to be obsolete. Confirm with BIA.
112	Fed. Adm. - Ch. 10		X			Fed. Adm. Backup Paper
113	Fed. Adm. - Ch. 10		X			Fed. Adm. Backup Paper
114	Fed. Adm. - Ch. 10		X			This provision appears to be obsolete. Check with BIA.
115	Fed. Adm. - Ch. 10		X			This provision appears to be obsolete. Check with BIA.
116	Fed. Adm. - Ch. 10		X			This provision appears to be obsolete. Check with BIA.

TITLE 25 U.S.C. CONSOLIDATION & REVISION ANALYSIS

<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
117	Fed. Adm. - Ch. 10		X			This provision is unnecessary in light of 1950 Reorganization Plan. See Fed. Adm. Backup Paper, explanation of Plan.
118	Fed. Adm. - Ch. 10		X			Fed. Adm. Backup Paper
119	Tribal Funds - Ch. 1					Cross reference this section to Section 476 to reflect impact of tribal consent requirements.
120	Misc. - Ch. 2 (x ref Tribal Funds - Ch. 1)					
121	Tribal Funds - Ch. 1			X		This section should be revised to accommodate appointment of Guardians and involvement of tribe. See § 476
122	Tribal Funds - Ch. 1					
123	Tribal Funds - Ch. 1 (x ref. Misc. - Ch. 1)			X	X	Task Force recommends modification of limitation to accommodate broader range of tribal options. Also consolidate Sec. 123a, 123b, 124, 125 with this section. With consolidation of § 124 the exclusion of application of Section 123 to the Five Civilized Tribes can be dropped. Cross reference to § 155 See Task Force notes that section.

TITLE 25 U.S.C. CONSOLIDATION / REVISION ANALYSIS

<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
123a	Tribal Funds - Ch. 1				X	This section should be consolidated with Sec. 123 with reference to provisions of Sec. 476 requiring tribal consent. See comment to Sec. 123.
123b	Tribal Funds - Ch. 1				X	Consolidate with Sec. 123. See note that section.
124	Misc. - Ch. J				X	Consolidate with Sec. 123. See note in that section.
125	Misc - Quapaw				X	Consolidate with Sec. 123. See note in that section.
126	Omitted from Code		X			Omitted from Code as obsolete. See also Reeser list.
127	Not Charted		X			Provision is obsolete. See also Reeser list.
128	Not Charted		X			Fed. Adm. Backup paper and Reeser list.
129	Not Charted		X			Provision is obsolete. See also Reeser list.
130	Not Charted		X			Provision is obsolete. See also Reeser list.

TITLE 25 U.S.C. CONSOLIDATION & REVISION ANALYSIS

<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
131	Fed. Adm. - Ch. 10		X			Fed. Adm. Backup Paper
132	Not Charted		X			Provision is obsolete. See also Reeser list.
133	Fed. Adm. - Ch. 10		X			Fed. Adm. Backup Paper
134	Not Charted		X			Provision is obsolete. See also Reeser list.
135	Not Charted		X			Fed. Adm. Backup Paper and Reeser list.
136	Fed. Adm. - Ch. 10		X			This provision is obsolete.
137	Not Charted		X			Fed. Adm. Backup Paper and Reeser list.
138	Not Charted		X			This provision is obsolete. See also Reeser list.
139	Not Charted		X			This provision is obsolete. See also Reeser list.

TITLE 25 U.S.C. CONSOLIDATION & REVISION ANALYSIS

<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
140	Not Charted		X			This provision is obsolete. See also Reeser list.
141	Not Charted		X			This provision is obsolete. See also Reeser list.
142	Repealed		1928			
143	Repealed		1954			
144	Repealed		1928			
145	Tribal Funds - Ch. 2					The Task Force questions the current validity of this Section. See particularly the Historical Note to this Section and Sec. 8 Title 25.
146	Not Charted		X			Fed. Adm. Backup Paper and Reeser list.
147	Not Charted		X			This provision is obsolete. See also Reeser list.

TITLE 25 U.S.C. CONSOLIDATION AND REVISION ANALYSIS

<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
148	Fed. Adm. - Ch. 10					The Task Force questions the current validity of this section.
149-150	Open					
<u>Title 25 - Chapter 4 - Performance by U.S. of Obligations to Indians: Deposit, Care and Investment of Indian Moneys.</u>						
151	Tribal Funds - Ch. 1		X	X	X	The Federal Adm. Backup paper recommends repeal of this section as superceded by § 162a. A close reading of these two sections without reference to legislative history does not support the above conclusion. The Task Force recommends this section be amended to conform to the 1950 Reorganization Plan (See Fed. Adm. Backup Paper) and that it then be merged or consolidated with § 162a in accord with the Task Force notes to that section. In addition, the provisions in Sec. 372 relating to deposit of monies in banks should be consolidated with this section. The language referred to is entirely duplicative of the language in Sec. 151. See Historical Note to Sec. 151.

TITLE 25 U.S.C. CONSOLIDATION & REVISION ANALYSIS

<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
152	Tribal Funds - Ch. 1			X	X	This section should also be consolidated with new § 161, 161a-d, 162a in accord with Task Force notes to Section 162a. This section is already amended by Sec. 154 (see cross-reference note to Sec. 152) a portion of which should also be consolidated with § 162a.
153	Fed. Adm. - Ch. 8					The Task Force questions whether this section is obsolete. Check with B.I.A.
154	Tribal Funds - Ch. 2 (x ref. Lands-General)				X	Task Force notes that this section amends section 152. The two sections should be consolidated with each other and then consolidated with § 161 or § 162a. See Task Force notes to those sections.

TITLE 25 U.S.C. CONSOLIDATION & REVISION ANALYSIS

<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
155	Tribal Funds - Ch. 1			X	X	<p>Section 142 referred to in this section has been repealed. Section 123 referred to places limits on the use to which these IMPL funds may be put. Task Force note to § 123 recommend revision of that section and consolidation with § 123a, 123b, 124 and 125. As revised those sections should be consolidated or brought together with this section 155 to reveal the correct scheme of this IMPL - tribal account.</p> <p>This section 155 should be revised to clarify exactly what moneys it is intended to cover, and to provide for tribal consent to selection of banking depositories and fund management in accord with the basic thrust of § 476.</p> <p>Finally the financial management of monies deposited under this section is covered by § 161a-d and is the subject of criticism in our Task Force backup paper Deposit and Investment of Indian Moneys.</p>

TITLE 25 U.S.C. CONSOLIDATION & REVISION ANALYSIS

<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
155a	Not Charted		Delete			This section has been merged into present Sec. 155.
156	Misc. - Ch. 1 (x ref. Tribal Funds - Ch. 1)					Task Force recommends that consideration be given to consolidation of this section with § 152 as amended by § 154, and § 161 regarding deposit of moneys. We believe such consolidation would reflect current practice. Check with BIA.
157	Not Charted		X			Provision is obsolete. See also Reeser list.
158	Tribal Funds - Ch. 1				X	The Task Force questions the current validity of this statute. Its requirements appear to be covered in § 161 and § 162a. Note that § 158 provides on interest rate of 5% and § 161 the rate "prescribed by treaties or law," and § 162 interest at normal commercial rates. Inquiry as to accounts and practices should be made before this section is revised

TITLE 25 U.S.C. CONSOLIDATION & REVISION ANALYSIS

<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
159	Tribal Funds - Ch. 1			X	X	Sec. 14 of Title 25 should be consolidated with this section in a form providing for tribally appointed guardians. <u>Note</u> that funds deposited under this section draw 6%.
160	Tribal Funds - Ch. 1				X	Consider consolidation with Section 161.
161	Tribal Funds - Ch. 1				X	Consolidate § 161 and § 162a. Sections 152, 154, 156 and 158 should also be consolidated with these sections. See Task Force notes to those sections.  Sections 155 and 161a-d relate to IMPL funds. Consider additional consolidation to a comprehensive general statute. See Deposit and Investment Backup Paper for general discussion and recommendations.

TITLE 25 U.S.C. CONSOLIDATION & REVISION ANALYSIS

<u>Sec.</u>	<u>Chart Classification</u>	<u>retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
161a	Tribal Funds - Ch. 1			X	X	<p>Sections 161a-d are all part of the same Act aimed specifically at deposit and management of IMPL and other tribal moneys. See Deposit and Investment of Indian Moneys Backup Paper.</p> <p>These sections should be consolidated with section 155 in accord with Task Force notes thereto with amendment to provide for tribal consent or control over selection of depositories, etc. See Sec. 476.</p> <p>Note that these accounts draw only 4% interest under the statute. Amend interest provision.</p>
161b	Tribal Funds - Ch. 1			X	X	<p>See note to § 161a. Funds under this section draw only 4% simple interest. Amend interest provision.</p>
161c	Tribal Funds - Ch. 1			X	X	<p>See note to § 161a.</p>

TITLE 25 U.S.C. CONSOLIDATION & REVISION ANALYSIS

<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
161d	Tribal Funds - Ch. 1			X	X	See note to § 161a.
162	Repealed		1938			
162a	Tribal Funds - Ch. 1			X	X	See discussion Deposit and Investment of Indian Moneys Backup Paper. Consolidate sections 152, 154, 156, 158 with this section. See also notes to § 155, 161 a-d.  This section should be revised to accommodate some tribal control (See § 476), provide revised interest rates, remandate the broader investment authority, etc., discussed in Backup Paper, See also notes to Secs. 164 and 165.

TITLE 25 U.S.C. CONSOLIDATION & REVISION ANALYSIS

<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
163	Tribal Funds - Ch. 1		X(?)	X		Section 162 referred to in this section was repealed in 1938 (Sec. 162a). The 1938 Act (Sec. 162a) is silent on segregation of funds. The untrameled authority of the Secretary is certainly terminationist in tone and not in accord with the philosophy of the I.R.A. (§ 461) et seq. Unless the need for this section can be justified, the Task Force recommends repeal.
164	Tribal Funds - Ch.1	X			X	This section should be a part of any general revision of Section 162a.
165	Tribal Funds - Ch. 1	X			X	This section should be a part of any general revision of Section 162a.
166-170	Open					

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
<u>Title 25 - Chapter 5 - Protection of Indians</u>						
171	Repealed		1934			
172	Repealed		1934			
173	Repealed		1934			
174	Lands- General		X			<p>The "superintendence" of the President and the duty of "protection" is firmly rooted in judicial decisions, not this statute, and it extends to all tribes alike, not just those removed west. This statute is obsolete and should be repealed.</p> <p>If the section is not repealed, it should be amended to reflect general applicability, and perhaps consolidated with Sec. 9 of Title 25.</p>
175	Juris. - Representation			X		<p>See Task Force Backup Paper on Attorney Fees by Robert Pelcyger, Staff Attorney, Native American Rights Fund.</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
176	Lands - Reservations			X		Fed. Adm. Backup Paper
177	Lands - Tribal					This should be cross referenced to Sec. 81. This section is modified by subsequent statutes authorizing sale and lease of Indian lands with Secretarial approval. Also cross reference to §§ 450(f) and 476.
178	Juris. - Fed. Civ.			X		Fed. Adm. Backup Paper and chart on Jurisdiction.
179	Lands- General					Cross reference to Sec. 201
180	Lands-General					Cross reference to Sec. 174. This section is a more detailed statement of the general duty of protection in that section.
181	Lands-General Descent and Distribution Services			X		See Downey memo - Legislative Histories.
182	Lands - General Descent & Distribution		X			Provision is obsolete. See Downey memo - Legislative Histories.

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
183	Jurisdiction - Evidence	X				
184	Lands - General Descent & Distribution					Provision is obsolete. Compare also Sec. 182.
185	Not Charted		X			Fed. Adm. Backup Paper and Reeser List.
186	Repealed		1934			
187	Not Charted		X			Fed. Adm. Backup Paper and Reeser list.
188	Repealed		1951			
189	Repealed		1951			
190	Fed. Adm. - Ch. 7 (x ref Tribal Funds - Ch. 1)			X		This section should be amended to conform to the recent amendment to the Surplus Property Act (P.L. 93-599, 88 Stat. 1954). Additionally, when U.S. property situated on or near is offered for sale rather than disposed of under the Surplus Property Act, tribes should have a first right of purchase.

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
191	Repealed		1951			
192	Not Charted		X			Fed. Adm. Backup Paper and Reeser list.
193	Juris. - Procedure	X				
194	Juris. - Burden of Proof	X		X		Amend to strike "white person" and substitute "non-Indian".
195	Repealed		1953			
196	Natural Resources		X			See Timber Resources Backup Paper. Ample authority already exists under Secs. 406, 407.
197	Repealed		1902			
198	Services	X(?)				The Task Force questions the continued validity of this section in view of the removal of health services to Dept. of H.E.W. (Act 8/5/54, 68 Stat. 674; 42 U.S.C. 2001).

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
199	Misc. - Ch. 1		X(?)		X	The Task Force questions the validity of this Act except as it may relate to the State of Oklahoma. Access of the U.S. to records of the Five Tribes should be no greater and no less than it is to any other tribes. Consolidation of this section with Section 199a with deletion of reference to the Five Tribes specifically would help to clarify this interpretation.
199a	Misc. - Ch. 5					
200	Fed. Adm. - Ch. 1			X		Fed. Adm. Backup Paper
201	Jurs. - Fed. Civ.					Amend to direct payment of penalties to the tribes, not the U.S.
202	Lands - General (x ref. Juris- Fed. Crim.)					See also § 177
203-210	Open					

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
<u>Title 25 - Chapter 6 - Government of Indian Country and Reservations</u>						
211	Lands -- Reservation		X		X	This section should either be repealed or be consolidated with Sec. 467
212-215	Repealed		1948			
216	Repealed		1960			
217,218	Repealed		1948			
219-226	Repealed		1934			
227-228	Repealed		1948			
229	Not Charted		X			Fed. Adm. Backup Paper
230	Not Charted		X			Fed. Adm. Backup Paper

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
231	Services - Juris. - App. of Laws, State Regulatory		X	X		Section should be repealed or amended to conform to 25 U.S.C. 1321 et seq.
232	Misc. - Ch. 5 (x ref. Juris - App. of Laws, State Crim.)			X	X	Task Force recommends this section be amended in accord with S. 2010 introduced in 94th Cong., 1st Sess. and this consolidated with amended 25 U.S.C. 1321 et seq.
233	Misc. - Ch. 5 (x ref Juris - App. of Laws, State Civ.)			X	X	Task Force recommends this section be amended in accord with S. 2010 introduced in 94th Cong., 1st Sess. and this consolidated with amended 25 U.S.C. 1321 et seq.
234-240	Open					
241-250	Repealed		1948			
251	Not Charted			X	X	This section should be amended to conform to tribal option laws as written in 18 U.S.C. 1154-1156 and consolidated with those provisions in Title 18. See Fed. Adm. Backup Paper.

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
252	Repealed		1948			
253	Not Charted					This section should be amended to conform to tribal option laws as written in 18 U.S.C. 1154-1156 and consolidated with those provisions in Title 18. See Fed. Adm. Backup Paper.
254	Repealed		1948			
255-260	Open					
261	Fed. Adm. - Ch. 1			X		Fed. Adm. Backup Paper.
262	Fed. Adm. - Ch. 1			X		Fed. Adm. Backup Paper.
263	Fed. Adm. - Ch. 1			X		
264	Fed. Adm. - Ch. 1			X		Fed. Adm. Backup Paper.
265-266	Repealed		1953			
267-270	Open					

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
<u>Title 25 - Chapter 7 - Education of Indians</u>						
271	Services			X		This section is antique in its language and should be revised and retained. It appears to be the only statute that clearly directs that an educational program be maintained.
272	Services		X			Fed. Adm. Backup Paper and Reeser list.
272a	Services		X			Fed. Adm. Backup Paper and Reeser list.
273	Services		X			Provision is obsolete. See also Reeser list.
274	Fed. Adm. - Ch. 5		X		X	Fed. Adm. Backup Paper. Provision is superceded or duplicated by 25 U.S.C. 44-47, 472 and 450e(b).
275	Services	X				
276	Services		X			Section is obsolete. See also Reeser list.

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
277	Fed. Adm. - Ch. 7		X			Provision is obsolete. See also Reeser list.
278	Repealed		1968			
278a	Services (x ref. Fed. Adm. - Ch. 8)	X				
279	Services		X			Fed. Adm. Backup Paper and Reeser list.
280	Lands- General (x ref. Services)		X			
280a	Misc. - Ch. 5 (x ref. Services)		X			Provision appears to be obsolete. Check with BIA.
281	Services (x ref Fed. Adm. - Ch. 8)		X			Provision is obsolete.
282	Services			X	X	This section should be read with § 231 and consideration given to amendment and consolidation.

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
283	Services		X			Obsolete. See also Reeser list.
284	Omitted from Code as superceded					See Historical Note.
285	Misc. - Ch. 5		X			Fed. Adm. Backup Paper and Reeser list.
286	Services		X			Fed. Adm. Backup Paper.
287	Services	X				
288	Services			X		Fed. Adm. Backup Paper. Consolidate with § 289. See also notes to § 297.
289	Services			X		Fed. Adm. Backup Paper. Consolidate with § 288.
290	Services		X			Provision is obsolete.
291	Fed. Adm. - Ch. 7 (x ref. Services)	X				

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
292	Services Fed. Adm. - Ch. 7			X	X	Fed. Adm. Backup Paper. This section should be amended in conformity with notes to Sec. 190 and the Surplus Property Act ( 88 Stat. 1954). See consolidation note under Sec. 293.
292a	Omitted from Code					See Historical Note in Code.
293	Fed. Adm. - Ch. 7 Lands - Tribal (x ref. Services and Tribal Funds - Ch. 1)		X	X	X	The authority to sell tribal land should either be repealed or amended to conform to requirement of tribal consent (Sec. 476) and amended to conform to notes under Secs. 190 and 292. See also Sec. 443a.  Recommend consolidation of §§ 292, 293, 293a, 294.
293a	Fed. Adm. - Ch. 7 Lands - General Juris. - Fed. Civ.				X	When property is not conveyed to to tribe under Surplus Property provisions (Sec. 190, 292, 293, 294) or otherwise conveyed to tribe, this section should be the model for "conditional" transfer to non-Indian entities.
294	Fed. Adm. - Ch. 7			X	X	The authority to sell tribal land should either be repealed or amended to conform to requirement of tribal consent (Sec. 476) and amended to conform to notes under Sec. 190 and 292. See also Sec. 443a.

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
295	Services		X			Fed. Adm. Backup Paper.
296	Repealed		1929			
297	Fed. Adm. - Ch. 8 Services			X	X	<p>This section is the basic well spring for limiting all federal services of BIA and IHS to 1/4 blood Indians. Only two other sections in the Code (§ 480, 482) refer to quarter blood standard.</p> <p>See Downey memo on Legislative history.</p> <p>The 1/4 blood limitation is a fundamental policy issue which must be addressed by Congress and the Executive. Legislative Treatment of the 1/4 blood issue should appear in Sec. 13 (the Snyder Act) so that the breadth of application of the standards are made clear.</p> <p>This section (Sec. 297) should be repealed as being in conflict with Sec. 288.</p>
298	Omitted from Code		X			Obsolete. See also Reeser list.

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
299-301	Repealed		1928			
302	Services		X(?)			The Task Force questions whether this provision is obsolete and/or whether it has ever been implemented. Check with BIA.
303	Omitted from Code					See Historical Note to this section. Loans are now covered under Sec. 13 or § 471.
304	Misc - Ch. 7 (x ref to Services)					The Task Force questions the utility of this section. Check with BIA.
304a	Not Charted					This section should be deleted from any new Code as an "executed" statute. See also Reeser list.
304b	Services (x ref. Tribal Funds - Ch. 1)	X				

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
<u>Title 25 - Chapter 7A - Promotion of Social and Economic Welfare.</u>						
305	Economic Development (x ref Fed. Adm. - Ch. 1, 7)	X				Fed. Adm. Backup Paper.
305a	Economic Development (x ref. Fed. Adm. - Ch. 1, 7)			X		Fed. Adm. Backup Paper.
305b	Economic Development (x ref Fed. Adm. - Ch. 1, 7 )			X		Fed. Adm. Backup Paper.
305c	Economic Development (x ref. Fed. Adm. - Ch. 1,7)			X		Fed. Adm. Backup Paper.
305c-1	Repealed		1961			
305d	Repealed		1948			
305e	Repealed		1948			

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
306	Economic Development		X(?)			<p>The Task Force questions the obsolescence of this statute. Reeser lists as obsolete.</p> <p>This should be confirmed with BIA.</p>
306a	Services		X			<p>The Task Force questions the obsolescence of this statute. Reeser lists as obsolete.</p> <p>This should be confirmed with BIA.</p> <p>In addition the Task Force notes that the policy of placing liens and charges against the trust property of aged, etc., is in direct conflict with the policy of preservation of the trust. See further discussion in Federal Taxation Backup Paper.</p>
307	Fed. Adm. - Ch. 7 (x ref Services)					<p>The Task Force recommends that this section be deleted from any future Code. It is a statute calling for a specific administrative act which undoubtedly has been executed.</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
308	Fed. Adm. - Ch. 7 (x ref. Services)					Section 307 and 308 are part of the same Act and the same note applies.
309	Services			X		Section 309 is the statutory, authority relied upon by BIA for its entire "Relocation" program. See discussion of Title 82, Indian Affairs Manual in Task Force study of BIA Manual which is part of this Report. This statute is totally inadequate to the actual program. It should be amended to provide the necessary scope for the BIA to supply proper support services. Consult BIA. Also check <u>Morton v. Ruiz</u> , 415 U.S. 199 (1974)
309a	Services (x ref Fed. Adm. - Ch. 8)			X		This section is part of the same Act and the same note applies.
310	Open					

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
<u>Title 25 - Chapter 8 - Rights-of-Way through Indian Lands</u>						
311	Lands - Rights-of-Way		X			See notes to Sec. 323 et. seq.
312	Lands - Rights-of-Way		X			See notes to Sec. 323 et. seq.
313	Lands - Rights-of-Way		X			See notes to Sec. 323 et. seq.
314	Lands - Rights-of-Way (x ref Tribal Funds - Ch. 1) Juris - Fed. Civ.		X			See notes to Sec. 323 et seq.
315	Lands - Rights-of-Way		X			See notes to Sec. 323 et seq.
316	Lands - Rights-of-Way				X(?)	The Task Force is uncertain of the impact of Secs. 323-328 upon this section and has not studied the provision of 43 U.S.C. 935 referred to.  This section should be examined for consolidation with Secs. 323- 328.

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
317	Lands - Rights-of-Way		X			See notes to Secs. 323-328
318	Lands - Rights-of-Way		X			See notes to Secs. 323-328.
318a	Fed. Adm. - Ch. 8		X(?)			The Task Force questions the current validity of this Act. Check with BIA.
318b	Repealed		1958			
319	Lands - Rights-of-Way (x ref Juris- App. of Law, State Tax, Regulatory Tribal Funds - Ch. 1)		X			See notes to Secs. 323-328.
320	Lands- Rights-of-Way (x ref Tribal Funds - Ch. 1)		X			See notes to Secs. 323-328.
321	Lands- Rights-of-Way (x ref Juris- App. of Laws, State Tax, Regulatory. Tribal Funds - Ch. 1)		X			See notes to Secs. 323-328.
322	Lands - Rights-of-Way		X			See notes to Secs. 323-328.

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
323-328	Lands - Rights-of-Way			X		<p>The Task Force believes the Act of Feb. 5, 1948 (25 U.S.C. 323-328) was intended to supercede all prior statutes authorizing grants of rights-of-way. This would include all of those statutes codified in Secs. 311-322. See Legislative History 1948 U.S. Code Cong. Service, p. 1033. However, Sec. 326 U.S.C. specifically states that none of the pre-existing statutory authority empowering the Secretary of the Interior to grant rights-of-way over Indian lands shall be repealed. Apparently the purpose for inclusion of this non-repealer provision was to avoid upsetting rights-of-way which had been granted.</p> <p>The Task Force recommends amendment of Sec. 326 to provide for specific repeal of all prior rights-of-way statutes with a proviso that rights-of-way granted under those statutes shall continue in effect.</p> <p>The Task Force also notes that Sec. 324 provides that no grant of any right-of-way over Indian lands shall be made without the consent of the individual allottee or of the Tribe <u>if it is organized</u></p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
323-327	(Continued)					<u>under the Indian Reorganization Act of 1934 or the Oklahoma Indian Welfare Act of 1936.</u> This limiting language should be deleted and the protections of Sec. 324 extended to all federally recognized tribes, bands, groups and Pueblos. See notes to Secs. 461, 464, 465, 476 and Secs. 501, 503.
329-330	Open					
<u>Title 25 - Chapter 9 Allotment of Indian Lands</u>						
331	Lands - Allotments		X(?)	X		<p>This section was implicitly repealed by Sec. 1 of the IRA (25 U.S.C. 461). There are 17 pages of fine print in the Historical Note to this section setting out special statutes applicable to specific reservations.</p> <p>This suggests that as a statute of "general" application, this section is a dead letter and should be specifically repealed with a proviso that such repeal shall not affect any right, title or interest which may have accrued by virtue of any patent previously issued under its terms.</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
332	Lands - Allotments		X			This section is clearly repealed by Section 461. It should be specifically repealed in the new Codification.
333	Lands - Allotments		X			This section is clearly repealed by Section 461. It should be specifically repealed in the new Codification. See also Fed. Adm. Backup Paper.
334	Lands - Allotments			X	X	Fed. Adm. backup paper. This section should be amended to remove obsolete language and be consolidated with Secs. 334, 336 and 337 with reference to the provision of Sec. 468.
335	Lands - Allotments		X(?)		X	The Task Force recommends this section be repealed. As to lands outside a reservation, it is redundant and mere surplusage to the specific provisions of Sec. 334. As to lands within the reservation, sections 331, 332 and 333 were implicitly repealed by Sec. 461; it is redundant to Secs. 348 and 349; it is superceded by Sec. 465; and it is not relevant to Secs. 341, 342 and 349.

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
336	Lands - Allotments				X	Consolidate with Secs. 334, 336, 337, and 468. See also Fed. Adm. Backup Paper.
337	Lands- Allotments				X	Consolidate with Secs. 334, 336, 337 and 468.
337a	Misc. - Ch. 5 (x ref Lands - Allotments)					The Task Force questions why San Juan County, Utah should be excluded from the general laws applicable to allotments on the public domain. See 334, 336, 337 and 468. Seek explanation from BIA.
338	Repealed		1928			
339	Misc. - Ch. 1, 5			X(?)		The Task Force recommends that this section be repealed. This is Section 8 of the General Allotment Act. This section is simply providing that the General Allotment Act of 1887 shall <u>not</u> extend to the named tribes. For the following reasons we believe repeal of this section will <u>not</u> effect the legal posture of the named tribes.  Sections 331, 332, 333, 348 and 349 were implicitly repealed by Sec. 461 (See Task Force notes to those sections); members of the mentioned tribes should have access to the benefits of Sec. 334; and

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
339 (continued)						exception from coverage of 341 and 342 is irrelevant. Note that total repeal of this section may have an impact on these tribes insofar as Sec. 381 (regulation of water) is concerned and care should be taken to avoid any adverse effect in this respect.
340	Misc. - Ch. 5		X(?)			<p>This section simply provides that the provisions of the General Allotment Act of 1862 shall be applicable to the named tribe. The comments to Sec. 339 above apply equally to this section even though the thrust of the two sections is totally opposite.</p> <p>In addition the Task Force questions the current application of this section to the named tribes. At least one tribe, the Peoria, was subjected to termination legislation. See 25 U.S.C. § 821 et. seq.</p> <p>The Task Force recommends repeal of this section subject to the cautionary note regarding Sec. 381 made in our comments to the preceding Section.</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
341	Lands - Allotments (x ref Lands - Rights-of-Way)		X		X	This is section 10 of the General Allotment Act of 1887. This section simply states that nothing in that Act shall affect the power of the Congress to grant rights-of-ways. The section is superceded by numerous rights-of-way statutes (25 U.S.C. 311-322) which in turn were superceded by a general right-of-way statute (25 U.S.C. 323-328). See Task Force notes to Secs. 323-328.
342	Lands - Allotments		X			Provision is obsolete.
343	Lands - Allotments			X		Fed. Adm. Backup Paper.
344	Lands - Allotments					The Task Force questions the obsolesence of this section. The laws pertaining to ceded lands were transferred to Title 43. See Historical Note, 25 U.S.C., Chapter 13. Check with BIA before amending or repealing.

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
344a	Lands - Allotments		X			This section is superceded by Section 373a which was enacted in 1942.
345	Juris. - Fed. Civ. (x ref Lands - Allotments)	X				
346	Juris. - Fed. Civ. (x ref Lands - Allotments)	X				
347	Juris. - App. of Laws, State Statute of Limitations.	X				
348						This is section 5 of the General Allotment Act of 1887, as amended by section 9 of the Act of March 3, 1901. This section covers a multitude of subject areas, some of which require repeal, some amendment, and some consolidation. The thrust of this section as an affirmative federal policy was ended in 1934 with passage of the Indian Reorganization Act (25 U.S.C. 461 et seq.). However the provisions of this section continue to play a major role in federal Indian law.

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
348	(continued)					<p>In order to facilitate consolidation, revision and codification of Title 25, there is no alternative but to break up this section into its various component parts for analysis, classification and repeal or recodification. The following paragraph is a short synopsis of the provisions of section 348 with a letter designation for each component. The classification and recommendation process based on these separate components follows this synopsis.</p> <p>(a) Upon approval of allotments under §§ 331-334, Secretary to issue 25 year trust patent to allottee with provision therein that fee patent will issue upon expiration of trust period; (b) the President may extend the trust period "in any case in his discretion;" (c) conveyance or contract vis-a-vis allotment prior to expiration of trust is void; (d) state law on descent and partition applies once (trust) patents are delivered; (e) Secretary may negotiate with tribes for cession to U.S. of unallotted reservation lands; (f) ceded lands adapted to agriculture may be sold by U.S. only to bona fide settlers; (g)</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
348 (continued)						U.S. purchase money for ceded reservation lands to be paid into Treasury for benefit of grantor tribe, subject to appropriation by Congress for education and civilization of such tribe; (h) Secretary authorized to confirm occupation by religious groups, engaged in religious or educational work among the Indians, upon "public lands" to which General Allotment Act provisions (see Code sections cited in § 332 <u>supra</u> ) are applicable; (i) employment preference for allottees who have become U.S. citizens in hiring of "Indian police or any other employees in the public service among any of the Indian tribes or bands affected" by the General Allotment Act "where Indians can perform the duties required;" and (j) issuance of fee patents authorized for any Indians of the Siletz Reservation in Oregon,
348(a)	Lands - Allotments		X			This portion of § 348 authorizing and directing the Secretary of the Interior to issue trust patents was implicitly repealed by § 1 of the I.R.A. (25 U.S.C. 461). The limitation of 25 years to govern the term of the trust was superceded by § 2 of the I.R.A. (25 U.S.C. 462).

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
348(a)	(continued)					The Task Force recommends that the protective provisions of sections 461 and 462 be extended to all tribes -- not just those which voted not to reject that Act. In light of our recommendations on Secs. 461 and 462, we recommend that this portion of Sec. 348 be repealed.
348(b)	Lands - Allotments		X			This portion of § 348 vests the President with discretionary authority to extend the trust period indefinitely. With extension of the provision of § 462 to all tribes, both IRA and non-IRA, this portion of § 348 becomes mere surplusage. We recommend repeal.
348(c)	Lands - General			X	X	This portion of § 348 voids any contract for conveyance of a trust allotment during the term of the trust. In this measure it is parallel to provisions in Secs. 177 and 202 and should be consolidated with them.

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
348(d)	Lands - Allotments Descent and Distribution			X	X	<p>This portion of § 348 provides that state law shall govern the descent and partition of trust allotments issued under this section. This unrestricted adoption of state laws of descent and partition is duplicated elsewhere in Title 25, particularly Sec. 372 in Chapter 10, "Descent and Distribution", and Sec. 4 of the I.R.A. (25 U.S.C. 464).</p> <p>In our comments to these two sections we recommend that state law be applicable only if the tribe has failed to pass its own laws on the subject. We recommend that this portion of § 348 be consolidated with those two sections and amended in accord with our comments under those sections.</p>
348(e)	Lands - Tribal		X			<p>We recommend repeal of this portion of § 348. This provision authorizes the Secretary of the Interior to negotiate with tribes for cessions of surplus lands. The provision is of doubtful necessity and appears obsolete.</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
348(e)	(continued)					We recommend that any further land cessions of tribes to the U.S. should be the subject of special legislation directed only to the specific transaction. This portion of Sec. 348 should be repealed.
348(f)	Lands - Ceded					This portion of § 348 restricts the persons to whom the U.S. may sell ceded lands. This portion of § 348 should be transferred to Title 43 in accord with the Historical Note to Chapter 13 of Title 25.
349(g)	Tribal Funds - Ch. 1 (x ref Lands - Ceded) Services				X	<p>This portion of § 348 provides for the deposit of monies derived from sale of ceded lands in the U.S. Treasury to draw interest at the rate of <u>3%</u>. It limits the purposes for which the money may be appropriated.</p> <p>The deposit and interest features parallel Secs. 152, 154, 156 and 158. This section should be consolidated with those sections which in turn are being consolidated with Secs. 161 and 162a. See notes to those sections.</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
348(h)	Lands - General (x ref Services)			X	X	This portion of § 348 authorizes the Secretary to "confirm" religious or educational societies in their work and set aside 160 acres for their use. The provision is similar to that in Sec. 280 and 293a. It should be consolidated with those two sections with specific attention to the reverter rights and the judicial enforcement remedies provided in Sec. 293a.
348(i)	Fed. Adm. - Ch. 5		X		X	This portion of § 348 extends employment preference to allottees. This is superceded by Secs. 44-47, 472 and 405e(b).
348(j)	Misc. - Ch. 5		X(?)			The Task Force believes this portion of § 348 relating to the Siletz Tribe of Oregon to be obsolete since they were terminated by subsequent legislation.
348a	Misc. - Ch. 5		X		X	This section should be repealed if the Task Force recommendation for extending the protections of §462 to all tribes, IRA and non-IRA alike, is adopted. See notes to that section.

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
349						<p>The following is an exploded view of Section 349 similar to that given Section 348.</p> <p>(a) Upon expiration of trust period and issuance of fee patent to allotment under § 348 <u>supra</u>, "then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside;" (b) Secretary authorized in his discretion to issue fee patents prior to expiration of trust period; (c) "until issuance of fee-simple patents all allottees to whom trust patents shall be issued shall be subject to the exclusive jurisdiction of the United States."</p>
349(a)	Juris. - App. of Law, State Civil and Criminal			X		<p>This section that individual Indians shall be subject to state civil and criminal laws when they are issued a land title free of restriction. The two concepts have little if anything in common. Most if not all fee patent allottees continue to maintain their tribal membership.</p> <p>This section should be amended</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
349(a)	(continued)					<p>to oust state jurisdiction over an Indian residing within the boundaries of a reservation who still maintains his tribal citizenship.</p> <p>Where a person of significant Indian blood is residing on a reservation or in a dependent Indian community within the meaning of 18 U.S.C. 1151(c), and that person claims to be an Indian, the burden of proof should be on the state to prove otherwise. Such an amendment would merely codify existing law. See <u>Ex parte Pero</u>, 99 Frd 28 (7th Cir., 1938), cert. den., 306 U.S. 643; <u>Famous Smith v. U.S.</u>, 151 U.S. 50 (1894).</p>
349(b)	Lands - Allotments		X			<p>This portion of § 349 authorizing the Secretary to issue fee patents in advance of the termination of the trust period is superceded by Secs. 461, 462, and 464. See notes to those sections.</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
349(c)	Juris. - Fed. Criminal			X		This portion of § 349 should be amended to conform to comments under § 349(a).
350	Lands - Allotments		X			This section is similar to Sec. 344 relating to cancellation of allotments within ceded lands. In our note to Sec. 344 we questioned its obsolescence. This provision also appears obsolete and we recommend its repeal.
351	Misc. - Ch. 5		X(?)			The Task Force questions the continued vitality of this section in view of the provisions of Sec. 461. Extension of the provisions of Secs. 461, 462 and 464 to all tribes would appear to eliminate the need for this section. See notes to those sections.
352	Lands - Allotments	X			X	The power to cancel allotments appears in several sections of the Code. See Secs. 344, 350, 352, 352a-c, and 382. See also Historical Note to this section referencing to 43 U.S.C. 148.  This section is particularly good in that it requires the Secretary to provide lieu lands of equivalent value. Consideration should be given to consolidating those sections with this.

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
352	(continued)					See also Task Force notes to Section 357 relating to condemnation of allotted lands.
352a 352b 352c	Lands - Allotments	X				These are remedial statutes authorizing cancellation of <u>fee patents</u> and restoration of property to trust status. In those cases where the fee patent was issued without the approval or consent of the allottee. Sec. 352c authorizes payment of taxes assessed by states as a result of the wrongful issuance of the fee title.  These provisions require no amendment.
353	Misc. - Ch. 1			X	X	This section provides that the provisions of the Act of June 25, 1910 (36 Stat. 863) are not applicable to the Five Civilized Tribes and the Osage. We recommend that consideration be given to amending this provision to bring these tribes within the coverage of the Act of 1910 except perhaps as to the provisions relating to probate of estates (Secs. 372, 373).

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
353	(continued)					Specifically the Task Force favorably considers making available to these tribes, the provisions of that Act codified in Secs. 337, 352, 403 (as consolidated with Sec. 396a) 406, 407 and 408.
354	Lands - General				X	This section supplements that portion of § 348 that nullifies contracts for conveyance. See Chart § 348(c). It is an important provision and one of most important characteristics of trust allotments. It is also parallel to the protections extended in Secs. 177 and 202. We recommend that these provisions be consolidated and placed alongside the Sec. 464 and 465 provisions in a new general land section.
355	Misc. - Ch. 1	X				There are other sections in this Code which (1) subject individual Indian lands to state laws and/or (2) provide for partition and involuntary loss of trust status. See for example Sec. 372. The Task Force recommends that this Section with its specific application to the Five Tribes should be evaluated after the first effort at Code consolidation is completed.

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
356	Misc. - Ch. 1 (x ref. Tribal Funds - Ch. 1)		X			Fed. Adm. Backup Paper. Mr. Reeser of BIA says this section should be repealed as superceded. This should be reconfirmed.
357	Lands - Allotments Tribal Funds - Ch. 1 Jurisdiction			X		<p>This is the only provision in Title 25 of the Code clearly authorizing condemnation of Indian owned lands. Secs 312, 314 does provide for forced sale through the aegis of the Secretary of the Interior but this provision appears to be superceded by Secs. 323-238. See notes to those sections. As reference points for policies related to taking or use of Indian lands, see Secs. 323-328, 352, 409a and 16 U.S.C. 793e.</p> <p>Sec. 357 is a part of an Act authorizing general grants of rights-of-ways. (See Historical Note and Sec. 319 to which it refers). It applies, however, only to allotted lands -- not tribally owned. Rights-of-way over land owned by tribes organized under the IRA or OIWA can only be acquired with tribal consent (Sec. 324) or some other specific federal enabling statute. For example</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
357	(continued)					<p>statutes authorizing projects by the Corps of Engineers or Bureau of Reclamation.</p> <p>Condemnations under these other statutes frequently results in grave losses to tribes. The Kaw tribe in Oklahoma for example had its entire tribally owned land base condemned for a reclamation or flood control project. It is now a landless tribe.</p> <p>The forty years of shrinkage of the tribal land base through condemnation proceedings is thoroughly documented in the study of tribal land acquisition since 1934 prepared by BIA under Dr. Theodore Taylor at the request of the AIPRC. The loss has amounted to 1,811,010 acres. See p. 20 of the study.</p> <p>The Task Force recommends that this condemnation statute be amended in numerous ways and, after such amendment, that its coverage be extended to tribally owned as well as individually owned property regardless of whether the tribe is organized under the IRA or OIWA.</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
357	(continued)					<p><u>Recommendations:</u></p> <p>(1) Clarification of the fact that jurisdiction lies in the federal courts.</p> <p>(2) Clarification of the fact that the U.S. through the Secretary of the Interior is a necessary party to any proceedings. This should be extended to include actions brought by other federal agencies.</p> <p>(3) A requirement that whenever a condemnation action under this section is instituted, the Secretary of the Interior is directed to work with the effected tribe in preparing an evaluation of the probable impact on the tribe, which shall become a necessary part of the record of the proceeding.</p> <p>(4) That damages arising from any adverse impact to the tribe from condemnation of either tribal or individually owned allotments shall be assessed and awarded to the tribe as a part of the condemnation proceeding.</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
357	(continued)					<p>(5) That in any condemnation of tribally owned or individually allotted lands, it shall be encumbered upon the party seeking condemnation to secure for the defendant, upon his or its request, comparable lieu lands, within the area subject to the benefits of the project for which condemnation is sought. (This parallels the provision in Sec. 352).</p> <p>(6) That such lieu lands shall be taken in trust by the U.S. and held for the benefit of the individual Indian or tribe in the same manner as the lands which were condemned.</p> <p>(7) That obtaining such lieu lands is declared to be a "public purpose" related to the project for which condemnation of the Indian lands is sought, and this "Public purpose" will in turn support condemnation proceedings against non-Indian owned lands.</p> <p>(8) That if such lieu lands are situated outside the reservation boundaries, such lands shall become a part of the reservation subject to all the customary incidents of tribal and federal jurisdiction.</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
357	(continued)					<p>(9) That with respect to the lands condemned, whether individually or tribally owned, all interests in the property not specifically necessary to the purpose for which condemnation is sought shall be retained or vest in the tribe which had original title to the land prior to allotment. (This provision is specifically designed to preserve the tribal rights in subsurface or surface natural resources.)</p> <p>(10) That the interested tribe shall retain full jurisdiction over the property taken, provided that it cannot pass any laws which would defeat the purposes for which the land was taken.</p> <p>(11) That the provisions of this condemnation statute shall take precedence over any other federal statutes relating to condemnation except as such statutes may specifically exempt the application of this section.</p>
358	Tribal Funds - Ch. 2			X		Fed. Adm. Backup Paper.
359-370	Open					

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
<u>Title 25 - Chpt. 10 - Descent and Distribution:</u>						
						<u>Heirs of Allottee</u>
371			X	X	X	This section should be revised to modern language and should simply provide for recognition of traditional Indian marriages and divorces under tribal custom or marriages and divorces under tribal law. Provision should be consolidated with Sec. 183. Reference to Sec. 348 should be deleted. Reference to Cherokee Outlet should be repealed as obsolete.
372						The following is an exploded view of Sec. 372 similar to that used in Sec. 348 and 349.  (a) When any Indian dies seized of a trust allotment without a will disposing of same, the Secretary of Interior shall determine the legal heirs after notice and hearing and his decision shall be final and conclusive. (b) If he finds the heirs to be competent to manage their own affairs he shall issue them a patent in fee. (c) If he finds one or more heirs to be incompetent he may cause such lands to be sold. (d) If he finds the lands are capable of partition to the advantage of the heirs he may partition said lands and issue fee patents to the competent

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
372	(continued)					<p>heirs, upon their petition for such partition. (e) All sales of trust lands authorized by this or any other Act shall be by rules prescribed by the Secretary, proceeds of sales of lands of incompetent Indians to be held in trust by the U.S. for the trust period, otherwise to be paid directly to competent Indians. (f) Sec. authorized upon applications of Indians owning restricted fee patents to issue certificates of competency which shall thereby remove the restrictions upon the fee. (g) Indian agents, superintendents or other disbursing agents of Indian service may deposit Indian moneys, individual or tribal, coming into his hands as custodian, in such bank or banks as he may select, provided the bank post a surety bond in such amount as will safeguard the fund.</p> <p>The Task Force recommendations with respect to Sec. 372 are as follows:</p> <p>This portion of sec. 372 providing for Secretarial probate of trust estates should be retained. The Task Force recommends, however, that consideration be given to transfer of the original adjudicatory function to tribal</p>
372(a)	Descent & Distribution	X		X		

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
372(a)	Decent & Distribution (continued)	X		X		<p>courts with some interim re- view de novo authority in the Secretary. The ultimate goal should be complete transfer of this probate function to tribal insitutions</p> <p>Additionally, the Task Force recommends amendment to make clear that the probate auth- ority of the Secretary extends to <u>all</u> trust property - not just trust allotments.</p>
372(b)	Descent & Distribution (x ref Lands - Allotments)		X			<p>This provision of Sec. 372 <u>directing</u> the Secretary to issue a fee patent to "competent" heirs is in conflict with the later en- acted provisions of Secs. 462, 464. Ample authority exists elsewhere (e.g. Secs. 392, 483) for removal of restrictions upon application of trust beneficiary. This part of Sec. 372 should be repealed.</p>
372(c)	Descent & Distribution (x ref Lands - Allotments)		X			<p>This portion of Sec. 372 pro- viding for unrestricted discretio in the Secretary to issue fee patents if he finds one or more heirs to be competent is in con- flict with Secs. 462, 464. This should be repealed.</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
372(d)	Lands - Allotments			X	X	This portion of Sec. 372 provides a means for a portion of the heirs to seek partition of trust property. This provision would also be in conflict with Sec. 462, 464. But these are amended by Sec. 483. This provision is also consonant with 392. The Task Force proposes to modify Secs. 462, 464 and 465 for a new land acquisition and land consolidation statute. Secs. 392 and 483 will be consolidated into that treatment. This part of Sec. 372 should also be consolidated with those Secs. There is no need to continue a provision speaking in terms of "heirs" since land ownership devolves and vests in the heirs immediately upon death. This part of Sec. 372 should, therefore, be either deleted or consolidated as noted above.
372(e)	Lands - Allotments			X	X	This part of Sec. 372 directing that payment of proceeds of sales of trust lands be made to competent heirs and providing for trust handling of proceeds of incompetents should be repealed. The entitlement to petition for sale of trust property or payment over of trust assets to the individual owner will be dealt with in the

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
372(e) (cont'd.)	Lands - Allotments			X	X	<p>consolidation of Secs. 392, 462 464, and 489. To the extent the provision requires that the monies derived from sales of trust lands be taken out of trust status, it is in conflict with tenor of Sec. 462, 464.</p> <p>To the extent this part provides that sales of trust lands shall be made under such regulations as the Secretary may prescribe, the provision should be consolidated with Secs. 392, 462, 464, and 489. The language with respect to sale terms should be modernized.</p>
372(f)	Land - Allotments					<p>This part of Sec. 372 authorizing issuance of certificates of competency upon application does no more than extend to Indians holding restricted fees the same rights to petition for sale as is accorded those holding trust allotments. This should be consolidated with Secs. 392, 462, 464, and 489.</p>
372(g)	Tribal Funds - Chapter 1					<p>This part of Sec. 372 providing the authority of Superintendents, etc., to deposit individual or tribal monies in banks should be consolidated with Secs. 155 or Secs. 161, 162(a) with proviso for tribal control as specified in notes to those sections. See also back up paper on Deposit and Investment of Indian Monies..</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
372-1	Descent and Distribution	X				No comment.
372 a	Descent and Distribution	X		X		<p>The Task Force recommends that this provision be revised in accord with our note to Sec. 372(a) to provide for tribal take over of the probate functions of the Secretary.</p> <p>In addition, the Task Force sees no reason why the Five Civilized Tribes or Osage should be exempted from the application of this Act. The fact that some probate jurisdiction has been granted to the courts of that state should not preclude the tribes from (1) determining family relationships of a decedent during his lifetime, or (2) assuming that part of the Secretary's probate function which has not been transferred to the state. See Secs. 375, 375(a-c).</p> <p>Finally, the reference to the authority of the Superintendent as opposed to the Secretary is superceded by the 1950 Reorganization Plan and should be amended accordingly. See Federal Administration back up paper.</p>
373	Descent and Distribution (x ref. Lands - Allotted Tribal Funds - Chapter 1)					The Task Force believes that revision of the first and second

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
373 (cont'd.)		X		X		<p>proviso of this section on the matter of prior approval of wills would be in order but we offer no suggestions in this respect.</p> <p>That part of this section following the third "proviso" granting unrestricted authority to the Secretary to issue fee patents or cause lands to be sold is inconsistent with Secs. 462, 464 and should therefore be repealed. Compare notes to Sec. 373 (b) and (c).</p> <p>Also, there appears no reason for exemption of the application of this law to the Five Civilized Tribes or Osage as appears in the fourth proviso. See note to Sec. 372(a).</p>
373a	Descent & Distribution (x ref Tribal Funds - Ch. 1 Lands - Allotments)	X			X	<p>Retain as is. This is a good provision. See note to Sec. 375d which should be consolidated with this Sec.</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
373b	Descent & Distribution	X				The Task Force would suggest minor modification to make the provision for sale and disposition of funds conform to Sec. 373a.
373c	Misc. - Ch. 1		X			The Task Force can percieve no valid purpose in exclusion of Five Tribes and Osage and recommends repeal.
374	Descent & Distribution	X				No comment.
375	Misc. - Ch. 1 (x ref. Descent & Distribution, Tribal Funds - Ch. 2, Jurisdiction - App. of State Laws, Probate.	X				<p>This provision vests general probate jurisdiction over members of the Five Civilized Tribes and Osage in Oklahoma state courts. An exception to this general jurisdiction in small estate matters appears in Secs. 375a-c.</p> <p>The Task Force does not propose any present change in this scheme but does recommend consideration be given to transfer of jurisdiction to tribal courts if and when the tribes establish them. The transfer would be similar to that proposed in Sec. 372a.</p> <p>The Task Force notes that Sec. 375 appears to be strictly procedural in so far as state law is concerned. To the extent Sec.375 implies that the substantive law of the state shall govern descent and distribution, it should be amended to make room for tribal law on the subject at the tribes option.</p>

TITLE 25 U.S.C. CONSOLIDATION & REVISION ANALYSIS

<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
375a-c	Misc. - Ch. 1 (x ref Descent & Distribution, Tribal Funds - Ch. 1, Jurisdiction - App. of Laws, State Probate.)	X		X		<p>These sections vest small estate jurisdiction in the Secretary over funds and securities (not lands) of members of the Five Tribes. The Task Force recommends amendment to (1) provide for tribal jurisdiction as per note to Sec. 372a, and/or (2) authorize application of tribal law of descent and distribution as per note to Sec. 372a.</p> <p>In addition, the Task Force recommends that the provision for expeditious handling of small estates be incorporated into the revised Sec. 372. See notes to Sec. 372(a).</p>
375d	Descent & Distribution (x ref Tribal Funds - Ch. 1, Lands - Allotments				X	<p>This section should be expanded to include the Creeks and Osage and should then be consolidated with Sec. 373a.</p>
376	Descent & Distribution		X	X		<p>See notes Federal Administration back up paper. This section should either be repealed as unnecessary or amended to accord with notes to Sec. 36. If retained the exception to the Five Tribes and Osage should be deleted in view of Sec. 375a-c.</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
377	Descent & Distribution (x ref Tribal Funds - Ch. 2)	X				The Task Force recommends consolidation of the provision relating to fee structure with Sec. 375b. There appears no reason to have a different fee structure for the Five Tribes.
378	Lands - Allotments (x ref Descent & Distribtuion)			X	X	This section is redundant to Sec. 372 (parts 372(c) and (d) on these charts). See notes to that Section. This Sec. is in conflict with Secs. 462, 464. It should be given same treatment as parts (c) and (d) of Sec. 372.
379	Lands - Allotments			X	X	<p>This Sec. is similar to Sec. 372(d) on charts and Sec. 373 in its authorization for sale of lands or issuance of fee. See also Sec. 404. These all appear in conflict with 462, 464 and should be revised and consolidated into a new provision dealt with in Secs. 462, 464.</p> <p>Both Secs. 379 and 404 speak of "Guardians" for minors. The Task Force recommends that statutory revision specifically recognize tribally appointed Guardians.</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
380	Natural Resources, Lands - Leases (x ref Tribal Funds - Ch. 1)		X	X	X	<p>The provisions of this Section insofar as they relate to mining should be consolidated with Secs. 396, 396a. The exceptions regarding oil and gas leases should be repealed. See Mineral Leasing back up paper.</p> <p>The provision as it relates to general leasing should be consolidated with new Sec. 415. See General Leasing back up paper.</p> <p>The reference to Superintendent should be changed to Secretary. See Federal Admin. back up paper.</p>
<u>Title 25 - Chpt. 11 - Irrigation of Allotted Lands</u>						
381	Lands - Irrigation			X		<p>The authority of tribes to regulate water use is under litigation in <u>U.S. v. Walton</u> in District Court in Washington State. The Task Force recommends amendment to this Section to reflect the legitimate interests of tribes in the ownership of water rights and the authority to regulate within reservation boundaries. See also note to Sec. 389, 389a-e.</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
382	Lands Irrigation			X		The note to Sec. 381, supra, is equally applicable here. In the unlimited discretion vested in the Secretary of Interior to do what he "deems best" is not acceptable. His duty should be mandatory in accord with any principles of trust responsibility.
383	Lands - Irrigation			X		See Federal Administration back up paper. Amend to accord to 1950 Reorganization Plan.
384	Lands - Irrigation		X			Provision is obsolete. See Fed. Administration back up paper.
385	Lands - Irrigation				X	This section appears to be modified by Sec. 386 and 386a. Consolidate.
386	Lands - Irrigation				X	This section appears to be modified by Sec. 386 and 386a. Consolidate.
386a	Lands - Irrigation				X	This section appears to be modified by Sec. 386 and 386a. Consolidate.

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
387	Omitted from Code					Delete
388	Lands - Irrigation	X				No comment
389, 389a-e	Lands - Irrigation	X				Secs. 389 and 389a-e relate only to non-Indian land within Indian irrigation projects. The Task Force offers no recommendations but we do note that this law treats non-Indian water rights differently from Indian water rights. This should be considered in connection with notes to Sec. 381.
390	Misc. - Ch. 5 (x ref Lands - Irrigation)	X		X		This Sec. is classified to the Miscellaneous Part of the proposed revised code because it is directed toward specific named tribes or projects. However, the provisions included in the 4th proviso are general. The Task Force recommends that this entire Sec. 390 be rewritten so as to apply to <u>all</u> irrigation projects on any Reservation; that proceeds derived from <u>any</u> rentals go to the tribe; and that the authority of tribes to control leasing be extended to all tribes, not just those organized under Sec. 476 (IRA § 16). When this Section is rewritten to be general in application it should then be classified to Lands - Irrigation.

TITLE 25 U.S.C. CONSOLIDATION & REVISION ANALYSIS

<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
<u>Title 25 - Chpt. 12 - Lease, Sale, or Surrender of Allotted or Unallotted Lands</u>						
391	Lands - Allotments		X			Provision is incorporated within and superceded by Sec. 462.
391a	Lands - Allotments		X			The continuing utility of this Section is doubtful in view of Secs. 392 and 483. It should be consolidated with a new general provision consolidating Secs. 392, 462, 464, 483.
392	Lands - Allotments Descent & Distribution				X	This Sec. should be consolidated with Secs. 462, 464, 483. See notes to Secs. 462, 464.  The proviso portion relating to approval of Wills should be consolidated with Sec. 373.
393	Lands - Leasing			X	X	Consolidate into revised Sec. 415. See General Leasing back up paper.  The proviso excluding application to Five Tribes should be eliminated.  The note to this Section in the Federal Administration can be disregarded once this consolidation is effected.

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
393a	Misc. - Ch. 1 (x ref Lands - Leasing)		X	X	See General Leasing back up paper. This Section should be consolidated with new Sec. 415.  Note in Federal Admin. back up paper can be disregarded when this is done.
394	Misc. - Ch. 1		X	X	Consolidate to revised Sec. 415. See General Leasing back up paper.
395	Lands - Leases		X	X	Consolidate to revised Sec. 415. See General Leasing back up paper.
396	Natural Resources		X	X	This Section and Section 396a-g should form the basis for all mineral leasing of Indian lands. See discussion Mineral Leasing back up paper with proposed statutory language.  The basic thrust of proposed revision of this Section is (1) eliminate the exclusion of Five Tribes and Osage from its coverage, (2) modify the open ended lease term provision on allotted lands to correspond with lease terms provided for unallotted lands, (3) add that an additional condition precedent to the authority of the Secretary to offer leases on his own initiative is that the heirs as devisees, if located, cannot agree on lease terms, (4) require that where the Secretary

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
396	(continued)					offers leases on his own initiative he shall obtain the best available terms, but not less than the minimum prescribed for public domain lands. The modified Sections proposed also build in the primary authority of the tribe or allottee in the leasing process, the right of each to audit books and records, and a requirement that all leases, tribal or individually owned, conform to tribal land use codes, and federal court proceedings for forfeiture of lease. See additional notes under §§ 396a-g.
396a	Natural Resources			X	X	See notes to Sec. 396 and back up paper on Mineral Leasing.
396b	Natural Resources			X	X	See notes to Sec. 396. The proviso distinguishing powers of IRA tribes from non-IRA should be eliminated. See notes to Secs. 476, 477.
396c	Natural Resources			X	X	See notes to Sec. 396. The primary modification proposed here is to authorize both the Secretary and the Indian lessors to establish bond terms and provide for either cash or security bonds at lessor's option. A provision on reclamation bonds is also proposed.

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
396d	Natural Resources				X	See notes to Sec. 396.
396e	Natural Resources			X	X	See notes to Sec. 396. A note to this Section in the Federal Administration back up paper states that the limitation on who the Secretary may authorize to approve leases is in implicit conflict with the 1950 Reorganization Plan.
396f	Natural Resources			X	X	See notes to Sec. 396 and back up paper on Mineral Leasing. The Task Force proposes to eliminate the exclusionary language of this section unless specific justification otherwise can be shown. We would also add a provision in our proposed statute to require "expeditious" extraction under leases. This would conform to a specific statute pertaining to the Crows. See back up paper.
396g	Natural Resources				X	See notes to Sec. 396.

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
397	Natural Resources Lands - Leasing		X	X	X	<p>The portion of this Section that authorizes mining leases is obsolete by virtue of Sec. 396, 396a-g. It is covered by the proposed revision of those sections and should thus be repealed. See notes to those sections and Mineral Leasing back up paper.</p> <p>That portion pertaining to grazing leases is covered into the new Sec. 415.</p> <p>In the absence of this consolidation, see proposed amendment in Federal Administration back up paper.</p>
398	Natural Resources		X			<p>The lease provisions of this Section are encompassed within the existing Secs. 396, 396a-g and within our proposed revisions of those Sections. See notes to those Sections and Leasing back up paper. The lease provision of this Section should thus be repealed if not already done so by Secs. 396a-g.</p> <p>The tax provisions of this Section would appear also to have been repealed in 1938 by Secs. 396a-g. If any doubt remains, the Task Force calls for repeal now. See back up paper on State Taxation.</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
398a	Natural Resources		X			See notes to Sec. 398. Both of these statutes fall together in Secs. 396, 396a-g.
398b	Tribal Funds - Ch. 1 (x ref Natural Resources)		X	X	X	This is a general provision regarding disposition of proceeds from leases of tribal or individual interests. If it was not repealed by Sec. 396a-g (see note to 398), it should be moved into the general provisions of Secs. 155 or 161, 162a subject to the notes to those sections.
398c	Natural Resources (x ref Tribal Funds - Ch. 2)		X			See notes to Sec. 398 regarding Taxation by states. It would appear the 1938 Act (Sec. 396a-g) repealed this section. If not, it should be repealed now. See back up paper to State Taxation.
398d	Lands - Reservations			X	X	This Section and Sec. 211 would both appear to be superceded by Sec. 467 (\$ 7, IRA).
398e	Natural Resources		X			See notes to Sec. 398, Secs. 396, 396a-g, and Mineral Leasing back up paper.

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
399	Natural Resources (x ref Tribal Funds - Ch. 1.)		X			<p>This too is an older leasing statute and would appear to have been repealed or superseded by the 1938 Mineral Leasing Act (Sec. 396a-g). To the extent it was not, it should be repealed now in light of our treatment of Secs. 396, 396a-g. See Mineral Leasing back up paper and notes to those Sections.</p> <p>Features pertaining to inspection of books and federal district court proceedings for forfeiture and cancellation of leases have been in new § 396, 396a. Feature re disposition of rentals and royalties should be covered in §§ 155 or 161, 162a.</p> <p>See also note to Federal Administration back up paper.</p>
400	Misc. - Ch. 5 (x ref Nat. Resc.)			X		<p>See notes to Secs. 396, 396a-g and Mineral Leasing back up paper.</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
400a	Natural Resources (x ref Tribal Funds - Ch. 1)		X	X	X	Consolidate with Secs. 396, 396a-g. See Mineral Leasing back up paper.
401	Misc. - Ch. 5 (x ref Nat. Resources)		X			Provision is obsolete. In addition it is covered under Sec. 396, 396a-g. See Mineral Leasing back up paper.
402	Lands - Leases		X		X	Consolidate with Sec. 415. See General Leasing back up paper.
402a	Lands - Leases		X		X	Consolidate with Sec. 415. See General Leasing back up paper.
403	Lands - Leases (x ref Tribal Funds - Ch. 1)		X		X	Consolidate with Sec. 415. See General Leasing back up paper.
403a	Misc. - Ch. 5 (x ref Lands - Leases)				X	This is a statute directed at a specific tribe. They should be specifically consulted on any revision, but we recommend consolidation into Sec. 415.  See General Leasing back up paper and notes to Sec. 415.

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
403a-1	Misc. - Ch. 5 (x ref Lands - Allotments)	X				No comment
403a-2	Misc. - Ch. 5 (x ref Lands - Allotments Tribal Funds - Ch. 1)	X				No comment.
403b	Misc. - Ch. 5 (x ref Lands - Leases)				X	See note to Secs. 403a, 415 and General Leasing back up paper.
403c	Misc. - Ch. 5 (x ref Lands - Leases)				X	See note to Secs. 403a, 415 and General Leasing back up paper.
404	Lands - Allotments (x ref Tribal Funds - Ch. 1)		X	X	X	The provisions relating to approval of sales should be consolidated with Secs. 392, 462, 464, 483. (See also notes to Secs. 372, 373, 378, 379 and 405).  The proviso relating to dis- position of monies should be covered in Secs. 155 or 161, 162a.  The provision relating to Guardians should recognize tribal authority in the appoint- ment process. See note Sec. 379.  See also note under Fed. Adm. back up paper.

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend.</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
460	Funds - General (X Ref Tribal Funds - Ch. 1)			X	X	<p>This section should be consolidated with 379, 462, 464, 483 in accord with notes to Sec. 404 and the Sections named.</p> <p>See also note in Federal Administration back up paper.</p>
406	Natural Resources (X Ref Tribal Funds - Ch. 1)			X	X	<p>Sections 196, 406, 407, 407d and 466 should be consolidated into a single Act.</p> <p>See back up paper on Timber Sales with model statute.</p> <p>Proposed revisions include                      (1) clarification of authority of Indian lessor vis-a-vis the Secretary in contracting process.                      (2) authorize tribal regulations to supercede those of Secretary in the regulation of logging operations, and (3) provisions for reclamation and performance bonds.</p> <p>Provision relating to disposition of proceeds should be classified to Sec. 155 or Secs. 161, 162a.</p>
407	Natural Resources			X	X	See notes to Sec. 406 above.

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
407a-c	Omitted from Code					Obsolete provisions whose effect expired in 1936. See Historical Note in Code.
407d	Natural Resources			X	X	See notes to Sec. 406.
408	Lands - Allotments			X	X	This provision should be consolidated with Secs. 379, 462, 464, 483. See notes to those sections.
409	Lands - Allotment - (x ref Tribal Funds - Ch. 1, 2)		X	X	X	<p>The provisions of this Section relating to sale of trust allotments should be consolidated with Secs. 379, 462, 464, 483.</p> <p>See notes to those Sections.</p> <p>The provision regarding disposition of funds should be covered in Secs. 155 or Secs. 161, 162a.</p> <p>The provisions regarding maintenance charges are modified by Sec. 389. Repeal of this portion should be considered.</p> <p>See also note to Fed. Admin. back up paper.</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
409a	Lands - Allotments (x ref Tribal Funds - Ch. 1)			X	X	The Task Force embraces the concept of reinvestment of monies in trust status. We recommend that this Section be consolidated with our proposed new Sec. 357 with retention of the reinvestment provisions being applicable to all tribes. See notes to Sec. 357.
410	Tribal Funds - Ch. 2 (x ref Lands - Allotments)	X				The provisions of this Section should be grouped with those of Sec. 155 and 161, 162a.
411	Tribal Funds - Ch. 1 (x ref Lands - Tribal)			X	X	This section should be consolidated with Secs. 155 or 161, 162a.
412	Tribal Funds - Ch. 2 (x ref Lands - Allotted)	X		X		This provision should be amended in accord with note under Federal Administration back up paper.

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
412a	Lands - Allotments			X	X	<p>The Task Force has not had time to check out the scope of application of this statute.</p> <p>If the Sec. is applicable within reservation boundaries (which is not clear), then this Sec. should probably be consolidated with Secs. 464, 465. Its tax provisions are similar to those accruing under Sec. 384 and Sec. 462, 464 which originally spring from Sec. 177. The designation of the trust property as a "federal instrumentality" is of importance. See back up papers on Federal and State Taxation.</p> <p>The limitation of the homestead value to \$5,000.00 is ridiculous and should be repealed. In addition the Sec. should be amended to reflect whether it is only applicable to properties not within reservation boundaries, or also applies to properties within reservations.</p>
413	Tribal Funds - Ch. 2 (x ref Fed. Admin. - Ch. 6, Natural Resources, Lands.)	X				<p>The proviso portion of this Sec. should be grouped with Sec. 155. The authorization to charge fees should probably be divided out and placed in Fed. Admin. - Ch. 6.</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
414	Misc. - Ch. 1 (x ref Natural Resources Lands - Tribal or Allotted)		X(?)			This Sec. imposes no obligation on the Secretary, nor does it appear it gives him any authority that he doesn't already have over all Indian lands, i.e., approving the reservation of sub-surface rights.
415 415a-d	Lands - Leases			X	X	This Sec. should serve as the vehicle for a general leasing statute. See General Leasing back up paper.  It appears to supercede many of the leasing statutes previously noted. See notes to Secs. 380, 403, 403a, 403b, 403c. Our proposed amendments would include (1) providing tribes a first option on leases of allotted lands, (2) subjecting leases to tribal land use codes, (3) repeal of that portion which addresses itself to termination.  See back up paper on General Leasing.
416 - 416j	Misc. - Ch. 5	X				This provision parallels Sec. 415 but with slight differences to accomodate special needs of the two tribes involved. Retain as is.

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
417-429	Open					
<u>Title 25 - Chpt. 13 - Ceded Indian Lands</u>						
421-427	Transferred to Title 43 U.S. Code					
428-440	Open					
441	Fed. Adm. - Ch. 1	X		X		Amend to delete reference to Sec. 87 which has been repealed.
442	Economic Development				X	This Section was amended by Sec. 1461 (Indian Financing Act of 1974). To the extent this Section retains validity it should be consolidated with Section 1461.
443	Economic Development				X	Amended by Sec. 1461 et seq. See note to Sec. 442.
443a	Fed. Adm. - Ch. 7 (x ref Lands - Tribal)			X	X	This Sec. should be consolidated with 190, 292, 293, 293a and 294. The amendments recommended in the notes to those Secs. might well track the language of this provision.
444-449	Repealed		1954			

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
450	Fed. Adm. - Ch. 2 (x ref Services)	X				<p>These are prefecatory notes to our treatment of the Indian Self-Determination and Education Ass.stance Act of 1975.</p> <p>The Task Force does not propose any material modification or amendment of these provisions. The "Chart Classification" column only indicates our proposal for Chapter placement in a new revised Title 25.</p> <p>Our treatment of this Act and of the IRA and OIWA reflect the problems inherent in moving from simple statutory compilation into codification. It is necessary to break existing statutes into their component parts arranged on a subject matter or conceptual basis to arrive at a general "over-all" statute, i.e., a Code. With these comments as a back drop, the Task Force "Chart Classification" or Code placement with commentary follows.</p> <p>Task Force notes that the findings in this Sec. parallel findings in our proposed Findings and Declaration to serve as a Preamble to the new revised Code. Upon revision and codification, these Findings should be consolidated in the Preamble.</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
450a	Fed. Adm. - Ch. 2 (x ref Services)	X				The notes to Sec. 450 are equally applicable here.
450b	Fed. Adm. - Ch. 2 (x ref Services)	X				Needs clarification as to the definition of "Indian tribe" with regard to which entity or entities in Alaska will be regarded as "tribal entities" for purposes of the Act.
450c	Fed Adm. - Ch. 2 (x ref Services)	X				No comment
450d	Transfer to Title 18 U.S. Code	X				This is a criminal provision. It should be transferred to Title 18 with appropriate cross references back to Title 25.
450e(a)	Fed Adm. - Ch. 2 (x ref Services)					No comment

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
450e(b)	Fed Adm. - Ch. 5 (x ref Services)					<p>This Sec. should be cross referenced to Sec. 13 in Fed. Administration Ch. 8, Secs. 450f, 450g and 450h.</p> <p>Also should be cross referenced in all other statutes which authorize <u>any</u> Agency to let contracts or grants to or for the benefit of Indians. Congress should clarify that this Subsection does apply to <u>all</u> Agencies and that it was intended to modify in part "permissible" preference authorized by Section 703(i) of Title VII of the 1964 Civil Rights Act by "mandating" preference in contracts previously "permissible" under the 1964 Civil Rights Act, as well as other contracts and grants to or for the benefit of Indians which previously were not covered by the 1964 Civil Rights Act.</p> <p>See analysis in Final Report, Part VI, Chapter 2.C.1 on Preference in Contracting.</p>
450f	Fed. Adm. - Ch. 2 (x ref Services)					<p>Cross reference to §§ 81, 177, 476. Clarification of the authority of a tribe to contract for management of trust resources is needed. See note to Sec. 81.</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
450g	Fed. Adm. - Ch. 2 (x ref Services)	X				No comment
450h	Fed. Adm. - Ch. 2 (x ref Services)	X				No comment
450h(a) (3)	Fed. Adm. - Ch. 2 (x ref Lands - Acquisition and Consolidation)	X				All of Sec. 450h is cross referenced to Services except subpart (a) (3) which pertains to land aquisition
450i	Fed. Adm. - Ch. 2 (x ref Services)	X				No comment
450j(a)- (d)	Fed. Adm. - Ch. 2 (x ref Services)	X				No comment
450j(e)	Fed. Adm. - Ch. 2 (x ref Fed. Adm. - Ch.5, Services)	X				This perhaps should be consoli- dated with Sec. 453 which has identical language.
450j(f)- (h)	Fed. Adm. - Ch. 2 (x ref Services)	X				No comment
450k	Fed. Adm. - Ch. 2 (x ref Services)	X				No comment

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450l	Fed. Adm. - Ch. 2 (x ref Services)	X				No comment
450m	Fed. Adm. - Ch. 2 (x ref Services)	X				No comment
450n	(Fed. Adm. - Ch. 2 (x ref Services)	X				No comment
451	Fed. Adm. - Ch. 8 (x ref Services)	X				No comment
452	Services (x ref Fed Adm. - Ch. 2, 4)	X				Note that Sec. 450f makes tribes eligible as contractors under Secs. 452-457.
453	Services (x ref Fed. Adm. - Ch. 2, 4)	X			X	The language of this Sec. duplicates that in Sec. 450j(e).
454	Services (x ref Fed. Adm. - Ch. 2, 4)	X				See notes to Sec. 452

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455	Services (x ref Fed. Adm. - Ch. 2, 4)	X				See notes to Sec. 452
456	Services (x ref Fed. Adm. - Ch. 2, 4)	X				See notes to Sec. 452
457	Services (x ref Fed. Adm. - Ch. 2, 4)	X				See notes to Sec. 452
458	Services (x ref Fed. Adm. - Ch. 2, 4)	X				No comment
458a	Services (x ref Fed. Adm. - Ch. 3, 4)	X				No comment
458b	Services (x ref Fed. Adm. - Ch. 3, 4)	X				No comment
458c	Services (x ref Fed. Adm. - Ch. 3, 4)	X				No comment

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458d	Services (x ref Fed. Adm. - Ch. 3, 4)	X				No comment
458e	Services (x ref Fed. Adm. - Ch. 3, 4)	X				No comment
459	Lands - Tribal	X		X		The Task Force questions the deletion of the Cherokees from the reference to reservations. See Task Force special report on Oklahoma.
459a	Lands - Tribal	X				No comment
459b	Misc. - Ch. 5 (x ref Lands - Tribal)	X				No comment
459c	Lands - Tribal	X				No comment
459d	Tribal Funds - Ch. 1 (x ref Lands - Tribal)	X		X	X	Provision for deposit should either refer to or be consolidated with Secs. 161, 162a.

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
459e	Tribal Funds - Ch. 2 (x ref Lands - Tribal)	X				<p>The tax treatment accorded these submarginal lands should be compared to our recommendation on amendments to mineral leasing statutes.</p> <p>See notes Sec. 396, 396a-g; State Taxation back up paper.</p>
461	Lands - General	X				No comment
462	Lands - Allotments	X		X		<p>The Task Force fully supports the indefinite extension of trust status. However, the Cross Reference Note and interpretations of this 1934 Act by Interior indicate this protective provision is not applicable to tribes which voted to reject the Act. Acceptance of the 1934 Act ought not have been an "all or nothing" proposition. Indeed in <u>Morton v. Mancari</u> (1974) the Supreme Court held such votes only applied to Secs. 16 &amp; 17 of the IRA (25 U.S.C. 476, 477).</p> <p>The Task Force recommends legislation clarification that Sec. 462 applies to <u>all</u> trust lands or other trust assets of <u>all</u> federally recognized Indians or Indian tribes.</p> <p>Sec. 462 and 464 are a unit. For provisions on transfer and sale of trust assets, see notes of Sec. 464.</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
462a	Omitted as executed.					
463(a)	Lands- Acquisition and Consolidation.	X		X		The Task Force questions the "blanket" exclusion of this provision from lands withdrawn for reclamation projects prior to 1934. A limited interest with retention of federal easement rights would appear desirable. See Sec. 390 and notes thereto.
463(b) (1)(2)	Repealed		1955			
463(b) (3)(4)	Misc. - Ch. 5 (x ref Lands - Rights-of-Way) (Fed. Adm. - Ch. 8)	X				No comment
463a-c	Misc. - Ch. 5 (x ref Lands - Reservations) (Lands - Acquisition and Consolidation)					No comment
463d	Misc. - Ch. 5 (x ref Fed Adm. - Ch. 7)					This provision, enacted in 1939, has presumably been executed and should be deleted from the Code.

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
463e-g	Misc. - Ch. 5 (x ref Lands - Acquisition and Consolidation) (Fed. Adm. - Ch. 8)	X	X(?)			The Task Force questions the need for this statute. Enacted in 1939, it appears almost totally redundant to Sec. 465 enacted in 1934 insofar as land acquisition. The structures of Sec. 464 against transfer of Indian lands out of Indian ownership still authorizes exchanges of "equal value". Repeal of Secs. 463e-g should be considered in light of the more general provisions of Secs. 464, 465.
464	Lands - General			X	X	This Sec. limits the alienability of lands held in a trust status to transfer to a tribe, another Indian, or a tribal corporation. It authorizes voluntary transfers of lands of equal value for purposes of land consolidation. Outright sale of a trust allotment to a non-Indian would appear to be barred. This is too limiting. In 1948 the Act found in Sec. 483 was enacted to allow outright sale (with Secretarial approval). This was simply a return to the system prior to 1934. It provides for slow but continuous erosion of the tribal landbase.  The Task Force has noted numerous Secs. which should be consolidated with this Section to form a uniform land transfer provision.

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
464	(continued)					<p>These Secs. are Secs. 372, 373, 378, 379, 392, 404, 464 and 483. Our proposal is explored more broadly in Part V of this Report. The proposed revision of Sec. 464 and the Secs. consolidated here must be linked with proposals for land acquisition in Sec. 465.</p> <p>Our proposals include, among other things, that (1) tribes be given a first right of purchase of all lands within reservation boundaries similar to the provision in Sec. 502 only extended to fee patent as well as trust lands, (2) step one will require the immediate availability of funds to purchase property when it is offered for sale, (3) incorporation of the provisions for partition found in Secs. 372, 373, 378, 379 and 404 coupled with the tribal first right of purchase and recognition of eminent domain powers of tribe to consolidate remainder, and (4) modification of the discretionary power in Sec. 465 as to whether or not the Secretary will take land into a trust status. This should be mandatory. See comments to Sec. 465.</p> <p>Even in the absence of consolidation, the Task Force recommends changes in Sec. 464 as follows:</p> <p>(1) It should be made clear that the protective provisions of this Sec. are not limited to</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
464	(continued)					<p>tribes under the IRA. See note to Sec. 462.</p> <p>(2) the provision regarding descent of lands in accordance with state laws should be amended to provide for supremacy of tribal law on the subject. See comments to Sec. 348 and 372.</p> <p>Examples of special federal or tribal handling of the subject should be considered in developing general authorizing legislation. The Task Force notes the following special laws: Sec. 668 (So. Ute); Secs. 403a, a-1, 2 (Tulalip); Sec. 607 (Yakima); Sec. 619 (Swinomish); See also H.R. 14417, 94th Cong., and S. 2552, 2553, 94th Congress (Umatilla Land bill). Of all these, the Task Force recommends closest examination of the Yakima Act and the Umatilla bill.</p> <p>(3) The provision authorizing "equal value" exchanges should not bar good faith "love and affection" inter-family transfers or transfers in which some intangible considerations are involved. Such transactions should bear close scrutiny and full disclosure but not be barred outright. This "equal value" bar has some impact on the fractionated heirship problem.</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
465	Lands - Acquisition and Consolidation (x ref Fed. Adm. - Ch. 8)	X		X		<p>The principle problems with this Sec. relate to Congressional and Executive failure of implementation. The Executive has not sought nor has Congress appropriated the funds authorized by this Section since the late 1940's.</p> <p>See Report prepared by BIA under Dr. Theodore Taylor at AIPRC request on land acquisitions since 1934.</p> <p>The primary Task Force recommendations on this section are:</p> <p>(1) It's provisions be extended to all tribes irregardless of the applicability of IRA to them. See notes to Sec. 462.</p> <p>(2) An adequate fund providing immediate access be made available for land acquisition. See notes to Sec. 464.</p> <p>(3) The Secretary's duty to take land into trust status at the request of a tribe is mandatory. Internal, hidden, unpublished criteria such as impact on local non-Indian tax bases or whether an applicant is a "big shot" must cease. The tribal governments would be a far more reliable determinant of tribal and individual needs.</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
465	(continued)					<p>The Task Force is well aware of the concerns of western states regarding the impact land acquisitions could have on local tax bases. The solution lies in modification of the formula for impact aid. The burden for correcting the injustices to Indians over the years should not be borne inequitably by small, rural western counties. It is a national obligation and the impact should be absorbed through the national tax base.</p> <p>(3) The provisions of Sec. 501 (§ 1, O.I.W.A.) regarding land acquisition should be consolidated here, subject to the notes under that Section.</p> <p>(4) The provisions of Sec. 502 providing a first right of purchase should be modified to a tribal first right and should be consolidated here. See notes to Secs. 464 and 502.</p>
465a	Misc. - Ch. 5					This section should be deleted as obsolete. See Klamath Termination Act.
465b	Misc. - Ch. 5					This section should be deleted as obsolete. See Klamath Termination Act.

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
466	Natural Resources Lands - Regulation of Use		X	X	X	<p>The provisions of this Section relating to timber regulation are covered in the consolidation of Secs. 196, 406, 407, 407d and 466. See notes to those sections. See also back up paper on Timber Management, Part VI of this Report.</p> <p>The provisions regulating grazing and land conservation should be retained with amendment to provide for tribal authority to adopt and enforce their own regulations.</p>
467	Lands - Reservations	X				No comment.
468	Lands - Allotments			X	X	This Sec. should be consolidated with Secs. 334, 336 and 337. See notes to those Sections.
469	Fed. Adm. - Ch. 8		X(?)			The Task Force believes this provision is obsolete. Monies for organization and support of tribal government are channeled through the Snyder Act (25 U.S.C. 13) and now P.L. 93-638 (25 U.S.C. 450 et. seq.).

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
470	Economic Development. (x ref Fed. Adm. - Ch. 8)				X	This section is merged into Sec. 1461 (Indian Financing Act of 1974).
470a	Economic Development (x ref Fed. Adm. - Ch 8)				X	This section is merged into Sec. 1461 (Indian Financing Act of 1974).
471	Services		X	X		Provision may be obsolete. See Federal Administration back up paper. This Sec. is modified by the 1/4 blood standards in Secs. 480, 482.
472	Fed. Adm. - Ch. 5	X				The primary problem with this provision is the failure of Executive implementation. See analysis in back up paper on Preference in Employment and Contracting. The Task Force recommends retention of this provision as is.

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
473	Misc. - Ch. 5, 6		X			<p>The Task Force recommends extension of the protective provisions of the IRA mentioned to <u>all</u> federally recognized <u>Indian</u> tribes, including Oklahoma. We would merge the OIWA with the IRA provisions. See notes to appropriate Secs. of OIWA (25 U.S.C. 501 et. seq.).</p> <p>The reference to Alaska is redundant with Sec. 473a. We believe the limitations of extension of <u>all</u> provisions of the IRA to Alaska is questionable, but we do not feel competent to make recommendations regarding Alaska.</p>
473a	Misc. - Ch. 6					<p>See note to Section 473.</p>
474	Misc. - Ch. 5	X				<p>This section still has current application.</p>
475	Jurisdiction - Court of Claims (x ref Tribal Funds - Ch. 2)					<p>No comment.</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
475a	Jurisdiction - Court of Claims (x ref Tribal Funds - Ch. 2)					No comment
476	Not charted			X	X	<p>The provisions of this Section are discussed at length in Part V, pg 85-91 and other references set forth there. We propose that the portion of this Section authorizing optional organization of tribal governments be merged with the comparable provisions of the OIWA, i.e., Sec. 503, and that these provisions be amended to conform to principles providing more solid recognition of the sovereign powers of tribes both in matters of internal organization and the authority inherent in that political body, and to provide clear guidelines regarding Secretarial Authority and limitations in his political dealings with the tribes.</p> <p>The provision regarding veto power of tribes over trust assets should be retained as is. The Task Force recommends some modification to authorize a tribe to override the refusal of the Secretary to approve transactions involving trust assets, but such modification must be coupled with a continuing trust responsibility to aid in the implementation of tribal decisions and to give full</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consol'date</u>	<u>Task Force Comment</u>
476	(continued)					<p>advice and counsel to the tribes both in the implementation process and in the original decision. Where a tribe, after full consultation and disclosure with the Secretary, elects to over ride his "non-approval," this must constitute a waiver of Federal liability for the consequences of the decision. It will not however waive the trust obligation to aid in the implementation of the decision or the trust liability for failure to give such aid commensurate to the trust obligation.</p> <p>Finally, the provision relating to Secretarial advisement to tribes of appropriation estimates should be amended to provide meaningful tribal input into the budgetary process. It is difficult to see how this can be done within the present system of federal or Executive budgetary development. We would recommend that tribal budgets as well as the consolidated BIA - Interior - OMB approved budget be placed before Congress and that tribal spokesmen be liberally permitted to appear and testify with respect to their budgetary needs.</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
477	Economic Development			X		<p>The impact of the Indian Finance Act of 1974 (25 U.S.C. 1451 et. seq.) on this Section should be evaluated to determine whether this provision has been superceded. It is also noted that as an incident of their sovereignty tribes have the inherent power to issue corporate charters. (See Solicitor's Opinion of Aug. 25, 1969 (M 36781) regarding powers of the Standing Rock Sioux Tribe.) Thus to the extent this provision purports to "authorize" tribes to form corporations it is misleading and superfluous. To the extent it authorizes exercise of powers free of Secretarial approval the provision remains valid.</p> <p>The Task Force recommends that this provision be amended to reflect: (1) that the tribes have the inherent authority to charter corporations, (2) that such corporations are not identical to the tribes themselves but are in fact business corporations whose assets are separate and apart from the tribe, and (3) that the leasehold authority of the tribe be amended to conform to the recommendations contained in Sec. 415 and 396a-g. The Task Force also questions whether these limitations on the corporate leasehold authority properly extend to lands the corporation has taken in fee patent status.</p>

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478	Not charted		X			This Section has generally been held to exclude from all the protections of the Indian Reorganization Act tribes which voted to reject the Act. The <u>Morton v. Mancari</u> decision raises serious questions as to the correctness of that interpretation. The Task Force can see no reason why the protective provisions of this Act should not be applicable to all federally recognized tribes and members of said tribes. We recommend repeal of this Sec. See discussion of sovereign powers of tribes in Part V of this Report, at pgs 87-91.
478a	Not Charted			X		The modification of Section 476 which is discussed in Part V, pgs 87-91 also contains proposals for retention of some Secretarial authority in matters pertaining to tribal election processes.
478b	Not Charted	X		X		The basic provisions of this "general savings clause" are incorporated in our recommendations for codification of principles regarding reaffirmation of Indian treaties and agreements. See discussion Part V, pag. 93.

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479	Fed. Adm. - Ch. 5 Services	X				<p>Aside from the provisions of Secs. 297, 480 and 482 this is the only section in Title 25 which attempts to define the term "Indian". The Task Force proposes for consideration of the Commission amendments to this Section which would require that members of federally recognized tribes and persons who are within the descendant class of this Sec. must be 1/4 blood or more to qualify for preference. It must be stressed that our recommendations for amendment of this Section go <u>only</u> to the question of employment and contracting preference -- not to service eligibility or entitlement to federal protection of trust resources, etc.</p> <p>An alternative proposal would incorporate the 1/4 blood limitation but extend a second class preference to persons of less than 1/4 blood who are members of federally recognized tribes. See back up paper on Preference in Employment and Contracting in Part VI, Ch. 2.B.3 of this Report.</p>

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479	(continued)					The Task Force would also suggest consideration of lowering the blood quantum requirement of unaffiliated Indians from 1/2 blood to 1/4 blood. This was considered in 1934 when the IRA was enacted. The termination era and the desire for some uniformity would suggest reconsideration of this issue.
480	Fed. Adm. - Ch. 8				X	See notes to Sec. 297 regarding eligibility for federal services. See also Sec. 482  This Sec. should be consolidated with Sec. 1461.
481	Omitted from Code			X		See Historical Note in Code. No Action required.
482	Fed. Adm. - Ch. 8				X	This section should be handled in same manner as Sec. 480. Consolidate with Sec. 1461.
483	Lands - General				X	Consolidate with Sec. 464 and other Secs. discussed in notes to Sec. 464.

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483a	Lands - Allotments Jurisdiction - Application of Laws, State Foreclosures			X		<p>This is a general provision authorizing individual Indian allottees to mortgage their lands and subjecting said lands to foreclosure in state courts under state law.</p> <p>This statute waives the usual requirement that the U.S. be made a party to the foreclosure proceeding.</p> <p>The statute was enacted in 1956 during the termination period.</p> <p>This provision should be amended in numerous ways to conform to later statutory provisions regarding mortgages, foreclosure, etc. See for example Sec. 487 (Yakima), 610b and c (Swinomish), 642 (Hopi) and 670 (Southern Ute). The amended provision should then be grouped with the consolidated land transfer provisions under Sec. 464.</p> <p>The current importance and application of this Section should also be evaluated in light of the loan guarantee and insurance provisions of the Indian Financing Act of 1974 (25 U.S.C. 1481 et. seq.) which does not appear to authorize any foreclosures by the Secretary in the event of default</p>

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483a	(continued)					
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(Sec. 1491, 1496), and the 1970 amendments to the Farmer's Home Administration authority to provide for loans and lending insurance for tribal acquisition of lands ( 25 U.S.C. 488 et. seq.) The latter statute does provide for foreclosure under state law. See Sec. 491.

The Task Force recommends amendment to Sec. 483a as follows:

(1) The provision authorizing mortgages be retained.

(2) The provision authorizing foreclosure under state law in state courts be amended to permit alternative provision by tribes, at their option, to provide for foreclosure proceedings in tribal court under tribal law.

(3) In the event the tribes do not provide for foreclosure remedies through tribal institutions, that the provision waiving the United States as a necessary party be amended to conform to the later legislation cited above by requiring that the United States be made a party to any foreclosure proceeding with an automatic right of removal from state to federal courts in accordance with 28 U.S.C. 1446.

(4) That in any foreclosure proceeding, the validity of the action be conditioned upon notice to the tribal chairman or tribal

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483a	(continued)					council of all proceedings, including the order of foreclosure, in order that the tribe may exercise its first right of purchase as provided for in the amended Sec. 464. In order to give substance to this tribal right of first purchase attention is called to the notes to Sec. 465 calling for the establishment of a special fund for land acquisition.
484-486	Misc. - Ch. 5 (x ref Lands - Allotments, Natural Resources)	X		X		The Task Force is not able to recommend changes in this legislation as it pertains to the specific tribes named. We do note, however, that the reference in this statute to the nature of title conveyed by allotments issued under Sec. 348 (the General Allotment Act of 1887) should be modified to eliminate reference to such patents as descriptive of the property interest covered by this "exchange assignment" legislation. The question of property rights accompanying a trust patent is presently at issue in <u>U.S. v. Walton</u> pending in the U.S. District Court in Washington State (water) and was recently considered by the Supreme Court in the <u>Hollowbreast</u> case (subsurface mineral interest)

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487	Misc. - Ch. 5	X				No comment.
488	Lands - Acquisition and Consolidation	X		X		The reference to communities in Alaska incorporated under the IRA (Sec. 476) should be reconsidered in light of the Native Claims Settlement Act. In addition, incorporation under the IRA is not a precondition to recognition.
489	Lands - Acquisition and Consolidation	X				No comment.
490	Lands - Acquisition and Consolidation	X				No comment.
491	Lands - Acquisition and Consolidation	X				The foreclosure provision in this statute differs from that of Sec. 483a in that this section pertains to tribal property whereas Sec. 483a pertains to individual property. The Task Force would suggest amendatory language similar to that in Secs. 1465, 1491 and, by reference, Sec. 386a, to provide maximum flexibility in the administration of loans.

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492	Lands - Acquisition and Consolidation.	X				No comment.
493-494	Open					
495-496	Misc. - Ch. 5 (x ref Lands - Reservations)	X				No comment.
497	Mis. - Ch. 6 (x ref Services, Fed. Adm. - Ch. 10)	X				No comment.
498-500	Open					
501	Lands - Acquisition and Consolidation		X	X	X	The land acquisition provisions should be merged with Sec. 465. See notes to that Sec. The proviso authorizing the State of Oklahoma to levy a gross production tax upon oil and gas produced on land acquired under this Section should be repealed. This will have little if any effect on the present state tax base because, despite the passage of some 40 years, little, if any, lands with oil and gas bearing capabilities has been acquired under this section. See BIA land acquisition study by Theodore Taylor prepared by AIPRC request. See back up paper on State Taxation.

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
502	Land - Acquisition and Consolidation			X	X	The first right of purchase provisions of this Section should be amended to make it a tribal right, the provisions should be extended to fee patent land within reservation boundaries (in the case of Oklahoma it may be necessary to provide for tribally and Secretarially agreed upon consolidation districts of sufficient size and quality to adequately meet the economic and governmental needs of the different tribes rather than all lands within the reservation boundaries), and the provision should be consolidated with Sec. 464.
503	Not charted			X	X	Those portions of this Section providing for political organization of tribes in Oklahoma should be considered in the same light as the similar provisions of Sec. 16 of the IRA (Sec. 476). See notes to Sec. 476 and Part V, pg. 87-91 of the Final Report.  The reference in this Sec. to "body corporate under the laws of the State of Okalhoma" causes some confusion in meaning as to whether the corporate body referred to is a business corporation

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
503	(continued)					<p>as the BIA seems to have regarded it, or a municipal corporation with governmental powers. The Task Force recommendation that Oklahoma tribes be recognized on the same basis as tribes elsewhere resolves this problem without the need for resolution of this legal argument.</p> <p>The provisions controlling the election process on tribal organization are also covered in Part V, pgs. 87-91.</p> <p>The reference to the revolving credit fund eligibility should be merged with Sec. 1461.</p> <p>The proviso regarding deposit of corporate funds is most likely hollow legislation. Many tribes in Oklahoma have no corporate charter. We believe the banking practices are probably governed under Secs. 155 and 161, 162a. We recommend consolidation of this provision with those Secs.</p>
504-505	Economic Development			X(?)		<p>The Task Force questions the obsolescence of this provision in view of the Indian Finance Act of 1974. The provision has received very limited use. Check with BIA regarding its current utility.</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
506	Economic Development (x ref Fed. Adm. - Ch. 8)				X	Consolidate with Sec. 1461.
407	Fed. Adm. - Ch. 8 Lands - Acquisition and Consolidation Tribal Funds - Ch. 1		X		X	Provision for acquisition and consolidation of lands is covered in Sec. 465. The proviso for deposit of funds derived from mineral deposits and direction that such funds be used for additional land acquisition is unique to Oklahoma. The Task Force makes no recommendation regarding this proviso. The proviso requiring "fair and just" allocation of funds to Oklahoma Indians is unnecessary surplusage and should either be repealed or made generally applicable to all federally recognized tribes. The Task Force favors repeal.
508	Not Charted		X			In view of recommendations regarding repeal or consolidation of other Sections of the OIWA, this provision should be repealed.
509	Not Charted		X			In view of recommendations regarding repeal or consolidation of other Sections of the OIWA, this provision should be repealed.

TITLE 25 U.S.C. CONSOLIDATION & REVISION ANALYSIS

<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
510	Not Charted		X			See State Taxation back up paper and note to Sec. 501.
1301	Not Charted	X				The provisions of this Section are treated in Part V of this Report, pg 87-91, See also Part IV, pgs. 37-45.
1302	Not Charted			X		<p>See reference noted in Sec. 1301. The Task Force recommends two amendments to this statutory "bill of rights". The first proposal is that subpart (10) providing for a right to trial by jury be amended to specify that the right guaranteed by this subsection shall only be applicable to offenses which if charged in a federal court would be subject to a Constitutional right to trial by jury. As subsection (10) presently reads the right to trial by jury would theoretically apply to almost every offense a person might be charged with, no matter how slight the penalty.</p> <p>Tribal courts presently handle in excess of 80,000 cases per year. If demands for jury trials were liberally sought, the system would quickly break down.</p> <p>It is not possible to discuss the jurisdiction of tribal courts in terms of misdemeanors and felonies since these terms are</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
1302	(continued)					<p>normally defined on the basis of potential penalty. The penal power of tribal courts under subsection (7) of this Section is limited to 6 months and \$500.00.</p> <p>The Task Force supports and advocates interpretations of current criminal law in Indian country in such a manner as to recognize concurrency of tribal and federal jurisdiction over conduct regarded in federal criminal law as felonious. See Part V, pgs. 154-159 and Exhibit 3 referred to therein.</p> <p>The proposal for amendment of the jury trial provision in subsection (7) is for these reasons couched in reference to federal criminal law.</p> <p>The second proposed amendment is that an additional provision be added to this Section which would codify the interpretive standards enunciated by the various court decisions referred to in footnote 41 to Part IV of this Report, pg. 74.</p> <p>These cases recognize the principle that this Section did not "blanket in" the entire body of federal Constitutional law and the</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
1302	(continued)					Act must be interpreted in a manner consistent with the needs and customs of tribal institutions.
1303	Jurisdiction- Federal Criminal			X		<p>The Task Force proposes the following amendments to this Sec.</p> <p>(1) The judicially evolving rule requiring exhaustion of tribal remedies, should be rigidly enforced. Current judicial decisions are hit and miss on this question. This "exhaustion" requirement should include all tribal appellate remedies including appeals to regional inter-tribal courts of appeal should the tribes elect to enter into such inter-tribal compacts.</p> <p>(2) Review should be limited to the record of proceedings in the tribal courts where such a record has been maintained. At this time many tribal courts do not maintain a record of court proceedings. All tribal courts could easily be equipped with recording devices at a nominal expense if the Congress is genuinely concerned about tribal courts being courts of record.</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
1303	(continued)					<p>(3) The review should not turn on procedural niceties but rather should be premised on fundamental fairness based on the entire record. Contrary to most criminal law rules, doubts should be resolved in favor of the tribe rather than the individual. It must be remembered that we are talking here of courts with limited penal power.</p> <p>(4) The Task Force recommends reconsideration of the jurisdictional provisions of this Act -- or rather the lack of jurisdictional provisions. This Section providing for habeas corpus review is the only jurisdictional provision in this Act. Yet as far back as 1973 of some 40 or 50 cases decided under this Act, only 3 involved a criminal matter. As the situation stands, the jurisdictional reach of federal courts and the remedial orders which they feel free to enter is virtually unlimited. This is in complete contrast to all other federal civil rights legislation and is of dubious legality.</p> <p>See discussion Part IV, pgs 37-45. Limitations on the scope of jurisdiction under this Act should be defined.</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
1303	(continued)					(5) Congress should enact provisions to make it crystal clear that this Act was not intended as a general waiver of sovereign immunity of the tribes. The holding in <u>Loncassion v. Leekity</u> , 334 F.Supp. 370 (D.C. N.M., 1971) authorizing a money judgment against the tribe should be specifically rejected by Congress. Proposals for limitation on judicial remedies are proposed in Part V of this Report.
1311- 1312	Not charted					This provision should be dropped from any future recodification. It is a single shot item of legislation rather than permanent and general. In addition a proposed Model Code was published in Vol. 40, Federal Register, No. 72, p. 16689 on April 14, 1975. By the time any codification is completed this provision will have been executed.
1321- 1326	Jurisdiction - State Civil and Criminal			X		The Task Force recommends amendment and revision of these provisions in conformity with the principles of S. 2010, 94th Cong. See Discussion Part V of this Report, pgs. 154-163, particularly p. 162.

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
1327- 1330	Open					
1331	Fed. Adm. - Ch. 3				X	Consolidate with Secs. 81, 82a.
1332- 1340	Open					
1341	Fed. Adm. - Ch. 1 (x ref Fed. Adm. - Ch. 8)			X		<p>This provision should be consolidated with Sec. 3 requiring compilation of statutes pertaining to Indian affairs and distribution to Indian agents. The Task Force proposes the following amendments:</p> <p>(1) That subsection (a)(1) be amended to delete the language "in force on Sept. 1, 1967" and substitute therefore "... including special regulations of all federal agencies relating to the regulation of Indian property or persons or the delivery of services to Indians..."</p> <p>In April 1975 the Department of the Interior, in compliance with this provision published a document entitled "Supplement to Kappler's Indian Affairs: Laws and Treaties -- Compiled Federal Regulations Relating to Indians"</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
1341	(continued)					<p>This document was based on the 1973 Code of Federal Regulations and is now considerably out of date. It should be brought current and maintained on an annual basis.</p> <p>(2) That subsection (a)(3) be amended to direct that the "opinions of the Solicitor's Office, Department of the Interior, relating to Indian affairs, including opinions and orders prepared by the Solicitor's Office for the signature of the Secretary, and opinions signed by the Solicitor, Deputy Solicitor and the Associate Solicitor for the Division of Indian Affairs along with tables of authorities cited and construed by said opinions, be compiled by the Department of the Interior, be maintained on a current annual basis, and be published as a government document at the Government Printing Office."</p> <p>The purpose of this amendment is to reverse a decision of the Department of the Interior regarding the scope of material covered by this provision as now written.</p> <p>From 1971 to 1975 the Indian Civil Rights Task Force in the Solicitor's Office, Department of the Interior, compiled all of the</p>

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<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
1341	(continued)					<p>material referred to in this proposed amendment for the period 1885 to April, 1973 and developed a comprehensive table of authorities cited and construed to accompany said material. In March 1975, over the objections of the Indian Civil Rights Task Force and the Associate Solicitor for the Division of Indian Affairs, the Solicitor ruled that <u>only</u> opinions bearing the signature of the Solicitor or Deputy Solicitor would be published. Opinions of the Associate Solicitor comprising fully one-half of the material would not be published nor would the table of authorities cited.</p> <p>We believe this decision was contrary to the legislative intent of this Section. (See particularly Hearings before the Subcommittee on Constitutional Rights of the Committee on the Judiciary, U.S. Senate, 89th Cong., 1st Sess., on S. 961-968 and S.J. Res. 40 on June 22, 23, 24 and 29, 1965, at pages 13-14, 29-35, 87-90, and 99-100. Excerpts from this Hearing are attached to this Report in the Appendix of Exhibits along with a letter of Sept. 11, 1975 from members of this Task Force to the AIPRC Commissioners explaining this issue.)</p>

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1341	(continued)					<p>The time and expense necessary to complete this publication would now be minimal -- the benefit to the Indian community in information access great.</p> <p>(3) That there be added to Sec. 1341(a) a fourth subpart requiring that the Bureau of Indian Affairs Manual be maintained on a current basis. A first step to this process will probably require a complete overhaul of the Manual. See discussion in Part VII of this Report.</p> <p>(4) That there be added to Sec. 1341(b) an additional proviso that the Department of the Interior shall provide free copies of these materials to each federally recognized tribe, including the thirteen regional corporations provided for in the Alaska Native Claims Settlement Act, in order that Indian people may have ready access to the treaties, statutes, regulations, and administrative rules that govern the Federal Indian relations.</p> <p>It is the intent of the Task Force that copies of the revision of the Handbook of Federal Indian Law referred to in Sec. 1341 (a) (2) also be supplied to each tribe</p>

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1341	(continued)					<p>free of charge when it is completed.</p> <p>This provision calling for free distribution of these materials codifies an informal agreement between Congress and the Department of the Interior set forth in Senate Report No. 93-252, 93rd Cong., 1st Sess., and House Report No. 93-931, 93rd Cong., 2d Sess., which accompanied an amendment to Sec. 1341(c) to provide for appropriation of printing costs.</p> <p>(5) Finally, the Task Force recommends that the Superintendent of Documents at G.P.O. be directed to make copies of all of these materials except the Bureau of Indian Affairs Manual available for public purchase. As of this date the Superintendent of Documents has refused to advertise the availability of the reprint of the first five volumes of <u>Kappler's, Indian Affairs, Laws and Treaties</u> on the grounds there is insufficient public interest. In the absence of advertisement this will become a self-fulfilling prophecy.</p>

TITLE 25 U.S.C. CONSOLIDATION & REVISION ANALYSIS

<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
1342- 1400	Open					
1401- 1407	Tribal Funds - Ch. 1 (x ref Misc. - Ch. 2)	X				No comment
1408- 1450	Open					
1451	Economic Development					No comment
1452	Economic Development	X				No comment
1453	Economic Development	X				No comment
1454- 1460	Open					
1461	Economic Development	X				No comment
1462	Economic Development	X				No comment
1463	Economic Development	X				No comment
1464	Economic Development	X				No comment
1465	Economic Development	X				No comment

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TITLE 25 U.S.C. CONSOLIDATION & REVISION ANALYSIS

<u>Sec.</u>	<u>Chart Classification</u>	<u>Retain</u>	<u>Repeal</u>	<u>Amend</u>	<u>Consolidate</u>	<u>Task Force Comment</u>
1466	Economic Development (x ref Lands - Acquisition and Consolidation)	X				No comment
1467	Economic Development	X				No comment
1468	Economic Development (x ref Fed. Adm. - Ch. 8)	X				No comment
1469	Economic Development	X				No comment
1470- 1480	Open					
1481- 1494	Economic Development	X				No comment
1495	Economic Development (x ref Lands - Acquisition and Consolidation)	X				No comment
1496- 1498	Economic Development	X				No comment
1499- 1510	Open					

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1511	Economic Development	X				
1512	Economic Development (x ref Fed. Adm. - Ch. 8)	X				No comment
1513- 1520	Open					
1521- 1524	Economic Development	X				No comment
1525- 1540	Open					
1541	Economic Development	X				No comment
1542	Economic Development (x ref Fed. Adm. - Ch. 6)	X				No comment
1543	Economic Development (x ref. Fed. Adm. - Ch. 6,8)	X				No comment

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Appendix I, Ex. 1

AMERICAN INDIAN POLICY REVIEW COMMISSION  
 CONGRESS OF THE UNITED STATES

HOUSE OFFICE BUILDING ANNEX No. 2  
 20 AND D STREETS, SW.  
 WASHINGTON, D.C. 20518  
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September 11, 1975

TO: The Commissioners  
 American Indian Policy Review Commission

FROM: Peter S. Taylor and Karl Funke  
 Task Force on Consolidation, Revision  
 and Codification of Indian Law

SUBJECT: Publication of Compiled Opinions of the Solicitor's  
 Office of the Department of the Interior Relating to  
 Indian Affairs

In February 1971 the Solicitor's Office in the Department of the Interior organized a group known as the Indian Civil Rights Task Force. The purpose of this Task Force was to carry out the provisions of Titles III and VII of the 1968 Civil Rights Act (25 U.S.C. 1311, 1341). Among the functions which this Task Force was to perform was, to the extent feasible, the compilation and publication of Solicitor's opinions of the Department of the Interior relating to Indian affairs.

The purpose of this letter is to advise you of a very important decision made by the Department of the Interior which in the judgment of the staff of the now defunct Indian Civil Rights Task Force was contrary to the intent of Congress mandated in Title VII of the 1968 Civil Rights Act (25 U.S.C. 1341) and conflicts with the thrust and purpose of the Freedom of Information Act (5 U.S.C. 552 et seq.) so recently amended and expanded by Congress. The decision to which I refer involves the scope and extent of material in the form of legal opinions and memoranda emanating from the Solicitor's office which is to be published pursuant to the requirements of the 1968 Civil Rights Act.

In the course of its work, the Civil Rights Task Force collected approximately 2,500 opinions covering the period 1885 to the present. A very comprehensive Table of Authorities Cited and Construed was prepared to accompany publication of this material. The collected materials bore the signatures of Assistant Secretaries of the Interior, the Solicitor, the Deputy Solicitor, and the Associate Solicitor for the Division

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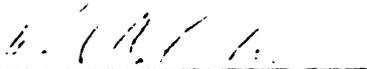
of Indian Affairs. After compilation of this material and after development of the Table of Authorities, the present Solicitor countermanded the authorizations and directives of his predecessor and decided that only opinions bearing the signature of the Solicitor or the Deputy Solicitor would be published. Thus opinions signed by Associate Solicitors as well as Assistant Secretaries were excluded from publication. Because of the complications this caused with the Table of Authorities Cited and Construed, this table was abandoned entirely.

The result of this decision was that the number of opinions to be published was cut in half. In recent years the bulk of opinions emanating from the Solicitor's office in Interior have been signed by Associate Solicitors. There is simply no difference in the kind and quality of opinion signed by the Associate Solicitor as opposed to the Solicitor. Both have a direct impact upon policy positions of the Department of the Interior; both have the same final effect on tribes or people who are the subject of consideration. The value of the compiled opinions which will not be published are certainly as important to Indian law as are the opinions which will be published. The value of the Authority Cited table is readily apparent. It guides the researcher to every opinion which cites or contrues any given statute, constitutional provisions, both federal and tribal, and state and tribal code provisions.

We believe the publication of this material is very important to Indian law. We believe the legislative history of the 1968 Civil Rights Act bears out that Congress intended by this legislation that opinions signed by Associate Solicitors as well as opinions signed by the Solicitor himself should be published. We recommend that this Commission take whatever steps it deems appropriate in order to secure publication of this material.

We have not had sufficient opportunity to confer with our fellow Task Force members with respect to this letter. We therefore submit this letter in our individual names and not as a Task Force position.

  
Peter S. Taylor

  
Karl Funke



**APPENDIX I, EXHIBIT 2**

**TITLE 25, U.S.C.**

**(Apparently obsolete provisions not yet repealed)**

25 U.S.C. 23 (omitted)	25 U.S.C. 126	25 U.S.C. 272
25 U.S.C. 24 (omitted)	25 U.S.C. 127	25 U.S.C. 272a
25 U.S.C. 25	25 U.S.C. 128	25 U.S.C. 273
25 U.S.C. 25a	25 U.S.C. 129	25 U.S.C. 276
25 U.S.C. 27 (omitted)	25 U.S.C. 130	25 U.S.C. 277
25 U.S.C. 32 (omitted)	25 U.S.C. 132	25 U.S.C. 279
25 U.S.C. 41	25 U.S.C. 134	25 U.S.C. 283
25 U.S.C. 41a	25 U.S.C. 135	25 U.S.C. 284
25 U.S.C. 58	25 U.S.C. 137	(superseded)
25 U.S.C. 60	25 U.S.C. 138	25 U.S.C. 285
25 U.S.C. 61	25 U.S.C. 139	25 U.S.C. 298 (obsolete)
25 U.S.C. 65	25 U.S.C. 140	25 U.S.C. 303 (omitted)
25 U.S.C. 66	25 U.S.C. 141	25 U.S.C. 304a
25 U.S.C. 72	25 U.S.C. 146	25 U.S.C. 306
25 U.S.C. 91	25 U.S.C. 147	25 U.S.C. 306a
(superseded)	25 U.S.C. 157	25 U.S.C. 384
25 U.S.C. 92	25 U.S.C. 185	25 U.S.C. 561 (omitted)
(superseded)	25 U.S.C. 187	25 U.S.C. 562 (omitted)
25 U.S.C. 101	25 U.S.C. 192	
25 U.S.C. 102	25 U.S.C. 200	

**(Prepared by Ralph Reeser, Office of Legislative Development, Bureau of Indian Affairs)**



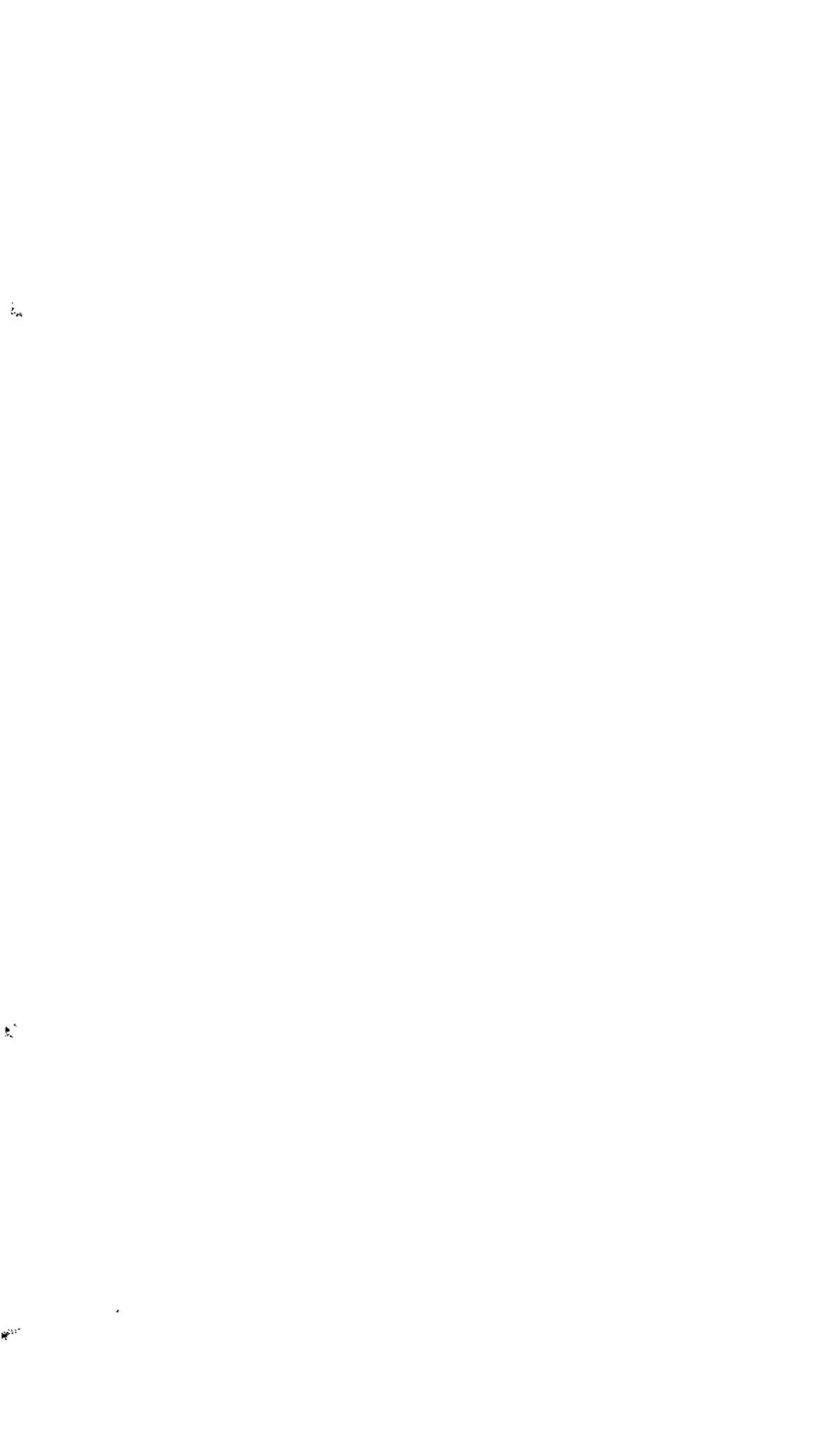
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**APPENDIX II**

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## APPENDIX II—EXHIBITS

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This Appendix contains all of the exhibits referred to in the main body of our report. For ease of reference, we have identified these exhibits in accordance with the part of the report in which they were cited and discussed.

A variation of this organizational procedure occurs in connection with the exhibits supporting the discussion of Indian employment and contracting preference. These exhibits are arranged in Part VI as exhibits 1, 2, 3, 4. A separate index for each of these exhibits appears at the front of each exhibit, and each document within the exhibits has been assigned an index number.



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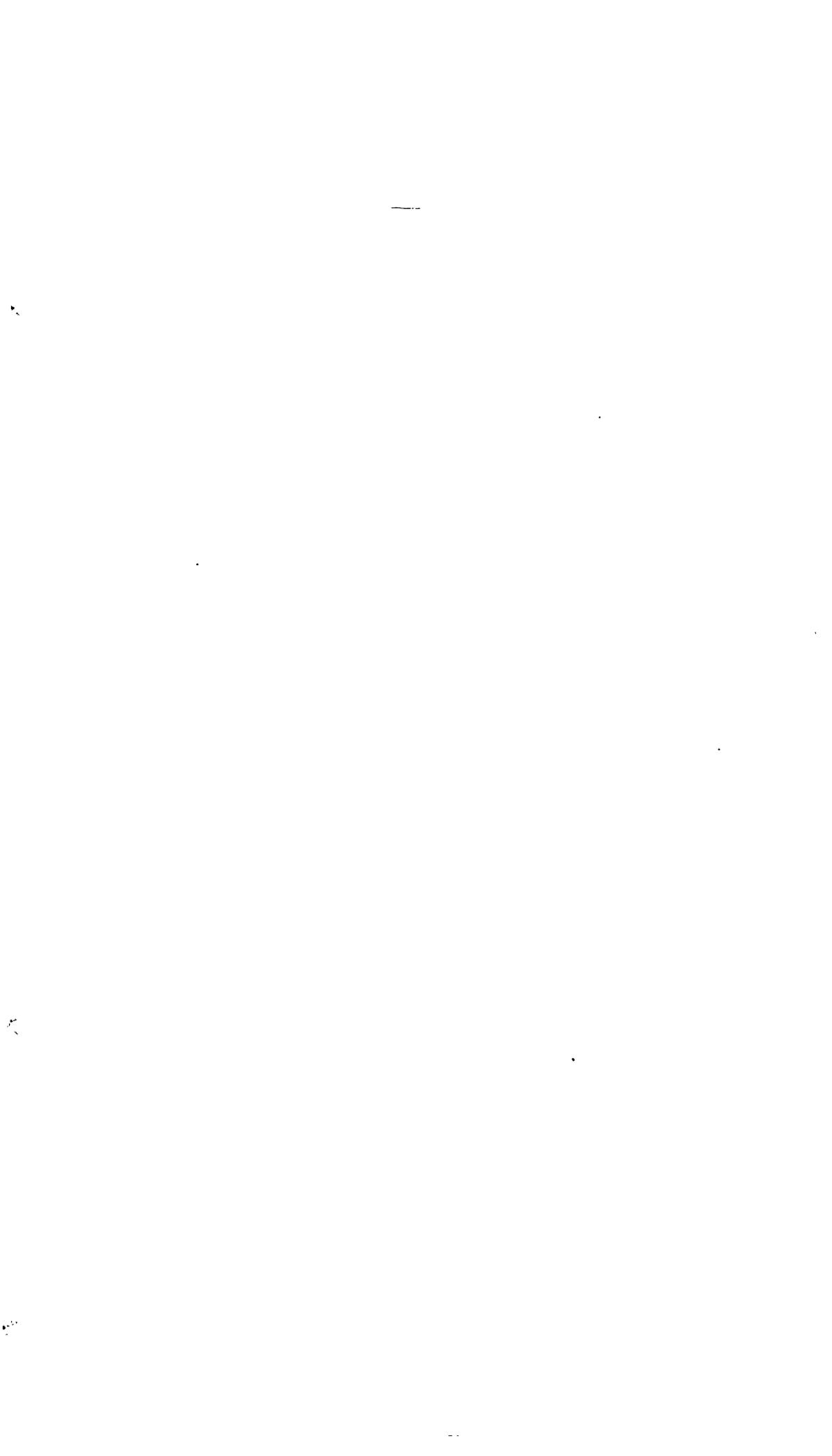
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## APPENDIX II

### PART I. INTRODUCTION

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#### PART I, EXHIBIT 1A

SMALL BUSINESS ADMINISTRATION,  
Washington, D.C., April, 30, 1975.

Mr. MARVIN J. SONOSKY,  
*Attorney-at-Law,*  
*Washington, D.C.*

DEAR MR. SONOSKY: This is in reply to your letter of March 24, 1975, to Administrator Kleppe. In your letter you take exception to the February 21, 1975, opinion of our Denver Regional Counsel which said, in effect, that corporations chartered by Indian tribes to carry out business projects are not eligible for SBA assistance unless such businesses are incorporated under state law.

Careful consideration has been given to your submissions, both written and oral, and we must conclude that the position of our Denver Regional Counsel is correct.

An applicant engaged in an eligible activity, and organized and operated for profit in a manner similar to its private enterprise competitors, is eligible to apply for a loan even though all of its outstanding capital stock is held by a nonprofit corporation or other organization which would not be an eligible loan applicant. If the private profit subsidiary will operate within the private enterprise system, i.e., operate for a profit, pay corporate taxes, and produce distributable income for its stockholders, it would be eligible. If it will operate as an alter ego for its nonprofit parent, i.e., to distribute products or services at a minimum cost to its customers or member stockholders rather than to earn a profit by merchandising at competitive prices, then it would not be eligible.

In the instant case, the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation chartered the Fort Peck Mfg. Co. pursuant to Article X, Section 5, of the Constitution of the Tribes.

The Board of Directors of Fort Peck Mfg. Co. consists of five members, three of whom must be members of the Fort Peck Tribal Executive Board. There appears to be no stock issued by the Fort Peck Mfg. Co. However, the Articles of Incorporation provide that within 30 days after the close of its fiscal year the net earnings of the company shall be transferred to the Fort Peck Tribal Executive Board for deposit to the credit of the tribes.

The Articles of Incorporation provide that the Board of Directors, at its initial meeting, shall elect from its own membership a President, Vice-President, Secretary and Treasurer who shall serve during their respective terms as Members of the Board. It is obvious that the Fort Peck Mfg. Co. really operates as a nonprofit alter ego of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation.

It is our opinion that, unless a business entity is formed under and subject to the laws of a particular state, subject to the taxes and regulations of like enterprises, that business entity is not operating within the competitive free enterprise system which is contemplated by the Small Business Act.

As you have been advised, this Agency would have no objection if the stock on the Fort Peck Mfg. Co. were owned entirely by the tribe or individual Indians provided that the corporation itself were formed under state law.

This position does not preclude assistance to Indian industries. As you have pointed out in your letter, SBA has in the past contributed greatly to, and is committed to continue to assist small businesses operated by members of Indian communities.

However, we must conclude that in order for the Fort Peck Mfg. Co. to be eligible for SBA assistance it must be an independently owned and operated corporate entity, organized under state laws for private profit. As stated above this proposition does not preclude the stock of that corporation being held by the tribe or members of that tribe.

We should also point out that this corporation must comply with our size standard regulations, which require that we must include in our size determination the Fort Peck Mfg. Co.'s affiliation with other business entities which may be owned or controlled by the tribe.

Sincerely,

H. GREGORY AUSTIN,  
*General Counsel.*

Part I, EXHIBIT 1B

47 BIAM SUPPLEMENT NO. 3

CREDIT AND FINANCING: FINANCING BY CUSTOMARY FINANCIAL INSTITUTIONS

(c) *Small Business Administration.*—A Memorandum of Understanding between the Administrator of the Small Business Administration and the Commissioner of Indian Affairs was entered into on April 27, 1971, regarding financial assistance available to Indians through the Small Business Administration. Provisions of the memorandum are as follows:

"MEMORANDUM OF UNDERSTANDING"

Whereas it is the desire of the Small Business Administration and the Bureau of Indian Affairs to provide whatever assistance is possible consistent with legislative authority and published rules and regulations to encourage American Indians, Eskimos, and other Alaskan natives to participate in the economic growth of the Nation through ownership in business enterprises, it is agreed that:

1. The Bureau of Indian Affairs, tribes, and other Indian organizations are, in some instances, able to furnish equity capital either through grants or on a loan basis which can be used as a lever to increase the availability of direct loans, loan guarantees, and participation loans by the Small Business Administration for the financing of Indian-owned and operated business enterprises.

2. The Small Business Administration under its Economic Opportunity Loan Program is able, provided funds are not available from other sources, to furnish financial assistance up to \$25,000 (SBA share) in participation with private financial institutions or on a direct basis when no participation is available. In addition, the Small Business Administration can guaranty rentals for the life of a lease but in no event for a term in excess of 20 years under its Lease Guaranty Program. These loans and guarantees cannot be used for equity investment purposes.

3. The Bureau of Indian Affairs will take vigorous steps to encourage tribes and other Indian organizations with available funds to make equity capital loans to Indian-owned businesses on a deferred payment basis. These loans will be subject to subordination and standby agreements with the Small Business Administration.

4. The Small Business Administration is making every effort, under OPERATION BUSINESS MAINSTREAM, to provide loans and loan guarantees to Indians, Eskimos, and other Alaskan natives for borrowed capital purposes. Proceeds of these loans may be used for business construction, expansion or conversion; for purchase of machinery, equipment, facilities, supplies, or materials; or for working capital.

5. Where individual Indians are eligible for grants or direct loans from the United States, the Bureau of Indian Affairs will furnish such grants or loans for equity capital and other requirements to the extent funds are available.

6. The Bureau of Indian Affairs will take appropriate steps to determine whether equity capital financing is available from tribes and other Indian organizations, or from the Bureau, and will advise the Small Business Administration.

7. The Small Business Administration will arrange for its field office personnel to visit reservations according to prearranged schedules and will so notify reservation Superintendents and Tribal Councils.

8. The Bureau of Indian Affairs will assist the Small Business Administration in serving reservation areas including but limited to the following:

a. Cooperating with SBA personnel in arranging scheduled visits to reservations and arranging office space for their use.

b. Serving as an on-site source of information to Tribal Councils and individual Indians on SBA programs.

- c. Assisting Indian applicants in preparing loan applications.
  - d. Advising SBA personnel on ways in which security interests in trust property can be perfected.
  - e. Providing information on the nature of an applicant's title to or interest in trust land, including copies of BIA records as appropriate.
  - f. Providing available credit information.
9. The Bureau of Indian Affairs and the Small Business Administration shall develop jointly details of operation procedures designed to carry out this agreement.
10. This agreement may be amended at any time by written agreement of both parties.
11. This agreement shall take effect upon the date of the execution thereof."

PART I, EXHIBIT 2

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U.S. DEPARTMENT OF THE INTERIOR

HORTON AGENCY TASK FORCE REPORT

On May 13, 1975, a Task Force was established to address the problems which had evolved over an extended period of time at the Horton Agency and among the tribes served by that Agency. Ultimately, the Task Force was assembled following an insistent request from Mr. Forrest Fee, Chairman of the United Tribes of Kansas and Southeast Nebraska and also Chairman of the Iowa Tribe, that the Commissioner send representatives to examine closely the prevalent problems among the tribes of that area. Persons participating on this Task Force include Stuart Jamieson of the staff of NCAI; H. Zakojl of the Portland Area Community Development Staff; Ray Sanford and Ben Imbrock of the Solicitor's staff in Tulsa and Anadarko, Oklahoma; Scott Keep of the Solicitor's staff, Washington; Mel Rousseau, Aberdeen Area Office Personnel Staff; and Ted Krenzke, Director, Office of Indian Services.

On the day it was established, the Washington members of the group met with Commissioner Thompson for the purpose of receiving his charge as to their responsibilities. The Commissioner indicated his major concerns were the difficulties among the tribes and directed the Task Force to meet with all parties to the various problems in evidence. The Task Force was to make every effort to develop a climate in which the parties might work out solutions to their own problems through negotiation. Additionally, the group was to collect the information provided by the various factions and report findings and recommendations to the Commissioner.

I. THE SUPERINTENDENCY

The Superintendent at Horton Agency has been the center of controversy for well over a year. In June 1974 the Kickapoo Tribal Council demanded his removal in vehement terms. In response a two member investigating team gave intensive attention to a list of charges submitted by the Kickapoos and compiled a lengthy report which in effect found no real substance to the charges. This report is a matter of ready record which has been examined in every detail by the members of this Task Force.

Although a Kickapoo Tribal election seemingly reduced the effort to remove the Superintendent, pressures again surfaced early this year and were incorporated with efforts to remove the four Kickapoo Tribal members elected on October 7, 1974. On January 30 the Area Director announced he would reassign the Superintendent to the Anadarko Area Office after meeting with those seeking the removal. In response, a delegation of tribal leaders came to Washington and on February 26 presented to the Commissioner a lengthy appeal and petition in support of the Superintendent. At that time action on the matter was placed in the hands of R. V. Butler, Acting Deputy Commissioner, who responded to the petitioners with a letter in which he indicated the Superintendent would not be moved until there was an examination of the appeal. Because Mr. Butler was shortly thereafter assigned to a special Pine Ridge Commission, action on the appeal was left in a state of limbo.

On April 9, 1975, about sixty members of the Kickapoo and Potawatomi Tribes occupied the Horton Agency offices. They refused to leave the premises until assured that the Superintendent would be removed and that the Kickapoo Council election held on March 26 would be recognized. The Area Director and Mr. John Perez of the Community Relations Service of the Justice Department negotiated with the occupants, and the Area Director signed a statement acceding to these demands. The Superintendent was told he was being removed from the office on the following day.

Subsequently the Superintendent sent telegrams to the Central Office requesting confirmation of this detail to the Anadarko Area Office and later asking that he be placed on administrative leave until the matter was addressed. Additionally, numerous letters in support of the Superintendent were received from the United Tribes of Kansas and Southeast Nebraska, individual tribal members, as well as other interested individuals and groups. Many were transmitted from Congressional offices. The Task Force found considerable criticism of the BIA for not responding to this correspondence more promptly.

The Task Force found numerous supporters of the Superintendent as well as numerous critics. It is our conclusion that, while his overall conduct as a Bureau employee over many years has been excellent, he has now become identified so extensively with certain factions of the affected tribes that he has become unacceptable to the other segments. Because of the strong feelings of one faction against him, it is unlikely he will ever be acceptable to them. Consequently, it is recommended that he be permanently reassigned away from Horton as soon as possible.

In a number of ways the Superintendent may have been unfairly treated. He has had to withstand a large volume of personal, verbal abuse and for a long time there has been only a half-hearted Bureau effort to work out a solution to the problem. At this point he feels, perhaps with some justification, that the Area Director and the immediate past Acting Area Director have been almost totally nonsupporting to the Agency and its staff. Thus, the Superintendent should now be dealt with in a way which would enhance his continued effective service as a Civil Servant, either in or out of the Bureau.

The Task Force specifically recommends the following actions:

1. The Superintendent's request for administrative leave until the end of May, 1975, should be responded to.

2. After June 1, 1975, he should be placed on detail to the regional Special Assistant to the Secretary, the Muskogee Area Office, or some other suitable location in the Department of the Interior.

3. Central Office personnel staff should be directed to give top priority to assisting the Superintendent in being permanently placed in a suitable Federal position either in or out of the Interior Department. Since this is to the benefit of both the Superintendent and the entire situation at Horton, special assistance from the Department and Civil Service Commission would be appropriate and should be insisted upon if necessary. There should be no delay in this action as its continued uncertainty places major constraints on any other progress.

4. All correspondence relating to this matter should be responded to immediately, indicating what actions are taking place. Letters should be written to all the parties immediately concerned.

Another matter needing immediate attention is the appointment of a competent, experienced Bureau administrator to serve as Acting Superintendent. The current Acting Superintendent is doing an excellent job of holding the situation together. She does not, however, wish to have the responsibility and her previous experience does not lend well to the broad responsibilities carried by the Superintendent, especially in a location such as Horton with its limited support staff. Therefore, it is recommended that immediate steps be taken by the Washington Office to appoint a person with the above described qualifications to the acting position. Because of the intricacies of the problems of the Potawatomi and Kickapoo Tribes, it would be preferable if this individual had considerable experience in tribal governmental affairs and have the ability and confidence to make fairly independent, far-reaching decisions.

The permanent position should be advertised and filled as soon as possible by the Washington Office. Special care should be made to recruit a capable individual for the position, as well as one relatively free from personal problems which might interfere with his effectiveness. It would be well to consider raising the grade to a GS-14. Although the staff and budget are fairly small, the problems are enormously complex and the position requires an individual with exceptional maturity and judgment.

## II. THE AREA OFFICE AND THE AREA DIRECTOR

There is some indication that the relationship of the Agency and the tribes under the Agency to the Area Office changed substantially following the retirement of the former Area Director some two years ago. Until that time the Area Office had a minimally direct relationship to the tribes, but worked through the

Agency Superintendent and his staff. The Area Office primarily provided technical assistance at the request of the Agency and allegedly only once over a three year period ruled on an appeal of a tribe from an action of the Agency.

After the Area Director retired, the Acting Area Director prompted a change in the kinds of relationships between the Anadarko Area Director and the Horton Agency tribes. The Acting Area Director spent a great deal of time in direct relationships with only certain of the tribal leaders. In particular, he is alleged to have related to an element which was opposed to the United Tribes organization and which also was moving toward having the Superintendent removed. The present Area Director is alleged to have continued these practices. Because of this, certain tribal leaders and members have indicated an unwillingness to work with the present Area Director and have verbally requested that they be removed from the jurisdiction of the Anadarko Area Office and placed under the Muskogee Area Office, or some other arrangement made.

The Task Force heard about a number of minor incidents of alleged inappropriate conduct on the part of the Area Director and former Acting Area Director. The Task Force did not attempt either to prove or disprove those allegations. The truth or falsehood of the allegations is of little importance. What is important about them is that they reflect the nature and extent to which the Area Office and the Area Director have become the objects of intense feeling, with the attitudes of the community polarized in directions almost exactly the opposite to those attending the Superintendent.

Severe criticism has resulted, however, from two recent actions by the Area Director, one of which was the takeover of the Agency Office by militant Potawatomes. The other was his verbal support of the Kickapoo Tribal recall election of March 26 in the face of the Commissioner's April 18 memorandum refusing to recognize the election.

In respect to the takeover of the Agency the criticism is wide spread from the membership of all four tribes, Agency employees, law enforcement staff at all levels of government, and the non-Indian community which contacted the Task Force. Specifically, the critics complain that in dealing with the matter, the Area Director dealt unilaterally with the militant leadership. Law enforcement personnel indicate he did not cooperate with them, and, by capitulating to militant demands, he has established a climate in which the militants believe they may achieve whatever they wish by such actions involving civil disobedience. Many tribal leaders and members take the position that the Agency was established to serve all of the tribes under the Agency and that when the Agency was taken over, the leadership of all of the tribes should have been consulted prior to a major action such as removing the Superintendent inasmuch as all were consulted at the time he was assigned to Horton.

In the Kickapoo matter, the Area Director is accused of taking a stand on the recall election clearly in conflict with the Commissioner's ruling and the legal advice he has received. His critics state that this has encouraged militant elements in their actions and has prevented the establishment of a climate to work out a solution to the present impasse.

A major factor in the relationship between the Area Director and the tribes of the Agency is his position with regard to the United Tribes. He views the United Tribes as a group which is self-serving and alienated from the bulk of the Indian people, and particularly many of the Kickapoos and Potawatomes, who are the most numerous and who are more traditional in their cultural identification. He believes that the programs of the United Tribes fail to provide either services or employment to such individuals and his feelings in this respect were strongly reinforced by statements of his supporters among the Kickapoo and Potawatomi Tribes.

In respect to the takeover of the Horton Agency Office, the Area Director indicates his sole intent was to see that the individuals were removed from the building without damage to property, or injury or loss of life. In this he felt he was successful and indicated that other factors were not particularly significant.

As to the Kickapoo tribal impasse, the Area Director indicated the problems of the tribe had become critical and that it is necessary to recognize the recall election of March 26 in order to keep the tribal government functioning. He viewed the objections to recognition raised in the April 18 memorandum of the Commissioner as technical in nature and not substantive. He expressed the opinion that other solutions were not possible, including compromise.

Clearly, much emotionalism surrounds the issues at Horton and statements made by both sides must be considered accordingly. Of primary concern, how-

ever, is the fact that both the Agency and the Area Office have become strongly identified with either one side or the other and that the net result has placed the Bureau in an intolerable posture where it is extremely difficult for the Bureau to be of constructive help. The Agency and the Area Office has reached the point where they are at cross purposes, and both have lost credibility with major elements of the tribes.

Every possible effort should be made to correct this situation. Actions with regard to the Superintendency have been recommended above. As to the Area Director and the Area Office, it is recommended that the Area Director be invited to Washington to meet with the Commissioner and the members of the Task Force to review the Task Force's findings. What has occurred relative to the roles of the two respective Bureau units should be emphasized. Thereafter, emphasis should be placed on actions to be taken to restore both offices to roles in which they will not be identified so strongly with the respective tribal factions and with the Bureau working in unison at all levels. An effort should be made to utilize the Agency staff to the maximum extent possible. Moreover, a special effort should be made to make certain that the Area Office is not identified with any one side or faction. Particular pains must be taken to relate to both sides and special consideration given to all elected leaders. This will be a demanding task at Horton since the population is divided on many issues. The task is complicated even more by the fact that the Potawatomes do not have a recognized governing body, which gives rise to many opportunities for self-appointed spokesmen to present their views in a vocal fashion.

Special attention should be given to dealing with the militant elements of the tribes. It is important that their rights not be abrogated in any way, but it is also essential that they not be allowed to override democratic processes by use of either civil disobedience or threats of violence. It may be anticipated that their verbal wrath will be spent on any decisions contrary to their wishes. While threats may be only threats, past experience suggests a small number of these individuals may be capable of violations of the law on occasion. Certainly, the Area Office should keep this in mind and give a top priority to reestablishing a climate of cooperation with law enforcement agencies.

### III. IMPASSE OF THE KICKAPOO TRIBAL COUNCIL

The Constitution of the Kickapoo Tribe of Kansas provides for a seven member tribal governing body. The two year terms of the tribal council members are staggered. On October 7, 1974, four new council members were elected and shortly thereafter the seven members met for the purpose of electing officers from among themselves. On January 16, 1975, a general council meeting of the Kickapoo Tribe was held and an effort was made to remove Jerry Cadue, Frank Wahwassuck, Gwen Davis and Hildrith Crith, the four council members elected in October. Since the attempted removal did not comply with the terms of the tribal constitution, the Superintendent and Area Director held that the removal was invalid. On February 27 the Acting Deputy Commissioner affirmed their decisions. In the meantime on January 30, 1975, the Area Director, Anadarko, travelled to the Horton area and met with only two members of the minority faction of the tribal council before announcing that he was reassigning the Superintendent, Horton Agency, to the Anadarko Area Office. The four newly elected members opposed the Area Director's action.

On March 26, 1975, after having circulated a recall petition among their tribal members, the three minority faction members of the council again attempted to hold an election to recall the other four members and install others in their stead. The meeting was called on extremely short notice and the petitions were never reviewed by the council as a whole prior to the calling of the meeting. The tribal constitution states that it is the responsibility of the tribal council to call the election on any recall petitions. Accordingly, the Superintendent and Area Director again refused to recognize the results of the recall election and on April 18 the Commissioner again affirmed their decisions. The Area Director subsequently requested that the Commissioner reconsider his decision and the request was denied. Although the Commissioner's decision was a final decision in the exercise of the authority delegated to him by the Secretary, the appeal of Amos Goslin, Chairman of the tribal council and one of the three minority faction members, was erroneously referred to the Board of Indian Appeals, Office of Hearings and Appeals. The Commissioner's action on Mr. Goslin's actually constituted final departmental action and there is no further administrative review of the Commissioner's action.

A memorandum should be sent to the Director, Office of Hearings and Appeals, advising him that Mr. Goslin's appeal was erroneously referred to him and requesting that he dismiss the appeal as not being properly before them. Mr. Goslin should be advised of this request as well as being notified as to what action OHA takes on it. The dismissal of the appeal will exhaust Mr. Goslin's administrative remedies and thereby permit him to proceed directly to Federal court without further delay if he so desires.

The seven members of the council as recognized by the Commissioner should be invited to Washington at Bureau expense in an effort to get them to meet together at a neutral place. The Task Force was able to obtain a copy of the recall petitions and delivered it to the four subject members for their review. Since the four members who are the subject of the recall petitions have now had two weeks in which to review the petitions, they should be prepared to pass on the validity of the petitions and, if valid, establish a time, date and place for tribal meeting and recall election. Written election procedures should also be adopted by the council to prevent any further challenges to the validity of the recall elections. For this to work, both sides must compromise some of their existing attitudes. Failure of such an effort will almost certainly result in costly and lengthy legal proceedings and a paralysis of tribal government activities.

#### IV. ABSENCE OF TRIBAL GOVERNMENT FOR THE PRAIRIE BAND OF POTAWATOMI INDIANS

On October 4, 1972, the Commissioner of Indian Affairs announced to the Prairie Band of Potawatomi Indians that he was withdrawing his recognition of the band's governing body and his approval of the band's constitution. The Commissioner took this extreme action because the band's seven member governing body had been badly divided for a number of months with each faction refusing to meet with the other. The three member faction had also attempted to remove the majority faction from office without complying with the terms of the Band's Constitution. The provisions of the constitution did not provide a way for the tribal members to resolve the deadlock among themselves as a practical matter.

At the same time that the Commissioner announced his actions with regard to the governing body and the band's constitution, he also announced that there would be a tribal meeting to elect a committee to draft a new constitution. It was originally anticipated that the drafting committee would be able to complete its work quickly and that the band would have a better governing document and a new governing body elected pursuant to it within a very short time.

Before the election for the drafting committee could be held, members of the minority faction filed suit in the case of *Bullene v. Bruce*, Civil No. KC-3664, United States District Court, District of Kansas. After one attempt in September, 1973, to have the election of a drafting committee conducted by an impartial third party, the National Center for Dispute Settlement of the American Arbitration Association, the election was held in abeyance pending a resolution of the lawsuit. The District Court finally ruled on the case on December 30, 1974, and dismissed the complaint for lack of subject matter jurisdiction. Although the case is now on appeal, the band did go ahead and elect a drafting committee on January 8, 1975. There were ten candidates for the five positions on the committee and 625 out of 1,440 eligible voters cast their ballots by mail in the election. In the nine previous tribal elections, all of which were conducted at tribal meetings, an average of only [copy illegible] voted. Previously, the largest voter participation had been 176.

The drafting committee does have a draft, or drafts, of a proposed constitution. It is apparent from our meetings with the members of the band and the drafting committee, in particular, that there are a great many members of the band who remain concerned about and distrustful of the Indian Reorganization Act (48 Stat. 948). It has been suggested that the group should organize and adopt a constitution pursuant to Section 16 of this act (25 U.S.C. 476). They have requested a list of the pros and cons of organizing under this act. They would also like to examine the original ballots and other documents which establish that the Prairie Band did in fact vote not to reject the Indian Reorganization Act and therefore come within its provisions.

The other major problem facing the band is the question of its representation on the Inter-tribal Council of the United Tribes of Kansas and Southeast Nebraska. The constitution of the United Tribes calls for the governing bodies of each of the member tribes to represent their respective tribes on the Inter-tribal Council. Thus, the Prairie Band, as originally organized, was entitled to seven

members on the council but these seven members had only one vote. In October 1972 when the Commissioner withdrew his recognition of the band's governing body, he appointed Joe Nioce to continue to represent the band on the council. Some members of the band are now questioning the right of Joe Nioce to represent the band on the Inter-tribal Council.

In addition to the major problems of the governing document and representation on the Inter-tribal Council, there is a need to clarify the status of what authority, if any, James Wahwassuck has to represent the Prairie Band. On April 4, the Area Director accepted an invitation from Mr. Wahwassuck to meet with members of the Prairie Band at St. Mary's Indian Center on April 24. On April 8, Mr. Wahwassuck acting as a "tribal representative" requested that Senator Pearson send a representative to the meeting. When the Horton Agency building was occupied on April 9, the Area Director entered into a written agreement with members of the Kickapoo Tribe and the Prairie Band. Mr. Wahwassuck signed the agreement as the "representative of the Potawatomi Tribe". Mr. Wahwassuck does not have any authority to represent the Prairie Band. We have no information, however, as to what authority, if any, he might have to speak for individual members of the tribe.

It is recommended that the Commissioner make available to the Prairie Band of Potawatomi Indians whatever financial and technical assistance is necessary to enable the committee to complete its work on a proposed constitutional draft at the earliest possible date. Assistance to the committee should be given an absolute top priority. The search for documents which the committee has requested should be completed as soon as possible.

Mr. Nioce should be allowed to continue to represent the band on the Inter-tribal Council of the United Tribes. In the event that Mr. Nioce determines that he needs to know the consensus of the band on an issue before the Inter-tribal Council, the Commissioner should make the necessary financial and technical assistance available to him to either conduct a meeting or a mail-out survey of tribal members. In his memorandum to the band of October 4, 1972, in which he withdrew his recognition of the band's governing body, the Commissioner indicated that such a consensus of the band could be obtained if it became necessary.

The Area Director, Anadarko, the Superintendent, Horton Agency, and their staffs should be advised that Mr. Wahwassuck does not represent the Prairie Band and that they are not authorized to treat him as a tribal representative.

It bears repeating that the very highest priority should be given to existing Prairie Band of Potawatomi Indians in reestablishing a tribal government that is representative of its membership and recognized by the Interior Department.

#### V. THE UNITED TRIBES OF KANSAS AND SOUTHEASTERN NEBRASKA

The United Tribes is a non-profit organization incorporated under the laws of the State of Kansas in the summer of 1972. The United Tribes was originally organized by all four of the tribes served by the Horton Agency, the Iowas, the Sac and Fox, the Kickapoo and the Prairie Band of Potawatomi Indians. The essential purpose of the organization is to provide a common entity capable of contracting with the various Federal agencies to operate social service programs. The Kickapoo Tribe has since withdrawn from the organization, preferring to establish and operate their own programs.

This withdrawal is a major factor in the split between the factions of the Kickapoo tribal council with the minority of the three members wanting to continue their independence and the majority of four wanting to rejoin the United Tribes which employs two of them.

In recent weeks some individual members of the Prairie Band have stated that they want the Band to withdraw from the United Tribes also.

Each of the member tribes is entitled to seven representatives on the United Tribes council and a single vote. For the Iowas and the Sac and Fox, the representatives are the five tribal councilmen plus two additional members. The Prairie Band was entitled to have the seven tribal councilmen under its formerly approved constitution represent the band on the council. When approval of the constitution and recognition of the councilmen was withdrawn by the Commissioner in October 1972, the Commissioner simply appointed one of the councilmen to continue to represent the band on the United Tribes council on an interim basis. Thus, while the Prairie Band is entitled to have seven representatives on

the United Tribes council, they have in fact only one. The Band is not, however, necessarily prejudiced by this since each member tribe is entitled to only one vote regardless of the number of representatives. Yet, the interim representation for the Prairie Band and the fact the Iowas and the Sac and Fox, whose combined membership is vastly less than that of the Prairie Band, each have equal voting rights with the Prairie Band (and previously the Kickapoos) aggravates the controversy over the role the organization should play in serving the tribes.

The concept of the United Tribes is to provide better welfare and social services to all Indian people in the Horton Agency area. In order to do so they must rely on the populations of at least the Prairie Band for justification since program eligibility and justification are based on the number of Indian people served. Because the Iowas and the Sac and Fox are very small, it is possible that they might not be able to meet minimum service population requirements or at least their range of available services would be severely limited if they were forced to seek program funding independently.

The United Tribes has developed almost a million dollar (\$971,567) program budget for fiscal year 1975. Through these program contracts with various Federal and state agencies, national Indian organizations and religious groups, the United Tribes are providing employment or training for approximately 240 people in the Horton, Kansas area. The majority of these employees are members of the Kickapoo and Potawatomi Tribes. A complete statistical breakdown of the programs is attached.

The present status and future role of the United Tribes are essentially intra- and inter-tribal political questions. Whether the United Tribes should continue as it is, continue in some new form or be abandoned are questions for the leaders of the various tribes and their members to decide. The Bureau should not become involved in the controversy except to assist in resolving the disputes as to who constitutes the duly installed representatives for each tribe. Thus, as already recommended, the establishment of a new tribal governing document and new tribal governing body for the Prairie Band and the resolution of the impasse among the Kickapoo tribal councilmen should be given the highest possible priority.

In the meantime the individual members of the Prairie Band of Potawatomi Indians have been receiving substantial benefits through the United Tribes in the absence of a tribal government of their own which otherwise carry out such activities. The Bureau should continue to recognize Mr. Joe Nioce as the representative of the Prairie Band on the United Tribes' Inter-tribal Council and take no action which would in any way lead one to question the validity of the existing participation of the Prairie Band in the United Tribes organization or when is or until a majority of the band indicates that it is not their desire to so participate.

#### VI. CONCLUSION

In the past few years serious internal differences have developed within the leadership and members of the two largest tribes served by the Horton Agency, the Kickapoo Tribe and the Prairie Band of Potawatomi Indians. Differences have also developed between the leadership of the four tribes as to what role, if any, the United Tribes organization should have. In trying to resolve these differences both the Superintendent and the Area Director and Area Office have become intensely and inextricably identified with opposing factions. The surrounding community is also rapidly becoming polarized to the detriment of all. The causes of the current difficulties are essentially internal tribal matters; however, the identification of the Agency and Area Offices with opposing factions of the tribes has aggravated these internal difficulties. The actions we have recommended above are intended to cure to the greatest extent possible the identification of both the Agency and Area Offices with tribal factions.

The differences among the tribal leaders and members have fostered a paralyzing suspicion among them. As a first step toward helping to relieve that suspicion, it is further recommended that audits be made of the Kickapoo tribal funds and of the various tribal and inter-tribal programs.

Although the Task Force found no conclusive evidence of any misappropriations of funds, the suspicions were widespread. The recommended audits which are outside the technical capabilities of the Task Force would greatly assist in dispelling these suspicions.

THEODORE KRENZKE,  
*Chairman, Horton Agency Task Force.*

## CHRONOLOGY OF ACTIVITIES OF HORTON TASK FORCE

Date/time	Place	Met with
<b>May 14, 1975:</b>		
8 a.m.	Oklahoma City, Okla., Holiday Inn	Mr. Charles James, Anadarko area director.
7 p.m.	Horton Agency Office	Mr. Forrest Fee, chairman, United Tribes of Kansas and Southeast Nebraska and chairman, Iowa Tribe. Mr. Ed Dunn, United Tribes attorney. Board of Directors, United Tribes.
10 p.m.	do	Sac and Fox Tribal Council.
11 p.m.	do	Iowa Tribal Council, Forrest Fee, chairman.
<b>May 15, 1975:</b>		
8:30 a.m.	do	Mr. Jack Carson, superintendent, Horton Agency.
10 a.m.	do	Majority faction and supporters of the Kickapoo Tribal Council.
1 p.m.	do	Mr. Forrest Keener and Mr. James Gordon, officials of the Horton Bank.
2 p.m.	do	Mr. Jim McCubbin, Kansas Bureau of Investigation. Mr. Richard Drietzler, Chief of Police.
3 p.m.	do	Horton Agency staff.
4:30 p.m.	United Tribes Building	Employees of United Tribes and members of the Kickapoo and Potawatomi Tribes.
7:30 p.m.	Kickapoo Community Hall	Mr. Amos Gosland, chairman, Kickapoo Tribal Council. Minority faction of Kickapoo Tribal Council and supporters. Some members of the Potawatomi Tribe.
<b>May 16, 1975:</b>		
9 a.m.	Horton Agency Office	Potawatomi Constitution Committee, John Harrison, chairman.
10:30 a.m.	do	Members of the Horton Chamber of Commerce and concerned citizens.
3 p.m.	Task Force left Horton, Kans	

PART I, EXHIBIT 3

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,  
December 17, 1974.  
MEMORANDUM OF AGREEMENT

PROVISION OF MEDICAL SERVICES TO INDIANS AND OTHER NATIVE AMERICANS

*I. Policy*

Indians and other Native Americans are entitled under the Fifth and Fourteenth Amendments to the Constitution of the United States, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000-d *et seq.*, to equal access to State, local, and Federal programs to which other citizens are entitled.

The United States Indian Health Service is a *residual* rather than primary health service resource.

Pursuant to Title XIX of the Social Security Act, 42 U.S.C. 1396 *et seq.*, the Snyder Act, 25 U.S.C. 13, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000-d *et seq.*, Departmental policy related to health care for Indians and other Native Americans is:

1. Indians and other Native Americans shall have the same rights to receipt of medical services under a state plan approved under any of the public assistance Titles of the Social Security Act, including Title XIX, Medicaid, as do all other eligible individuals.

2. In the case of a person who qualifies as an Indian or other Native American, eligible for services of the Indian Health Service/Public Health Service of the Department of Health, Education, and Welfare, this agency may assume *residual* responsibility for medical care and services that are encompassed by the appropriate state plan. The eligibility of an Indian or other Native American under the State's medical assistance or other public assistance program will not be affected by the use of or eligibility for services provided by Indian Health Service facilities or contractors.

3. Under the provisions of its approved medical assistance plan or other public assistance plans, the state agency is responsible for meeting the cost of the services provided therein for all individuals, regardless of race, who apply and are found eligible.

4. Eligible Indians or other Native Americans, whether or not enrolled members of a State or federally recognized reservation, colony, native village, or rancheria, or similar grouping, are entitled to all services for which other eligible persons are entitled.

5. Services available from the Indian Health Service cannot be considered as an alternative resource which would preclude eligibility of Indians or other Native Americans for services available to the general population.

6. No recipient of Federal financial assistance may, therefore, refuse to certify as eligible or fail to provide health services to Indians or other Native Americans on the ground that Indian Health Service services are available. Such refusals are a violation of Title VI of the Civil Rights Act of 1964. They exclude persons from the provision of such services purely on grounds of race or national origin.

7. It is recognized that the Indian Health Service may be the only provider feasibly available and accessible to some groups of Indians and Alaska Natives; however, this does not relieve the States from the obligation to make services available to eligible Indians and Alaska Natives which they make available to other eligible members of their general populations.

*II. Implementation*

A. The Office for Civil Rights, Department of Health, Education, and Welfare (OCR) shall:

1. Require state and local agencies receiving Federal financial assistance who are responsible for the administration, in whole or in part, of any third-party pay-

ment schemes for the provision of medical services, whether or not such third-party payments are federally assisted, to provide information relating to such programs as may be specified by the Director, Office for Civil Rights, pursuant to his authority under 45 CFR 80.6.

2. Require medical services providers receiving Federal financial assistance to provide information relating to the acceptance of or refusal to treat Indian or other Native American patients, and the source of any third-party payments for treatment received for the benefit of Indians, or other Native Americans, as such information may be specified by the Director, Office for Civil Rights, or other responsible Department official, pursuant to 45 CFR 80.6.

3. Require, in the event that the Indian Health Service informs the Office for Civil Rights that treatment has been refused by a health care provider or eligibility for third-party payments for medical services denied by a state or local agency to an apparently eligible Indian or other Native American, that such health care providers or state and local agencies thereafter report in writing to the Regional Director of the Office for Civil Rights in the DHEW Region in which they are located any refusal of certification of eligibility for any third-party payment benefits or any refusal of service to an Indian or other Native American, together with the identity of the person to whom service was refused, and the reason or reasons for the refusal. Upon request, such providers and State and local agencies shall also produce documentation establishing the factual basis for the refusal, and records and supporting documents, if not already developed or retained presently, shall be developed and maintained for the purpose of providing such information.

4. Require that State and local agencies responsible for administration of medical services programs adequately publicize the availability of services to Indian or other Native American communities where past practices may have created an impression that such services were, in fact, not available.

5. Commence activities leading to formal enforcement proceedings resulting in termination of Federal financial assistance, or use other means authorized by law to obtain compliance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d-1 et. seq. where there has been failure to provide information as required in paragraphs one through three above, or where there has been refusal of service or eligibility for third-party payment benefits on the ground that an individual is eligible for IHS services.

B. The Indian Health Service, within the limits of its authorities, resources, and program scope, shall:

1. Although not an indigeneity program, work with the Bureau of Indian Affairs, Social and Rehabilitation Service, Department of Health, Education, and Welfare, other Government agencies, tribal governments, and voluntary agencies to ascertain the number and identity of Indians and other Native Americans who may be eligible for programs and services administered by other Federal agencies and by state, local, and private entities receiving Federal financial assistance.

2. Inform the Office for Civil Rights of the number, general location, and identity of such individuals identified as result of action taken pursuant to paragraph one, above.

3. Inform the Indian and other Native American people it serves, through tribal governments, national, area, and local Indian health boards, and other Indian health-oriented or health-interested organizations, groups activities, and events, about Federal, State, and local health services and health services payment programs for which Indians, as members of the general population, are eligible to participate on the same basis as others who qualify.

4. Provide the Office for Civil Rights Regional Offices, on a quarterly basis, with a listing of all Indians or other Native Americans who have been referred to IHS hospitals by other health care providers, although eligible for services or third-party payment benefits at the referring facility.

5. Require that all contractors conform to requirements of their contracts with the Indian Health Service which shall require that vendors seek third-party reimbursement for services rendered to Indian people within the funded scope of the Indian Health Service program who are eligible to receive services under such third-party reimbursement mechanisms. Where such vendors refuse to utilize third-party payment mechanisms, the Indian Health Service shall notify the Office for Civil Rights, DHEW and any other Federal, State or local agency or private third party of such refusal.

**C. The Social and Rehabilitation Service (SRS) shall, within the limits of its authorities, resources and program scope :**

**1. Assure that no State plan or practices shall permit a State or local agency to refuse to certify eligibility or fail to provide services on the ground that Indian Health Service services are available.**

**2. Inform State agencies administering the Medicaid program that medical services must be made available to eligible Indians and other eligible Native Americans in the same manner as to all other Medicaid recipients, and that application procedures as specified in 45 CFR 200.10 must be adhered to in a manner assuring equal treatment in the application and eligibility determination process to all applicants.**

**3. At the request of State Medicaid agencies, provide technical assistance to State Medicaid program officials so that the State may develop procedures it deems appropriate by which the eligibility of Indians and other Native Americans may be established prior to the time need for services or third-party reimbursement of medical costs may arise.**

**D. Nothing contained herein shall be construed as abrogating or limiting the rights of Indians presently established under any treaty, statute, or regulation.**

**EMERY A. JOHNSON, M.D.,**  
*Assistant Surgeon General, Indian Health Service.*

**JAMES S. DWIGHT, Jr.,**  
*Administrator, Social and Rehabilitation Service.*

**PETER E. HOLMES,**  
*Director, Office for Civil Rights.*

PART I, EXHIBIT 4

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U.S. DEPARTMENT OF THE INTERIOR,  
BUREAU OF INDIAN AFFAIRS,  
LAW ENFORCEMENT SERVICES,  
March 28, 1975.

Hon. JONATHAN ROSE,  
*Associate Deputy Attorney General,  
Department of Justice, Washington, D.C.*

DEAR MR. ROSE: Enclosed for your attention and review is a position paper that we have compiled on the issue of duplication of services between the Bureau of Indian Affairs criminal investigators and Agents of the Federal Bureau of Investigation.

We are forwarding this document as per your request during our meeting during the month of December 1974.

After you and your staff have had an opportunity to review this paper, we would appreciate an opportunity to meet and discuss this matter.

Thank you for your cooperation and assistance in these matters.  
Sincerely yours,

MORRIS THOMPSON,  
*Commissioner of Indian Affairs.*

Enclosure.

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U.S. DEPARTMENT OF THE INTERIOR,  
BUREAU OF INDIAN AFFAIRS,  
Washington, D.C., March 5, 1975.

Memorandum to: Commissioner, Bureau of Indian Affairs.  
From: Director, Office of Indian Affairs.  
Subject: Duplication of Services—Bureau of Indian Affairs and the Federal Bureau of Investigation.

A major problem exists in the delivery of services to Indian communities in the area of investigating Federal law violations. In addition to the problem of declinations by the U.S. attorneys, there are the issues involving delays in receiving their prosecutive opinions, lengthy delays in their actual prosecution, and the duplication of investigative efforts between the FBI and the Bureau of Indian Affairs.

This problem is two-fold:

(1) Since FBI agents are not residents nor stationed on reservations, they are required to travel to the reservations when requested to investigate violations of the Federal law. Their response time may vary from three hours to four days. This delay does great disservice to the community, inasmuch as Indian communities do not receive the same instant response from the FBI as other communities in the United States.

(2) The fact that the FBI Agent does not live on the reservation makes it difficult for him to obtain, not only all the facts related to the incident itself, but all the other facts which should be known to the United States Attorney. This fact, coupled with a lack of knowledge of reservation customs, mores, and community standards, makes it difficult for the FBI to obtain all the information necessary to present to the appropriate agency—this may, in part, account for the large number of declinations.

In addition to the above, the present system is a waste of time for both agencies—one agency could accomplish the same objective.

We have met with the Deputy Attorney General, U.S. Department of Justice, and discussed these issues. He requested that we provide him with a paper on the subject. The accompanying document, if it meets with your approval, will

be forwarded to his office. Also, a copy is being forwarded to the Office of the Solicitor for his review and comment.

At your earliest convenience, we would appreciate discussing this matter with you.

THEODORE C. KRENZKE

Enclosure.

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### I. BACKGROUND

Prior to Congress authorizing the establishment of a Indian liquor suppression force in 1906, Indian agents and the Indian police were primarily responsible for the enforcement of Federal laws and investigation of crimes in Indian country. After establishment of the liquor suppression force which had arrest powers the same as Indian agents, they began enforcing Federal laws in Indian country and investigating crimes other than liquor law violations.

Action was first initiated, beginning in 1935, to assign liquor suppression agents, known as special officers, to Indian reservations to assume, in addition to their Federal criminal investigative duties, the duty of chiefs of reservation Indian police. Later, the special officers' responsibilities were further expanded to include responsibility for the overall Bureau and tribal operation and maintenance of criminal justice programs within assigned reservations under the general supervision of Indian agency (reservation) superintendents.

In the early forties, due to reductions in funding and personnel positions for Indian programs, the number of available special officers was reduced. In the late forties and early fifties, further reductions were made and this situation remained fairly static until 1960.

Starting in the 1930's the tribes had begun to assist in the maintenance of law and order by paying some of the Bureau law and order personnel. By the 1940's, in order to maintain a semblance of law and order in Indian country, the tribes attempted to take up more of the slack by paying the salaries of additional Bureau special officers, policemen and judges. Later during the 1950's and continuing to present, most tribes began employing their own tribal police and judges as well as other categories of criminal justice personnel. Even though they could ill afford such funding, the tribes recognized the urgent need to maintain at least a minimum of law and order services if any type of community stability and Indian cohesiveness was to survive. These persons were employed by the tribes to enforce Code of Federal Regulation Rules and tribal codes, and to administer justice.

Tribes under Federal supervision whose reservations had not been made subject to state law by Public Law 280 of 1953, or other prior Congressional legislation, remained firm in their position that where, through Congressional enactments, the United States had assumed jurisdiction relating to crimes in Indian country, the enforcement, investigative and prosecutive responsibility laid directly with the United States Government, through the Bureau of Indian Affairs. The Bureau of Indian Affairs had and did continue to recognize this responsibility. However, due to the reduction in special officer manpower during the 1940's and continuing to 1960, the Bureau of Indian Affairs was not able to totally provide these Federal services without support. It was during this time that the Federal Bureau of Investigation lent assistance to Bureau special officers in meeting this responsibility. Initially, the assistance was limited to the more serious offenses. Investigative assistance was provided upon request of the responsible special officer, usually after at least a preliminary investigation to determine that a crime had in fact been committed. Where no special officer was assigned, the request was originated by the Indian Agency superintendent. Slowly, over the years, the precedent for reporting alleged violations of most Federal laws in Indian country to the Federal Bureau of Investigation was established. Due to their operating policies, on offenses accepted by them for investigation, the FBI took the part of the primary investigative agency and made prosecutive presentation of the cases to the appropriate United States Attorneys, even though special officers, where available, provided the bulk of the investigative effort. U.S. Attorneys, over a period of time, came to rely solely on Federal Bureau of Investigation case reports and prosecutive presentations. Bureau of Indian Affairs case reports, where available, became supportive to the FBI investigation. Prosecutive presentations by special officers to U.S. Attorneys were rare.

By 1953 and subsequent thereto, apparently because of the FBI leadership, most U.S. Attorneys, and U.S. District Court Judges, recognized the FBI as having

primary investigative jurisdiction for Federal law violations committed in Indian country, notwithstanding the wording of Congressional appropriation acts since FY-1939 and Opinion M. 29069 dated August 1, 1938, issued by the Solicitor, U.S. Department of the Interior. This Opinion, in effect, stated that there may be included in the prescribed duties of the Bureau of Indian Affairs Chief Special Officer, Special Officers and Deputy Special Officers, the duty of enforcing generally the laws of the United States for the purpose of maintaining law and order on Indian reservations.

## II. CURRENT SITUATION

The Bureau of Indian Affairs currently has a staff of approximately 279 Special and Deputy Special Officers involved in providing law enforcement services in Indian country. The vast majority of these Officers are assigned to 8 BIA Area Offices and 48 Indian Agencies situated strategically within or near 122 Indian reservations with an estimated Indian population of 332,000. These reservations range, in population, from less than 100 to more than 100,000 and, in size, from about +1 to more than 100,000 square miles. The combined land area of these reservations is approximately 356,000 square miles. The Officers supervise and manage law enforcement services, including the prompt investigation and reporting violations of Federal laws. (See Attachment 1—Special Officer Profile)

While persons accused of minor crimes are promptly brought to justice in Indian courts, those who are accused of serious (Federal) crimes frequently remain at liberty pending completion of second investigations by the FBI. Many are then tried on charges that have been drastically reduced to permit the case to be disposed of in Indian courts rather than Federal court.

In 1973, about 8,200 alleged Federal law violations were reported and initially investigated by Bureau of Indian Affairs Officers. Approximately 7,300 were determined to be offenses within Federal investigative jurisdiction. Only slightly more than 1,600 of these offenses were presented to the U.S. Attorneys who authorized prosecution in less than 1,000 cases. In the majority of the cases presented, it was the Bureau of Indian Affairs Officers who first obtained and secured evidence, contacted and interviewed witnesses, identified subjects and attempted or recovered any property involved.

Comments of the National American Indian Court Judges Association in a recent report underscore the gravity with which Indian leaders view this problem:

"Failure to prosecute in such cases could be interpreted as approving of anti-social behavior and, in effect, as licensing such activity. It fosters, in addition, to communal anger when residents see an individual set free without having been punished for his crime. Reservation residents, as so many other citizens, do not understand the intricacies of the Federal system. Declination particularly on a technicality is painful to community members, especially if the offense was a violent crime or a crime against the community itself.

The chagrin of a community member is only heightened if he should be arrested for a relatively minor offense (such as unlawful possession of liquor, curfew violation, disorderly conduct, or traffic violation) and convicted in tribal court. This anger and frustration often leads to dissatisfaction with the entire law and order system. Many Indians now feel that the authorities in the criminal justice system do not care about crimes committed on the reservation."

The source of many of these problems is the cumbersome machinery which has developed over the years for the prosecution of major crimes involving Indians on reservations.

Although the BIA maintains trained criminal-investigators on most reservations, most U.S. Attorneys will not accept the findings of the BIA investigator as the basis for prosecution. An FBI agent who is frequently stationed in a distant city must be called to conduct a second investigation.

If the FBI agent believes the facts warrant prosecution, the U.S. Attorney is called for permission to proceed. The U.S. Attorney may give authorization over the telephone or request a written report. A decision to proceed will usually be delayed three days if a written report is required.

During this period, the suspect remains at large. Lesser tribal charges could be filed immediately, but this is not usually done because it might influence the U.S. Attorney to decline prosecution on the grounds the matter is being handled at the tribal level.

Clearly, the decision of the U.S. Attorney depends heavily on the manner in which the findings of the investigations are presented by the investigator. The

result is that the investigator's own judgment on the seriousness of the alleged crime is often the crucial factor in the decision whether to prosecute.

A legitimate element in such a judgment is the community attitude toward the alleged criminal activity. Most FBI agents do not live in the Indian community and their work takes them there infrequently. Although they are skilled investigators, FBI agents do not know community attitudes concerning the events they investigate.

In most instances, U.S. Attorneys now make their decisions on whether to prosecute, solely on the basis of the FBI agents' prosecutive presentations. Seldom are cases presented to the U.S. Attorney as a joint-coordinated investigation between the FBI and BIA investigators.

Many cases are declined by U.S. Attorneys for lack of sufficient evidence or other reasons. However, in some instances, Bureau Special Officers complain that results of their investigation were not made known to the U.S. Attorney before his decision was made.

No Federal Bureau of Investigation agents live on Indian reservations. Neither do they maintain regular offices in Indian country so that they are easily accessible to Indian law enforcement personnel and the people. A number of FBI agents reside, and their offices are located, over 100 miles away from the Indian reservations they now serve. Most Indian agencies and reservations have Bureau Special Officers assigned who live on or near the reservations which generally makes for better rapport and understanding with tribal officials, Indian police, the general public and the Indian community they serve. (See Attachment No. 2—Comparative Analysis of Locale.)

The FBI frequently cannot, due to their locations and other investigative duties, respond to reported Federal crimes as quickly as special officers. It is not unusual, even after a serious Federal Indian crime has been committed, verified and reported to the nearest FBI field office, that an agent is on the scene twenty-four hours later to assume investigation responsibility.

There is also a duplication of effort in nearly every investigative step in each criminal investigation in that the FBI agents normally re-interview all persons involved, visit the crime scene, review and examine evidence, etc. (See Attachment No. 3—Approximate Time (Hours) of FBI Response to Reported Crimes.)

### III. CONCLUSIONS

A. The source of many problems related to Federal criminal investigative procedures and prosecution of crimes in Indian country has developed over a span of many years.

B. Although the BIA maintains trained criminal investigators on most reservations, most U.S. Attorneys will not accept the findings of the BIA investigator as the basis for prosecution.

C. FBI agents who are frequently stationed in distant localities must be called to conduct a second investigation. If the FBI agent believes the case warrants prosecution, the U.S. Attorney is called for permission to proceed.

D. The U.S. Attorney may give authorization over the telephone upon presentation of the case by the FBI agent—or he may first request a written report, delay action pending presentment of the case to a grand jury, refer to another agency for informal disposition, or outright decline prosecution for many and varied reasons.

E. Suspects, during the investigatory phase and pending a decision of the U.S. Attorney for violations of Federal law, remain free. Lesser tribal charges could be filed immediately, but this is not usually done because it might influence the U.S. Attorney to decline prosecution on the grounds the matter is being handled at the tribal level.

F. The BIA investigator (special Officer), normally due to his background, knowledge and understanding of Indian community mores and the people, is in a better position to bring to a successful conclusion criminal investigations and make a presentation that would more likely bring about authorizations for prosecution.

### IV. OPTIONS

#### OPTION 1

A. That the Bureau of Indian Affairs, through the Chief Special Officer and Special Officers assigned to work under his supervision, reassume the primary

responsibility for the investigation and presentation to appropriate United States Attorneys violation of laws of the United States which are dependent upon Indians and Indian country.

B. That the Federal Bureau of Investigation and other Federal investigative agencies provide investigative support services, the same as provided other Federal, State and local agencies, as requested by the Bureau of Indian Affairs Chief Special Officer and Special Officers.

C. Other Federal investigative agencies exercise primary responsibility for the investigation and presentation to appropriate United States Attorneys all those laws designated by statute or that are not dependent upon Indians or Indian country.

OPTION 2

A. That the Bureau of Indian Affairs investigators (Special Officers) discontinue investigation of reported Federal crimes in Indian country, leaving the total investigation of such crimes to the FBI and other responsible Federal agencies.

B. That the Bureau of Indian Affairs Special Officers be reassigned to other responsible management and training duties related to Indian police operations and service.

OPTION 3

Continue present procedure in conducting investigation of Federal law violations in Indian country, thereby perpetuating and condoning an unsatisfactory situation.

SPECIAL OFFICER PROFILE, PHOENIX AREA, JANUARY 1975

A recent survey of the Special Officers assigned to the Phoenix Area (Arizona, Nevada and Utah) indicates the following:

39 years of age.

Male of Indian descent.

GS-11.

Nearly 15 years of law enforcement experience, a substantial part of which has been in the area of criminal investigation.

High school graduate with about 2 years of college.

A graduate of the FBI National Academy or the Consolidated Federal Law Enforcement Training Center, coupled with considerable in-service training and specialized training in non-Federal facilities.

It can be assumed that this Phoenix Area Special Officer Profile would be approximately the same for all BIA Special Officers.

Attachment 1.

COMPARATIVE ANALYSIS OF LOCALE, JANUARY 1975

Reservations	BIA investigator location and miles from reservation	FBI agent location and miles from reservation
<b>Aberdeen area:</b>		
Omaha, Nebr.	Winnebago, Nebr. (10)	Sioux City, Iowa (36).
Fort Berthold, N. Dak.	On reservation	Minot, N. Dak. (46).
Devil's Lake, N. Dak.	do	Grand Forks, N. Dak. (96).
Standing Rock, N. Dak.	do	Bismarck, N. Dak. (63).
Standing Rock, S. Dak.	do	Aberdeen, S. Dak. (139).
Turtle Mountain, N. Dak.	do	Minot, N. Dak. (113).
Cheyenne River, S. Dak.	do	Pierre, S. Dak. (94).
Crow Creek and Lower Brule, S. Dak.	do	Pierre, S. Dak. (60).
Flandreau, S. Dak.	Lake Traverse, S. Dak. (100)	Sioux Falls, S. Dak. (54).
Pine Ridge, S. Dak.	On reservation	Rapid City, S. Dak. (100).
Rosebud, S. Dak.	do	Pierre, S. Dak. (113).
Lake Traverse, S. Dak.	do	Aberdeen, S. Dak. (88).
Yankton, S. Dak.	Crow Creek, S. Dak. (154)	Sioux City, Iowa (131).
<b>Albuquerque area:</b>		
Southern Ute, Colo.	Ute Mountain, Colo. (93)	Durango, Colo. (93).
Ute Mountain, Colo.	On reservation	Durango, Colo. (58).
Jicarilla, N. Mex.	do	Farmington, Colo. (91).
Mescalero, N. Mex.	do	Alamogordo, N. Mex. (27).
N. Pueblos, N. Mex. (8 reservation areas)	Espanola, N. Mex. (from 15 to 20)	Los Alamos, N. Mex. (15/18/20).
Ramah, N. Mex.	On reservation	Santa Fe, N. Mex. (10/42/75).
S. Pueblos, N. Mex. (10 reservation areas)	Albuquerque, N. Mex. (from 13 to 70)	Gallup, N. Mex. (70).
Zuni, N. Mex.	On reservation	Albuquerque, N. Mex. (from 13 to 70).
<b>Billings area:</b>		
Blackfeet, Mont.	do	Gallup, N. Mex. (40).
Crow, Mont.	do	Great Falls, Mont. (126).
Flathead, Mont.	do	Billings, Mont. (65).
Fort Belknap, Mont.	do	Missoula, Mont. (60).
Fort Peck, Mont.	do	Glasgow, Mont. (105).
N. Cheyenne, Mont.	do	Glasgow, Mont. (70).
Rocky Boy's, Mont.	Fort Belknap, Mont. (70)	Miles City, Mont. (120).
Wind River, Wyo.	On reservation	Great Falls, Mont. (90).
<b>Eastern area:</b>		
Chitimacha, La.	Pearl River, Miss. (350)	Riverton, Wyo. (35).
Choctaw, Miss (7 reservation areas.)	Pearl River, Miss. (from 0 to 90)	New Orleans, La. (70).
Qualla, N.C.	Washington, D.C. (500)	Meridian, Miss. (from 38 to 70).
<b>Minneapolis area:</b>		
Sac and Fox, Iowa	Minneapolis, Minn. (300)	Asheville, N.C. (60).
Bay Mills, Mich.	L'Anse, Mich. (240)	Des Moines, Iowa (75).
Hannahville, Mich.	L'Anse, Mich. (148)	Sioux St. Marie, Mich. (159).
Isabelle, Mich.	L'Anse, Mich. (420)	Marquette, Mich. (79).
L'Anse, Mich.	On reservation	Saginaw, Mich. (45).
Bad River, Wis.	Ashland, Wis. (7)	Marquette, Mich. (79).
LaCourte Oreilles, Wis.	Ashland, Wis. (60)	Superior, Wis. (70).
Grand Portage, Minn.	Minneapolis, Minn. (320)	Superior, Wis. (110).
Leach Lake, Minn.	Reelake, Minn. (45)	Duluth, Minn. (160).
Greater Nett Lake, Minn.	Minneapolis, Minn. (100)	St. Cloud, Minn. (120).
Red Lake, Minn.	On reservation	Bemidji, Minn. (100).
<b>Navajo area:</b>		
Chinle, Ariz.	do	Bemidji, Minn. (35).
Fort Defiance, Ariz.	do	Flagstaff, Ariz. (221).
Kayenta, Ariz.	do	Flagstaff, Ariz. (220).
Tuba City, Ariz.	do	Flagstaff, Ariz. (151).
Window Rock, Ariz.	do	Flagstaff, Ariz. (75).
Eastern Navajo, N. Mex.	do	Flagstaff, Ariz. (214).
Shiprock, N. Mex.	do	Gallup, N. Mex. (57).
<b>Phoenix area:</b>		
Colorado River, Ariz.	do	Farmington, N. Mex. (30).
Chemehuevi, Ariz.	Colorado River, Ariz. (80)	Yuma, Ariz. (120).
Cocopah, Ariz.	Colorado River, Ariz. (140)	Barstow, Calif. (200).
Fort Mohave, Ariz.	Colorado River, Ariz. (75)	Yuma, Ariz. (15).
Fort Yuma, Ariz.	Colorado River, Ariz. (125)	Kingman, Ariz. (65).
White Mountain, Ariz.	On reservation	El Centro, Calif. (60).
Kaibab, Ariz.	Hopi, Ariz. (250)	Safford, Ariz. (185).
Hopi, Ariz.	On reservation	Flagstaff, Ariz. (234).
Papago, Ariz.	do	Flagstaff, Ariz. (158).
Ak Chin and Gila River, Ariz.	do	Phoenix, Ariz. (130).
Salt River, Ariz.	Phoenix, Ariz. (36)	Tucson, Ariz. (65).
		Mesa, Ariz. (50).
		Mesa, Ariz. (20).

## COMPARATIVE ANALYSIS OF LOCALE, JANUARY 1975—Continued

Reservations	BIA investigator location and miles from reservation	FBI agent location and miles from reservation
<b>Phoenix area—Continued</b>		
Fort McDowell, Ariz.....	Phoenix, Ariz. (38).....	Phoenix, Ariz. (25).
San Carlos, Ariz.....	do.....	Safford, Ariz. (74).
Camp Verde, Ariz.....	Hualapai, Ariz. (170).....	Flagstaff, Ariz. (55).
Havasupai, Ariz.....	Hualapai, Ariz. (70).....	Kingman, Ariz. (125).
Hualapai, Ariz.....	On reservation.....	Kingman, Ariz. (50).
Yavapai-PreScott, Ariz.....	Hualapai, Ariz. (115).....	PreScott, Ariz. (5).
Battle Mtn., Nev.....	Owyhee, Nev. (175).....	Elko, Nev. (75).
Duck Valley, Nev.....	On reservation.....	Elko, Nev. (100).
Fallon, Nev.....	Stewart, Nev. (80).....	Reno, Nev. (70).
Fallon Colony, Nev.....	Stewart, Nev. (65).....	Reno, Nev. (55).
Ft. McDermitt, Nev.....	Stewart, Nev. (225).....	Reno, Nev. (215).
Goshute, Nev./Utah.....	Duck Valley, Nev. (415).....	Salt Lake City, Utah (190).
Las Vegas Colony, Nev.....	Stewart, Nev. (450).....	Las Vegas, Nev. (2).
Lovelock, Nev.....	Owyhee, Nev. (110).....	Reno, Nev. (100).
Moapa, Nev.....	Stewart, Nev. (500).....	Las Vegas, Nev. (55).
Pyramid Lake, Nev.....	Stewart, Nev. (75).....	Reno, Nev. (50).
Reno-Sparks, Nev.....	Owyhee, Nev. (35).....	Reno, Nev. (2).
Ruby Valley, Nev.....	Owyhee, Nev. (225).....	Elko, Nev. (125).
South Fork, Nev. (also including Elko Colony and Odgers Ranch).	Owyhee, Nev. (225).....	Elko, Nev. (51).
Summit Lake, Nev.....	Stewart, Nev. (290).....	Reno, Nev. (75).
Walker River Paiute, Nev.....	Stewart, Nev. (95).....	Reno, Nev. (75).
Washoe (including Carson and Dresserville Colonies), Nev.	Stewart, Nev. (20).....	Carson City, Nev. (21).
Winnemuca, Nev.....	Owyhee, Nev. (150).....	Reno, Nev. (140).
Yerington (and Campbell Ranch), Nev.	Stewart, Nev. (67).....	Carson City, Nev. (68).
Yumba, Nev.....	Owyhee, Nev. (185).....	Carson City, Nev. (71).
Skull Valley, Utah.....	U. & O., Utah (195).....	Salt Lake City, Utah. (45).
U. & O., Utah.....	On reservation.....	Salt Lake City, Utah. (150).
<b>Portland area:</b>		
Fort Hall, Idaho.....	do.....	Pocatello, Idaho (14).
Coeur d'Alene, Idaho.....	do.....	Spokane, Wash. (40).
Nez Perce, Idaho.....	do.....	Spokane, Wash. (100).
Warm Springs, Oreg.....	do.....	Bend, Oreg. (60).
Kalispel, Wash.....	do.....	Spokane, Wash. (50).
Spokane, Res., Wash.....	do.....	Spokane, Wash. (45).
Huh, Wash.....	Port Angeles, Wash. (100).....	Tacoma, Wash. (130).
Lower Elwah, Wash.....	Port Angeles, Wash. (6).....	Tacoma, Wash. (125).
Lummi, Wash.....	On reservation.....	Bellingham, Wash. (9).
Makah, Wash.....	Port Angeles, Wash. (70).....	Seattle, Wash. (120).
Nooksack, Wash.....	Everett, Wash. (35).....	Bellingham, Wash. (35).
Ozette, Wash.....	Port Angeles, Wash. (75).....	Seattle, Wash. (135).
Port Gamble, Wash.....	Port Angeles, Wash. (40).....	Seattle, Wash. (50).
Port Madison, Wash.....	Port Angeles, Wash. (40).....	Seattle, Wash. (50).
Quinault, Wash.....	Hoquiam, Wash. (40).....	Tacoma, Wash. (105).
Shoalwater Wash.....	Hoquiam, Wash. (25).....	Tacoma, Wash. (100).
Yakima Reservation, Wash.....	On reservation.....	Yakima, Wash. (20).

**APPROXIMATE TIME (HOURS) OF FBI RESPONSE TO REPORTED CRIMES**

***Aberdeen Area:***

Violent (2) : 24 Hours.  
Nonviolent (8) : 72 Hours.

***Albuquerque Area:***

Violent (1) : 6 Hours.  
Nonviolent (1) : 48 Hours.

***Billings Area:***

Violent (8) : 12 Hours.  
Nonviolent (8) : 72 Hours.

***Eastern Area (Choctaw, MS, Only):***

Violent (3) : 16 Hours.  
Nonviolent (8) : 24 Hours.

***Joint Use Area:***

Violent (4) : 8 Hours.  
Nonviolent (4) : 72 Hours.

***Minneapolis Area:***

Violent (1) : 6 Hours.  
Nonviolent (8) : 48 Hours.

***Navajo Area:***

Violent (8) : 36 Hours.  
Nonviolent (8) : 144 Hours.

***Phoenix Area:***

Violent (1) : 8 Hours.  
Nonviolent (24) : 168 Hours.

***Portland Area:***

Violent (1) : 4 Hours.  
Nonviolent (8) : 144 Hours.

PART I, EXHIBIT 5

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OFFICE OF THE ATTORNEY GENERAL,  
Washington, D.C., February 28, 1972.

Mr. JOHN D. EHRLICHMAN,  
*Assistant to the President for Domestic Affairs,*  
*The White House, Washington, D.C.*

DEAR MR. EHRLICHMAN: This is in reply to your memorandum of February 15, 1972, addressed jointly to the Secretary of the Interior and me, concerning the representation of Indian natural resources trust interests pending the creation of an Indian Trust Counsel Authority as proposed by the President to the Congress.

An understanding has been reached with the Department of the Interior under which the several divisions of the Department of Justice which may have occasion to conduct litigation in which Indian natural resource trust interests may be challenged or threatened will advise the Solicitor of the Department of the Interior of the case title and number and the nature of the interests involved immediately as such interests become apparent. This will be done except where it is clear that the Department of the Interior will otherwise have timely knowledge of such information, because it referred the case to the Department of Justice or for other reasons. It has been agreed that cases involving condemnation of real property shall come within the exception. The Department of Justice will furnish to the Department of the Interior, thereafter, any further information concerning any such case that the Department of the Interior may request.

The Department of Justice will advise and consult with the Department of the Interior as to the position proposed to be taken by the Department of Justice. Upon timely request of the Secretary of the Interior, or of the Solicitor of the Department of the Interior, any brief filed by the Department of Justice in any case in which Indian natural resources trust interests may be challenged or threatened (other than Supreme Court briefs, which are referred to below) shall include supplementary matter setting forth the views of the Department of the Interior with respect to those interests.

The Department of Justice will make any adjustments in the foregoing procedures that appear necessary to carry out as fully as possible the spirit of the President's Indian Trust Counsel proposal.

Briefs for filing in the Supreme Court present a special problem, which is receiving further study, and are not subject to the above procedures.

Sincerely,

JOHN MITCHELL,  
*Attorney General.*

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OFFICE OF THE SOLICITOR GENERAL,  
Washington, D.C., May 19, 1972.

HON. RICHARD C. KLEINDIENST,  
*Acting Attorney General, Department of Justice,*  
*Washington, D.C.*

DEAR MR. ATTORNEY GENERAL: On February 28, 1972, Attorney General Mitchell addressed a letter to the Hon. John D. Ehrlichman, Assistant to the President for Domestic Affairs, at the White House, relating to the handling of Indian natural resource cases pending the creation of an Indian Trust Counsel Authority as proposed by the President.

The final paragraph of the letter reads as follows:

Briefs for filing in the Supreme Court present a special problem, which is receiving further study, and are not subject to the above procedures.

The purpose of my letter now is to outline a procedure to be followed with respect to briefs in the Supreme Court.

As an interim matter, until the Indian Trust Counsel is established, this office will advise the Solicitor of the Department of the Interior of any Indian matters in any cases in which the United States or one of its officers or agencies is a party, and in any case in which the Supreme Court requests the Solicitor General to file a brief *amicus curiae*. If the views of this office differ in any way from the views of the Solicitor of the Interior, steps will be taken to include supplementary matter setting forth the views of the Solicitor of the Department of the Interior with respect to Indian natural resource trust interests.

It should be understood that this office is usually subject to rather short deadlines with respect to the filing of briefs in the Supreme Court, and that these deadlines must be met. We will, however, follow the procedures outlined above in all cases where the views of the Solicitor of the Department of the Interior are received here in time for inclusion in our brief.

I would suggest that you send copies of this letter to Mr. Ehrlichman, and to Secretary Morton, as a supplement to Attorney General Mitchell's letter of February 28, 1972. Copies are attached for that purpose.

Very truly yours,

ERWIN H. GRISWOLD,  
*Solicitor General.*

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OFFICE OF THE DEPUTY ATTORNEY GENERAL,  
*Washington, D.C., July 22, 1976.*

HON. H. GREGORY AUSTIN,  
*Solicitor, Department of the Interior,*  
*Washington, D.C.*

DEAR MR. AUSTIN: The decision in *United States v. Critzer*, 498 F. 2d 1160 (4th Cir. 1974), and the present necessity to file a brief in the related case of *Critzer v. United States*, Ct. Cl. No. 134-75, has precipitated a resolve in the Department of Justice to seek an end to the 1972 agreement allowing the Department of Interior to express separate views as a matter of course in government briefs concerning Indian natural resource trust interests. A copy of our letter to Mr. Buchen for this purpose is enclosed.

We believe that government interests are not well served when a court, as in *Critzer*, throws out a government case, not because it finds our view of the law unpersuasive, but merely because the government has not agreed on one view to put before the court. Of course we do not object to continued consultation with the Department of Interior in cases involving Indian trust interests. When a brief must be submitted to a court of the United States, however, we feel that the government should decide on one position to support.

Sincerely,

HAROLD R. TYLER, Jr.

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OFFICE OF THE DEPUTY ATTORNEY GENERAL,  
*July 26, 1976.*

Re: *Amy T. Critzer v. United States* Ct. Cl. No. 134-75.

HON. PHILIP W. BUCHEN,  
*Counsel to the President,*  
*The White House, Washington, D.C.*

DEAR MR. BUCHEN: The above-captioned tax refund suit was recently tried before a trial judge of the Court of Claims, and we are now in the process of preparing our brief for submission to the Court. The basic question involved is whether income is taxable which plaintiff, a Cherokee Indian, received from the operation of a motel and a restaurant located on inherited property on the Eastern Cherokee Reservation in North Carolina.

The issue involved in this case has been given careful consideration by the Internal Revenue Service, as well as this Department, and we believe that the Government should file a brief stating its views that the income which plaintiff received has not been exempted from taxation by any treaty or statute. The problem which we bring before you for consideration is whether the brief which we file must also contain the views of the Department of the Interior which are contrary to ours.

This case is a sequel to a criminal tax prosecution captioned *United States v. Amy T. Critzer*, in which plaintiff was convicted of tax evasion as a result of having filed income tax returns understating her income from the operation of

the same motel and restaurant. When Mrs. Critzer appealed that conviction to the Court of Appeals for the Fourth Circuit, her attorneys communicated with the Department of the Interior which, in turn, insisted that our brief in the Court of Appeals should contain a statement of the views of that Department even though those views were diametrically opposed to ours and supported a reversal of the judgment of conviction rather than an affirmance. This insistence was the result of an understanding which had been reached between the Department of the Interior and the Department of Justice with respect to "litigation in which Indian natural resource trust interests may be challenged or threatened." That agreement was embodied in a letter from Attorney General John Mitchell to Mr. John D. Ehrlichman, Assistant to the President for Domestic Affairs, dated February 28, 1972. A copy of that letter is enclosed for your information.

It seems appropriate at this time to reopen the entire question of proper representation of the Government's interests in Indian litigation, apart from the narrower question as to whether this case involved "Indian natural resource trust interests." In our view, it is neither wise nor proper for the United States Government to submit a bifurcated brief (as we did in the first *Critzer* case) which carefully analyzes the issues and concludes that the income received by the Indian is taxable and which has appended to it several more pages stating the views of the Department of the Interior which are exactly the opposite. When the *Critzer* case came before the Court of Appeals, we received some criticism from the Court for our inability to resolve this matter within the Executive Branch. The Court reversed the conviction on the ground that if two agencies of the Government could not agree on whether the income was taxable, the Court was not going to affirm a criminal conviction arising out of the receipt of income by an Indian. *Critzer v. United States*, 498 F.2d 1160 (1974).

In our pending case in the Court of Claims, we believe that a brief should be filed stating a single view as finally determined by this Department. If you agree, we shall proceed accordingly in this and future cases; if you do not agree, we would appreciate your views on the matter.

Sincerely yours,

HAROLD R. TYLER, Jr.,  
Deputy Attorney General.

Enclosure.

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U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SOLICITOR,  
Washington, D.C., August 6, 1976.

Hon. PHILIP W. BUCHEN,  
Counsel to the President, The White House,  
Washington, D.C.

DEAR MR. BUCHEN: On July 26, Deputy Attorney General Tyler wrote to you asking to be relieved of the Department of Justice's agreement of February 28, 1972. This agreement requires the Justice Department to state separately the views of this Department, when requested to do so by the Solicitor, in cases where the position taken by Justice conflicts with rights of Indians to natural resources. This Department strongly opposes the proposal of the Justice Department.

The reasons for the 1972 agreement are as follows. The United States is obligated, on the one hand, to determine and advocate the public interest; in litigation, the Attorney General has this responsibility. On the other hand, pursuant to treaties and agreements with Indian tribes and acts of Congress, the United States serves as trustee for certain private property rights of Indian tribes and, in some instances, individual Indians. Our Department is principally charged with administration of those trust obligations; in litigation, this trust responsibility is also an obligation of the Department of Justice. See, e.g., 25 U.S.C. § 175.

On many occasions, the needs of a policy or program of a public agency conflict with those private property rights of Indians for which the United States has this unique trust obligation. This conflict-of-interest was recognized by President Nixon's 1970 Message to Congress on Indian Affairs:

"The United States Government acts as a legal trustee for the land and water rights of American Indians. These rights are often of critical economic importance to the Indian people; frequently they are also the subject of extensive legal dispute. In many of these legal confrontations, the Federal government is faced

with an inherent conflict of interest. The Secretary of the Interior and the Attorney General must at the same time advance *both* the *national* interest in the use of land and water rights *and* the *private* interests of Indians in land which the government holds as trustee.

Every trustee has a legal obligation to advance in interests of the beneficiaries of the trust without reservation and with the highest degree of diligence and skill. Under present conditions, it is often difficult for the Department of the Interior and the Department of Justice to fulfill this obligation. No self-respecting law firm would ever allow itself to represent two opposing clients in one dispute; yet the Federal government has frequently found itself in precisely that position. There is considerable evidence that the Indians are the losers when such situations arise. More than that, the credibility of the Federal government is damaged whenever it appears that such a conflict of interest exists.

In order to correct this situation, I am calling on the Congress to establish an Indian Trust Counsel Authority to assure the independent legal representation for the Indians' natural resource rights. . . .

The Indian Trust Counsel Authority would be independent of the Departments of the Interior and Justice and would be expressly empowered to bring suit in the name of the United States in its trustee capacity. The United States would waive its sovereign immunity from suit in connection with litigation involving the Authority." (emphasis in original)

This 1970 Message, which has been universally lauded in the Indian community, remains Administration policy, and the Administration continues to support legislation to establish the Indian Trust Counsel Authority. I should mention that the Administrative Conference of the United States has also recognized the problems created by this conflict of interest within the Executive Branch and has recommended enactment of the Trust Counsel Bill in its Recommendation No. 33, adopted June 9, 1972. We view the split brief procedure as an essential interim mechanism to the protection of Indian trust property pending enactment of the Trust Counsel proposal.

The Deputy Attorney General's letter makes reference to one case, *United States v. Critzer*, where the Department of Justice filed a split brief and was subsequently unsuccessful in persuading the Court of Appeals for the Fourth Circuit to sustain a conviction of an Indian for tax fraud. In that case, this Department's portion of the brief argued that no federal income tax should be assessed for income derived by an Indian from trust property assigned to her on the Eastern Cherokee Reservation. As trustee of this Indian property, we believe that income derived for it is not subject to taxation; in this respect, we differ with the views of the Internal Revenue Service and Department of Justice. We regret the criticism to which the Court of Appeals subjected the Department of Justice. After *Critzer* was decided, representatives of this Department met with officials of the Justice Department's Tax Division to explore ways in which communication could be improved in tax cases. (In this regard, we emphasize that no official of the Justice Department or Internal Revenue Service at any time prior to commencing the *Critzer* prosecution sought this Department's views on the taxability of this kind of income.) Some improvements in communications have been made, and in the two years since *Critzer*, we have not requested the filing of a split brief in several tax cases brought to our attention by the Department of Justice because, in our view, the position taken by our Justice Department in those cases was sound.

The split brief procedure was established initially as a result of a dispute between this Department and the Justice Department in *Stevens v. Commissioner of Internal Revenue*. *Stevens* involved whether income to an Indian of the Fort Belknap Reservation for lands allotted under a special allotment act and lands acquired by purchase, gift, and inheritance was subject to the Federal income tax. The position of this Department that income directly derived from the lands acquired as above described and held in trust pursuant to Act of Congress was exempt from Federal income tax was separately stated in the Government's brief. The Justice Department advocated the contrary view. The Interior Department's position was adopted by the Ninth Circuit Court of Appeals. See *Stevens v. Commissioner of Internal Revenue*, 452 F. 2d 741 (9th Cir. 1971). The issues in *Critzer* were similar to those in *Stevens*—one difference being that they arose in *Critzer* in a criminal case. Disputes involving trust properties do not ordinarily arise in a criminal prosecution context. Even in tax cases (where the potential for crimes to become involved is somewhat higher) the dispute can be resolved in civil litigation without the risk of dismissal. As the Court of Appeals

for the Fourth Circuit pointed out in *Critzer*, "the appropriate vehicle to decide this pioneering interpretation of tax liability is the *civil* procedure of administrative assessment. . . ." Mrs. Critzer subsequently filed a civil suit which was recently argued and pending submission of briefs in the Court of Claims.

In considering Deputy Attorney General Tyler's proposal, we have reviewed all the situations in which the split brief procedure has been utilized. Apart from *Stevens* and *Critzer*, it has been followed in four cases, none involving tax questions. Two of these cases involve litigation on behalf of the Corps of Engineers to take property which Indian tribes claim is protected by treaty from such a taking without specific congressional consent.\* In our separately submitted views, this Department argues that such consent was lacking. Neither case has been finally decided.

The two other cases involved conflicting views between our Department and Justice concerning the position to be taken in cases involving Indian trust resources before the Supreme Court. In *Oncida Indian Nation v. County of Oncida*, the United States Court of Appeals for the Second Circuit had dismissed under the "well pleaded complaint" rule an action brought by the Oncida Indian Nation claiming ownership of certain tracts of land. In a memorandum filed on the Oncida Nation's petition for writ of certiorari, the Solicitor General (while conceding the difficulty of the question) urged that the Supreme Court sustain the lower court and deny a writ of certiorari. The memorandum, however, also included the argument of this Department that a writ of certiorari should be granted. The Supreme Court granted the writ and reversed the Second Circuit. *Oncida Indian Nation v. County of Oncida*, 414 U.S. 661 (1974). *Northern Cheyenne Tribe v. Hollowbreast*, — U.S. — (1976), 44 U.S. Law Week 4655 concerned whether the tribe or individual allottees own the mineral estate beneath lands on the Northern Cheyenne Reservation. Following a decision by the Court of Appeals for the Ninth Circuit against the tribe, this Department favored the grant of certiorari and reversal of the decision. The Department of Justice decided not to support or oppose certiorari, but separately stated our views. The Court granted the petition, and reversed.

Thus, in every case where a split brief has been filed and the matter has been finally decided, the views of this Department as trustee for Indian property rights have been sustained. We are aware, of course, that in ordinary litigation, the Justice Department formulates the position of the United States and contrary views can be presented to the courts by opposing attorneys—here, for example, by attorneys for Indian tribes. But these attorneys represent the tribes, and *not* the United States as trustee. The Department of Justice represents agencies such as the Internal Revenue Service and the U.S. Army Corps of Engineers which are taking positions adverse to Indian private property rights for which the United States is a trustee. A private trustee would have to subordinate his own interests to those of his trust beneficiaries, a rule which—if applicable to the Department of Justice in these cases—would require support of any plausible Indian claim of right where a conflict is presented. Such a rule as applied to an Executive Department is, of course, impractical. However, fulfillment of the trust responsibilities of the United States to Indians in these cases at least requires that our Department's position be separately presented to the courts, and that the Department of Justice openly acknowledge the existence of its conflict-of-interest and advise the court both of the views of the United States as advocate for the public interest and the views of the United States as fiduciary for Indian trust property. The split brief procedure accomplishes this desirable result.

As the record of its use shows—the positions advocated by this Department in all cases having been judicially sustained—the procedure has been employed with extreme circumspection and we expect that great care would be exercised in any future use. The split brief procedure is an integral part of the policy of this Administration toward increasingly vigorous protection of Indian trust property rights, and we strongly urge that it be continued. We would be glad to discuss our views further with you.

Sincerely,

H. GREGORY AUSTIN, *Solicitor*.

\*These cases are: (1) *Confederated Tribes of the Umatilla Reservation v. United States*, Civil No. 74-991, U.S.D.C., Ore., which challenges construction of Catherine Creek Dam in Oregon because of its infringement on treaty fishing rights and (2) *United States v. 210.33 Acres*, now before the Court of Appeals for the Eighth Circuit, where the Corps seeks to condemn land on the Winnebago Reservation in Iowa and Nebraska.

NATIONAL CONGRESS OF AMERICAN INDIANS,  
Washington, D.C., August 30, 1976.

HON. GERALD R. FORD,  
*President of the United States,*  
*The White House,*  
*Washington, D.C.*

Attention: Bradley H. Patterson, Jr.

DEAR MR. PRESIDENT: On behalf of the Indian tribal and individual membership of the National Congress of American Indians, we wish to express our deep concern over recent covert negotiations involving the Agreement of February 28, 1972, regarding representation of Indian natural resource trust interests pending the creation of an Indian Trust Counsel Authority.

We were astonished to learn of the Department of Justice request that the White House relieve it of the 1972 Agreement, under which the Department of Justice is required to state separately the views of the Department of Interior, when requested to do so by that Department, in cases where the Justice Department intends to take a position in conflict with the Interior Department's view of the rights of Indians.

We simply cannot understand how serious consideration could be given to this request, particularly in light of the Administration's announced policy of continued support of the proposal for the establishment of an Indian Trust Counsel. The basic idea of the Indian Trust Counsel is to provide a means whereby the United States Government's responsibility to Indians, in its role as trustee, can be discharged without regard to the Government's obligation to advocate the general public interest. This necessarily presupposes a procedure whereby the United States—in its different functions—will take conflicting positions in court.

Under the 1972 Agreement the Department of Interior has the right to have its views included in a split brief. We are not necessarily committed to the continuation of the split brief procedure, as such. It may be preferable for the Department of Interior to have an option to present a separate brief when it wishes to communicate the views of the United States, in its role as trustee, to a court in which litigation is pending.

We hope that the reports of the level of consideration of the Justice Department's request are exaggerated and that changes in the direction suggested by the Department are not anticipated. It is of utmost importance that the 1972 procedures, carefully developed to discharge (at a minimal level) the Government's trust responsibility, will not be abandoned cavalierly. If new procedures are being considered, we believe that the Indian Tribes and Indian legal community should be accorded the opportunity to review and comment on the procedures and amendments before drastic change is made.

Finally, we hope to find agreement in the White House that the time has come to formalize and publicize the procedures set out in 1972, along with any amendments. We respectfully suggest that serious consideration be given to the promulgation of an Executive Order to this effect. The procedures formalized in this fashion may serve to remove future temptation for the Department of Justice to seek a change, in secret, in announced policies for the protection of Indian rights.

Sincerely,

CHARLES E. TRIMBLE,  
*Executive Director.*

PART I, EXHIBIT 6

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AMERICAN INDIAN POLICY REVIEW COMMISSION,  
CONGRESS OF THE UNITED STATES,  
Washington, D.C., July 7, 1976.

HON. EDWARD H. LEVI,  
*Attorney General,  
Department of Justice,  
Washington, D.C.*

DEAR MR. LEVI: The American Indian Policy Review Commission, created pursuant to P.L. 93-580 (January 2, 1975), is a Joint Congressional Commission composed of Congressmen and Native Americans. Its mandate is to study the relationship between the Federal Government and Indian people. A significant part of the Commission's activities involves an evaluation of the government-Indian relationship, obtained through hearings and discussions with individual Indians and tribes.

During hearings in Oklahoma City, Oklahoma, on May 11, 1976, a particularly disturbing and tragic incident was related to the Commission. It concerns the alleged suicide of a 16-year-old boy, Larry Black, Jr. while incarcerated pending formal charges relating to an alleged breaking and entering and robbery. This boy was arrested in Watonga, Oklahoma in the early morning hours of February 13, 1976, and was released under \$2,000 bond on the afternoon of the same day. His parents Mr. and Mrs. Black then obtained the assistance of counsel who allegedly agreed to represent Larry at a preliminary proceeding (either for certification as an adult or a formal bond hearing) scheduled for February 27. (The attorney has since denied that he was retained by the Blacks and there is no retainer agreement to show otherwise). On this date Larry also had an appointment for treatment of a kidney ailment at Baptist Memorial Hospital in Oklahoma City, approximately 150 miles from Watonga. Their attorney advised them to keep the medical appointment; he would appear in court and obtain a continuance. The Blacks followed his instructions, assuming that their attorney would do what was necessary. On Saturday, February 28, the bondsman appeared at their home and notified the Blacks that he was withdrawing bond because Larry had not appeared as required on February 27.

Larry, accompanied by his father, proceeded to the Blaine County Jail and turned himself in on the afternoon of February 28. At that time all Larry's clothing and personal belongings, *including his belt*, were taken from him in his father's presence. On the evening of Saturday, March 13, 1976 Larry Black Jr. was found hanging in his jail cell by what was alleged to be his own belt. Mr. Black learned of this as he was entering the jail to visit his son. As he arrived, Larry's body was being conveyed to an ambulance. Mr. Black frantically attempted to revive him. He later stated his son's body was still warm. Shortly thereafter, Mrs. Black arrived. She entered the jail and without comment was handed approximately 8 photographs of Larry. Several showed him actually hanging. Mrs. Black immediately questioned why he was not cut down and attempts made to revive him instead of taking photographs. She was not given a satisfactory answer. All that was said was that Larry had hung himself with his own belt. The Sheriff, Hugh Compton, cannot explain how Larry obtained the belt. Mrs. Black claims the belt allegedly used was not Larry's.

The body was removed to Oklahoma City where an autopsy was to be performed. There are conflicting reports as to whether an autopsy or a toxicology was actually performed. The cause of death was listed as asphyxiation. The body was exhumed on April 8 at the family's request. The reports of this examination are also in conflict. It is still unclear if an autopsy or toxicology was performed. Further, there is a dispute regarding whether or not bruises were found on the body, possibly indicating a beating or struggle had taken place.

According to the record, there was and continues to be much concern and tension in the town of Watonga as a result of this tragic incident. Numerous threats have been communicated to all members of the Black family. There have been prowlers near the Black home and shots have been fired at the house. The local police do not respond to calls for assistance.

The Oklahoma State Bureau of Investigation conducted an inquiry into the situation. The results of this inquiry are unclear. The U. S. District Attorney for the Western District of Oklahoma stated in a letter to the Blacks dated April 16, 1976 that the F.B.I. had been requested to investigate the matter, but nothing further was heard. On May 1, Dr. Aaron Dry of the Area Bureau of Indian Affairs Office also requested that the F.B.I. investigate. As of May 24, the Blacks had not been contacted by any F.B.I. personnel.

In a Washington, D.C. interview on May 21 with Mr. John McDonald of the Indian Rights Division of the Department of Justice, it was learned that the F.B.I. had apparently monitored local newspaper articles reporting developments in the case and had supplied copies of these articles to the Indian Rights Division but it did not appear that there had been any substantive investigation. Following Larry's death, the record shows three community meetings were held in an attempt to relieve local tension. Unfortunately, these meetings were discontinued without reaching a community consensus as to the solution to the problem. Mr. Bob Alexander of the Community Relations Service, Department of Justice in Dallas, Texas stated to us on May 24 that he was present at some of the meetings as an observer. At the time of this conversation Mr. Alexander stated that he had not requested a formal F.B.I. investigation, assuming that local and/or state authorities would investigate. However, he indicated that he believed it might be appropriate now for an F.B.I. investigation in order to clarify the record and relieve community tension.

The problem involved here is much broader than just this single incident. Many similar incidents have occurred in other nearby Oklahoma jails in the past few years. Attempts by several organizations and individuals, particularly the Native American Legal Defense and Education Fund, to persuade officials to investigate these incidents appear to have been unsuccessful.

On November 14, 1972, Mr. Richard Young, a staff attorney with N.A.L.D.E.F., wrote Mr. John Green, Assistant U.S. Attorney in Oklahoma City listing six specific incidents of possible police brutality, listing as a seventh problem jail conditions at Hammon and Canton, Oklahoma. On November 6, 1973 Mr. Young again wrote the Department of Justice, this time to Dennis Ickes, Chief of the Indian Rights Division, reciting five additional incidents of alleged police brutality in this same area. He noted that no action had been taken by the U.S. Attorney; that some had purportedly been investigated by the F.B.I. but the results of these investigations were not known. It appears that despite numerous follow up inquiries he was not able to find out the results of any investigations which may have been conducted. On January 9, 1974, Mr. Ickes of the Indian Rights Division did respond to Ms. Viola Hatch of Canton, Oklahoma regarding the jail conditions in that area. This was item seven in Mr. Young's letter of November 14, 1972.

In addition to the specific incidents and instances mentioned above, the general conditions relating to incarcerations of Indian people in Oklahoma should be examined. In testimony at American Indian Policy Review Commission hearings held in Oklahoma City on Monday, May 10, 1976, Mr. Robert Gann, Executive Director of the Oklahoma Indian Affairs Commission presented for the record a report surveying incarceration statistics for 1974. Based upon a random selection of 22 Oklahoma counties, the report is comprised of factual information taken from the Oklahoma State Bureau of Investigation's Uniform Crime Report Survey from 1974; the Annual Report from the Department of Institutes and Social Rehabilitated Services for 1974; and the U.S. Census of Population for 1970.

In citing statistics contained in the report, Mr. Gann testified:

"We found that there were 26,749 arrests made in the 22 counties surveyed for 1974. Of that number 12,673 were Native American or Indian people. That constitutes 47.3 percent of all arrests in the 22 counties surveyed being imposed upon 3.8 percent of the population."

Utilizing the Blaine County statistics as an example, the report shows a total of 1075 incarcerations for 1974. 725 of those incarcerated were Indian, 330 were non-Indian. Total Indian population of Blaine County is 801; total non-Indian

population appears as 10,903. Thus Indian people in Blaine County, while comprising 6.7 percent of the total population, constitute 69 percent of all those incarcerated. As stated in another way in testimony by Mr. Gann, ". . . 1:10 will be arrested for every one Indian that lives in the county. Of 30 individuals that are non-Indian, one will be arrested." The statistics veritably speak for themselves.

It is of major concern to the Commission that action be taken by appropriate agencies in response to complaints by Indian people as well as others. It would appear that the numerous inconsistencies surrounding the Larry Black, Jr. case warranted some investigation by outside agencies. The highly tense Watonga Community situation would also appear in good part to be a result of the sense of frustration exemplified by the apparent inactivity of federal, state and local agencies. It does no good if an investigation is conducted unless there is some release of information on the results of that investigation.

We therefore ask you to supply us with the following information:

A. A full report on the Larry Black, Jr., case including the date or dates when an F.B.I. investigation was requested, what investigation if any was conducted, and when such investigation occurred, what persons were interviewed, what conclusion was reached, and whether Mr. and Mrs. Black were ever interviewed and whether they were ever apprised of the results of the investigation.

What if anything, did the Department of Justice do in response to the letters of Mr. Richard Young of N.A.I.D.E.F. dated November 14, 1972 and November 6, 1973, copies of which are attached. Assuming that some investigations had been conducted as Mr. Young notes in his 1973 letter, why was he not advised of the results of those investigations?

B. What guidelines exist governing local offices of the F.B.I. for discretionary review and subsequent decisions for refusal, referral, or any other form of non-investigation of complaints alleging violation of civil rights by state or local police authorities? If a request to the F.B.I. for an investigation is made by the Indian Rights Division or the Community Relations Service, what discretion does the F.B.I. have in whether or not to investigate?

C. 28 Code of Federal Regulations Sec. 0.50 delegates to the Indian Rights Division responsibility for enforcement of all Federal statutes affecting civil rights, including those pertaining to elections and voting, public accommodations, public facilities, school desegregation, employment, housing and the constitutional and civil rights of Indians arising under 25 USC 1301 et seq. Does the Indian Rights Division have authority to institute investigations into alleged cases of violation of civil rights by state or local police authorities under 42 USC 242? If so, what investigative machinery does it have at its disposal? How many such investigations has it requested since its inception in August, 1973?

D. It appears that the F.B.I., the Indian Rights Division and the Community Relations Service have an integral responsibility in protecting the civil rights of Indian people. What mechanism exists to coordinate the actions of each of these agencies? What guidelines have been established to keep the Indian Rights Division and the Community Relations Service apprised by the F.B.I. of incidents involving Indians which may involve possible violations of civil rights?

Sincerely,

JAMES ABOUREZK,  
*Chairman.*

LLOYD MEEDS,  
*Vice-Chairman.*

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THE DEPUTY ATTORNEY GENERAL,  
*Washington, D.C., August 31, 1976.*

HON. JAMES ABOUREZK  
*Chairman, American Indian Policy Review Commission, U.S. Congress, Washington, D.C.*

DEAR SENATOR ABOUREZK: This is in response to your letter of July 7, 1976, to the Attorney General concerning the case of Larry Black, Jr., and other matters. The following information is provided in response to your requests.

A. In accordance with usual procedures, the Oklahoma City Division of the FBI furnished a memorandum, dated April 8, 1976, and a news article relating to the death by hanging of Larry Black, Jr., in the Blaine County jail on March 12, 1976, to the Civil Rights Division of the Department of Justice, as well as to the United States Attorney for the Western District of Oklahoma.

On April 14, 1976, the United States Attorney requested the Oklahoma City Division of the FBI to conduct a preliminary investigation into the matter as a result of a letter received from the victim's parents indicating a possible violation of the victim's civil rights. This request for a preliminary investigation was, however, subsequently withdrawn by the United States Attorney on April 16, 1976, after his review of the initial FBI memorandum and other information provided by the FBI to the effect that the victim's body had been exhumed and reexamined in the presence of a private physician and an attorney, both of whom were representing the victim's parents. Since the results of this examination indicated that Larry Black, Jr., was not involved in a fight or struggle prior to his death and that he did in fact die by hanging, it was determined that no formal investigation by the FBI was warranted. The Oklahoma City Division of the FBI continued to monitor this matter but conducted no active investigation or interviews.

On May 27, 1976, the Civil Rights Division received a letter from the United States Commission on Civil Rights, dated May 24, 1976, referring a letter by the National Indian Youth Council, dated March 31, 1976. Both letters requested a federal investigation into the hanging of Larry Black, Jr.

The letter from the Council also contained an allegation that Larry Black, Jr., was beaten in the presence of law enforcement officers on the day of his arrest, February 13, 1976, by the civilian owner of the property that the victim had allegedly burglarized. On July 7, 1976, the Civil Rights Division of the Department requested the FBI to conduct a preliminary investigation into this alleged beating.

It was also determined that an FBI investigation into the hanging of Larry Black, Jr., in the Blaine County jail on March 12, 1976, should be conducted in view of continuing allegations by the parents of the victim and a renewed request for an investigation by the National Indian Youth Council. Therefore, on July 8, 1976, the Civil Rights Division, with the concurrence of the United States Attorney's Office, requested the FBI to conduct a limited investigation into the hanging incident. The investigation included interviews with the victim's parents, the sheriff of Blaine County, certain inmates and employees of the jail and the physician who examined the body on behalf of the parents. In addition, all reports of local investigations were sought.

The FBI has recently completed both investigations. As there is no evidence that the civil rights of Larry Black, Jr., were violated, the Department will take no further action in this matter. Enclosed is a copy of the Department's letter to Mr. and Mrs. Larry Black, Sr., informing them of the results of the investigations.

Your letter cites several incidents similar to the Larry Black, Jr. incident. The results of the investigations into those incidents are set forth below.

Upon receipt of a letter from Richard L. Young of the Native American Legal Defense and Education Fund, (N.A.L.D.E.F.), dated November 14, 1972, the United States Attorney for the Western District of Oklahoma requested an FBI investigation into each of the nine allegations contained therein. These FBI investigations were completed on December 22, 1972. Prosecution was declined in each of the matters.

Upon receipt of a letter from Richard L. Young of N.A.L.D.E.F., dated November 6, 1973, regarding mistreatment of Indians in the jail at Clinton, Oklahoma, the Civil Rights Division of the Department initiated an investigation. Although a formal FBI investigation was not requested, a Departmental attorney was sent to Oklahoma to interview the alleged victims of mistreatment and to observe conditions at the Clinton jail. Telephonic contact was maintained with N.A.L.D.E.F. concerning these matters. Formal FBI investigations had already been conducted concerning two of the victims mentioned in Mr. Young's letter: Larson Simmons (investigative reports dated 1/4/73 and 9/12/73) and Merle Emerson Ellis (investigative report sent 7/20/73). No prosecutions resulted from these investigations. In a letter from the Civil Rights Division signed by R. Dennis Ickes and dated December 28, 1973, Mr. Young was informed that the matters he referred to the Civil Rights Division concerning Merlyn Joe Hadley and Albert Tenorio were being looked into. The Departmental attorney who conducted these investigations determined that the allegations were either unsubstantiated or lacking in prosecutive merit.

When the Department receives a complaint and conducts an investigation, it evaluates the evidence and determines what action, if any, is appropriate. There is no obligation to notify the complainant of the results of an investigation, par-

ticularly when the complainant is not directly involved or affected. As a matter of policy, the Department may notify the victims and the subjects of investigations whether or not action will be taken by the Department in a particular matter.

B. In accordance with Departmental policy, a complaint received by the FBI is furnished to both the Civil Rights Division and the Office of the United States Attorney within whose district the violation allegedly occurred. Depending on the nature of the allegation, and pursuant to Department guidelines, the FBI initiates an investigation or refers the matter to the Civil Rights Division for a determination whether further action is warranted.

Under Departmental policy in effect prior to March 19, 1976, death cases were not investigated without specific Departmental authority or a request in writing from a United States Attorney. Allegations received in all such cases are expeditiously brought to the Department's attention for its review and consideration.

If a request for an investigation is made by the Office of Indian Rights (OIR), Civil Rights Division, to the FBI, the investigation is handled in accordance with the request and the results furnished to both the Civil Rights Division and the appropriate United States Attorney's Office. As an investigative agency, the FBI has no discretion to decline Departmental requests for investigations and makes no conclusion on the merits of a particular case.

Unlike the Civil Rights Division, the Community Relations Service has no authority to compel an FBI investigation. There is no provision for the Community Relations Service to make a formal request for an FBI investigation. If the Community Relations Service should make a request, the FBI would treat it as a complaint received by the FBI and handle it in accordance with policies and guidelines established by the Civil Rights Division. The Community Relations Service provides an assessment to Federal law enforcement authorities of the level of community tensions and expectations following incidents such as the death of Larry Black, Jr., so that these authorities may have the benefit of such information in determining what action they should take. Occasionally, the Community Relations Service will indicate to the Civil Rights Division or the appropriate United States Attorney that a Federal law enforcement investigation could have a beneficial impact in alleviating potential violence and conflict in an area. Such recommendations for investigations are given full consideration.

C. The Criminal Section of the Civil Rights Division of the Department has the authority under 28 C.F.R. § 0.50 to investigate and prosecute allegations of violations of civil rights by state and local law enforcement officers under 18 U.S.C. §§ 241 and 242. However, as a matter of policy, whenever the issue involved is "uniquely Indian," (i.e., involves more than the mere fact that the victim is an Indian) possibly requiring expertise in the field of Indian law, the Criminal Section may refer the case to the Office of Indian Rights for handling. When OIR receives a complaint alleging a violation of sections 241 or 242, it initiates an investigation. If the complaint is substantiated, then OIR may refer the case to the Criminal Section of the Civil Rights Division or the appropriate United States Attorney's Office for prosecution. The investigative machinery at the disposal of the Office of Indian Rights is the FBI.

A tally of the Office of Indian Rights files from July, 1974 through July 1976, indicates that 73 requests for FBI investigations have been made under 18 U.S.C. §§ 241 and 242, five of which involved state or local law enforcement officers in Oklahoma.

D. As a matter of policy, the FBI furnishes copies of all FBI reports and memoranda relating to civil rights violations to the Civil Rights Division and the United States Attorney's Office in the district in which the violation has occurred. These reports and memoranda include the initial allegations as well as the results of all investigations conducted. There are no guidelines for notification or provision of information by the FBI to the Community Relations Service. In matters of joint interest, the Community Relations Service works closely with the Civil Rights Division and has access to any information within the Department pertinent to a matter in which the Community Relations Service is involved. Any request by the Community Relations Service regarding the results of an FBI investigation or for dissemination of FBI investigative reports would be handled by the Civil Rights Division and not by the FBI. Coordination is the responsibility of the persons within each of the Departmental agencies handling a matter in common.

Thank you for your interest in our efforts to enforce the Federal civil rights of American Indians. I can assure you that it is among the highest priorities of this Department to ensure that all complaints of criminal violations under 18 U.S.C. §§ 241 and 242 involving Indians are investigated and that those complaints which can be substantiated and supported in the law are duly prosecuted.

Sincerely,

HAROLD R. TYLER, Jr.

Enclosure.

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U.S. DEPARTMENT OF JUSTICE,  
*Washington, D.C., August 20, 1976.*

MR. AND MRS. LARRY BLACK, Sr.  
*Watonga, Okla.*

DEAR MR. AND MRS. BLACK: At the request of the United States Civil Rights Commission and the National Indian Youth Council, the Civil Rights Division of the Department of Justice conducted investigations into allegations that your son, Larry Black, Jr., may have been beaten in the presence of law enforcement officers on the day of his arrest, February 13, 1976, and that there may have been suspicious circumstances surrounding the hanging/suicide of Larry Black, Jr., in the Blaine County Jail on March 12, 1976.

These investigations have been completed. The findings of the investigation concerning the alleged beating of Larry Black, Jr., indicate that no beating took place. All evidence suggests that the would be assailant attempted to strike Larry Black, Jr., but was promptly restrained by the arresting officers. The findings of the investigation concerning the hanging of Larry Black, Jr., indicate no evidence of force or coercion on the part of law enforcement or jail officials.

Since this matter does not appear to involve any violation of federal constitutional or civil rights, the Department plans to take no further action in this matter.

If you feel you have a private cause of action, you should consult your attorney. Please accept our sympathies on the death of your son.

Sincerely,

J. STANLEY POTTINGER,  
*Assistant Attorney General Civil Rights Division.*  
MARGO M. MCKAY,  
*Attorney, Office of Indian Rights.*

**PART I, EXHIBIT 7**

**U.S. COMMISSION ON CIVIL RIGHTS,  
March 31, 1976.**

**Subject: Events Surrounding Recent Murders on the Pine Ridge Reservation in South Dakota.**

**To: John A. Buggs, Staff Director, U.S. Commission on Civil Rights.**

Events surrounding the murder of two Native Americans in separate incidents during the past six weeks on the Pine Ridge Reservation in South Dakota have again called into question the roles of FBI and BIA police in law enforcement on the reservation. Numerous complaints were received by MSRO alleging that these two agencies failed to act impartially or to respond properly in the aftermath of the two murders which are the subject of this memorandum. More seriously, the media published allegations that the FBI was perpetrating a cover-up to protect guilty persons.

In view of the seriousness of these charges, Dr. Shirley Hill Witt, Regional Director, and William F. Muldrow, Equal Opportunity Specialist, from the Mountain States Regional Office were asked to gather first-hand information on events which transpired. FBI and BIA police officers, attorneys, tribal officials, and other persons involved in events surrounding these two murders were interviewed on March 18 and 19 in Rapid City, South Dakota, and on Pine Ridge Reservation. Additional information was gathered through the mail and in telephone interviews.

Following is a brief summary of events which transpired according to the persons contacted.

Wanblee, a small town on the northeastern portion of the reservation, is largely populated by so-called "full blood" or traditionally oriented Native Americans. This community helped to oust incumbent Tribal President Richard Wilson by a three to one vote against him in the recent general election on the reservation. The chairman of Pine Ridge District, an area strongly supportive of Wilson on the reservation, was quoted on January 23 as saying that Wanblee needed "straightening out" and that people would come to do it.

On Friday evening and Saturday morning, January 30 and 31, according to Wanblee residents, several carloads of heavily armed persons reported by eye-witnesses to be Wilson supporters arrive in the town. Sometime Saturday morning shots were fired, allegedly by this group, into the house of Guy Dull Knife. BIA police in town at the time called for reinforcements which arrived promptly but made no arrests of the persons identified by eye witnesses as the ones who did the shooting.

Shortly following this incident that same day, Byron DeSersa, a resident of Wanblee, was shot and killed during a high-speed automobile chase, reportedly by persons recognized by passengers in DeSersa's car as being the same individuals responsible for terrorizing the town earlier. Attackers jumped out of their cars to chase those who were with DeSersa and he bled to death for lack of immediate medical attention.

Following DeSersa's death, the FBI, which has jurisdiction over felonies, was called and two agents arrived that afternoon. Sporadic shooting continued in the town through Saturday night and two houses were firebombed. Residents reported that despite their pleas, law enforcement officers who had cross-deputization powers and were present at the time, did nothing to stop the shooting. Despite the fact that one person had already been killed by gunfire an FBI spokesman told District Chairman James Red Willow that the FBI was strictly an enforcement agency and had no authority to act in a protective capacity. Saturday evening one person, Charles David Winters, was arrested for the murder of DeSersa. No attempt was made to apprehend or arrest the other passengers in Winters' car, even though persons who were with DeSersa when he was shot claimed that they were chased by Winters' companions after the shooting and could readily identify their attackers. Nor have any further arrests been made in

connection with the terrorization of the town over a period of two days. The case is at present being investigated by a grand jury in Pierre.

The second series of events (about which Witt and Muldrow conducted an inquiry) began on February 25 when a rancher discovered the partially decomposed body of a Native American woman beside Highway No. 73 a few miles east of Wanblee. Two BIA policemen and an FBI agent responded to the rancher's report and brought the body to the Pine Ridge Hospital where an autopsy was performed on February 25 by W. O. Brown, M.D., a pathologist from Scottsbluff, Nebraska. He issued a verbal report that day to the effect that she had died of exposure. He found no marks of violence on her body except evidence of a small contusion. The dead woman's hands were severed and sent to a laboratory in Washington, D.C., for fingerprint identification, both the FBI and the BIA claiming that they had no facilities to do so themselves due to the state of decomposition of the body.

On the morning of March 3, the body, still unidentified, was buried in the Holy Rosary Cemetery at Pine Ridge. The FBI reported that in the afternoon of the same day they received a report from the Washington laboratory that fingerprint tests revealed the dead woman was Anna Mae Pictou Aquash, a Canadian citizen wanted in connection with bench warrant issued November 25 in Pierre for default of bond on a fire arms charge. She also was under indictment by a federal grand jury in connection with a shoot out with Oregon police last November 14.

Relatives of Aquash in Canada were notified of her death on March 5, and news of her identification was released to the media the following day. Immediately, relatives of the dead woman and others who had known her expressed their disbelief that she had died of natural causes. On March 6, citizens of the town of Oglala, where she had lived for a time, publicly demanded a full investigation of the circumstances surrounding her death. Relatives, represented by attorney Bruce Ellison of the Wounded Knee Legal Committee, requested that the body be exhumed for further examination.

On March 9, six days after the body was identified, the FBI filed an affidavit with the U.S. District Court and received a court order permitting exhumation for "purposes of obtaining complete X-rays and further medical examination." X-rays had not been considered necessary during the first examination.

On March 11 the body was exhumed in the presence of FBI agents and Dr. Garry Peterson, a pathologist from Minneapolis, Minnesota, who had been brought in by Aquash's family to examine her body. X-rays revealed a bullet of approximately .32 caliber in her head. Peterson's examination revealed a bullet wound in the back of the head surrounded by a 5x5 cm. area of subgaleal reddish discoloration. Incredibly, this wound was not reported in the first autopsy and gave rise to allegations that the FBI and/or the BIA police had covered up the cause of her death. The fact that officers of both agencies examined the body *en situ*, wrapped in a blanket beside the road and far from any populated area, yet still did not suspect foul play, lends credence to these allegations in the minds of many people.

Hospital personnel who received the body at the hospital reportedly suspected death by violence because of blood on her head.

Other persons are of the opinion that Anna Mae Aquash had been singled out for special attention by the FBI because of her association with AIM leader Dennis Banks and knowledge she might have had about the shooting of two FBI agents on the Pine Ridge Reservation last summer.

These two incidents have resulted in further bitterness, resentment or suspicion toward the FBI. They follow months of turmoil on the reservation in the aftermath of the FBI shooting incident when allegations were rife that the FBI engaged in numerous improper activities including illegal search procedures and creation of a climate of intimidation and terror.

A contrast is seen between the Wanblee incident, where a person was killed and shooting was allowed to continue over a period of two days, and the incident in July when two FBI agents were shot and nearly 300 combat-clad agents, along with the trappings and armament of a modern army, were brought in "to control the situation and find the killers." Reservation residents see this as disparate treatment. This, along with what at the very least was extremely indifferent and careless investigation of the Aquash murder, many residents feel reveals an attitude of racism and antagonism on the part of the FBI toward Indian people.

Because of the circumstances surrounding the events mentioned here, along with the record of an extraordinary number of unresolved homicides on the reservation, and incidents of terror and violence which have become almost commonplace, the sentiment prevails that life is cheap on the Pine Ridge Reservation. The more militant and traditional Native Americans have concluded that they cannot count on equal protection under the law at the hands of the FBI or the BIA police. Many feel that they are the objects of a vendetta and have a genuine fear that the FBI is "Out to get them" because of their involvement at Wounded Knee and in other crisis situations.

Feelings are running high and allegations of a serious nature are being made. MSRO Staff feel that there is sufficient credibility in reports reaching this office to cast doubt on the propriety of actions by the FBI, and to raise questions about their impartiality and the focus of their concern.

I. T. CRESWELL, Jr.

**PART I, EXHIBIT 8**

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**U.S. SENATE,  
Washington, D.C., August 13, 1976.**

**Hon. EDWARD H. LEVI,  
Attorney General, Department of Justice,  
Washington, D.C.**

**DEAR MR. ATTORNEY GENERAL:** As a result of the questionable circumstances surrounding the death of Anna Mae Aquash of Nova Scotia, whose body was found near Wanblee, South Dakota on February 24, 1976, I understand that the Justice Department has been asked to undertake a full investigation of the case. Please advise me of the status of that investigation.

With best wishes,  
Sincerely,

**PHILIP A. HART.**

PART I, EXHIBIT 9

U.S. COMMISSION ON CIVIL RIGHTS,  
MOUNTAIN STATES REGIONAL OFFICE,  
Denver, Colo., July 9, 1975.

Reply to attention of: MSRO—W. F. Muldrow.

Subject: Monitoring of Events Related to the Shooting of Two FBI Agents on the Pine Ridge Reservation.

To: Dr. Shirley Hill Witt, Regional Director.

At about 1:00 p.m. on Thursday, June 26, two FBI agents were shot to death on the Pine Ridge Reservation near the town of Oglala, South Dakota. The FBI immediately launched a large-scale search for the suspected slayers which has involved 100 to 200 combat-clad FBI agents, BIA policemen, SWAT teams, armored cars, helicopters, fixed-wing aircraft, and tracking dogs. An increasing volume of requests for information regarding the incident and numerous reports and complaints of threats, harassment, and search procedures conducted without due process of law by the FBI prompted my visit to the reservation to gather firsthand information. MSRO was involved at Pine Ridge during the investigation of the tribal election held there in 1973. This office was also called upon to do a preliminary investigation of an incident involving the shooting of AIM leader Russell Means on the Standing Rock Sioux Reservation in North Dakota last month.

I was on the reservation from July 1-3, and during that time had the opportunity to talk with the Acting BIA Superintendent (Kendall Cuming), the President of the Tribal Council (Dick Wilson), FBI agents, BIA police officials, numerous residents of the reservation including several who lived in the vicinity of the scene of the shooting, and media correspondents from NBC, CBS, and National Public Radio. FBI officials were too busy to see me when I visited their headquarters to arrange for an appointment. Part of the time I travelled in the company of Mario Gonzales, an attorney and enrolled member of the tribe who has been designated chairman for the South Dakota Advisory Committee.

This particular incident of violence must be seen in the context of tension, frustration, and crime which has increasingly pervaded life on the reservation during the last three years. Unemployment approaches 70 percent and the crime rate is four times that of Chicago. There have been eight killings on the reservation so far this year and uncounted beatings, fights, and shootings. Many of these incidents have never been explained or, in the minds of many residents, even satisfactorily investigated. The tribal government has been charged by reservation residents with corruption, nepotism, and with maintaining control through a reign of terror.

Tribal officials, including the President of the Council, have been indicted in connection with such an incident (on a misdemeanor charge, although guns and knives were involved). It is widely felt that those in power profit from the largesse of Federal programs at the expense of the more traditionally oriented residents of the reservation.

Tensions are exacerbated by irresponsible statements by State officials.

The Civil Liberties Organization for South Dakota Citizens, a right-wing group composed in large part of white ranchers who own or lease most of the prime land on the reservation, produces active support for Wilson's government and presses for State jurisdiction over the reservation.

During World War II, due to a shortage of law enforcement manpower, the FBI was given jurisdiction to investigate felons on the reservation and this has never been relinquished. The number of FBI agents assigned to the reservation was recently increased in an attempt to cope with the mounting crime rate. One of the agents who was killed last week was on special assignment from Colorado.

Many of the facts surrounding the shooting are either unknown by officials or have not been made public. Media representatives felt that the FBI was un-

necessarily restrictive in the kind and amount of information it provided. It is patently clear that many of the statements that have been released regarding the incident are either false, unsubstantiated, or directly misleading. Some of these statements were highly inflammatory, alleging that the agents were "led into a trap" and "executed." As a result, feelings have run high.

The FBI had arrest warrants for four Native Americans who had allegedly assaulted, kidnapped, and robbed a white man and a boy. Residents of the reservation and an attorney from the Wounded Knee Legal Offense/Defense Committee with whom I talked felt that the warrants were issued merely on the word of the white people without adequate investigation. Such a thing, they point out, would never have happened had the Indians been the accusers and typifies unequal treatment often given to Indian people.

The two agents killed in the shooting had been to several houses on the reservation looking for the wanted men. The occupants of some of these houses claimed that the agents had been abusive and threatening. Some of the Native Americans that I talked with, who had been involved in the Wounded Knee incident, have a genuine fear that the FBI is "out to get" them. When the two agents were killed they had no warrants in their possession.

The bodies of the agents were found down in the valley several hundred yards from the houses where the shooting supposedly occurred. "Bunkers" described in newspaper accounts turned out to be aged root cellars. "Trench fortifications" were non-existent. Persons in the houses were in the process of preparing a meal when the shooting occurred. One of the houses, owned by Mr. and Mrs. Harry Jumping Bull, contained children and several women, one of whom was pregnant. The Jumping Bulls had just celebrated their 50th wedding anniversary. As a result of the incident, Mrs. Jumping Bull had a nervous breakdown and is now in a Chadron, Nebraska hospital.

The body of Joseph Stuntz, the young Native American killed in one of the houses during the shooting, was seen shortly after the shooting lying in a mud hole as though it had been dumped there on purpose. He was later given a traditional hero's burial attended by hundreds of people from the reservation.

Sixteen men were reportedly involved in the shooting though no one knows how this figure was determined. The FBI has never given any clear indication that it knows the identity of these men. Incredibly, all of them, though surrounded by State and BIA police and FBI agents, managed to escape in broad daylight during the middle of the afternoon.

In the days immediately following the incident there were numerous accounts of persons being arrested without cause for questioning, and of houses being searched without warrants. One of these was the house of Wallace Little, Jr., next-door neighbor to the Jumping Bulls. His house and farm were surrounded by 80-90 armed men. He protested and asked them to stay off his property. Elliot Daum, an attorney with the WKLOFDC who had been staying in the house with Little's family, informed the agents that they had no right to search without a warrant. They restrained him and prevented him from talking further with Little while two agents searched the house.

Daum was also present when David Sky, his client, was arrested in Pine Ridge as a material witness to the shooting. Sky was refused permission to talk with Daum before he was taken to a Rapid City jail, a two-hour drive. Individual FBI agents with whom I talked were deeply upset over the "execution" of their comrades.

Most of the Native Americans received me cordially and I was invited to attend the burial of Joseph Stuntz. Some expressed appreciation for my presence there as an observer and suggested that the Commission might be the only body capable of making an impartial investigation of the Pine Ridge situation. My interview with Dick Wilson was less satisfactory. He stated that he could give me no information and that he did not "feel like talking about civil rights at a time like this."

Several questions and concerns arise as a result of these observations. The FBI is conducting a full-scale military operation on the reservation. Their presence there has created deep resentment on the part of many of the reservation residents who do not feel that such a procedure would be tolerated in any non-Indian community in the United States. They point out that little has been done to solve the numerous murders on the reservation, but when two white men are killed, "troops" are brought in from all over the country at a cost of hundreds of thousands of dollars.

No FBI agents actually live on the reservation and none of them are Native American. They are a completely outside group with remarkably little understanding of Indian society. Questions are raised as to the basis for FBI jurisdiction on the reservation, the seeming conflict and overlap with the jurisdiction of the BIA police, and the propriety of the FBI, which furnished adversary witnesses for the Wounded Knee trials, acting as an investigatory body on the Pine Ridge Reservation. Many Native Americans feel that the present large-scale search operation is an over-reaction which takes on aspects of a vendetta.

Does the Commission have legal access to FBI and BIA investigatory reports which would enable an assessment of the scope and impartiality of their activities? Requests from this office to both of these agencies, and to the Justice Department's Office of Indian Rights, for reports of the investigation of Russell Means' shooting in June were denied.

The jurisdictional problem, like the present shooting incident, cannot be divorced from the other pressing concerns of Pine Ridge Reservation residents which relate to their basic rights as human beings and citizens of the United States. The climate of frustration, anger, and fear on the reservation, which results from poverty, ill health, injustice, and tyranny, would indicate that the latest incident of violence will not be the last.

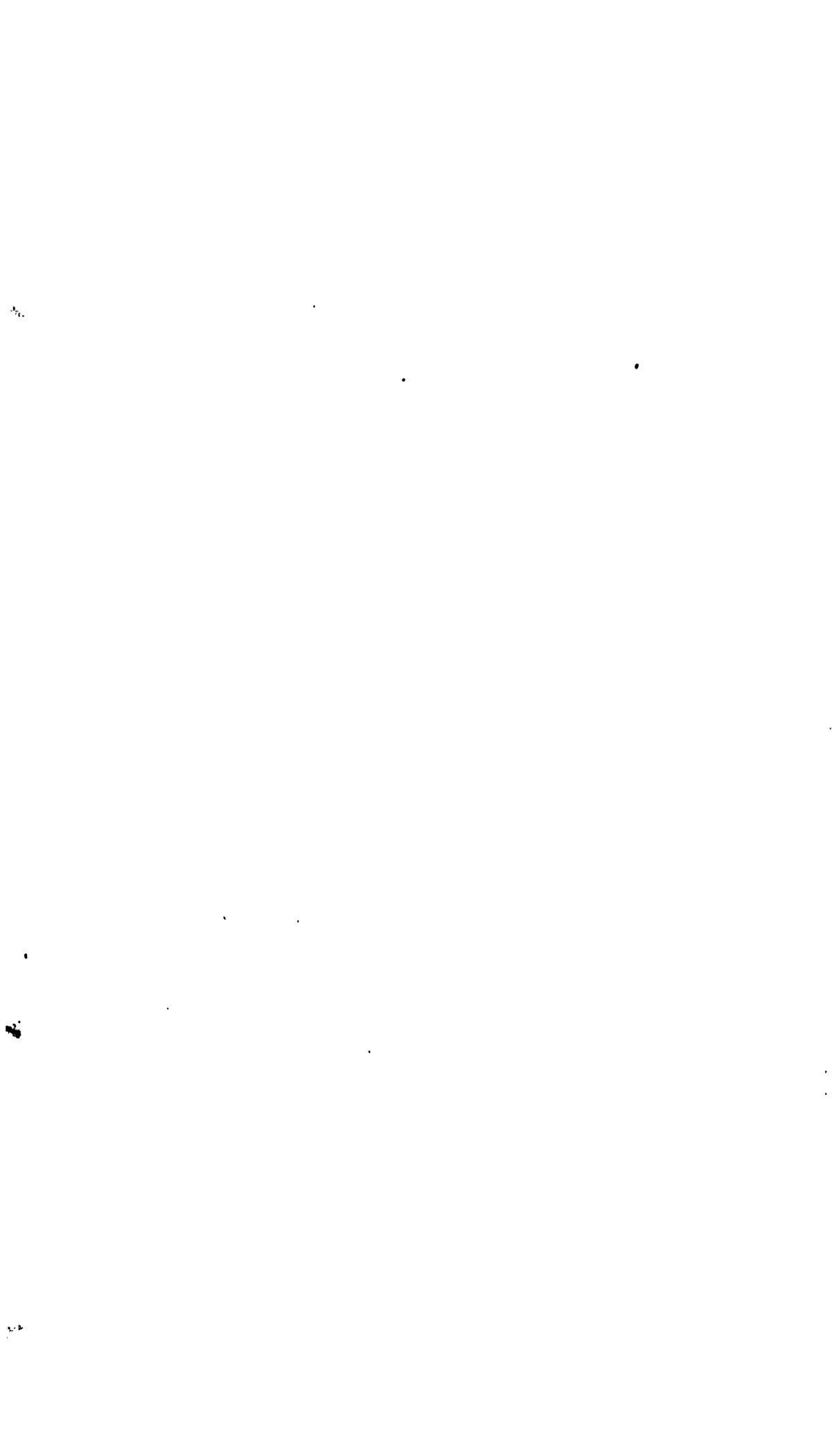
**WILLIAM F. MULBROW,**  
*Equal Opportunity Specialist.*

## APPENDIX II

### PART II. HISTORICAL DEVELOPMENT OF THE FEDERAL STATUTORY AND REGULATORY SYSTEMS

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## APPENDIX II

### PART II. HISTORICAL DEVELOPMENT OF THE FEDERAL STATUTORY AND REGULATORY SCHEME

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#### PART II, EXHIBIT 1

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#### REPORT ON REVISION OF INDIAN LAWS

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON REVISION OF THE LAWS,  
*Washington, D.C., April 20, 1917.*

Honorable Chairman and Members of the Committee on Revision of the Laws, House of Representatives, I have the honor to submit to you my report on the codification, revision, and annotation of the general acts of a permanent character relating to Indians, which you assigned to me for preparation in code form, subsequent to your consideration of House Resolution No. 134, Sixty-fourth Congress, first session, which reads as follows:

*Resolved*, That in codifying and revising the laws it is the sense of the House that the laws relating to Indian affairs be, and they are hereby, ordered to be codified and revised.

In the preparation of this work, as in the preparation of the various other codes submitted by me, I have adhered to and followed the general plan of the Commission to Revise and Codify the Laws, created by act of Congress of June 4, 1897, the final report of which was made to the Congress on December 15, 1906:

First, I have endeavored to bring together all statutes and all parts of statutes relating to the same subject.

Second, I have omitted redundant and obsolete enactments, noting such omission in my explanation of the section.

Third, I have made such alterations as seemed necessary to reconcile the contradictions, supply the omissions, and amend the imperfections of the original text.

Fourth, I have proposed and embodied in the revision such changes in the substance of existing law as in my judgment were necessary and advisable, explaining such proposed changes and italicizing the language inserted.

In the revision of the Indian laws for code form the chief obstacle encountered was in drawing the line of demarcation between the general and specific acts of Congress, the former properly belonging in a code of laws for permanent use, and the latter, the object of which is aimed at the accomplishment of some specific performance on the part of a certain tribe of Indians, being omitted from the revision. For this reason, it is explained that all Indian laws are not to be found in this revision, but only those laws which affect the Indians generally, their governmental protection, and regulation.

One of the questions of the greatest delicacy with which I was confronted in this revision was determining when one statute was inconsistent with the provisions of another statute. It is the common practice of Congress to pass laws more or less inconsistent with existing statutes on the same subjects without repealing the latter in specific terms, but my employing the familiar formula "that all acts and parts of acts in conflict with the provisions of this act are hereby repealed." On the one hand, it would defeat the main purpose of revision if inharmonious provisions were retained and, on the other, repeals by implication are not favored. In the solution of this problem painstaking investigation and mature consideration are both required.

Another obstacle is the singling out of obsolete statutes. We find upon our statute books provisions that are in fact ignored by the executive officers of the

Government, in some cases because it is impracticable to enforce them; in others because they are out of adjustment with existing conditions; and in others because they have been superseded by practices and methods of administration that have grown stronger than the letter of the law and by this uninterrupted acquiescence have acquired the force of a tacit and common consent. That there are many such provisions which should be omitted is certain; but this conviction does not abate the difficulty attending the task of selection. An illustration of this may be had in the case of the omission from this code of sections 2046 to 2051, inclusive, of the Revised Statutes of the United States, respecting superintendents and superintendencies. Section 2046 of the Revised Statutes provides for the appointment of eight superintendents of Indian affairs, and section 2047 abolishes four of that number after June 30, 1873. Sections 2048 to 2051, inclusive, deal with the duties, etc., of such superintendents. There has never been a repeal of these six sections, but since 1877 Congress has made no appropriation for the salaries or expenses of the officers, and there has been none employed in the Indian Service.

Another question which presented itself for solution was that of repeal by implication. An illustration of this is had in the omission of sections 2128 to 2131, inclusive, Revised Statutes, which provide for licensing citizens of good moral character to trade with the Indians. In view of the act of August 15, 1876, chapter 283, which authorizes the Commissioner of Indian Affairs to appoint traders to the Indian tribes, and prescribing rules and regulations for their government, these sections are omitted. Another illustration of this character is had in the omission of section 2107 of the Revised Statutes, which requires that accounts and vouchers for goods, supplies, etc., for the Indian Service shall be submitted for approval to the executive committee of the Board of Indian Commissioners. It is presumed that this provision is repealed by the act of May 17, 1882, chapter 163, which provides that "hereafter the commission shall only have power to visit and inspect agencies and other branches of the Indian Service, and to inspect goods purchased for said service, and the Commissioner of Indian Affairs shall consult with the commission in the purchase of supplies."

Another phase of the revision is that of determining the settled policy of Congress for the purpose of treating a provision of law as permanent in character. It is of common occurrence that Congress in the annual appropriation bills inserts provisions limited to the year concerned that are in conflict with or create exceptions to general laws, and repeals these provisions from year to year. It is considered that where these provisions have been reenacted for a sufficient number of years to warrant the inference that they represent the settled policy of Congress they should be treated as permanent laws, and in determining this the exercise of deliberate judgment is demanded.

Attention is invited to numerous sections where changes have been made in the phraseology. Where a change in the law is recommended a full explanation of such proposed change will be found under the caption "Notes on the sections." Where changes are required to conform the provisions to existing law the marginal citations are designed to support the text. A revision is something more than a compilation: in many cases the act has been executed, and a correct revision requires the use of different language to conform its operation to the evident intention and purpose of the act. For example, the act of March 3, 1875, chapter 132, requires that copies of contracts for the Indian Service shall be filed with the Second Auditor of the Treasury. The act of August 15, 1876, chapter 280, provides that "an abstract of all bids and proposals received for the supplies or services embraced in any contract shall be attached to and filed with the said contract when the same is filed with the Second Comptroller of the Treasury." This is apparently a discrepancy. However that may be, in view of the provisions of the act of July 31, 1894, chapter 174, it would appear that the Auditor for the Interior Department is the officer with whom the copies and abstracts should be filed to secure the purpose of the laws mentioned.

This work is presented in such a manner as to call your attention to the existing law and the changes made in the original text. This is accomplished by placing the existing law on one page and on the page opposite the text as I have revised it, wherein all new matter proposed appears in *italic*, so that by a mere visual inspection your attention will be directed to the fact as to whether any change is proposed in the section, and the nature and character of such change. Following the plan adopted by the commission in its codification and revision of the laws, I have placed the various sections of the several acts in places where I deemed they most appropriately belonged.

Annexed to this report is an Appendix A and an Appendix B. Appendix A contains a tabulated list of each act which is brought into this revision, the date of the act, the section (when it is made a section) and page of the volume of the United States Statutes at Large from which I have taken the act, with proper reference to the section of the revision which you will find codified and revised that section or those sections of the act or acts from which the text of the revision is taken. Appendix B contains a statement of the sections of the Revised Statutes omitted from the revision and a reason assigned for such omission.

In the revision of the general and permanent Indian laws I have encountered many difficult questions of construction which required, for intelligent solution, a thorough research into the history and purpose of the legislation, and after having revised, perfected, and printed the several chapters comprising this work I transmitted copies to the Secretary of the Interior and the Commissioner of Indian Affairs for the closest scrutiny by the members of the staff of examiners under these departments of the Government, requesting that any imperfections and errors be noted, and a report made to your committee at the earliest possible date.

The numbering of the sections of this revision has commenced with No. 4 and continued in numerical order until completed. In my notes on the sections of the revision, which follow these introductory remarks, I have explained the status of the text of the section from its origin to date, which was done for the purpose of affording your committee a condensed analysis of the work done on each section, as well as to furnish a ready index to the original text.

Having completed this subject assigned to me, and acting in accordance with your instructions, I take up for preparation in code form all laws relating to commerce and navigation.

I have the honor to be,

Your obedient servant,

W. K. WATKINS,  
*Reviser of the Statutes.*

#### NOTES ON THE SECTIONS

##### *Chapter 1. Officers and Agencies*

**Section 1:** This section is taken from section 2039 of the Revised Statutes of the United States. The section is as originally enacted.

**Section 2:** This section is derived from section 2040 of the Revised Statutes and from section 1 of the act of August 24, 1912 37 Stat. L., 518, chapter 388. Section 2040 of the Revised Statutes, as originally enacted, provided for the appointment of the secretary to the Board of Indian Commissioners, requiring that the appointment should be made from the membership of the board. The act of August 24, 1912, changes this by requiring that a person not a member of said board shall be appointed as secretary.

**Section 3:** This section is taken from section 2041 of the Revised Statutes and from the act of May 17, 1882, 22 Stat. L., 70, chapter 163. The italics appearing within the section are substituted for "the preceding section," for the sake of correct revision.

**Section 4:** This section is section 2042 of the Revised Statutes, empowering the members of the Board of Indian Commissioners to investigate all contracts, expenditures, etc., and to have access to all books and papers belonging to the Government in making such investigations.

**Section 5:** This section is derived from section 2043 of the Revised Statutes, from a part of the acts of March 3, 1875, 18 Stat. L., 422, chapter 132; March 3, 1905, 33 Stat. L., 1040, chapter 1470, and March 4, 1909, (35 Stat. L., 888, chapter 207. Section 2043 of the Revised Statutes provided for five Indian inspectors; the act of March 3, 1875, 18 Stat. L., 420, reduced this number to three. The number was increased from time to time in the Indian appropriation acts to eight. In the act of March 3, 1905, 33 Stat. L., 1048, it was provided that there should be eight inspectors, two of whom should be engineers, skilled in the location, construction, and maintenance of irrigation work. In the Indian appropriation act of March 3, 1909, 35 Stat. L., 785, an appropriation was made for the salaries and expenses of the two "engineer" inspectors; while in the legislative act of March 4, 1909, 35 Stat. L., 888, in the paragraph making appropriations for the force in the office of the Secretary, with reference to the six remaining Indian inspectors, it was provided that "said Indian inspectors shall here-

after be termed inspectors, and shall be included in the classified service," and an appropriation was made in the paragraph for their salaries. These six inspectors, so transferred, are now connected with the office of the Secretary, and used for general inspection purposes. In view of these facts, the section has been so revised as to authorize but two "Indian inspectors,"—those required to possess the engineering qualifications. The italics in the section are made necessary by reason of this change.

Section 6: This section is taken from section 2044 of the Revised Statutes and from the act of March 3, 1905, 33 Stat. L., 1049, chapter 1479, providing for the salaries and expenses of the inspectors authorized by the preceding section.

Section 7: This section is taken from section 2045 of the Revised Statutes and from the act of March 3, 1875, 18 Stat. L., 422, chapter 132, detailing the powers and duties of the Indian inspectors. Section 2045 of the Revised Statutes, appearing herein, is amended by striking out the words "Commissioner of Indian Affairs" and inserting in lieu thereof "Secretary of the Interior." This amendment is made upon the recommendation of a former Commissioner of Indian Affairs, as the inspectors are under the supervision of the Secretary of the Interior, to whom they report directly.

Section 8: This section is taken from the act of April 4, 1910, 36 Stat. L., 269, chapter 140. It is repeated in subsequent Indian appropriation acts. I have been somewhat confused as to the number of inspectors in the Indian Service, and the official title of the inspectors. In no revision heretofore has any reference been made to a chief inspector of irrigation and an assistant inspector of irrigation, both of whom are required to be skilled irrigation engineer. It will be noted that the provisions of this section are somewhat similar to the provisions of section 5 which provides for the appointment of *Indian inspectors*, who are required to be engineers, and competent in the location, construction, and maintenance of irrigation work. But section 5 does not designate these two inspectors as irrigation inspectors, and it is presumed that the positions of inspectors in section 5 of this revision and in this section are entirely separate and distinct offices. In the various appropriation acts, where language is found relating to the irrigation inspectors nothing appears authorizing their appointment, but simply the salaries appropriated.

Section 9: This section is taken from the act of April 4, 1910, 36 Stat. L., 269, chapter 140, and is repeated in subsequent Indian appropriation acts. The same explanation given in the preceding section is applicable to this section.

Section 10: This section is derived from section 1 of the act of August 1, 1914, 38 Stat. L., 586, chapter 222, and from section 4 of the act of May 18, 1910, 39 Stat. L., 127, chapter 125.

Section 11: This section is taken from the act of April 4, 1910, 36 Stat. L., 271, chapter 140, and which is found repeated in subsequent Indian appropriation acts. The section provides for the appointment of superintendents of irrigation, not to exceed seven in number, who shall be skilled irrigation engineers. The explanation given of section 8 of this revision applies to section 9 and 10, as well as to this section.

Section 12: This section is derived from section 2052 of the Revised Statutes and from the acts of March 3, 1905, 33 Stat. L., 1048, chapter 1479; June 21, 1900, 34 Stat. L., 332, chapter 3504; and March 1, 1907, 34 Stat. L., 1020, chapter 2285, authorizing the appointment by the President of Indian agents from time to time, as Congress provides. The words appearing in the section in italics are necessary for correct revision.

Section 13: This section is taken from the act of March 3, 1893, 27 Stat. L., 614, chapter 209, and is existing law. Extra appropriation for this official not being made for several years, is omitted.

Section 14: This section is section 2053 of the Revised Statutes and is existing law.

Section 15: This section is derived from section 2055 of the Revised Statutes and from the acts of July 4, 1884, 23 Stat. L., 77, chapter 180, and from March 1, 1907, 34 Stat. L., 1020 chapter 2285, providing for the salary of Indian agents, etc. The act of July 4, 1884, repeated all provisions of law fixing salaries of Indian agents in excess of these provided in that act, since which time they have received such salaries as are appropriated for from year to year. The section is amended accordingly, thus explaining the italics.

Section 16: This section is derived from section 2056 of the Revised Statutes, which was reenacted in its entirety by the act of May 17, 1882, 22 Stat. L., 87, chapter 103.

Section 17: This section is taken from section 2057 of the Revised Statutes and from a part of section 10 of the Indian appropriation act of March 3, 1875, 18 Stat. L., 449-450, chapter 132. Language has been inserted so as to exempt a corporation authorized to guarantee bonds from the requirement of setting out, under oath, the nature and kind of property owned by it, such companies being regulated by the act of August 13, 1894, 28 Stat. L. 279, chapter 282, entitled "An act relative to recognizances, stipulations, bonds, and undertakings and to allow certain corporations to be accepted as sureties thereon." A part of the Indian appropriation act of April 30, 1908, 35 Stat. L., 75 chapter 153, contained a provision whereby the United States Government was required to bear the expense of procuring the official bond of any agent, superintendent, or other disbursing officer of the Indian Service; but in the act of August 5, 1909, 36 Stat. L., 125, chapter 7 (urgent deficiency act), a proviso was inserted whereby it was forbidden that the United States Government pay any part of the premium or other cost of furnishing a bond required by law or otherwise of any officer or employee of the United States.

Section 18: This section is taken from section 2058 of the Revised Statutes, and from section 10 of the act of March 3, 1875, 48 Stat. L., 451, chapter 132, and from a part of the Indian appropriation act of March 3, 1909, 35 Stat. L., 784, chapter 263, all dealing with the duties of Indian agents. The language in the acts from which the section is taken specifying the offense for keeping false books, making false entries in transcripts, etc., is omitted as superfluous, as has been the practice of the commission, as well as this committee throughout the revision. Section 335 of the Criminal Code, approved March 3, 1909, effective January 1, 1910, was as follows: All offenses which may be punished by death, or imprisonment for a term exceeding one year, shall be deemed a felony. All other offenses shall be deemed a misdemeanor. In this case of the Indian agent a fine of not less than \$500 nor more than \$1,000, at the discretion of the court, and rendering the convicted party incompetent to hold office of Indian agent after conviction, is prescribed.

Section 19: This section is taken from section 2059 of the Revised Statutes and from section 6 of the act of May 17, 1882, 22 Stat. L., 88, chapter 163, dealing with the discontinuance, transfer, and consolidation of Indian agencies. The section is existing law.

Section 20: This section is taken from section 2060 of the Revised Statutes and is existing law.

Section 21: This is section 2061 of the Revised Statutes and is existing law.

Section 22: This section is taken from section 2062 of the Revised Statutes and from a part of the Indian appropriation act of July 13, 1892, 27 Stat. L., 120, chapter 161. In the revision of the Indian laws by the commission the words "except at agencies where, in the opinion of the President, the public service would be better promoted by the appointment of a civilian," are omitted. A part of the Indian appropriation act of July 1, 1898, 30 Stat. L., 573, chapter 515, is also made a part of this section. It empowers the President to detail Army officers to act as Indian agents when, in the opinion of the President, the presence of an Army officer is required.

Section 23: This section is derived from section 2063 of the Revised Statutes and from a part of the Indian appropriation act of April 4, 1910, 36 Stat. L., 272, chapter 140. The section is existing law.

Section 24: This section is section 2064 of the Revised Statutes.

Section 25: This section is section 2065 of the Revised Statutes.

Section 26: This section is section 2066 of the Revised Statutes.

Section 27: This section is section 2067 of the Revised Statutes.

Section 28: This section is taken from a part of the Indian appropriation act of July 4, 1884, 23 Stat. L., 77, chapter 180, dealing with the traveling allowances to special agents.

Section 29: This section is taken from section 2068 of the Revised Statutes, and is existing law.

Section 30: This section represents section 2069 of the Revised Statutes, giving a preference to Indians, or persons of Indian descent, in cases of appointment of interpreters or other persons employed for the benefit of the Indians.

Section 31: This is section 2072 of the Revised Statutes.

Section 32: This is section 2073 of the Revised Statutes.

Section 33: This section is derived from section 2074 of the Revised Statutes, and is amended so as to allow the Commissioner of Indian Affairs to grant leave to any agent, subagent, interpreter, or person employed under this title, and

also amended by inserting the words "Except as otherwise expressly provided," for the reason that in many instances a person in the Indian Service is required to perform the duties of another office, either by statute or by specific authorization on the part of those empowered by Congress to make such authorization. The original section 2074 of the Revised Statutes, from which this section is taken, made it mandatory on the part of the employee in the Indian Service to apply to the superintendent or to the Secretary of the Interior for necessary leave of absence. As fully explained under Appendix B of this report, sections 2046 to 2051, inclusive, Revised Statutes, which are provisions respecting superintendents and superintendencies, are omitted, for the reason that since 1877 Congress has made no appropriation for the salaries or expenses of these offices, and there has been none employed in the Indian Service.

**Section 34:** This section is derived from a part of the Indian appropriation act of July 1, 1898, 30 Stat. L., 595, chapter 545, and is existing law.

**Section 35:** This section is section 2075 of the Revised Statutes.

**Section 36:** This section is derived from a part of the Indian appropriation act of April 21, 1904, 33 Stat. L., 191, chapter 1402, requiring a special bond to be furnished by any disbursing officer of the Indian Department when large per capita payments to Indians are to be made. When the commission revised this section of law it was made to read that the expenses incurred in procuring such special bond were to be paid by the United States from "the appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes and for other purposes." In view of the urgent deficiency appropriation act of August 5, 1909, 36 Stat. L., 125, chapter 7, in which it is declared that from that date the United States should not pay any part of the premium or other cost of furnishing the bond required by law or otherwise of any officer or employee of the United States, it seems that if that part of the act of April 21, 1904, 33 Stat. L., 191, which is brought within this section, were left to read that in the filing of such special bond the United States was to defray the expenses thereof, it would be in direct contradiction to that part of the act of August 5, 1909, and believing that the act of August 5, 1909, intended to repeal that part of the Indian appropriation act of April 21, 1904, which required the United States to defray the expenses incident to the furnishing of this special bond, it is omitted from this revision.

**Section 37:** This is section 2076 of the Revised Statutes and is existing law.

**Section 38:** This section is derived from section 2077 of the Revised Statutes and from the act of March 3, 1905, 33 Stat. L., 1049, chapter 1479. Section 2077 of the Revised Statutes provides that "where persons are required, in the performance of their duties under this title, to travel from one place to another, the actual expenses, or a reasonable sum in lieu thereof, shall be allowed them." Later legislation (March 3, 1905, 33 Stat. L., 1049, and subsequent Indian appropriation acts) has fixed the traveling expenses of Indian inspectors and certain other designated officers in the Indian Service at \$3 per day, exclusive of transportation and sleeping-car fares. This allowance is inserted in sections where persons employed in the service come within its terms.

**Section 39:** This section is section 2078 of the Revised Statutes.

**Section 40:** This section is taken from the Indian appropriation act of March 1, 1889, 30 Stat. L., 927, chapter 324, and is existing law.

**Section 41:** This section is derived from the act of March 1, 1899, 30 Stat. L., 927, chapter 324, and from a part of the Indian appropriation act of April 30, 1908, 35 Stat. L., 75, chapter 153. The words "salaries and compensation of employees contained in section forty-five" are inserted for the purpose of correct revision, the language in the existing law under the act of August 30, 1908, for which the italics are inserted, reading as follows: "That the amounts paid farmers and stockmen shall not come within the limit for employees fixed by the act of June seventh, eighteen hundred and ninety-seven" (being section 15).

**Section 42:** This section is derived from a part of the Indian Appropriation act of March 3, 1909, 33 Stat. L., 1050, chapter 1479, and from a part of the Indian appropriation act of March 1, 1907, 34 Stat. L., 1019, chapter 2285. The explanation made on the preceding section, as to the italics inserted, applies also to the italics appearing within this section.

**Section 43:** This section is derived from a part of section 6 of the Indian appropriation act of May 17, 1882, 22 Stat. L., 88, chapter 163, and from section 10 of the Indian appropriation act of August 15, 1894, 28 Stat. L., 313, chapter 200, and

from a part of the Indian appropriation act of April 30, 1908, 35 Stat. L., 71, chapter 153, respectively. The first part of section 6 of the act of May 17, 1882, cited on existing law side under this section, appears under section 19 of this revision. The words "of supplies" inserted to supply an apparent omission. The section is existing law.

Section 44: This section is taken from a part of the Indian appropriation act of May 17, 1882, 22 Stat. L., 86, chapter 163, providing for the expenses of clerks on special duty. The section is existing law.

Section 45: This section is derived from section 5 of the Indian appropriation act of March 3, 1875, 18 Stat. L., 449-450, chapter 132, and from a part of the Indian appropriation acts of May 11, 1880, 21 Stat., L., 131, chapter 85, and June 7, 1897, 30 Stat. L., 90, chapter 3. The language from the three acts has been blended together and condensed so as to express the intent and purpose of the law in concise terms. It will be noted that the parts of the acts of May 11, 1880, and June 7, 1897, respectively, merely reenact a good part of the section 5 of the act of March 3, 1875. Then, again, we find in the section 5 of the act of March 3, 1875, that provision requiring the employment of Indian, when they can perform the duties, which is the same language used in many appropriation acts, and which will be found under section 43 of this revision. In all cases of this kind it is extremely difficult to determine the proper blending in correctly stating what the law intended. The words "this section" are inserted for correct revision.

Section 46: This section is derived from a part of the Indian appropriation act of March 1, 1907, 34 Stat. L., 1016, chapter 2285, relative to the transfer of funds for payment of employees and authorizing the detailing of employees for other service when necessary.

Section 47: This section is taken from a part of the Indian appropriation act of June 30, 1913, 38 Stat. L., 80, chapter 4. The section probably could have been blended with section 40 of this revision, but it was deemed advisable to make it a separate section.

#### *Chapter 2. Performance of Treaty Obligations*

Section 48: This section is taken from section 2040 of the Revised Statutes.

Section 49: This section is derived from section 2080 of the Revised Statutes.

Section 50: This section is taken from section 2081 of the Revised Statutes.

Section 51: This section is taken from section 2082 of the Revised Statutes.

Section 52: This section is taken from section 2083 of the Revised Statutes, and from a part of the acts of March 3, 1877, 19 Stat. L., 291, chapter 101: 30 April, 1908, 35 Stat. L., 71, chapter 153: June 25, 1910, 36 Stat. L., 861, chapter 431 (section 23), and May 18, 1916, 39 Stat. L., 126, chapter 125. The italics in the section are made necessary for correct revision.

Section 53: This section is taken from section 9 of the act of March 3, 1875, 18 Stat. L., 420, chapter 132, which was reenacted in its entirety by the act of May 18, 1916, 39 Stat. L., 129, chapter 125. The section is existing law.

Section 54: This section is taken from section 3 of the Indian appropriation act of August 15, 1876, 19 Stat. L., 199, chapter 289.

Section 55: This section is taken from section 7 of the act of March 3, 1875, 18 Stat. L., 450, chapter 132. The act of March 3, 1875, requires that copies of contracts for the Indian Service shall be filed with the Second Auditor of the Treasury. The act of August 15, 1876, chapter 289, provides that "an abstract of all bids and proposals received for the supplies or services embraced in any contract shall be attached to and filed with the said contract when the same is filed with the Second Comptroller of the Treasury." This is apparently a discrepancy. However that may be, in view of the provisions of the act of July 31, 1894, chapter 174, it would appear that the Auditor for the Interior Department is the officer with whom the copies and abstracts should be filed to secure the purpose of the laws mentioned. The section is amended accordingly.

Section 56: This section is derived from section 2084 of the Revised Statutes, and from section 3 of the act of May 11, 1880, 21 Stat. L., 132, chapter 85. The section is existing law and the section number appearing in italic is for the purpose of correct revision.

Section 57: This section is taken from section 4 of the Indian appropriation act of August 15, 1894, 28 Stat. L., 312, chapter 290, which superseded in its entirety section 4 of the act of March 3, 1891, 28 Stat. L., 1015, chapter 513.

Section 58: This section is taken from a proviso in the Indian appropriation act of March 1, 1907, 34 Stat. L., 1016, chapter 2285, and is existing law.

Section 59: This is section 2085 of the Revised Statutes.

Section 60: This section is taken from a part of the Indian appropriation act of April 30, 1908, 35 Stat. L., 73, chapter 153, designating the places at which warehouses are to be maintained.

Section 61: This section is taken from a part of the Indian appropriation act of April 30, 1908, 35 Stat. L., 73, chapter 153, and is existing law.

Section 62: This section is derived from a part of the Indian appropriation act of March 3, 1877, 19 Stat. L., 291, chapter 101, and is existing law.

Section 63: The section is taken from a part of the act of July 7, 1898, 30 Stat. L., 676, chapter 571. The words "preceding section" are substituted for "act of March third, eighteen hundred and seventy-seven," for the sake of correct revision.

Section 61: This section is taken from section 2086 of the Revised Statutes and from a part of the Indian appropriation act of June 10, 1896, 29 Stat. L. 336, chapter 398, and is existing law.

Section 65: This section is section 2087 of the Revised Statutes and is existing law.

Section 66: This section is section 2100 of the Revised Statutes and is existing law.

Section 67: This section is taken from a part of the Indian appropriation act of March 3, 1875, 18 Stat. L., 424, chapter 132, which superseded section 2102 of the Revised Statutes.

Section 68: This section is section 2 of the act of March 3, 1875, 18 Stat. L., 449, chapter 132.

Section 69: This section is section 2101 of the Revised Statutes.

Section 70: This section is section 7 of the Indian appropriation act of July 1, 1898, 30 Stat. L., 596, chapter 545.

Section 71: This section is section 8 of the Indian appropriation act of March 1, 1899, 30 Stat. L., 947, chapter 324.

Section 72: This section is section 3 of the act of March 3, 1875, 18 Stat. L., 449, chapter 132, and is existing law.

Section 73: This section is section 2088 of the Revised Statutes.

Section 74: This section is taken from section 2089 of the Revised Statutes. The provision requiring the disbursement of moneys to be made by the Superintendents of Indian Affairs is omitted, since those offices have been abolished.

Section 75: This section is section 2090 of the Revised Statutes, and is existing law.

Section 76: This section is taken from section 6 of the Indian appropriation act of March 3, 1875, 18 Stat. L., 450, chapter 132.

Section 77: This section is section 2097 of the Revised Statutes, and is existing law.

Section 78: This section is taken from a part of the Indian appropriation act of March 1, 1907, 34 Stat. L., 1016, chapter 2285. The words "the President shall" are substituted for "that he" to improve the phraseology of the section, and the word "section" substituted for "provision" for correct revision.

Section 79: This section is taken from a part of the Indian appropriation act of March 1, 1907, 34 Stat. L., 1016, chapter 2285. The words "but" and "with" are substituted to improve the phraseology of the section.

Section 80: This section is section 2098 of the Revised Statutes and is existing law.

Section 81: This section is derived from a part of the Indian appropriation act of April 30, 1908, 35 Stat. L., 73, chapter 153, and from a part of section 1 of the act of June 25, 1910, 36 Stat. L., 855, providing for the selection of banks for the purpose of depositing Indian moneys and providing for the execution of indemnity bonds. The section is existing law, with the exception of the word "such" which is substituted for the word "said," which is done for the purpose of improving the phraseology of this section.

Section 82: This section is derived from section 2092 of the Revised Statutes, relative to the restriction which is placed on advances to Indian agents and disbursing officers in the Indian Service. The section also originally applied to superintendents of Indian affairs, but, as is explained in the introductory remarks of this report, all provisions of law relating to superintendents and superintendencies are omitted from the revision for the reason that Congress for many years has failed to provide for these offices, and they have become extinct on account of no appropriation being made for their continuance. The word "quarter" is substituted for the word "year," for the reason that the Bureau of Indian Affairs states that such agents are required to render their accounts quar-

terly under the provision of section 12 of the appropriation act of July 31, 1894, 28 Stat. L., 209, which section has been printed in full on existing law side of this revision.

Section 83: This section is section 2093 of the Revised Statutes, and is existing law.

Section 84: This section is section 2094 of the Revised Statutes, and is existing law.

Section 85: This section is section 28 of the act of March 3, 1911, 36 Stat. L., 1077, chapter 210, providing for the payment of judgments to Indians, and is existing law.

Section 86: This section, as codified and revised by the commission, seems to have been taken from a part of the deficiency appropriation act of March 3, 1883, 22 Stat. L., 500, chapter 111, and from a part of section 7 of the Indian appropriation act of March 2, 1887, 24 Stat. L., 407, chapter 320. Apparently, the commission acted on the assumption that the first part of section 7 of the act of March 2, 1887, was confined to that particular time as governed by the word "now." The commission has remodeled the section, purported to be taken from these two acts of Congress, and left no explanation governing its action in so remodeling it.

Section 87: This section is section 7 of the act of June 25, 1910, 36 Stat. L., 857, chapter 431, and is existing law.

Section 88: This section is section 2095 of the Revised Statutes.

Section 89: This section is taken from the act of June 10, 1876, 19 Stat. L., 58, chapter 122. The words "on the tenth of June, eighteen hundred and seventy six," are inserted in lieu of the word "now," for the sake of correct revision. The word "section" is substituted for "act," for the reason that the act referred to is made this section of the revision.

Section 90: This section is taken from the act of April 1, 1880, 21 Stat. L., 70, chapter 41. The words "now held by him," are omitted as obsolete. The section is existing law.

Section 91: This section is taken from a part of the Indian appropriation act of April 4, 1910, 36 Stat. L., 270, chapter 140, and from section 27 of the Indian appropriation act of March 3, 1911, 36 Stat. L., 1077 chapter 210. The word "made" is substituted for "herein." The word "he" is substituted for "the Secretary of the Interior." The word "And" is inserted for correct revision and for the improvement of the phraseology of the section as blended.

Section 92: This section is derived from section 26 of the act of June 30, 1913, 38 Stat. L., 103, chapter 4, which authorizes the installation of a system of book-keeping in the Bureau of Indian Affairs, in connecting the two paragraphs the word "annually" is omitted as superfluous, and the words "after July first, nineteen hundred and fourteen," are omitted as obsolete. A semicolon is inserted, the word "and" substituted for "a," and the word "such" is inserted to improve the phraseology of the section.

Section 93: This section is also a part of section 26 of the Indian appropriation act of June 30, 1913, 38 Stat. L., 103, chapter 4. The words "After July first, nineteen hundred and fourteen," are omitted as obsolete. The word "preceding" is inserted in lieu of "first paragraph of this."

Section 94: This is section 10 of the Indian appropriation act of July 4, 1881, 23 Stat. L., 98, chapter 180.

Section 95: This is section 2096 of the Revised Statutes, and is existing law.

Section 96: This section is derived from section 1 of the act of March 2, 1907, 34 Stat. L., 1221, chapter 2523. The word "the" is inserted to supply an apparent omission and the word "any" is substituted for "the" to improve the phraseology of the section.

Section 97: This section is derived from section 2 of the act of March 2, 1907, 34 Stat. L., 1221, chapter 2523, which is reenacted by the act of May 18, 1910, 35 Stat. L., 128, chapter 125.

Section 98: This section is section 2103 of the Revised Statutes and is existing law.

Section 99: This section is section 2104 of the Revised Statutes and is existing law.

Section 100: This section is section 2105 of the Revised Statutes and is existing law.

Section 101: This section is section 2106 of the Revised Statutes, and the section number appearing in *italics* is for the purpose of correct revision.

**Section 102:** This section is section 2108 of the Revised Statutes and is existing law.

**Section 103:** This section is derived from section 2109 of the Revised Statutes, from section 4 of the act of March 3, 1875, 18 Stat. L., 449, chapter 132, and from section 2 of the act of March 3, 1877, 19 Stat. L., 293, chapter 101. In consolidating these three sections of law relating to the distribution of supplies, etc., some superfluous words have been omitted to avoid unnecessary repetition. The section is existing law. The last proviso, under section 2 of the act of March 3, 1877, 19 Stat. L., 293, is covered by section 52 of this revision.

**Section 104:** This section is section 2110 of the Revised Statutes.

**Section 105:** This section is section 8 of the Indian appropriation act of July 4, 1884, 23 Stat. L., 97, chapter 180, dealing with misrepresentation on the part of any disbursing agent or other officer as to fact, etc., in any voucher, account, or claim, and providing the penalty of being denied payment or credit for any part of said voucher, account, or claim presented with such misrepresentation.

**Section 106:** This section is derived from section 6 of the Indian appropriation act of July 1, 1898, 30 Stat. L., 596, chapter 545, from a part of the Indian appropriation act of March 1, 1907, 34 Stat. L., 1016, chapter 2285, all of which is reenacted by section 22 of the act of June 25, 1910, 36 Stat. L., 801.

### *Chapter 3. Government and Protection*

**Section 107:** This section is section 2111 of the Revised Statutes and is existing law.

**Section 108:** This section is section 2112 of the Revised Statutes and is existing law.

**Section 109:** This section is section 2113 of the Revised Statutes and is existing law.

**Section 110:** This section is section 2114 of the Revised Statutes and is existing law.

**Section 111:** This section is section 2115 of the Revised Statutes and is existing law.

**Section 112:** This section is section 2116 of the Revised Statutes and is existing law.

**Section 113:** This section is section 2117 of the Revised Statutes and is existing law.

**Section 114:** This section is section 2118 of the Revised Statutes and is existing law.

**Section 115:** This section is the act of March 2, 1901, 31 Stat. L., 950, chapter 808, authorizing the Attorney General, at the request of the Secretary of the Interior, to appear in suits brought by States relative to school lands. The section is existing law.

**Section 116:** This section is section 2122 of the Revised Statutes and is existing law.

**Section 117:** This section is section 2123 of the Revised Statutes and is existing law.

**Section 118:** This section is section 2124 of the Revised Statutes and is existing law.

**Section 119:** This section is section 2125 of the Revised Statutes and is existing law.

**Section 120:** This section is section 2126 of the Revised Statutes and is existing law.

**Section 121:** This section is derived from a part of the Indian appropriation act of July 4, 1884, 23 Stat. L., 96, chapter 180, making the provisions of the homestead laws applicable to the Indians. The section has been remodeled by inserting "on the fourth of July, eighteen hundred and eighty four" for correct revision and other minor alterations made necessary to bring the law up to date in revised form. The text of the law is not changed in any respect.

**Section 122:** This section is derived from section 1 of the act of August 9, 1888, 25 Stat. L., 392, chapter 818. "State of Oklahoma" has been inserted in lieu of "Indian Territory" for the reason that Oklahoma now comprises that part of the Indian Territory referred to in the original statute. Parentheses inserted to improve the punctuation of the section.

**Section 123:** This section is derived from section 2 of the act of August 9, 1888, 25 Stat. L., 392. The words "after the ninth of August, eighteen hundred and eighty-eight," are inserted for correct revision, in lieu of the word "hereafter." The words "or the section last preceding" are inserted in lieu of "act contained." The section is existing law.

Section 124: This section is section 3 of the act of August 9, 1888, 25 Stat. L., 392, and is existing law.

Section 125: This section is taken from a part of the Indian appropriation act of June 7, 1897, 30 Stat. L., 90, chapter 3. The words "prior to the seventh of June, eighteen hundred and ninety-seven," are inserted for correct revision, in lieu of "heretofore." The words "was on said date" are inserted in lieu of "is at this time," for correct revision. The word "was" is omitted as unnecessary.

Section 126: This section is derived from a part of the Indian appropriation act of March 3, 1893, 27 Stat. L., 631, chapter 209. As is explained in note on the existing law side of the revision under this section, the first part of the paragraph is merely an appropriation for the current year and does not properly belong in a permanent revision. It is also explained that the last sentence, dealing with the duties of district attorneys, is omitted for the reason that it has heretofore been carried in that part of the Judiciary Title, known as the Judicial Code, Part Two, which was passed by the House of Representatives in 1911 and is now before the Committee on the Judiciary of the Senate, to be reintroduced in Congress at a later date. The Judiciary Committee of the Senate has changed the name of the proposed Judicial Code, Part Two, to "The Practice Code," presumably for the purpose of avoiding confusing it with the Judicial Code of March 3, 1911, in force January 1, 1912.

Section 127: This section is taken from a part of the Indian appropriation act of March 1, 1907, 31 Stat. L., 1027, chapter 2285, giving the Secretary of the Interior or his accredited representative access to any books and records of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole Tribes of Indians. The word "of" has been inserted to improve the phraseology of the section, as has a comma after the word "tribes." The comma after the word "thereof," in the last line, has been omitted on account of the omission of the words "the future," which are now obsolete.

#### *Chapter 4. Government of Indian Country*

Section 128: This section is section 2127 of the Revised Statutes and is existing law.

Section 129: This section is derived from a part of the Indian appropriation act of July 4, 1884, 23 Stat. L., 94, chapter 180, and is existing law.

Section 130: This section is the act of February 16, 1889, 25 Stat. L., 673, chapter 172, "An act in relation to dead and fallen timber on Indian lands."

Section 131: This section is derived from a part of the Indian appropriation act of June 7, 1897, 30 Stat. L., 90, chapter 3, and is existing law.

Section 132: This section is derived from section 5 of the Indian appropriation act of August 15, 1876, 19 Stat. L., 200, chapter 285, and from section 10 of the Indian appropriation act of March 3, 1903, 32 Stat. L., 982, chapter 994. The section is existing law, omitting all obsolete language, which is done for the sake of correct revision.

Section 133: This section is section 2132 of the Revised Statutes.

Section 134: This section is section 2133 of the Revised Statutes, as reenacted by the act of July 31, 1882, 22 Stat. L., 179, chapter 300.

Section 135: This section is section 2134 of the Revised Statutes.

Section 136: This section is section 2135 of the Revised Statutes.

Section 137: This section is section 2136 of the Revised Statutes.

Section 138: This section is section 2137 of the Revised Statutes.

Section 139: This section is section 2138 of the Revised Statutes.

Section 140: This section is derived from section 2139 of the Revised Statutes, and from the acts of July 23, 1892, 27 Stat. L., 260, chapter 234; January 30, 1907, 29 Stat. L., 506, chapter 109; and August 24, 1912, 37 Stat. L., 519, chapter 388. The section is existing law, making it prohibitory to introduce into the Indian country any intoxicating liquors or beverages, other than for sacramental purposes under church authority.

Section 141: This section is derived from section 2140 of the Revised Statutes, and from the acts of March 1, 1907, 34 Stat. L., 1017, chapter 2285; August 21, 1912, 37 Stat. L., 519, chapter 388; March 18, 1916, 39 Stat. L., 121; and March 2, 1917 (the volume of Statutes at Large and page can not be given, as the statute is not in permanent form at the time of this report). The section represents a consolidation of the various provisions of law in the different acts of Congress relating to the powers, duties, etc., of Indian agents in searching for concealed liquors in the Indian country.

Section 142: This section is taken from a part of the Indian appropriation act of January 4, 1881, 23 Stat. L., 94 chapter 180 and is existing law. The words

"the two sections last preceding" are substituted for "section twenty-one hundred and thirty-nine or of section twenty-one hundred and forty of the Revised Statutes" for the reason that the two sections last preceding represent the two sections of the Revised Statutes designated.

Section 143: This section is taken from section 2141 of the Revised Statutes and from a part of the act of May 18, 1916, 39 Stat. L., 124, chapter 125. The provisions of the acts mentioned herein are blended in this section, and the italics are necessary for correct revision.

Section 144: This section is section 2142 of the Revised Statutes, fixing the penalty for assaults with intent to kill in the Indian country by white persons or Indians. So far as the Indians are concerned, this offense is covered by the act of March 3, 1885, chapter 341, and this section is accordingly amended by the omission of the words "and every Indian who shall make an assault upon a white person." Throughout the revision on the part of the commission, as well as the Joint Committee on Revision of the Laws and the present Committee on Revision of the Laws, the words "hard labor" are omitted. The words "other than an Indian" are proposed for the reason that it would appear to be the intention of Congress that the section govern any assault by a person other than an Indian, and not to be confined to an assault upon an Indian by a white person.

Section 145: This section is derived from section 2143 of the Revised Statutes and, as in the preceding section, a like omission is made, for the reason that the crime of arson when committed by an Indian on an Indian reservation is subject to the provisions of the so-called "seven crimes act" of 1885. The words "other than an Indian" are inserted for the same reason assigned in the last preceding section.

Section 146: This section is section 2144 of the Revised Statutes.

Section 147: This section is section 2145 of the Revised Statutes.

Section 148: This section is derived from section 2146 of the Revised Statutes. The last preceding section (147) which is section 2145 of the Revised Statutes, extends over the Indian country the general laws of the United States as to the punishment of crimes committed within its exclusive jurisdiction. This section, which is section 2146 of the Revised Statutes, provides that this shall not extend to crimes committed by one Indian against the person or property of another Indian, etc. This was due to the practice then existing of permitting such offenses to be punished by the tribal courts, but since the act of March 3, 1885, jurisdiction over the seven crimes therein mentioned, when committed by Indians in a Territory or upon a reservation in a State, has been given to the Territorial courts in the former case and to the United States court in the latter. Words have been inserted in this section to give effect to this limitation upon the recognition previously extended to the authority of tribal courts.

Section 149: This section is section 2147 of the Revised Statutes. The words "The Superintendent of Indian Affairs, and the" are omitted, as previously explained under the omission of provisions relating to superintendents and superintendencies of Indian affairs.

Section 150: This section is section 2148 of the Revised Statutes.

Section 151: This section is section 2149 of the Revised Statutes.

Section 152: This section is derived from a part of the Indian appropriation act of August 1, 1914, 38 Stat. L., 584, chapter 222, relative to the segregation of Indians with contagious diseases.

Section 153: This section is section 2150 of the Revised Statutes.

Section 154: This section is section 2151 of the Revised Statutes.

Section 155: This section is section 2152 of the Revised Statutes.

Section 156: This section is taken from a part of the Indian appropriation act of August 1, 1914, 38 Stat. L., 586, chapter 222, requiring a record to be kept of all arrests on an Indian reservation or at an Indian school.

Section 157: This section is section 2153 of the Revised Statutes, providing for the employment of a posse comitatus to assist in executing process in the Indian country.

Section 158: This section is section 2154 of the Revised Statutes. The words "or misdemeanor" are omitted as superfluous.

Section 159: This section is section 2155 of the Revised Statutes.

#### *Chapter 5. Education*

Section 160: This section is section 9 of the Indian appropriation act of July 4, 1884, 23 Stat. L., 98, chapter 180, and is existing law.

Section 161: This section is taken from a part of the Indian appropriation acts of March 3, 1891, 26 Stat. L., 1014, chapter 543, and July 13, 1892, 27 Stat. L., 143, chapter 164, the language in both acts being identical.

**Section 162:** This section is section 2071 of the Revised Statutes.

**Section 163:** This section is taken from a part of the Indian appropriation act of July 13, 1892, 27 Stat. L., 143, chapter 164.

**Section 164:** This section is derived from a part of the Indian appropriation act of March 3, 1893, 27 Stat. L., 628, chapter 209.

**Section 165:** This section is derived from a part of the Indian appropriation act of March 2, 1895, 28 Stat. L., 906, chapter 188.

**Section 166:** This section is taken from section 7 of the act of June 23, 1879, 21 Stat. L., 35, chapter 35.

**Section 167:** This section is taken from a part of the Indian appropriation act of June 10, 1896, 29 Stat. L., 345, chapter 398. The act of June 20, 1888, chapter 503, contains certain provisions as to schools at which "church organizations are assisting in the educational work." The act of June 10, 1896, from which this section is taken, declares it to be "the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school." This is regarded as superseding the provisions of the act of June 20, 1888.

**Section 168:** This section is derived from section 11 of the act of August 15, 1894, 28 Stat. L., 313, chapter 290, and from a part of section 1, of the act of June 10, 1896, 29 Stat. L., 348, chapter 398. The provisions of section 11 entirely cover the proviso taken from section 1 of the act of June 10, 1896, and this section is really based entirely on section 11 of the act of August 15, 1894.

**Section 169:** This section is derived from the act of July 31, 1882, 22 Stat. L., 181, chapter 303.

**Section 170:** This section is derived from section 10 of the Indian appropriation act of March 2, 1889, 25 Stat. L., 1003, chapter 112, and from a part of the Indian appropriation act of March 3, 1891, 26 Stat. L., 991, chapter 543.

**Section 171:** This section is derived from a part of the acts of March 3, 1891, 26 Stat. L., 991, chapter 543; May 27, 1902, 32 Stat. L., 247, chapter 888, and June 21, 1906, 34 Stat. L., 330, chapter 3504, as explained in note on existing law side, the language in the various acts mentioned being the same, it is deemed necessary only to place on the existing law side that part of the act of June 21, 1906, from which this section is taken.

**Section 172:** This section is derived from a part of the Indian appropriation act of August 24, 1912, 37 Stat. L., 519, chapter 388.

**Section 173:** This section is taken from a part of the Indian appropriation act of April 21, 1904, 33 Stat. L., 211, chapter 1402.

**Section 174:** This section is derived from a part of the acts of March 1, 1907, 34 Stat. L., 1017, chapter 2285; April 30, 1908, 35 Stat. L., 72, chapter 153, and September 7, 1916, 39 Stat. L., 741, chapter 455. As explained in note on existing law side, it was considered unnecessary to reprint that part of all the acts from which this section is taken where the language was the same.

**Section 175:** This section is derived from a part of the act of March 1, 1907, 34 Stat. L., 1018, chapter 2285.

**Section 176:** This section is taken from a part of the act of March 3, 1909, 35 Stat. L., 783, chapter 263.

**Section 177:** This section is taken from a part of the act of May 18, 1916, 39 Stat. L., 125, chapter 125. As explained on existing law side, it is considered unnecessary to reprint the several acts wherein will be found identical language.

#### *Chapter 6. Rights of Way Through Indian Lands*

**Section 178:** This section is derived from section 1 of the act of March 2, 1899, 30 Stat. L., 900, chapter 374; from section 23 of the act of February 28, 1902, 32 Stat. L., 50, chapter 134, and from section 19 of the act of June 25, 1910, 36 Stat. L., 859, chapter 131. The act of February 28, 1902, 32 Stat. L., 50, section 23, excepted from the operation of the act of March 2, 1899, 30 Stat. L., 900, lands in Oklahoma and Indian Territory. The proviso in *italic* at the end of the section gives effect to the act of February 28, 1902. This explains also the omission of the language used in section 23 of the act of February 28, 1902, which is necessary for revision. The section is existing law. The word "chapter" is substituted for "Act"; "section" for "Act," for correct revision. The word "each" is omitted as unnecessary.

**Section 179:** This section is derived from section 2 of the act of March 2, 1899, 30 Stat. L., 900, chapter 374; from section 23 of the act of February 28, 1902, 32 Stat. L., 50, chapter 134, and from a part of the Indian appropriation act of June 21, 1906, 34 Stat. L., 330, chapter 3504.

**Section 180:** This section is derived from section 3 of the act of March 2, 1899, 30 Stat. L., 991, chapter 374, and is existing law. The word "chapter" is substituted for "Act," for revision.

Section 181: This section is section 4 of the act of March 2, 1899, 30 Stat. L., 991, chapter 374, and is existing law.

Section 182: This section is section 6 of the act of March 2, 1899, 30 Stat. L., 992, chapter 374. The word "chapter" is substituted for "Act," for correct revision.

Section 183: This section is section 7 of the act of March 2, 1899, 30 Stat. L., 992, chapter 374. The words "the five sections last preceding" are substituted for "this Act," for the reason that the five sections last preceding comprise the act of March 2, 1899.

Section 184: This section is derived from a part of the Indian appropriation act of March 3, 1909, 35 Stat. L., 781, chapter 263, and from the act of May 6, 1910, 36 Stat. L., 349, chapter 204. The words appearing in italics in the section do not in anywise change the existing law, but in most instances are offered for the purpose of improving the phraseology of the section, and stating in as concise a way as possible the law.

Section 185: This section is derived from the act of March 11, 1904, 33 Stat. L., 65, chapter 505, and from the Indian appropriation act of March 2, 1917, granting rights of way for the construction, operation, and maintenance of pipe lines for the conveyance of oil and gas through any Indian reservation, Indian lands, etc. The section is existing law, word "section" substituted for "Act," for revision.

Section 186: This section is section 8 of the act of March 2, 1899, 30 Stat. L., 992, chapter 374. The words "the foregoing sections of chapter," substituted for "this Act," for correct revision for the reason that the foregoing sections comprise the act of March 2, 1899, 30 Stat. L., 992.

Section 187: This section is taken from section 3 of the Indian appropriation act of March 3, 1901, 31 Stat. L., 1083, chapter 832. The words "that portion of the State of Oklahoma formerly known as" are inserted for correct revision, the State of Oklahoma comprising that part of the Indian Territory. The word "chapter" is substituted for "Act."

Section 188: This section is also derived from a part of section 3 of the Indian appropriation act of March 3, 1901, 31 Stat. L., 1083, chapter 832, relative to the condemnation of lands for public purposes. The section is existing law.

Section 189: This section is section 4 of the act of March 3, 1901, 31 Stat. L., 1084, chapter 832.

#### *Chapter 7. Allotment of Lands*

Section 190: This section is derived from section 1 of the act of February 8, 1887, 24 Stat. L., 388, chapter 119, and from section 1 of the act of February 28, 1891, 26 Stat. L., 794, chapter 883, and from section 17 of the act of June 25, 1910, 36 Stat. L., 859, chapter 431. The word "section" is substituted for the word "Act," for revision. Otherwise, there is no change.

Section 191: This section is taken from section 2 of the act of February 8, 1887, 24 Stat. L., 388, chapter 119.

Section 192: This section is taken from section 3 of the act of February 8, 1887, 24 Stat. L., 389, chapter 119, reenacted in its entirety by the act of June 25, 1910, 36 Stat. L., 858, chapter 431, section 9. The word "chapter" is substituted for the word "Act."

Section 193: This section is section 4 of the act of February 8, 1887, 24 Stat. L., 389, chapter 119. The word "chapter" is substituted for the word "Act."

Section 194: This section is taken from section 5 of the act of February 8, 1887, 24 Stat. L., 389, chapter 119, and from a part of the act of June 21, 1906, 34 Stat. L., 326, chapter 3504. The act of June 21, 1906, 34 Stat. L., 326, authorizes the President, in his discretion, to extend beyond twenty-five years the period within which an Indian allottee may not dispose of his allotment, as forbidden by section 5 of the act of February 8, 1887, 24 Stat. L., 389. Language has been inserted in this section declaring void all conveyances of allotted land during any extension of the trust period, as well as during the twenty-five years. The word "chapter" is substituted for "Act," and the other words appearing in italics within the section are inserted for correct revision.

Section 195: This section is taken from section 6 of the act of February 8, 1887, 24 Stat. L., 390, chapter 119, which was reenacted by the act of May 8, 1906, 34 Stat. L., 182, chapter 2848. The words "the section last preceding" are substituted for "section 5 of this act," as section 5 of the act referred to is made the preceding section of this revision. The word "chapter" is substituted for "Act," for correct revision; "and of the next succeeding section" substituted for "Act"; "that part of Oklahoma which was formerly" is inserted for the reason that the State

of Oklahoma comprises that part of the old Indian Territory. The section is existing law.

Section 196: This section is taken from a part of the act of May 8, 1906, 34 Stat. L., 183, chapter 2348, and from the act of May 29, 1908, 35 Stat. L., 414, chapter 216. The act of May 29, 1908, supersedes that part of the act of May 8, 1906. The words appearing in *italics* are inserted to improve the phraseology of the section and for correct revision. No change is made in the existing law.

Section 197: This section is taken from a part of the Indian appropriation act of March 1, 1907, 34 Stat. L., 1018, chapter 2285, and is existing law.

Section 198: This section is taken from the act of March 1, 1907, 34 Stat. L., 1016, chapter 2285, and is existing law.

Section 199: This section is derived from a part of section 1 of the act of June 25, 1910, 36 Stat. L., 855, chapter 431, and from a part of the acts of June 30, 1943, 38 Stat. L., 80, chapter 4; August 1, 1911, 38 Stat. L., 586, chapter 222, and May 18, 1916, 39 Stat. L., 127, chapter 125. The word "chapter" is substituted for "act" for revision. The section is existing law.

Section 200: This section is derived from a part of the Indian appropriation act of August 1, 1914, 38 Stat. L., 586, chapter 222, authorizing those designated as special examiners in heirship cases to administer oaths in investigations committed to them.

Section 201: This section is also a part of the Indian appropriation act of August 1, 1914, 38 Stat. L., 586, chapter 222. The *italics* appearing within the section are for the sake of correct revision.

Section 202: This section is taken from section 2 of the act of June 25, 1910, 36 Stat. L., 856, chapter 431, reenacted by the act of February 14, 1913, 37 Stat. L., 678. The *italics* appearing in this section are for the purpose of correct revision.

Section 203: This section is section 3 of the act of June 25, 1910, 36 Stat. L., 856, chapter 431.

Section 204: This section is section 4 of the act of June 25, 1910, 36 Stat. L., 856, chapter 431.

Section 205: This section is section 5 of the act of June 25, 1910, 36 Stat. L., 857, chapter 431. The second sentence of the section has been somewhat rearranged to improve the phraseology of the section and to omit all unnecessary words. This is in line with the policy of the commission, the Joint Committee on Revision of the Laws, and the present Committee on Revision of the Laws. The section is existing law.

Section 206: This section is section 12 of the act of June 25, 1910, 36 Stat. L., 858, chapter 434. As explained in note on existing law side of this revision, only the proviso of section 12 is general legislation, the first part being special legislation, and is omitted.

Section 207: This section is section 31 of the act of June 25, 1910, 36 Stat. L., 863, chapter 431. The words "in the manner provided in section 224" are inserted for correct revision, as well as offered in substitution for "conformity with the general allotment laws as amended by section (17) of this act," for the reason that the original statute was not specific enough and might have brought about confusion.

Section 208: This section is section 13 of the act of June 25, 1910, 36 Stat. L., 858, chapter 431; "section" substituted for "Act," for revision.

Section 209: This section is section 14 of the act of June 25, 1910, 36 Stat. L., 859, chapter 431.

Section 210: This section is taken from section 7 of the act of February 8, 1887, 24 Stat. L., 300, chapter 119.

Section 211: This section is taken from section 8 of the act of February 8, 1887, 24 Stat. L., 301, chapter 119, and from the act of March 2, 1889, 25 Stat. L., 1013. The *italics* appearing within the section are made necessary for correct revision.

Section 212: This section is section 9 of the act of February 8, 1887, 24 Stat., 301, chapter 119. The language of the section has been rearranged so as to avoid the usage of the obsolete language found in the original statute and to bring into the revision that section of the law governing the disposition of the appropriations of \$100,000 made by section 9 of the act of February 8, 1887, which this section represents. The *italics* are necessary for revision.

Section 213: This section is section 10 of the act of February 8, 1887, 24 Stat. L., 301, chapter 119. The word "chapter" is substituted for "Act," for revision.

**Section 214:** This section is taken from a part of the Indian appropriation act of June 21, 1906, 34 Stat. L., 327, chapter 3504. The word "chapter" is substituted for "Act," for the sake of revision.

**Section 215:** This section is also a part of the act of June 21, 1906, 31 Stat. L., 327, chapter 3504: "chapter" is substituted for "Act," for revision.

**Section 216:** This section also represents a part of the act of June 21, 1906, 34 Stat. L., 327, chapter 3504, regulating the sales of lands within reclamation projects.

**Section 217:** This section is section 14 of the act of February 8, 1887, 24 Stat. L., 391, chapter 119.

**Section 218:** This section is section 2 of the act of October 19, 1888, 25 Stat. L., 612, chapter 1214: "chapter" is substituted for "Act," for correct revision.

**Section 219:** This section is section 2 of the act of February 28, 1891, 26 Stat. L., 795, chapter 383. The italics appearing within the section are made necessary for correct revision.

**Section 220:** This section is a part of the Indian appropriation act of March 3, 1909, 35 Stat. L., 784, chapter 263.

**Section 221:** This section is also a part of the act of March 3, 1909, 35 Stat. L., 783, chapter 263. The word "section" is substituted for the word "paragraph" for correct revision, and the words "full force and" are omitted as superfluous.

**Section 222:** This section is section 8 of the act of June 25, 1910, 36 Stat. L., 857, chapter 431, regulating the sale of timber on trust allotments and the disposition of the proceeds derived therefrom.

**Section 223:** This section is based on section 3 of the act of February 28, 1891, 26 Stat. L., 795, chapter 383, and on a part of the act of August 15, 1891, 28 Stat. L., 305, chapter 290; March 2, 1895, 28 Stat. L., 900 chapter 188; June 7, 1897, 30 Stat. L., 85, chapter 3:

March 1, 1899, 30 Stat. L., 911, chapter 324; May 31, 1900, 31 Stat. L., 229, 246, March 1, 1899, 30 Stat. L., 911, chapter 324; May 31, 1900, 31 Stat. L., 229, 246, chapter 598; and May 18, 1916, 39 Stat. L., 128, chapter 125. The notes appearing under this section on existing law side fully explain why each part of the various acts cited is not printed and the changes in the various acts. The act of August 15, 1891, 28 Stat. L., 305, chapter 290, provides for the leasing of surplus land by the council of the tribe "under the same rules and regulations and for the same term of years as is now allowed in the case of leases for grazing purposes." By subsequent legislation allotted lands can be leased for farming purposes only, and the language quoted has been changed to conform to the provisions of the act of May 31, 1900, 31 Stat. L., 229, chapter 598. The last proviso in this section, regulating the leasing of arid allotments susceptible of irrigation, which is found in the act of May 18, 1916, is revised by omitting all unnecessary words which are found in the first part of the section to cover it. The italics in the section are necessary for correct revision.

**Section 224:** This section is based on section 4 of the act of February 28, 1891, 26 Stat. L., 795, chapter 383, which is reenacted by the latter part of section 17 of the act of June 25, 1910, 36 Stat. L., 859, chapter 431. The section is existing law, and the italics appearing therein are made necessary for correct revision.

**Section 225:** This section is section 5 of the act of February 28, 1891, 26 Stat. L., 795, chapter 383, regulating the legitimation of Indian children for the purpose of determining the descent of land to the heirs of deceased Indians. The italics appearing within the section are necessary for correct revision.

**Section 226:** This section is section 2149 of the Revised Statutes.

**Section 227:** This section is section 2120 of the Revised Statutes.

**Section 228:** This section is section 2121 of the Revised Statutes.

**Section 229:** This section is section 7 of the act of May 27, 1902, 32 Stat. L., 275, chapter 888.

**Section 230:** This section is based on section 1 of the act of August 15, 1894, 28 Stat. L., 305, chapter 290, which is reenacted by section 1 of the act of February 6, 1901, 31 Stat. L., 760, chapter 217. The word "district" is inserted in lieu of "circuit" on account of the abolition of the circuit courts by the Judicial Code of 1911.

**Section 231:** This section is section 2 of the act of February 6, 1901, 31 Stat. L., 760, chapter 217.

**Section 232:** This section is taken from the act of January 26, 1895, 28 Stat. L., 641, chapter 50, reenacted by the act of April 23, 1904, 33 Stat. L., 297, chapter 1480.

Section 233: This section is taken from a part of the act of April 30, 1908, 35 Stat. L., 95, chapter 153, regulating the leasing of irrigable allotted land on the Uintah and Uncompahgre Reservations in the State of Utah.

Section 234: This section is also a part of the act of April 30, 1908, 35 Stat. L., 97, chapter 153, regulating the leasing of irrigable allotted lands on the Shoshone or Wind River Reservation in the State of Wyoming. The word "section" is substituted for "provision."

Section 235: This section is derived from a part of the act of March 27, 1908, 35 Stat. L., 49, chapter 107, regulating the sale of the interests of Indian miners in lands of the Yakima Indian Reservation in the State of Washington, and the disposition of the proceeds derived therefrom.

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1 Repealed.

2 Not yet bound.

Note.—Laws for 2d sess. 64th Congress not yet bound.

## APPENDIX B

### STATEMENT SHOWING SECTIONS OF THE REVISED STATUTES WHICH HAVE BEEN OMITTED FROM THIS REVISION WITH REASONS FOR SUCH OMISSION

Section 2046, providing for the appointment of eight superintendents of Indian affairs, omitted for the reason that since 1877 Congress has made no appropriation therefor and none has been employed in the Indian Service.

Sections 2047, 2048, 2049, 2050, and 2051, dealing with the duties, etc., of such superintendents, omitted for the same reason.

Section 2107, requiring that accounts and vouchers for goods, supplies, etc., for the Indian Service, shall be submitted for approval to the executive committee of the Board of Indian Commissioners, is omitted for the reason that it is presumed that the section is repealed by the act of May 17, 1882, chapter 163, which provides that "hereafter the commission shall only have power to visit and inspect agencies and other branches of the Indian Service, and to inspect goods purchased for said service, and the Commissioner of Indian Affairs, shall consult with the commission in the purchase of supplies."

Sections 2128 to 2181, inclusive, providing for licensing citizens of good moral character to trade with the Indians, are omitted in view of the act of August 15, 1876, chapter 283, which authorizes the Commissioner of Indian Affairs to appoint traders to the Indian tribes, and prescribes rules and regulations for their government.

Section 2156 is omitted, as the subject of Indian depredations is dealt with comprehensively in the act of March 3, 1801.

Section 2157 is omitted, as the power of agents to administer oaths is elsewhere conferred.

Section 2099, providing that no moneys appropriated for the purposes of education among the Indian tribes shall be expended elsewhere than in the Indian country, is omitted, as being in direct conflict with the present policy of the Government.

PART II, EXHIBIT 2

REVISION AND CODIFICATION OF STATUTES AFFECTING AMERICAN INDIANS

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON INDIAN AFFAIRS,  
*Washington, D.C., Wednesday, January 28, 1931.*

The committee this day met at 10:30 o'clock a.m., Hon. Scott Leavitt, chairman, presiding, for consideration of H.R. 15498; which reads as follows:

[H.R. 15498, Seventy-first Congress, third session]

A BILL Authorizing the President, through the Secretary of the Interior, to study, report, and recommend on a revision and codification of the statutes affecting the American Indians

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there is hereby authorized to be appropriated, out of any money in the Treasury of the United States not otherwise appropriated, the sum of \$250,000, or so much thereof as may be necessary, to be immediately available, to cover any expenses which may be incurred by the President, through the Secretary of the Interior, in making a study and report on the policy of the Federal Government in relation to the American Indians as found in the applicable statutes of the United States, their treaty, property, and citizenship rights, their health, education, and social welfare, the relations of the States to the so-called Indian problem, and any other phase of the national policy affecting the aim and end of Federal guardianship over the affairs of the Indian as embodied in existing laws and treaties, and to make recommendations on all such matters. Such expenditures may include compensation and expenses of persons named for the purposes, at least one of whom shall be an Indian citizen of the United States; the employment of experts, stenographic, and other services by contract if deemed necessary, transportation, travel, and subsistence, or per diem in lieu of subsistence, rent of office in the District of Columbia and elsewhere, purchase of necessary books and documents, printing and binding, official cards; and/or such other expenses as the President and the Secretary of the Interior may deem necessary, without regard to the provisions of any other act.

The CHAIRMAN. This bill is in reality a proposal on the part of the Indian Office as to what it thinks ought to be done to crystallize the entire Indian situation through codification of the laws, recommendations, and so forth, as to some actual step to be taken.

The Indian Office is widely criticised, of course. The question confronting this committee is whether when it places before us a constructive proposal—what it thinks ought to be done to bring this into a workable form—we are going to report the bill out and give the Congress an opportunity to act on it.

The report of the department on this bill reads as follows:

DEPARTMENT OF THE INTERIOR,  
*Washington, January 24, 1931.*

Hon. SCOTT LEAVITT,  
*Chairman, Committee on Indian Affairs,  
House of Representatives.*

MY DEAR MR. CHAIRMAN: In response to your request of December 20, for a report on H.R. 15498, relative to a proposed revision and codification of the statutes affecting the American Indians, I transmit herewith a memorandum on the subject that has been submitted by Commissioner Rhoads of the Indian

Service. After a review of the proposed measure, I agree with Commissioner Rhoads.

In this connection, you are advised that the Director of the Bureau of the Budget has advised me that the expenditures contemplated by this bill would not be in conflict with the financial program of the President, "provided, that any estimate of appropriation for this project, if authorized by law, be presented as a part of the estimates to be submitted by the Department of the Interior for the annual Budget, rather than as a supplementary estimate." Therefore, we are desirous of having the bill enacted into law before we submit the next regular estimates.

Very truly yours,

RAY LYMAN WILBUR, *Secretary.*

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DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
*Washington, January 24, 1931.*

By letter dated December 20, 1930, the chairman of the House Committee on Indian Affairs requested a report on House bill No. 15498 designed to authorize the President, through the Secretary of the Interior, to study, report, and recommend on a revision and codification of the statutes affecting the American Indians and the policy of the Federal Government toward its Indian citizens.

At suitable intervals in the progress of the Indians toward complete emancipation from wardship of the Federal Government it behooves us to pause and consider whether existing policies determined in large measure by legislative enactments of Congress relating to such matters are in fact hindering rather than helping accomplishment of the goal desired. That is, an inventory based on a present appraisal of the Indian problem from a governmental standpoint should prove exceedingly helpful and also afford a real opportunity for greatly needed constructive legislation by Congress.

Piecemeal legislation in the past resulting in a multiplicity of statutes relating to the same subject matter, applicable to specific tribes or a group of Indians only, leaves us with a patchwork system very bewildering to an inexperienced layman, difficult of administration, and assuredly confusing to the very people—the Indians—whose welfare we are all so earnestly striving to safeguard and advance. Admittedly past legislation by Congress has not always been consistent in such matters, resulting in inequalities between tribes or groups of Indians, which in itself gives considerable cause for dissatisfaction and complaint. Mutations in office coupled with attendant mutations in policies legislative or otherwise, lead to no permanent goal and assuredly create misunderstandings and doubts in the minds of the Indians as to where they stand in their relation to the Federal Government. In other words a fixed and determined continuity of policy in dealing with the Indians is greatly to be desired, not during any one administrative period alone but by successive decades or generations as well. This we regard as highly essential, not only for the ultimate welfare of the Indians but also as a definite step toward their early and complete emancipation from governmental paternalism, be it State or Federal. In other words chart out a definite course to be pursued and rigidly stick to it, by legislative enactment, if necessary, in order to assure a steadfast continuity of policy.

As illustrative of the multiplicity of statutes dealing with the Indian affairs it may be pointed out that in 1914 the legislation by Congress relating to the Five Civilized Tribes from 1890 to 1914 was compiled for convenient use. This compilation comprises over 587 printed pages. Since then (1914) numerous important statutes relating to these tribes have been enacted but have not been recompiled or brought down to date. With over 100 different tribes, or groups of Indians to deal with, the need for frequent revision codification, and compilation is manifest. Again, and purely for illustrative purposes, the Flathead Indian Reservation in Montana, was created originally by treaty with these Indians in 1855. Since that time more than 20 separate enactments of legislation dealing with the question of irrigation on this reservation alone have been had, all of which necessarily must be considered before conclusions can be drawn and administrative action taken. Frequently such substantive legislation will be found embedded in lengthy appropriation acts scattered through ponderous volumes, and unless separately codified or compiled becomes a real burden to classify and keep in mind.

The question of jurisdiction, State and Federal, over the Indians and the extent to which the respective States should be authorized or permitted to exercise jurisdiction over the Indians, particularly within Indian reservations, becomes increasingly complex as time progresses. This is especially true in such matters as health, education, and maintenance of law and order. Cooperation between the two Governments, State and Federal, in such matters certainly appears the logical course to pursue, as this would avoid duplication of effort, duplication of expense, duplication of facilities, overhead, etc., and assuredly should result in better equipment, a higher grade of personnel with better attendant results to the local citizenry both Indian and white.

The working out of a codification and revision of such a complex situation, particularly if it involves the adoption of a new or different policy necessarily will require a small corps of experts, free to devote their entire time to research and study of the problem. This should be done by all means, and as Congress has plenary power with respect to such matters naturally no definite or permanent policy can be mapped out without affirmative action by that body. As administrative officers primarily charged with the duty of carrying out such laws and policies as Congress may see fit to enact with respect to the Indians we stand ready and earnestly desirous of cooperating to the fullest extent possible with the limited facilities at our command in working out a more equitable solution of a problem which for generations past has been most perplexing, misleading, confusing, and admittedly far from satisfactory.

However, this bill if enacted would authorize an appropriation of \$250,000 for carrying on the proposed work. This may be larger than actually required for early use. It is suggested that this sum be reduced by substituting therefor in line 5, page 1 of the bill, the figures \$100,000.

For the reasons given we recommend favorable consideration of this bill with the understanding that whatever sum is therein authorized to cover the cost of such work will be included in our regular estimates for the year 1933.

C. J. RHOADS, *Commissioner.*

The CHAIRMAN. To my mind I would say to the committee this is a particularly important matter of legislation, it is something rather fundamental, and something that ought to be reported out as a forward step.

Some representatives of the Indian Office are here this morning, but I think the situation is pretty well understood by every member of the committee who has been in contact with Indian problems.

Mr. HALSEY. Was not an exhaustive report made in 1927, covering a good many of the suggestions now before us? I wonder whether the Indian Bureau has given any consideration to that report.

The CHAIRMAN. They most certainly have. However, it does not carry out the question of codification of the laws and matters of that kind as fully as they think they ought to be carried out. There should be experts definitely at this with their expenses paid, if necessary, and they could spend the necessary time to put this into workable form.

The report you have in mind was very valuable in many ways. The commission went to the different reservations, but it scattered out among several places and they were only a few days on an Indian reservation. Nevertheless, that report contains a great deal of valuable matter and many suggestions have been adopted and carried out as a result of it, but it does not complete the necessities that seem to be covered in this bill.

Mr. HALSEY. I recently asked the Indian Office for information along some of the lines covered by that report, but I could not get anything satisfactory.

The CHAIRMAN. One has to keep in mind that the responsibility is still with the Indian Office and the fact that somebody has suggested something that they do not approve does not put the Indian Office under obligation to adopt things suggested any more than Congress is under obligation to adopt something suggested by somebody but not approved by Congress.

Mr. WILLIAMSON. The matter of codification was discussed at the late Mohawk conference in New York a year ago when you and I were present. I feel that this would be a great advantage not only to the committee but to the Indians and especially the Indian Bureau if we could have a codification of the Indian laws. Does the bill contemplate that this codification committee shall attempt to outline matters for the benefit of Congress and make recommendations with reference to the future policy of the Government toward the Indians?

The CHAIRMAN. Yes.

Mr. SPROUL. That is just what it does. There is not a word said about codification except in the title.

Mr. COOKE. I have been trying to find "codification" in the bill some place but can not do so.

Mr. SPROUL. You will have to get it.

The CHAIRMAN. It is the wording of the Indian Office, and if anything is lacking to bring that about it can be put in the bill. I know it is the intention to cover codification.

Mr. SPROUL. If that is the intention the sum of \$100,000 is not enough. The original amount in the bill, namely, \$250,000, is more nearly correct.

The CHAIRMAN. If further appropriation should be necessary, it could easily be authorized. The Bureau of the Budget approves this much at this time.

Mr. O'CONNOR. This bill was undoubtedly motivated by the highest possible desire on the part of the Indian Bureau to be of the greatest service to the country and the Indians, and the title would seem to cover two distinct things, first, the codification of the law, which is a good thing. The fact that they might seek to drag in all these appropriations of past years would make it voluminous and tend toward defeating the thing desired.

Mr. WILLIAMSON. Codification would involve only substantive law, and a lot of it appears in appropriation bills.

Mr. O'CONNOR. But the codification seems to be rather the small thing that is contemplated since it was left out. The real thing is to make a study of the Indian policy and history and report a new policy as interpreted by the Indian Bureau as now constituted. The trouble with all these sorts of things is that they are weak and idealistic, still under our form of Government we have rotation of crops. This commission would report the present ideas of the Indian Bureau, but nobody knows what those ideas will be three or four years from now. We are changing the relations of the Government to the white people very much, and I am wondering if a great deal of actual, practical benefit would ever come from this thing. I had some men in my office only this morning who were interested in getting immediate, specific relief for their own people who are suffering very much.

The CHAIRMAN. This would not delay that matter.

Mr. O'CONNOR. No; this is only \$100,000, but that sum would buy a lot of peanuts. That would create another commission, and it may turn out to be another Wickersham commission and we will have to hire an interpreter to find out what they agreed upon. I am in favor of getting the underbrush out of the way so that we may see our way ahead; but I am impressed with this idea—the Government, a lodge, or any particular organization very largely speaks the attitude and point of view of these then in charge, and we can not under this form of Government lay down any policy that would be intended to educate somebody to come afterwards or to bind those who come afterwards in any way. I think we are wasting a lot of money looking things up and printing them when they will not lead or influence anybody except those whose views are expressed in them.

Mr. ARENTZ. Do you not think it would be a good thing to have this revision and codification?

Mr. O'CONNOR. Yes; if this is the purpose of the bill.

Mr. ARENTZ. Let us out the extraneous things involved.

Mr. O'CONNOR. I do not think the department would care for the bill if those were cut out.

Mr. COOKE. The things in the bill are usually under the regular duties of the Department of the Interior, are they not?

Mr. O'CONNOR. The department has a freer hand and more funds as they go along to investigate these conditions and declare a policy thereon, and all these reports coming in here would be an invaluable source of such information, but when it comes to make a general Indian policy throughout the country, it will not do to lay down a rule to govern all Indians everywhere, because conditions vary in different parts of the country. The different sections of the country would have to be treated by Congress and the department as local, specific matters to be dealt with. I would not like to see the adoption of an inflexible standard regardless of places and facts.

The CHAIRMAN. This bill would not do that.

Mr. O'CONNOR. As I stated, the recommendations by one set of officials would not and could not bind their successors. Things change; every election changes things. The attitude and point of view of the men in power at this time prevail and should prevail. The dead do not govern the living.

Mr. SPROUL. I think this is the most forward-looking and important step that the Indian Bureau or anybody directly in its behalf has ever undertaken or made in years. I think it is very fine.

Mr. O'CONNOR. But is there any chance of this being followed after the work is done?

Mr. SPROUL. The only fear I have is that a commission may get balled up as the Wickersham commission has. If the Secretary of the Interior and the bureau will use that as something to beware of and to stay away from and get a different personnel and a different character of personnel for the commission and go at it in the right way, I think we may confidently expect something very desirable.

Mr. COOKE. This does not provide for the appointment of a commission; it provides that the work shall be done under the Department of the Interior.

Mr. SPROUL. The report says that there shall be experts; but I think the fewer experts the better it will be.

Mr. COOKE. I can not understand why this bill comes before us now. Why has not the Department of the Interior sufficient authority to do now all things contemplated in this bill without congressional authority? Why has it not done these things before?

The CHAIRMAN. The scope of the work contemplated was too wide for its force as now constituted. They need to turn the attention of a group that has nothing else to do to this problem. The results would be valuable and the work requires the study of experts. It will be noticed that there is a provision in the bill for "making a study and report on the policy of the Federal Government in relation to the American Indians as found in the applicable statutes, their treaty, property, and citizenship rights, their health, education, and social welfare." After they have studied existing laws and treaties, then they are called upon to make recommendations.

Mr. SPROUL. They are called upon to make recommendations for legislation.

The CHAIRMAN. Yes.

Mr. SPROUL. They are called upon to outline a policy for treatment of the Indian with respect to his ultimate emancipation.

The CHAIRMAN. The bill further provides that—"such expenditures may include compensation and expenses of persons named for the purposes, at least one of whom shall be an Indian citizen of the United States: the employment of experts, stenographic, and other services by contract if deemed necessary, transportation, travel."

It provides that they may add to the personnel for these particular purposes whatever is necessary within the appropriation.

Mr. COOKE. I am in sympathy with the object in mind, but each tribe represents a specific problem.

The CHAIRMAN. Yes. We will never get away from the necessity of a bill such as I wanted to bring up here. It applied to an irrigation proposition on the Black-foot Indian Reservation, which situation exists nowhere else. Many times we are called upon to meet just such a situation.

Mr. SPROUL. The particular point that the different tribes are different is not only true of the Indians but it is true of all who are citizens of the United States.

Mr. COOKE. But not quite so fully.

Mr. SPROUL. For instance, the German immigrants to this country live somewhat differently than the French and the Swedes who come here. We have a great many different nationalities of people here who live differently. So with the Indians.

Mr. COOKE. But we are not called upon to legislate specifically for them.

Mr. SPROUL. Anyway, they live under the same laws, and their children are trained and educated under the same general educational system. We can have a system of education that will be as elastic and pliable for the Indians as our systems of education in the different States are for the different inhabitants of the United States. Repeating, I think this is a wonderful bill and its enactment would be of immeasurable benefit. I think the ideals embodied in it are highly conceived.

Mr. WILLIAMSON. The one great trouble in the Indian Bureau is the same trouble we have in our own offices. There are so many details to look after, and so much work that must be immediately done, that we have not got the help to do it properly. The Indian Bureau has nobody with the time to think these problems out and to do the necessary research work and formulate a policy. They simply have not got the time. It seems to me, and I have not studied the particular provisions of this bill, that if we could arrange to put a personnel in charge

down there that would have nothing else to do but study the Indian problem with a view to recommending to Congress some definite policy for congressional action, that would be a good thing. Obviously, there can not be any policy that would apply to all conditions, but there are some things by way of education and the general treatment of Indians, and preparing for the future, that can be worked out and will be of inestimable value to Congress. We can not do it and the Indian Bureau has not got the time to do it.

Mr. SPROUL. We shall have to gamble as to whether this commission would bring forth a sensible report.

Mr. HALSEY. There are specific recommendations in the 1927 report, but they have not been followed.

Mr. WILLIAMSON. I have read that report and I will admit it.

The CHAIRMAN. A great many things in that report have been helpful. That report was made by a group invited by the Secretary of the Interior to make a survey of the Indian problem, and it did a very valuable work; but this matter, in my judgment, would bring that sort of a study more to a head in a more concrete form. This would be an agency established by Congress to do a certain job and then required to report back to Congress, turning its attention to certain things and to put it in the definite form of recommendations.

I should say they ought to go to the extent of actually preparing some legislation for us to consider. That report, as has been said, is too voluminous. Members of this committee are more or less acquainted with it, but it is rather voluminous. It is a discussion and a history and is very valuable as a reference work. It has many valuable suggestions, but this bill before us is meant to get down, crack the coconut and get the meat, so that we may proceed intelligently.

Mr. EVANS. Do you think this bill should carry the two objects, one to codify the statutes and the other to make an investigation of the matters and report back to Congress a policy that in the judgment of that commission should be adopted?

The CHAIRMAN. It would seem to me so; yes. In making their study as to existing laws, in outlining the existing laws with respect to the Indians, they would do a great deal of the work necessary to make the codification. I think the two objects are so closely related that it should be here.

If the language does not cover codification fully enough, I know it is the belief of the department that it is there. If it does not cover it close enough to meet the idea of the committee, perhaps we can suggest some additional or different language.

I should like to have somebody representing the Indian Office speak about that.

Mr. JOHN R. T. REEVES, senior attorney, Bureau of Indian Affairs. Our understanding of that bill is that it has a twofold purpose. One is a revision and codification of and an elimination from the statutes those treaties and acts of Congress which have been performed in years gone by and are no longer current legislation. In other words, we would separate the active from the inactive legislation. We would codify existing law, and take out the deadwood. The other purpose of the bill is a real study of the Indian problem from the governmental standpoint, the relationship between the States and the Federal Government in this problem in which the white citizens in every separate community have a vital interest.

For instance, we are pressed daily by counties and States in connection with the question of taxation. If the State is not permitted to tax these Indian lands, the Federal Government should, it is thought, make a contribution in lieu of taxation. If we ask them to cooperate with us in matters of health and law and order they say, "We will be glad to perform those functions, but if we are burdened with the expense, we ought to have the right to tax the physical property of the Indians." It is a study of that problem with the idea of presenting to Congress a fixed and definite policy to be adopted by Congress, adhered to by Congress and made a mandate of Congress, rather than leaving the efforts as they are to-day to a vacillating, uncertain, drafting from pillar to post, as policies change with changes of administration, that is in mind. It is for that certain purpose that we are greatly interested in this matter.

The CHAIRMAN. Can you suggest certain language showing that the codification of the laws is necessary? The bill provides that the appropriation shall cover any expenses which may be incurred by the President, through the Secretary of the Interior, in making a study and report on the policy of the Federal

Government in relation to the American Indians as found in the applicable statutes of the United States, their treaty, property, and citizenship rights, their health, education, and social welfare. Could you not say after the comma in line 8, page 1, of H.R. 15408, "in codifying and revising existing laws relating to American Indians"?

Mr. REEVES. That is all we are interested in.

Mr. ARENTZ. How many persons would you employ on this work?

Mr. REEVES. As small a number as would be consistent with the proper performance of the work.

Mr. ARENTZ. Would the President designate a commission?

Mr. REEVES. We would have to designate a board.

The CHAIRMAN. The Commissioner of Indian Affairs told me that he thought they ought to be able to finish this work in a year or two.

Mr. SPROUL. It would take a year to visit the various tribes throughout the country.

Mr. O'CONNOR. It is a big 2-year job.

Mr. ARENTZ. The Indian Service to-day is really handicapped because it is undermanned in personnel.

Mr. REEVES. That is true. We are not in position to take on work of this character and dignity with the force we have, which force is hardly able to keep abreast of current work.

The CHAIRMAN. Mr. Reeves' suggestion is that after the comma in line 8, page 1, we add the words, "in codifying and revising existing laws relating to American Indians," so that the bill would read, in part, that the appropriation will—

"Cover any expenses which may be incurred by the President, through the Secretary of the Interior, in codifying and revising existing laws relating to American Indians, in making a study and report on the policy of the Federal Government in relation to the American Indians as found in the applicable statutes of the United States."

Mr. WILLIAMSON. I move that the amendment be adopted and that the bill be favorably reported as amended.

Mr. COOKE. How about amending the title?

Mr. REEVES. I think the title is all right.

Mr. PEAVEY. It occurs to me that there is an inherent weakness in this bill, but perhaps I say that because I do not understand the bill. However, this is something I desire to call to the attention of the committee. The \$250,000 should be stricken.

The CHAIRMAN. Without objection the \$250,000 on line 5, page 1, will be changed to \$100,000.

[The change was unanimously agreed to.]

The CHAIRMAN. Is there any question on the motion of the gentleman from South Dakota that the bill as amended be favorably reported?

Mr. PEAVEY. Let me say this, I am in full accord with the sentiment expressed here as to the wisdom of some legislation looking to this codification of the Indian laws; but I am in doubt as to the question of fixing a policy. It seems to me that there is something inherently wrong in the thought that a department of the Government charged with the administration of a law should recommend to the Congress a policy. I am not saying this in any way as a criticism of the Indian Bureau. It seems to me that it would be advisable and even absolutely necessary that the Indian Bureau be consulted and that its experience and judgment on these matters be taken into consideration in the formulation of a policy in dealing with the Indians, but to leave to a department charged with the administration of law, with all the weaknesses of the departments, and we know they have many, the matter of recommending a policy as important as one dealing with Indians, is wrong. In my opinion, this proposed commission should be composed of members of Congress or somebody with the public viewpoint and in whom the public would have absolute confidence. After we should receive this recommendation from the department, we would be where we are now.

[There was discussion off the record.]

Mr. SPROUL. A commission would visit the tribes and study the problems indicated in this bill and then make a report to the Secretary of the Interior. Subsequently we would expect that report to be embodied in a report by the department to Congress, and Congress can do as it sees fit with the report. The policy suggested with respect to the treatment of the Indians will be followed or adopted by Congress only if Congress sees fit to do so.

Mr. PEAVEY. But it would be formulated by those having charge of the administration of that particular law.

Mr. SPROUL. Congress would authorize the commission to gather this information, then to draw their conclusions and submit them to Congress for appropriate action.

Mr. ARENTZ. I should like to see the Indian Bureau recommend a policy, because it is not going to dove-tail in with and harmonize with Congress and others unless it agrees to a policy. The trouble up to this time has been that the commissioner has come before us with a policy for one section of the country of this nature and in another section of the country with a policy of another nature. If we have one policy and we know that it is the policy of the Bureau of Indian Affairs, that will be very helpful to us.

Mr. PEAVEY. I have no objection, and I am in full accord with what the gentleman says in regard to the Indian Bureau having a policy for the Indian Bureau, but as for the bureau to formulate a policy for the United States, they can not do that.

The CHAIRMAN. I consider it one of their duties, as they are in contact with Indian problems to recommend to Congress what, in their judgment, ought to be done to meet situations. The department continually sends up bills to be introduced by me at the department's request. The Bureau sees a situation and makes a recommendation as to how it should be met. Their specific recommendations have to do with individual problems here and there.

Mr. ARENTZ. With the Commissioner of Indian Affairs be the chairman of the proposed investigating commission?

Mr. SPROUL. We could not have a separate body investigate that. I should like to see the department have a part in it.

The CHAIRMAN. These are expenditures that are to be made by the President through the Secretary of the Interior. The law would put the matter in the hands of the President and he would work through the Secretary of the Interior to accomplish these things.

Mr. ARENTZ. Mr. Rhoads has always been considered as one vitally interested in Indian affairs.

Mr. SPROUL. I did not know that.

Mr. ARENTZ. The reason he was appointed Commissioner of Indian Affairs was because he is an outstanding man in Indian affairs. He has always been interested in such. Yet he comes here with the best of good grace and proposes things diametrically opposed to recommendations made by various associations having to do with Indian welfare matters before he was appointed. I should like to have him come forward with definite views of Indian service so that the committee may know what to do.

Mr. O'CONNOR. In this, like in many other matters, when I make remarks, it may seem that I am opposed to the bill. My motive is to try to throw some light upon this proposal that may be helpful to those who want to carry the proposition out. I think that we will go ahead if, instead of reducing this sum to \$100,000, we put it at \$150,000, because the time is short. Unless the work can be expedited and facilitated and completed by those in charge at the present time, we may have a difficult situation arising by reason of a change in personnel of the Indian Office, so that there may be a duplication or a failure to carry out the idea in mind.

The work will cost so much anyway, and while we are at it why should we not appropriate a larger amount now, or authorize it, in order to expedite completion of the work by those who undertake it at first. Reference has been made to congressional investigations in connection with these matters. My experience with such in Oklahoma has been that they are largely political. Those people have gone down there to see what they can find to put somebody in the Indian Office in the hole, somebody that they do not like and whom they would supplant by somebody of their own choice. I hope that the Department of the Interior, which will have the authority to appoint these men, will not appoint men to go out and gather data and information to confirm and validate opinions they now have as to what should be done. I do hope this will be a fact-finding commission. Anybody who had all the facts that tell the story could act, but one has to have all the facts. I hope that this commission does not make the mistake that dignified legislators in the other body make by going out and getting information to prove what they want to prove. I hope this will not be an investigation simply to justify some particular plan or idea, but will be one to get the actual facts and let the

facts speak; and if that is done, it will be a valuable contribution to the Government and the Indians. And, as I said before, I think that this matter is one that should be expedited and that we should furnish or authorize the necessary amounts, so that the commission will not have to come back for more money.

The CHAIRMAN. The fundamental thing is to get it through. I would be willing to accept the amendment.

Mr. O'CONNOR. You have two distinct things to do; first, the codification of the laws, and, second, to investigate the policy of the Federal Government in relation to the American Indians as found in the applicable statutes of the United States, their treaty, property, and citizenship rights, their health, education and social welfare. I have been a lawyer most of my life, and I have not yet lived all of my life, and I know that when you come to codifying and revising laws you want lawyers and good ones. The people who would do that other work are the last ones in the world to get for this work. Heaven save us from those people in this particular work. This work is going to have to be kept separate and distinct. You can not mix the nursing bottle and legal questions. Men like Mr. Reeves are the men necessary to codify and revise these Indian laws, but when it comes to the other things, such as health, education, and social welfare, people informed in them should study them so as to make a wise recommendation.

The CHAIRMAN. That idea is in the minds of the committee.

Mr. O'CONNOR. I hope somebody in the Interior Department will read my feeble remarks about this. In some of these things to be considered lawyers would be awful; but I think the welfare people would be just as bad when they started to codify and revise the laws of the land. They could not do it.

Mr. WILLIAMSON. If these people started in with preconceived ideas, it would be bad. Unless these conclusions should be based on a real study of the whole thing, the efforts would not be beneficial.

Mr. O'CONNOR. Most people have preconceived ideas and they fight for them whether they are right or wrong. To-day the prohibition question is not so much one of whether the country shall be wet or dry. It is a question of who is right or wrong. For instance, the drys are presumably willing to junk the remainder of the Constitution if they can only preserve the one amendment, and the wets want to preserve the Constitution if they can do it in alcohol. This prejudice is the real danger.

The CHAIRMAN. Even though there may be preconceived ideas existing in the Indian Bureau, yet if they call in experts who are not employed by the Indian Bureau to collaborate with them in the study of these problems, we are going to get a pretty broad view of the situation.

Mr. O'CONNOR. I am in favor of the bill heartily and I am in favor of increasing the authorization for an appropriation, if we can get it by; but I do not think this will work out perfectly. As for experts, we always have experts in law suits, but they are experts for the side that employs them; and after all they are human beings.

The CHAIRMAN. Are you ready for the vote on the motion of Mr. Williamson?  
Mr. SPROUL. Yes.

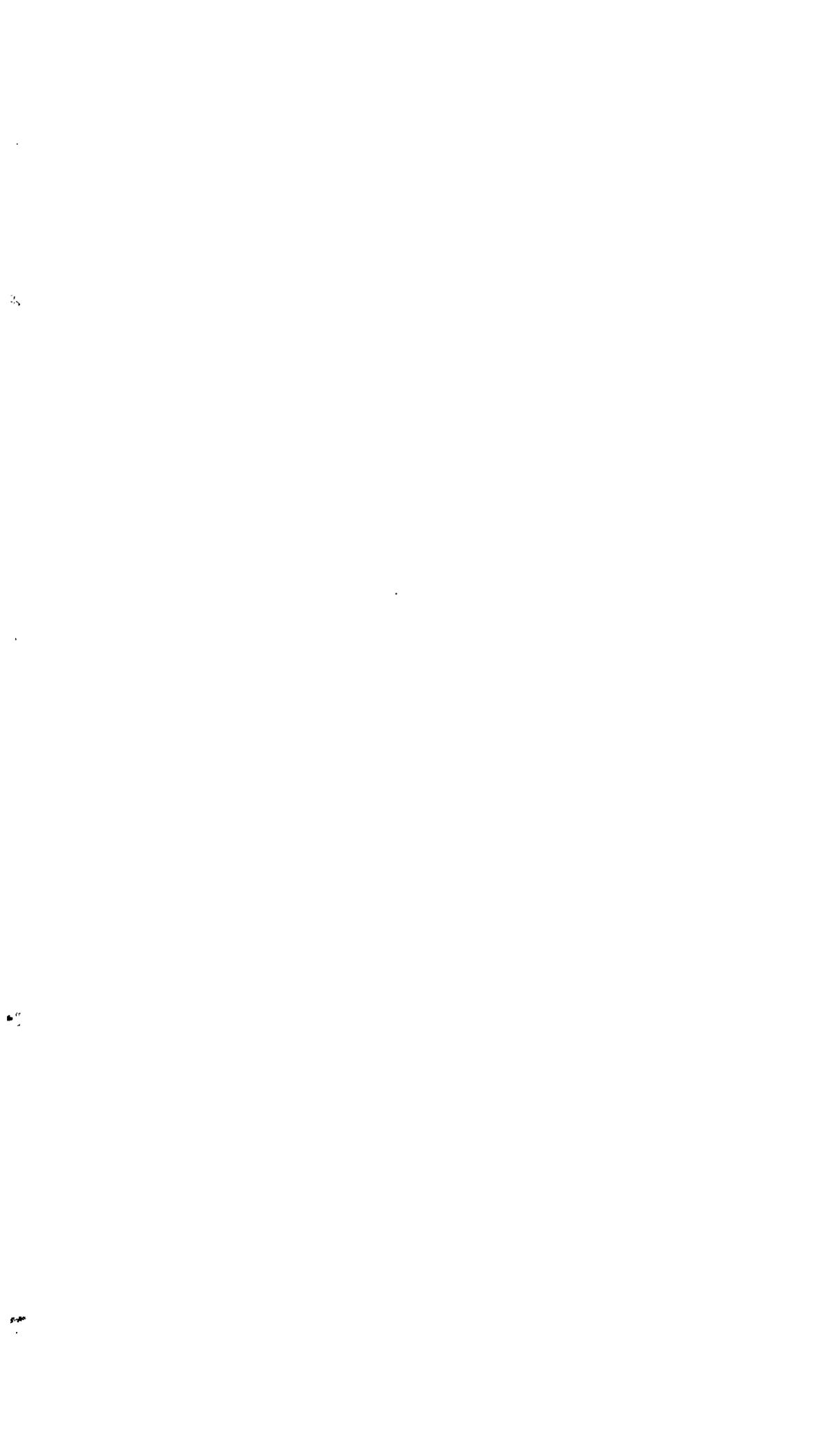
[The committee voted unanimously to favorably report the bill as amended.]  
[Thereupon, at 11:10 o'clock a.m., the committee proceeded to other business.]

**APPENDIX II**

**PART III. FEDERAL LEGISLATION AND INDIAN POLICY**

**There are no exhibits to this part.**

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**APPENDIX II**

**PART IV. CONGRESSIONAL STATEMENT OF FINDINGS AND DECLARATION  
OF POLICY**

**Exhibit 1. Materials prepared by Ms. Alice Riehl, Editor, Indian Law Reporter, 1974-1975. (Cited on page 84, note 24; page 42, note 91; and page 802, of the Report.)**

**Table A. Allotment Statutes, 1887-1918.**

**Table B. Outright Cession.**

**Table C. Opened for Settlement.**

**Table D. Restored to Public Domain.**



## APPENDIX II

### PART IV, EXHIBIT 1

(By Ms. Alice Riehl, Editor, Indian Law Reporter 1974-1975)

TABLE A—ALLOTMENT STATUTES, 1887-1913

- (1) Act of May 1, 1888, 25 Stat. 118 (amended, March 3, 1911, 36 Stat. 1080) :
  1. Gros Ventre, Piegan, Blood, Blackfeet, River Crow.
  2. Fort Peck, Fort Belknap, Blackfeet and former individual reservations of these tribes, Montana.
  3. Outright cession.
  4. Statute contained language restoring ceded land to "public domain."
- (2) Act of January 14, 1889, 25 Stat. 642 (amended, June 27, 1902, 32 Stat. 400; April 4, 1910, 36 Stat. 276; June 25, 1910, 36 Stat. 802; May 18, 1916, 39 Stat. 134; January 25, 1924, 43 Stat. 95; April 14, 1924, 43 Stat. 95) :
  1. Chippewa.
  2. White Earth, Red Lake, all other Chippewa Reservations, Minnesota.
  3. Cession in trust.
  4. Allotments to be made on "old" and assigned reservations.
- (3) Act of February 23, 1889, 25 Stat. 687 :
  1. Shoshone, Bannock, Sheepeaters.
  2. Fort Hall, Lemhi reservations, Idaho.
  3. Outright cession.
- (4) Act of March 2, 1889, 25 Stat. 871 (amended, July 1, 1898, 30 Stat. 596) :
  1. Flathead.
  2. Bitter Root Valley, Montana.
  3. Secretary of Interior authorized to sell lands formerly patented to Indians—proceeds to go to individual allottees. Indians moved to Jacko Reservation, Montana.
- (5) Act of March 2, 1889, 25 Stat. 888 :
  1. Santee, Flandreau, other Sioux Nations, Poncas.
  2. Great Sioux Reservation, North and South Dakota and Nebraska.
  3. Cession in trust, outright cession.
  4. Tribes to agree to cession. Proceeds of land sale plus other money deposited into permanent fund for Indians. Language restoring this ceded land to "public domain". Act provided for later cession of land on newly created reservations for money from U.S.
- (6) Act of March 2, 1889, 25 Stat. 1013 (amended, May 27, 1902) :
  1. Wea, Peoria, Kaskaskia, Plankeshaw, Western Miami.
  2. Peoria Reservation, Oklahoma.
  3. No land cession, land completely allotted.
- (7) Act of Oct. 1, 1890, 26 Stat. 658 :
  1. Wallaki.
  2. Round Valley Reservation, California.
  3. Opened for settlement.
  4. Land sold at auction.
- (8) Act of June 12, 1891, 26 Stat. 712 :
  1. Mission Indians.
  2. Various Reservations, California.
  3. All lands allotted.
  4. Lands held in common, in trust, until Secretary of Interior decides that individual may receive allotment.
- (9) Act of February 13, 1891, 26 Stat. 749 :
  1. Sac, Fox, Iowa.
  2. Indian Territory, Oklahoma.
  3. Outright cession.
  4. Language restoring land to "public lands".

- (10) Act of March 3, 1891, 26 Stat. 989 :
1. Potawatomi, Shawnee.
  2. Potawatomi Reservation, Oklahoma.
  3. Outright cession.
- (11) Act of March 3, 1891, 26 Stat. 1022 :
1. Cheyenne, Arapaho.
  2. Cheyenne, Arapaho Reservation, Oklahoma.
  3. Outright cession.
- (12) Act of March 3, 1891, 26 Stat. 1026 :
1. Coeur D'Alene.
  2. Coeur D'Alene Reservation, Idaho.
  3. Outright cession.
  4. Language restoring land to "public domain".
- (13) Act of March 3, 1891, 26 Stat. 1032 :
1. Arickaree, Gros Ventre, Mandan.
  2. Fort Berthold Reservation, North Dakota.
  3. Outright cession.
  4. Lands ceded. Allotments to be made at later date by Secretary of Interior.
- (14) Act of March 3, 1891, 26 Stat. 1035 :
1. Sioux.
  2. Sisseton and Wahpeton Reservation, South Dakota.
  3. Outright cession.
  4. Language about land being subject to laws of the state. Vague about whether this refers to all ceded land or that ceded to State for schools.
- (15) Act of March 3, 1891, 26 Stat. 1039 :
1. Crow.
  2. Crow Reservation, Montana.
  3. Outright cession.
  - 4 Tribe agreed to "sell" land to U.S. rather than cede and relinquish all rights to land.
- (16) Act of June 17, 1892, 27 Stat. 52 (amended, March 2, 1917, 39 Stat. 976) :
1. Yurok, and others.
  2. Klamath River Reservation, California (i.k.a. Hoopa Valley Reservation).
  3. Opened for settlement.
- (17) Act of July 1, 1892, 27 Stat. 62 :
1. Colville, and others.
  2. Colville Reservation, Washington.
  3. Restored to "public domain."
  4. Dealt with North Half of Reservation.
- (18) Act of July 13, 1892, 27 Stat. 136 :
1. Spokane.
  2. Coeur D'Alene Reservation, Idaho. Lands ceded in Washington.
  3. Outright cession.
- (19) Act of March 3, 1893, 27 Stat. 557 :
1. Kickapoo.
  2. Kickapoo Reservation.
  3. Outright cession.
- (20) Act of March 3, 1893, 27 Stat. 633 (amended, April 28, 1904, 33 Stat. 565) :
1. Puyallup.
  2. Puyallup Reservation, Washington.
  3. Cession in trust.
  4. Certain lands ceded and sold at public auction.
- (21) Act of March 3, 1893, 27 Stat. 640 :
1. Cherokee.
  2. Cherokee Outlet, Oklahoma.
  3. Outright cession.
  4. Language restoring land to "public domain."
- (22) Act of March 3, 1893, 27 Stat. 644 :
1. Tonkawa.
  2. Tonkawa Reservation, Oklahoma.
  3. Outright cession.

- (23) Act of March 3, 1803, 27 Stat. 644:
1. Pawnee.
  2. Pawnee Reservation, Oklahoma.
  3. Outright cession.
  4. Language restoring land to "public domain."
- (24) Act of March 3, 1803, 27 Stat. 645:
1. Cherokee, Creek, Choctaw, Chickasaw, Seminole.
  2. Indian Territory, Oklahoma.
  3. Directed a commission to negotiate for allotment and cession of land. Provided for some actual allotments.
- (25) Act of August 15, 1894, 28 Stat. 296:
1. Sac and Fox of the Missouri.
  2. Sac and Fox Reservation, Kansas and Nebraska.
  3. Cession in trust.
  4. No agreement but land would not be ceded until consent of a majority of adult male Indians was obtained.
- (26) Act of August 15, 1894, Stat. 301:
1. Wyandot.
  2. Indian Territory, Oklahoma.
  3. U.S. bought lands for Wyandot from other tribes. Lands allotted to Wyandots.
- (27) Act of August 15, 1894, 28 Stat. 314:
1. Yankton Sioux.
  2. Yankton Reservation, South Dakota.
  3. Outright cession.
  4. No liquor to be sold on ceded land.
- (28) Act of August 15, 1894, 28 Stat. 320:
1. Yakima Nation of Indians.
  2. Yakima Reservation, Washington.
  3. Certain tribes given allotments; tribe cedes fishing rights for money.
- (29) Act of August 15, 1894, 28 Stat. 323:
1. Alsea, and others.
  2. Siletz Reservation, Oregon.
  3. Outright cession.
  4. Unallotted lands ceded—this act does not specifically call for allotments to be made.
- (30) Act of August 15, 1894, 28 Stat. 326:
1. Nez Perce.
  2. Lapwai Reservation, Idaho, a.k.a. Nez Perce Reservation).
  3. Outright cession.
  4. Language restoring land to "public domain."
- (31) Act of August 15, 1894, 28 Stat. 332:
1. Yuma.
  2. Fort Yuma Reservation, California.
  3. Cession in trust.
  4. Non-irrigable lands restored to the "public domain." Irrigable lands sold at public auction in trust.
- (32) Act of February 20, 1895, 28 Stat. 677:
1. Southern Ute.
  2. Southern Ute Reservation, Colorado.
  3. Cession in trust.
  4. Language restoring land to "public domain."
- (33) Act of March 2, 1895, 28 Stat. 895:
1. Wichita.
  2. Wichita Reservation, Oklahoma.
  3. Statute did not specifically provide for compensation for ceded lands. Act of June 14, 1924, 43 Stat. 366 (amended April 21, 1932, 47 Stat. 87) provided money as settlement of Indian claim for compensation.
- (34) Act of March 2, 1895, 28 Stat. 902:
1. Otoe, Missouri, Iowa.
  2. Otoe and Missouri Reservation, Oklahoma.
  3. Land on Otoe and Missouri Reservation allotted to Iowas from Kansas and Nebraska.
- (35) Act of March 2, 1895, 28 Stat. 907:
1. Quapaw.
  2. Quapaw Reservation, Oklahoma and Arkansas.
  3. Lands allotted; surplus held for future allotments.

- (36) Act of March 2, 1895, 28 Stat. 909 :
1. Potawatomi, Kickapoo.
  2. Potawatomi Reservation, Kansas.
  3. Cession in trust.
  4. Consent of tribe needed before land could be sold by the Secretary of the Interior
- (37) Act of February 20, 1895, 28 Stat. 970 :
1. Chippewa.
  2. Red Cliff Reservation, Wisconsin.
  3. Land added to reservation and allotted.
- (38) Act of June 10, 1896, 29 Stat. 358 (amended, June 7, 1897, 30 Stat. 93) :
1. Gros Ventre.
  2. Fort Belknap Reservation, Montana.
  3. Outright cession.
  4. Allotments optional.
- (39) Act of June 10, 1896, 29 Stat. 353 (amended June 7, 1897, 30 Stat. 93) :
1. Blackfeet.
  2. Blackfeet Reservation, Montana.
  3. Outright cession.
- (40) Act of June 7, 1897, 30 Stat. 87 :
1. Uncompahgre Utes.
  2. Uncompahgre Reservation, Utah.
  3. Opened to settlement.
  4. No mention of compensation.
- (41) Act of June 7, 1897, 30 Stat. 92 :
1. Chippewa and Christian (Munsee).
  2. Chippewa and Christian Reservation, Kansas.
  3. Cession in trust.
  4. Sold at auction.
- (42) Act of June 1898, 30 Stat. 429 :
1. Uncompahgre Utes, Utes.
  2. Uintah Indian Reservation, Utah.
  3. Cession in trust.
  4. Cession to take place with consent of tribe.
- (43) Act of June 28, 1898, 30 Stat. 495 :
1. Choctaw, Chickasaw.
  2. Indian Territory, Oklahoma.
  3. All lands, allotted, no cession. Tribal government modified.
- (44) Act of June 28, 1898, 30 Stat. 500 :
1. Creek.
  2. Creek Area, Oklahoma.
  3. Residue of land after allotments sold (with improvements) at public auction. Money from improvement paid to owner thereof. Money from sale of land used to equalize allotments.
- (45) Act of July 1, 1898, 30 Stat. 567 :
1. Seminole.
  2. Seminole Area Oklahoma.
  3. All lands allotted.
- (46) Act of July 1, 1898, 30 Stat. 571 :
1. Colville and others.
  2. Colville Reservations, Washington.
  3. Mineral lands opened to settlement. No mention of disposition of proceeds. Allotments to be completed no later than 6 months after Presidential proclamation opening the reservation.
- (47) Act of February 28, 1899, 30 Stat. 909 (amended, March 3, 1903, 31 Stat. 1007) :
1. Potawatomi, Kickapoo.
  2. Potawatomi Reservation, Kickapoo Reservation, Kansas.
  3. Cession in trust.
  4. No cession made without the consent of the tribe.
- (48) Act of March 3, 1899, 30 Stat. 1074 :
1. Lower Brule, Rosebud Sioux.
  2. Lower Brule, Rosebud Reservations, South Dakota.
  3. Lower Brule Indians ceded portion of their reservation in return for U.S. buying part of Rosebud Reservation for them as a result of migration. Readjustment of allotments made. Ceded land later opened to settlement.

- (49) Act of June 6, 1900, 31 Stat. 672 :
1. Shoshone, Bannock.
  2. Fort Hall Reservation, Idaho.
  3. Outright cession.
- (50) Act of June 6, 1900, 31 Stat. 708 (amended, January 4, 1901, 31 Stat. 727; May 29, 1908, 35 Stat. 456; June 25, 1910, 36 Stat. 861) :
1. Comanche, Kiowa, Apache.
  2. Kiowa, Comanche Reservation, Oklahoma.
  3. Outright cession.
- (51) Act of February 11, 1901, 31 Stat. 766 (amended March 2, 1907, 34 Stat. 1217) :
1. Chippewa Indians of Lake Superior.
  2. Bad River or La Pointe Reservation, Wisconsin.
  3. Allotments made with consent of tribe. No cession of land.
- (52) Act of March 1, 1901, 31 Stat. 848 (superseded see Act of July 1, 1902, 32 Stat. 716) :
1. Cherokee.
  2. Cherokee Area, Oklahoma.
  3. All land allotted equally.
  4. Townsites reserved and sold at auction. Tribal government modified.
- (53) Act of March 1, 1901, 31 Stat. 861 :
1. Creek.
  2. Creek Area, Oklahoma.
  3. All land allotted equally.
  4. Townsites reserved and sold at auction. Tribal government modified.
- (54) Act of May 27, 1902, 32 Stat. 245 :
1. Mission Indians.
  2. Various Indian Areas, California.
  3. Land purchased for Indians and allotted to them.
- (55) Act of May 27, 1902, 32 Stat. 260 :
1. Klamath, Modoc and others.
  2. Klamath Reservation, Oregon.
  3. Provided for additional allotments on reservation.
- (56) Act of May 27, 1902, 32 Stat. 260 (amended, June 19, 1902, 32 Stat. 744) :
1. Paiute.
  2. Walker River Reservation, Nevada.
  3. Outright cession.
  4. Non-irrigable lands ceded. Heads of households received \$300 in consideration.
- (57) Act of May 27, 1902, 32 Stat. 263 (amended June 19, 1902, 32 Stat. 745; April 21, 1904, 33 Stat. 207) :
1. Uintah, White River Utes.
  2. Uintah Reservation, Utah.
  3. Cession in trust.
  4. Language restoring land to "public domain". Consent of tribe needed for cession of land.
- (58) Act of May 27, 1902, 32 Stat. 266 :
1. Spokane.
  2. Spokane Reservation, Washington.
  3. Mineral land open for entry. No mention of proceeds.
- (59) Act of July 1, 1902, 32 Stat. 636 :
1. Kansas or Kaw.
  2. Kaw Reservation, Oklahoma.
  3. All land allotted equally.
  4. Townsite reserved and sold at auction.
- (60) Act of July 1, 1902, 32 Stat. 641 (amended, April 21, 1904, 33 Stat. 209; March 3, 1905, 33 Stat. 1059) :
1. Choctaw, Chickasaw.
  2. Choctaw, Chickasaw Area, Oklahoma.
  3. Cession in trust.
  4. Lands sold at public auction.
- (61) Act of July 1, 1902, 52 Stat. 716 (amended, March 3, 1903) :
1. Cherokee.
  2. Cherokee Area, Oklahoma.
  3. All lands allotted.
  4. Supersedes Act of March 1, 1901, 31 Stat. 848. Townsites reserved and sold at auction. Tribal government modified.

- (62) Act of February 3, 1903, 32 Stat. 795 :
1. Chippewas of Lake Superior.
  2. Lac Courte Oreilles Reservation, Lac Du Flambeau Reservation, Wisconsin.
  3. All lands allotted. No cession of land.
- (63) Act of March 3, 1903, 32 Stat. 982 :
1. Chippewa.
  2. Red Lake Reservation, Minnesota.
  3. Cession in trust.
  4. Allotments to be made to Indians formerly residing on ceded land on the diminished reservation. Statute to take effect when agreed to by tribes.
- (64) Act of February 20, 1904, 33 Stat. 46 (amended, April 30, 1908, 35 Stat. 83) :
1. Chippewa.
  2. Red Lake Reservation, Minnesota.
  3. Cession in trust.
  4. Concerned same area as Act of March 3, 1903, 32 Stat. 982 which had called for consent of tribe.
- (65) Act of April 21, 1904, 33 Stat. 194 :
1. Chippewa.
  2. Turtle Mountain Reservation, North Dakota.
  3. Outright cession.
- (66) Act of April 21, 1904, 33 Stat. 218 :
1. Ponca, Otoe, Missouriia.
  2. Ponca Reservation, Otoe and Missouriia Reservations, Oklahoma.
  3. Additional allotments made. Lines of reservation abolished.
- (67) Act of April 23, 1904, 33 Stat. 254 :
1. Rosebud Sioux.
  2. Rosebud Reservation, South Dakota.
  3. Cession in trust.
- (68) Act of April 23, 1904, 33 Stat. 302 (amended, March 3, 1905, 33 Stat. 1080; June 21, 1906, 34 Stat. 354; May 29, 1908, 35 Stat. 449; March 3, 1909, 35 Stat. 795; April 12, 1910, 36 Stat. 296; February 28, 1919, 40 Stat. 1203) :
1. Flathead, Kootenai, Upper d'Oreille Indians.
  2. Flathead Reservation, Montana.
  3. Cession in trust.
- (69) Act of April 27, 1904, 33 Stat. 319 (amended, March 1, 1907, 34 Stat. 1042) :
1. Sisseton, Wahpeton and Cut-head bands of Sioux.
  2. Devils Lake Reservation, North Dakota.
  3. Cession in trust.
- (70) Act of April 27, 1904, 33 Stat. 352 :
1. Crow.
  2. Crow Reservation, Montana.
  3. Cession in trust.
- (71) Act of April 28, 1904, 33 Stat. 539 :
1. Chippewa.
  2. White Earth Reservation, Minnesota.
  3. Lands allotted pro rata. No surplus spoken of.
- (72) Act of April 28, 1904, 3 Stat. 567 :
1. Willamette and other tribes.
  2. Grande Ronde Reservation, Oregon.
  3. Cession in trust.
- (73) Act of December 21, 1904, 33 Stat. 595 (amended, March 6, 1906, 34 Stat. 53; March 6, 1910, 36 Stat. 348) :
1. Yakima.
  2. Yakima Reservation, Washington.
  3. Opened for settlement.
- (74) Act of February 8, 1905, 33 Stat. 706 :
1. Wallaki.
  2. Round Valley Reservation, California.
  3. Opened for settlement.

- (75) Act of March 3, 1905, 33 Stat. 1016 :
1. Shoshone, Arapaho.
  2. Wind River Reservation, Wyoming.
  3. Cession in trust.
- (76) Act of March 3, 1905, 33 Stat. 1069 (amended, May 14, 1920, 41 Stat. 599) :
1. Utes.
  2. Uintah Reservation, Utah.
  3. Opened for settlement.
- (77) Act of March 3, 1905, 33 Stat. 1071 :
1. Five Civilized Tribes.
  2. Indian Territory, Oklahoma.
  3. Additional allotments made.
- (78) Act of March 3, 1905, 33 Stat. 1078 :
1. Suquamish.
  2. Port Madison Reservation, Washington.
  3. Outright cession.
- (79) Act of March 20, 1906, 34 Stat. 80 :
1. Kiowa, Comanche, Apache.
  2. Kiowa, Comanche Reservation, Oklahoma.
  3. Reserved townsites from allotment-lots in townsites sold at public auction. Proceeds given to Indians.
- (80) Act of March 22, 1906, 34 Stat. 80 :
1. Colville.
  2. Colville Reservation, Washington.
  3. Opened for settlement.
- (81) Act of April 21, 1906, 34 Stat. 124 :
1. Lower Brule Sioux.
  2. Lower Brule Reservation, South Dakota.
  3. Opened for settlement.
- (82) Act of April 26, 1906, 34 Stat. 137 :
1. Five Civilized Tribes.
  2. Indian Territory, Oklahoma.
  3. Opened for settlement.
  4. Townsites sold at public auction.
- (83) Act of May 17, 1906, 34 Stat. 197 :
1. Alaskan Indians and Eskimos.
  2. District of Alaska.
  3. Allotments made to certain individuals in Alaska.
- (84) Act of June 5, 1906, 34 Stat. 213 (amended, March 1, 1907, 34 Stat. 1043):
1. Kiowa, Comanche, Apache.
  2. Kiowa, Comanche Reservation, Oklahoma.
  3. Opened for settlement.
  4. Concerned grazing lands formerly reserved from settlement. Additional allotments made.
- (85) Act of June 21, 1906, 34 Stat. 335 :
1. Coeur D'Alene.
  2. Coeur D'Alene Reservation, Idaho.
  3. Opened for settlement.
- (86) Act of June 21, 1906, 34 Stat. 360 :
1. Turtle Mountain Chippewa.
  2. Graham's Island, North Dakota.
  3. Restored to "public domain" subject to allotments.
  4. Land formerly used for military purposes—not as a reservation.
- (87) Act of June 21, 1906, 34 Stat. 382 :
1. Stockbridge and Munsee.
  2. Stockbridge and Munsee Community, Wisconsin.
  3. Allotments made. Land purchased as needed to complete allotments.
- (88) Act of June 28, 1906, 34 Stat. 539 :
1. Osage.
  2. Osage Reservation, Oklahoma.
  3. All land allotted equally.
- (89) Act of March 1, 1907, 34 Stat. 1021 :
1. Moqui (Hopi).
  2. Moqui (Hopi) Reservation, Arizona.
  3. Authorized allotments under Dawes Act.

- (90) Act of March 1, 1907, 34 Stat. 1042 :
1. Sioux.
  2. Standing Rock Reservation, North Dakota.
  3. Supplemental allotments made.
- (91) Act of March 1, 1907, 34 Stat. 1042 :
1. Arickaree, Gros Ventre, Mandan.
  2. Fort Berthold, North Dakota.
  3. Allotments made to those who did not yet receive them.
- (92) Act of March 1, 1907, 34 Stat. 1049 :
1. Sioux.
  2. Pine Ridge, Cheyenne River, Standing Rock Reservations, South Dakota.
  3. Additional allotments made to married women.
- (93) Act of March 2, 1907, 34 Stat. 1230 :
1. Sioux.
  2. Rosebud Reservation, South Dakota.
  3. Opened for settlement.
- (94) Act of March 4, 1907, 34 Stat. 1413 (amended, May 25, 1918, 40 Stat. 576) :
1. Apache.
  2. Jicarilla Reservation, New Mexico.
  3. Allotments exchanged. Secretary of the Interior authorized to sell timber on allotments and surplus lands.
- (95) Act of May 23, 1908, 35 Stat. 268 :
1. Minnesota Chippewas.
  2. Winnibigoshish, Cass Lake, Chippewas of the Mississippi, Leech Lake Reservations, Minnesota.
  3. Opened for settlement.
  4. Created National Forest. Timber sold on Indian lands now a part of Forest with proceeds going to Indians. Other land on reservations opened to settlement. Allotments in National Forest exchanges for new ones.
- (96) Act of May 29, 1908, 35 Stat. 451 :
1. Sioux.
  2. Sioux Reservations once part of Great Sioux Reservation, North and South Dakota.
  3. Additional allotments made.
- (97) Act of May 29, 1908, 35 Stat. 457 :
1. Navajo.
  2. Navajo Reservation, Arizona and New Mexico.
  3. Restored to "public domain."
  4. Concerned lands added to reservation in 1907-1908 by Executive Order.
- (98) Act of May 29, 1908, 35 Stat. 458 :
1. Spokane.
  2. Spokane Reservation, Washington.
  3. Opened for settlement.
- (99) Act of May 29, 1908, 35 Stat. 460 (amended, January 28, 1913, 37 Stat. 653) :
1. Sioux.
  2. Cheyenne River, Standing Rock Reservations, South Dakota.
  3. Opened for settlement.
- (100) Act of May 30, 1908, 35 Stat. 558 :
1. Assiniboin.
  2. Fort Peck Reservation, Montana.
  3. Opened for settlement.
- (101) Act of May 27, 1910, 36 Stat. 440 :
1. Sioux.
  2. Pine Ridge Reservation, South Dakota.
  3. Opened for settlement.
- (102) Act of May 30, 1910, 36 Stat. 448 :
1. Sioux.
  2. Rosebud Reservation, South Dakota.
  3. Opened for settlement.
- (103) Act of June 1, 1910, 36 Stat. 455 (amended, April 3, 1912), 37 Stat. 631; August 3, 1914, 38 Stat. 681; May 18, 1916, 39 Stat. 144; March 8, 1917, 39 Stat. 1131; May 10, 1920 :

1. Arickaree, Gros Ventre, Mandan.
  2. Fort Berthold, Montana.
  3. Opened for settlement.
- (104) Act of March 3, 1911, 36 Stat. 1063 :
1. Shosone—Bannock.
  2. Fort Hall Reservation, Idaho.
  3. Allotments made.
- (105) Act of March 3, 1911, 36 Stat. 1069 (supplemented March 4, 1915, 38 Stat. 1219) :
1. Kiowa, Comanche, Apache.
  2. Kiowa, Comanche Reservation, Oklahoma.
  3. Lands sold by Secretary of Interior under terms he prescribes.
- (106) Act of March 4, 1911, 36 Stat. 1345 :
1. Hoh, Quileute, Ozette, Quinault.
  2. Quinault Reservation, Washington.
  3. Allotments made.
- (107) Act of May 11, 1912, 37 Stat. 111 :
1. Omaha.
  2. Omaha Reservation, Nebraska.
  3. Opened for settlement.
  4. Land sold to highest bidder.
- (108) Act of February 14, 1913, 37 Stat. 675 (amended, May 25, 1918, 40 Stat. 577) :
1. Sioux.
  2. Standing Rock Reservation, North and South Dakota.
  3. Opened for settlement.

## APPENDIX II

### PART IV, EXHIBIT 1

#### TABLE B—OUTRIGHT CESSION

1. Act of May 1, 1888, 25 Stat. 113 (1).\*
2. Act of February 23, 1889, 25 Stat. 687 (3).
3. Act of March 2, 1889, 25 Stat. 888 (5).
4. Act of February 13, 1891, 26 Stat. 749 (9).\*
5. Act of March 3, 1891, 26 Stat. 989 (10).
6. Act of March 3, 1891, 26 Stat. 1022 (11).
7. Act of March 3, 1891, 26 Stat. 1026 (12).\*
8. Act of March 3, 1891, 26 Stat. 1032 (13).
9. Act of March 3, 1891, 26 Stat. 1035 (14).\*\*
10. Act of March 3, 1891, 26 Stat. 1039 (15).
11. Act of July 13, 1892, 27 Stat. 136 (18).
12. Act of March 3, 1893, 27 Stat. 557 (19).
13. Act of March 3, 1893, 27 Stat. 640 (21).\*
14. Act of March 3, 1893, 27 Stat. 644 (22).
15. Act of March 3, 1893, 27 Stat. 644 (23).\*
16. Act of August 15, 1894, 28 Stat. 314 (27).
17. Act of August 15, 1894, 28 Stat. 323 (29).
18. Act of August 15, 1894, 28 Stat. 326 (30).\*
19. Act of June 10, 1896, 29 Stat. 350 (38).
20. Act of June 10, 1896, 29 Stat. 353 (39).
21. Act of June 6, 1900, 31 Stat. 672 (49).
22. Act of June 6, 1900, 31 Stat. 708 (50).
23. Act of May 27, 1902, 32 Stat. 260 (56).
24. Act of April 21, 1904, 33 Stat. 194 (65).
25. Act of March 3, 1905, 33 Stat. 1078 (78).

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\*Statute contains language restoring ceded land to "public domain", in addition to all other elements of an outright cession.

\*\*Statute contains language about ceded land being subject to state law. (See list of allotment statutes.)

## APPENDIX II

### PART IV, EXHIBIT 1

TABLE C—OPENED FOR SETTLEMENT

1. Act of October 1, 1890, 26 Stat. 658 (7).
2. Act of June 17, 1892, 27 Stat. 52 (16).
3. Act of June 7, 1897, 30 Stat. 87 (40).\*
4. Act of July 1, 1898, 30 Stat. 571 (46).\*
5. Act of May 27, 1902, 32 Stat. 266 (58).\*
6. Act of December 21, 1904, 33 Stat. 595 (13).
7. Act of February 8, 1905, 33 Stat. 706 (74).
8. Act of March 3, 1905, 33 Stat. 1069 (76).
9. Act of March 22, 1906, 34 Stat. 80 (80).
10. Act of April 21, 1906, 34 Stat. 124 (81).
11. Act of April 26, 1906, 34 Stat. 137 (82).
12. Act of June 5, 1906, 34 Stat. 213 (84).
13. Act of June 21, 1906, 34 Stat. 335 (85).
14. Act of March 2, 1907, 34 Stat. 1230 (93).
15. Act of May 23, 1908, 35 Stat. 268 (95).
16. Act of May 29, 1908, 35 Stat. 458 (98).
17. Act of May 29, 1908, 35 Stat. 460 (99).
18. Act of May 30, 1908, 35 Stat. 558 (100).
19. Act of May 27, 1910, 36 Stat. 440 (101).
20. Act of May 30, 1910, 36 Stat. 448 (102).
21. Act of June 1, 1910, 36 Stat. 455 (103).
22. Act of May 11, 1912, 37 Stat. 111 (107).
23. Act of February 14, 1913, 37 Stat. 675 (108).

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\*Statute did not provide expressly for compensation to the tribe. However, land was expressly opened for settlement.

## APPENDIX II

### PART IV. EXHIBIT 1

#### TABLE D—RESTORED TO PUBLIC DOMAIN

1. Act of July 1, 1892, 27 Stat. 62 (17).
2. Act of August 15, 1894, 28 Stat. 332 (31).
3. Act of April 21, 1904, 33 Stat. 218 (66).\*
4. Act of June 21, 1906, 34 Stat. 360 (86).\*\*
5. Act of May 29, 1908, 35 Stat. 457 (97).

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\*Statute did not concern land cession.

\*\*Land restored not part of formal Indian Reservation.

## APPENDIX II

### PART V. MAJOR RECOMMENDATIONS ON REVISION OF TITLE 25 OF THE UNITED STATES CODE.

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APPENDIX II

PART V. MAJOR RECOMMENDATIONS ON REVIEW OF TITLE 25 OF THE UNITED STATES  
CODE

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PART V, EXHIBIT 1

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DEPARTMENT OF JUSTICE,  
*Washington, D.C., January 2, 1976.*

HON. H. GREGORY AUSTIN,  
*Solicitor, Department of Interior,*  
*Washington, D.C.*

DEAR MR. AUSTIN: By letter dated January 18, 1974, you request the position of the Criminal Division regarding your opinion of February 3, 1971 (78 I.D. 39). In this opinion you take the position that 18 U.S.C. 1161 does not grant jurisdiction to states to enforce state liquor laws, including the state licensing requirements, but rather "that the Chippewa Cree Tribe may license a liquor establishment owned or controlled by the tribe or tribal members on the Rocky Boy's Reservation without obtaining a license from the State of Montana or abiding by the prescribed quota system."

Under the present state of the law, it is not the intent of the Criminal Division to prosecute an Indian who sells liquor in conformity with state laws and tribal regulations but without a state liquor license in the State of Montana.

Sincerely,

RICHARD L. THORNBURGH,  
*Assistant Attorney General.*

PART V, EXHIBIT 2

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SOLICITOR,  
Washington, D.C., November 27, 1974.

Memorandum to : Legislative Counsel. Attention : Mr. John M. Powell.  
From : Associate Solicitor, Indian Affairs.  
Subject : Revision of Federal Criminal Code.

This responds to Fred Karem's October 18, 1974, memorandum requesting that Associate Solicitors submit comments to your Office regarding the proposed revision of the Federal Criminal Code, S. 1 amended. The purpose of a review is, according to that memorandum, to ensure "that there is no undesirable negative impact on the Bureau and agencies we represent." At a meeting on this matter the scope of review was restricted by instructions to note only those areas where there would be major adverse effects. It was also indicated that there would be another opportunity to make a more thorough analysis of the bill as it progresses through the legislative process.

Accordingly our comments are directed at two features of the proposed legislation which would, in our view, produce major adverse and disruptive effects. The first relates to the designation of Indian country as having the same jurisdictional status as other Federal enclaves. The other involves the deletion of the Indian liquor laws. Each will be discussed separately.

INDIAN COUNTRY

The proposed definition of Indian country contained in section 685, slightly expanded (in accordance with our earlier recommendations) from that presently contained in 18 U.S.C. § 1151 presents no problem.<sup>1</sup> However, the status given Indian country—*i.e.*, the same as that of any other Federal enclave—would have extremely undesirable consequences.

Existing law, the so-called "Major Crimes Act" 18 U.S.C. § 1153, defines and provides punishment for the commission of thirteen crimes by Indians against the person or property of another Indian or other person. Section 1152 of Title 18 makes the general laws of the United States (which includes the Assimilative Crimes Act, 18 U.S.C. § 13), applicable to offenses committed in Indian country. The scope of the jurisdiction under these Federal criminal provisions differ from that proposed by S. 1 amended is as follows :

1. The jurisdiction of the United States under the Major Crimes Act, 18 U.S.C. § 1153, expressly excludes jurisdiction of the states. S. 1 (as to the criminal laws it would make applicable) does not so provide. In addition, it adds 33 other crimes which would be applicable to all Federal enclaves, including Indian country. The result would be a virtually total preemption of tribal jurisdiction. This is not, of course, a problem in other Federal reservations but is very much a problem for Indian reservations.

2. The General Crimes Act, 18 U.S.C. § 1152, does not extend to offenses committed by one Indian against the person or property of another or to offenses punished by the Tribe or secured by treaty to the exclusive jurisdiction of the Tribe. S. 1 amended does not give such recognition to the sovereign authority of Tribes to enact and enforce criminal laws.

3. Both sections 1152 and 1153 apply in the context of the Federal authority and policy relating to Indian affairs, and such jurisdiction may be limited to crimes committed by or against Indians. *United States v. Kagama*, 118 U.S. 375 (1886). See *In re Carmen*, 270 F.2d 809, *cert. denied* 361 U.S. 934; *Gray v. United States*, 394 F.2d 96, *cert. denied* 398 U.S. 985.

See *Draper v. United States*, 164 U.S. 240 (1896); *United States v. McBratney*, 104 U.S. 621 (1881). S. 1 would thus create the possibility of greatly increasing Federal authority and responsibility.

<sup>1</sup> We note that the table, section 685(b) (1), listing areas within states as being within state jurisdiction is inaccurate because of changes brought about by retrocession of jurisdiction to the United States pursuant to 25 U.S.C. § 1323.

In sum, S.1 amended is not adapted to the special circumstances of Indian country. It does not recognize the "distinct political community" status of Indian reservations. Recognition of that status has been a long standing Federal policy. See *Worcester v. Georgia*, 6 Pet. 515 (1832); *Williams v. Lee*, 358 U.S. 217 (1959); *McClanahan v. Arizona Tax Commission*, 411 U.S. 164 (1973). Abandonment of that policy could seriously erode and damage authority of Tribes over their affairs. Moreover, discontinuance of the exclusive character of Federal criminal jurisdiction as it presently exists with respect to states could raise an argument that by implication states have concurrent jurisdiction.

#### INDIAN LIQUOR LAWS

The second major problem posed by S. 1 amended is the failure to provide for the reenactment of any legislation governing the introduction, possession and dispensation of liquor in Indian country. The proposal of S. 1 amended is to delete the provisions now found in Title 18, U.S.C. §§ 1154-56, 1161, 3113, 3488, and 3618. Sections 1154-56 prohibit the introduction, possession and dispensation of alcoholic beverages in Indian country. Section 1161 provides that the prohibitions of sections 1154-56 shall not apply within the Indian country when "such act or transaction is in conformity both with the laws of the State . . . and with an ordinance duly adopted by the tribe . . .". Sections 3113, 3488 and 3618 provide mechanisms to aid in the enforcement of the substantive provisions of sections 1154-56 and 1161.

These sections, in conjunction with each other, provide a Federal statutory base which permits the Tribes to forbid the introduction and sale of liquor into the Indian country even though the state permits such activity. The United States is currently supporting this statutory scheme in the Supreme Court. *United States v. Mazurie*, 487 F.2d 18 (10th Cir., 1973, cert. granted 42 U.S.L.W. 3480 (February 26, 1974)). By the same token, these sections deny to the Tribes the authority to authorize the sale of alcoholic beverages except in conformity with the laws of the state. Control of the sale of alcohol within reservation boundaries is of extreme importance to the Indian Tribes. A question exists with respect to the power of Indian Tribes to regulate the introduction and sale of liquor in Indian country on the basis of their own laws, particularly in states which have assumed jurisdiction under Public Law 83-280 (25 U.S.C. § 1321). The effect of 18 U.S.C. § 1161 is to support, with the authority of Federal law, tribal actions with regard to liquor control. Cf. *United States v. Mazurie*.

The provisions of sections 1154-56 may be outmoded and in need of revision, but neither they nor section 1161 should be entirely deleted.

#### RECOMMENDATIONS

The law with respect to Federal, tribal, and state criminal jurisdiction over crimes in Indian country is extremely complex. It has grown and been adapted by legislation pursuant to needs exposed by court decisions over a long period of time. Having only within the past week received a copy of S. 1, we have not had sufficient time to analyze all the effects which S. 1 amended would produce.

In view of the need for further analysis and the drastic effect the two features discussed above would have on Federal Indian law, we recommend that the status quo with respect to Federal and tribal criminal jurisdiction be maintained until the effect and advisability of policy changes are considered.

The existing law and status might be maintained by either of the following alternatives:

1. Remove the presently existing provisions relating to jurisdiction and applicable law to Title 25.

2. Designate Indian country as a separate jurisdictional area by adding new subsection to section 203 which would be "Section 203(d) Special Indian Country Jurisdiction." Under that section the counterparts of the Major Crimes Act, 18 U.S.C. § 1153 could be designated as applicable. Also the General Crimes Act, 18 U.S.C. § 1152, could be designated as applicable in Indian country to the same restricted extent that it now is applicable.

The treatment of Indian country jurisdiction by either alternative would require some change to conform references to other laws to their proposed designations under the proposed S. 1.

We would be happy to assist in the drafting of appropriate language to accomplish either alternative.

REID PEYTON CHAMBERS.

PART V, EXHIBIT 3

PARTIAL ANALYSIS OF PROPOSALS OF NATIONAL COMMISSION ON REFORM OF  
FEDERAL CRIMINAL LAWS MADE JANUARY OF 1971

(By Indian Civil Rights Task Force, Office of Solicitor, Department of the  
Interior, Fall 1972)

INTRODUCTION TO ANALYSIS OF TITLE 25 U.S.C. 212 PROPOSED BY THE  
NATIONAL COMMISSION ON REFORM OF FEDERAL CRIMINAL LAWS

Copies of the relevant federal statutes now in effect in Indian country are compiled in Appendix A of this memorandum. Copies of the proposed 25 U.S.C. 212, with the draftsmen's commentary and all relevant sections of the proposer revised Title 18 U.S.C., are compiled in Appendix B. Of assistance in reviewing this analysis would be, at this point, the rereading of federal statutes now in effect and familiarization with the proposed 25 U.S.C. 212 together with its commentary.

The stated objective of the draftsmen of proposed Title 25 U.S.C. § 212 is to postpone substantial reform of criminal law in Indian country and simply restate the existing relationships. Commentary, page 1524.

"2. *The effect of the Proposed Provision.*—There is obviously little change that can be effected in these fluctuating jurisdictional relationships by a reform of the substantive criminal law. Nor are we able now, without special knowledge and intensive study of the continued need for existing jurisdictional distinctions and potential effects if any change, to propose significant changes in the existing jurisdictional relationships. Rather than venture into an area requiring reforms with which we are substantially unfamiliar, the proposal for the most part is an effort to continue the existing relationships, but restate them in terms of the proposed Code."

Contrary to this statement the proposed Title 25 U.S.C. § 212 will cause a substantial change in the existing law.

Proposed section 212(1) provides that "Indian country shall be deemed to be part of the special maritime and territorial jurisdiction of the United States, as defined in § 210 of revised Title 18." Proposed § 212(3) (a) provides "Federal jurisdiction under this section shall not extend to any offense which is not a felony if it is committed by one Indian against the person or property of another Indian, unless § 202 of Title 18 applies." Section 202 provides, "If federal jurisdiction of a charged offense exists, federal jurisdiction to convict of an included offense defined in a federal statute likewise exists."

The effect of these proposals is to repeal the present Major Crimes Act (18 U.S.C. 1153) and, in effect, broaden the application of the present General Crimes Act (18 U.S.C. 1152) to include crimes by one Indian against the person or property of another Indian except misdemeanors. Federal jurisdiction would extend to misdemeanor offenses by one Indian against another only as a lesser included offense to a felony. The present General Crimes Act then might well be amended so as to read as follows :

"18 U.S.C. 1152 'Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.

"This section shall not extend to misdemeanor offenses committed by one Indian against the person or property of another Indian, *except as a lesser offense included within a charged felony. . . .*" (Emphasis supplied)

This increases federal jurisdiction over Indians within Indian country and encroaches upon the governmental powers of Indian tribes to a very significant extent. In addition, the proposed revision of federal criminal law fails to grapple with the question of the application of the Assimilative Crimes Act (18 U.S.C.

13) to Indians within the Indian country. Although it has been held that the Assimilative Crimes Act does apply to Indians in Indian country, the extent of its application has never been explored. Only one reported case has ever directly applied that section in the context of a victimless crime, while earlier cases suggest that such extension of the law is erroneous. This is the subject of comment in Part A of this memorandum.

Some of the reforms which the proposed revision seeks to achieve are laudatory. Unfortunately, however, the proposed solutions would uniformly be achieved at the expense of tribal powers. Proposed Title 25 U.S.C. 212(3) attempts to resolve existing questions with respect to the divisions of federal and tribal jurisdiction and eliminate problems of multiple prosecution. Presumably the author of this proposal is of the opinion that this section does little to change the existing federal-tribal relationship. But this opinion is the product of a misconception of the sovereign attributes of the tribes and a misunderstanding of the jurisdiction presently exercised by tribal courts. The salutary objectives which is proposed section seeks to achieve might well be accomplished through minor amendment of existing law. The jurisdictional problem between federal and tribal courts is the subject of comment in Part B of this memorandum.

Finally, proposed Title 25 U.S.C. 212(2) would codify the rule laid down in *U.S. v. McBratney*, 104 U.S. 621 (1881) and *Draper v. U.S.*, 164 U.S. 240 (1896) by providing as follows:

"Any state's jurisdiction over an offense committed within Indian country but not committed by or against an Indian or against his property, and the force and effect of its criminal laws with respect thereto, shall be the same as elsewhere within the state."

The *McBratney* and *Draper* cases represented a significant departure from the prior case law defining the status of Indian country. Whether those cases were rightly or wrongly decided appears a moot issue at this juncture since the case law has adhered to their edict for nearly 100 years. In any event, those rulings have never before had the benefit of statutory sanction. Before this section is passed into law, consideration should be given to the effect this will have on existing federal jurisdiction in Indian country over non-Indian offenders, particularly in the area of victimless offenses such as traffic offenses, fish and game violations, disorderly conduct, etc. In addition, in the conclusion portion of the commentary which accompanies 25 U.S.C. 212, the author calls for a study of the problem of tribal jurisdiction over non-Indians, noting that federal prosecutors are "understandably reluctant" to prosecute minor offenses. In addition to upsetting existing federal jurisdiction enactment of 25 U.S.C. 212(2) would appear to render the need for a study of tribal jurisdiction over non-Indian offenders moot by closing the door to possible recognition of tribal or federal jurisdiction over non-Indians for victimless offenses. These matters are the subject of comment in Part C of this memorandum.

Analysis of the jurisdictional issues outlined above is limited to the proposed allocations of jurisdiction in states which have not been delegated or which have not assumed jurisdiction over offenses by or against Indians within Indian country pursuant to special Congressional act. Proposed 25 U.S.C. § 212(2)(b) attempts to codify specific instances where such delegations or assumptions have occurred. The Departmental response of June 5, 1972 to the Attorney General concerning the proposed Federal Code revisions recommends a substantial reworking of subsection 212(2)(b) in order "to state in more general language the scope of state jurisdiction over offenses committed by or against Indians in the Indian country." (Letter of the Assistant Secretary of the Interior to the Attorney General, June 5, 1972, at page 6; see Appendix C).

Although these Departmental recommendations appear advisable, we note that neither the draftsmen of proposed 25 U.S.C. § 212 nor the Department's response thereto raise several troublesome questions that now exist concerning the scope of criminal jurisdiction accorded states under P.L. 280 (codified at 18 U.S.C. § 1162 and 28 U.S.C. § 1360 note), as amended in 1968 by P.L. 284 (codified at 25 U.S.C. §§ 1321 to 1326). Perhaps the principal issue centers upon whether P.L. 280 preempted all tribal criminal jurisdiction in affected states. The National Congress of American Indians, in an Amicus Curial brief filed in the United States Supreme Court in *Tonasket v. Washington*, No. 71-1031 (argued on Dec. 12-13, 1972) framed the matter this way:

"The big unresolved question is whether the state's jurisdiction is exclusive or concurrent. If concurrent, the tribe would retain the ability to legislate (consistent with state law) and operate its own enforcement machinery in areas

that the state neglects to cover. If exclusive, then the tribe's powers of self-government have been much more severely curtailed, and law and order services much less likely to be provided in a satisfactory way." (NCAI Amicus Brief at 3).

If Congress undertakes a broad study of Indian country criminal jurisdiction prefatory to action on the current proposals, we believe that thorough exploration of P.L. 280 dilemmas should be included.

Congressional examination might also be directed during such a study toward clarification of who is an "Indian" for jurisdictional purposes. As we briefly discuss in Part C *infra* (at note 1) Congress has never mandated the precise contours of this key term and the case law thereon is not completely definitive. The National Commission on Reform of Federal Criminal Laws has not suggested an appropriate definition but has noted the need for some. See Commentary to proposed § 212, *infra* Appendix B, at 1526.

PART A—EXPANSION OF FEDERAL JURISDICTION OVER INDIANS IN INDIAN COUNTRY  
(PROPOSED SECTION 212 (1) AND (2))

I. *Analysis of the proposed 212(1)*

Under the proposed code revisions, §§ 1151, 1152 and 1153 of Title 18 are eliminated and these jurisdictional sections are reformulated and compiled in the proposed § 212 of Title 25. Subsection one of the new 212 provides that, "Indian Country shall be deemed to be a part of the special maritime and territorial jurisdiction of the United States", and then goes on to list the three classes of Indian country listed in the present § 1151, i.e., Indian reservations, dependent Indian communities and outstanding allotments. In volume III, page 1254 of their working papers, the commentators offer their own explanation of the import of the proposed changes:

"Subsection (1) of the draft proposed here substantially restates the general principle that Federal jurisdiction exists over offenses committed in the Indian country, as it does over offenses committed on Federal enclaves; the subsection, as stated, marks no substantial change from the first paragraph of present 18 U.S.C. § 1152. But, since virtually all the offenses defined in the proposed Code would apply to Federal enclaves, this subsection would operate to render Indians committing any felony subject to the provision of the proposed Code. Indians would be subject to the same felony penalties, regardless of whether the victim is an Indian or non-Indian."

What the commentators intend then is to combine the effects and scope of the present jurisdictional sections 1151 through 1153. However, by explicitly defining Indian country as a part of the special territorial jurisdiction of the United States, that is, a federal enclave, the authors make it clear that the intended effect is that all laws applicable to federal enclaves are applicable to offenses committed in Indian country. The significant aspects of this proposal are twofold: (i) Indian country will be considered the full equivalent of a federal enclave rather than remain a distinctly defined territory. In short, this conferral of enclave status on Indian country will sever the rich historical connotations and qualifications which the law has recognized as accruing to that term. (ii) Subject to the qualifications listed in subsections (2) and (3) of 212, the full range of federal enclave laws will be applicable to offenses committed in Indian country. Briefly, subsection (2) excepts offenses involving only non-Indians from federal enclave jurisdiction and recognizes that state jurisdiction applies to such conduct. Subsection (3) provides that "federal jurisdiction shall not extend to any offense which is not a felony if it is committed by one Indian against the person or property of another Indian, unless § 202 (authorizing federal jurisdiction over lesser included offenses where the basis for federal felony jurisdiction already exists) applies." The clear implication is that tribal courts and not the federal courts shall have exclusive jurisdiction over such conduct.

The extent to which this would expand the scope of federal jurisdiction in Indian country beyond its present limits will be seen in light of the brief outline of existing law which follows in § II of this part of the memorandum and the serious procedural difficulties posed will be explored in Part B. However, it may be helpful at this point to briefly discuss several of the more obvious potential effects of the proposals.

(a) *Equalization of penalties.*—As the commentators state, one of their objectives in extending all enclave felony offenses to Indians in Indian country is to

insure equality of felony penalties to Indian Offenders, regardless of whether the victim is an Indian or non-Indian. As the commentators explain on page 1524: "Further, this process of distiguilshing offenses committed by an Indian against a non-Indian from offenses committed by an Indian against an Indian has led to clearly unwarranted differentiations: for example, a present provision in 18 U.S.C. § 1153 makes the penalty for rape depend upon whether the victim was or was not an Indian." As to lesser offenses, Indians would still be subject to varying sentences depending on the identity of the victim because of the differences in sentencing power of the tribal courts. For a misdemeanor offense a federal court under the proposed revisions could still impose a sentence of up to one year [cf 18 U.S.C. 3001] while a tribal court can only sentence for up to six months under the limitations of the 1968 Indian Civil Rights Act. (25 U.S.C. 1302(7)).

(b) *Elimination of the Major Crimes Act.*—The Major Crimes Act, 18 U.S.C. § 1153, presently furnishes the basis for federal jurisdiction over thirteen major offenses as committed by Indians in Indian country. (See Part A, II of this memorandum for an outline of present federal jurisdiction over Indians in Indian country.) The proposed § 212 would eliminate the need for such a statute by extending federal jurisdiction over all conduct coming within the definition of all federal felony offenses applicable to enclaves. This would encompass then not only all the major offenses listed in 18 U.S.C. § 1153 but the whole range of enclave felonies. In effect the clause in the present General Crimes Act excepting application of federal enclave laws to offenses by one Indian against the person or property of another Indian and leaving exclusive jurisdiction over such offenses to the tribes would be amended so as to limit the force of the exception only to misdemeanor grade conduct. (See Introduction to this memorandum, page 2). This would be a significant expansion of federal power since at present the tribes possess exclusive jurisdiction over intra-Indian offenses not enumerated in 18 U.S.C. § 1153 or covered by the general laws of the United States, i.e., those laws applicable within the United States wherever committed, and thus distinguishable from federal enclave laws.

One of the principal reforms which the proposed revision of criminal law seeks to achieve is elimination of wholesale adoption of state laws within federal enclaves as is presently the case under the existing Assimilative Crimes Act. (18 U.S.C. § 13). Thus the proposed revision would reduce all assimilated crimes to misdemeanor grade. Proposed 18 U.S.C. § 209. This reduction is the application of state laws within federal enclaves brings with it a corresponding need to expand the federal criminal code to encompass conduct previously governed by state laws. This is precisely what the proposed revision would do by supplying a comprehensive federal criminal code which ". . . attempts to define all serious crimes, including those whose principal incidence is limited to federal enclaves." See Commentary to 18 U.S.C. § 209, quoted *infra* at page 6. Thus the proposal encompassed in 25 U.S.C. § 212 would not be limited to extending all existing federal felony statutes to intra-Indian offenses within Indian country. It would in fact make applicable to such offenses a far broader, comprehensive federal code designed to supplant those laws of local governments which have always before been relied upon to govern conduct within federal enclaves. This may be of little significance to those communities, i.e., states, which have never had any jurisdiction within a federal enclave, but to the Indian community, which has never before been subject even to the existing federal enclave laws (except for offenses committed against non-Indians) and which, with the exception of the thirteen major crimes, has always been at liberty to establish their own criminal codes and regulate their own internal affairs, the impact is great.

Since the proposed revision adopts some rather revolutionary new approaches to defining criminality, it is difficult to project with exactitude what conduct would become subject to federal prosecution under the new code. However, among the many new provisions which would be added by the revised code to the federal catalogue of offenses applicable to conduct by Indians within Indian country are such offenses as willfully damaging tangible property of another (Section 1705), breaking into an automobile with intent to commit a crime (Section 1713), unauthorized use of a vehicle (Section 1736), conduct which creates a substantial risk of bodily injury or death to another (this would extend even to reckless driving) (Section 1613), making of threats to commit a crime of violence (Section 1614), and felonious restraint which, according to the explanation in Vol. II, Working Papers, pages 858, 859, could include attempted seduction, mistaken arrest or even initiation ceremonies into social clubs (Section 1632).

This catalogue of new crimes is by no means exhaustive. The working papers supplementing the proposed revision of the Assimilative Crimes Act clearly anticipates that Congress will wish to add additional offenses as future implementation of the panoply of enclave statutes contained in the present revision may reveal the need. Thus new and additional crimes will be extended to Indians in Indian country without specific attention to the requirements of the Indian communities but rather on the basis of need within enclaves in which federal jurisdiction is exclusive.

In explanation of the proposed 25 U.S.C. § 212 the Committee states that they do not propose to change the existing jurisdictional relationships between federal, tribal and state governments. (See Introduction, page 1, quoting Commentary to Section 212). The extent to which the proposal would alter the existing federal-tribal relationship is manifest from the above discussion. The proposal to extend all federal enclave laws to Indians within Indian country without regard to the power of the tribes to regulate their own internal affairs would uproot a statutory scheme and jurisdictional framework that has existed since the very founding of the United States government.

(c) *General laws of the U.S.*—In the commentary accompanying the proposed 212, the authors offer their own analysis of existing law. On page 1525 they observe, “. . . that Federal jurisdiction over these minor offenses is excluded (under the new 212(3)(a)), only for those of offenses involving the enclave type jurisdiction which is the subject of this section; minor offenses involving another Federal jurisdiction base (harassment by telephone for example) will still be federally prosecutable.” The authors then cite a recent 9th circuit case as upholding federal jurisdiction over an assault by an Indian on another Indian who was a federal officer: “The exception granted to Indians who abuse other Indians is, by the terms of the statute (18 U.S.C. 1152), only an exception from federal enclave law, and not from the general law of the United States.” *Walks on Top v. U.S.*, 372 F.2d 422, 425 (9th Cir., 1967), cert. den., 389 U.S. 879 (1967). It is instructive to note at this point the reliance of the commentators on this case as a theoretical premise. If one assumes that all general laws of the United States apply of their own force to Indian against Indian offenses in Indian country and that laws enacted especially for areas of exclusive federal jurisdiction (enclaves) will also apply to inter-Indians offenses except for non-felony grade offenses, then a special law applying certain major offenses would be superfluous (i.e., the Major Crimes Act) in view of this expansion of federal jurisdiction. The authors then are at least logically consistent in their choice to eliminate the Major Crimes Act as a separate jurisdictional base.

(d) *Effect of the Proposals on Applications of the Assimilative Crimes Act.*—Finally, before attempting a brief outline of existing law on the present extent of Federal jurisdiction over inter-Indian offenses in Indian country in order to better understand the potential effect of the proposed code, an additional aspect of the revisions should be pointed out. On page 1524 of the working papers following § 212, Title 25, the commentators observed, “. . . moreover all major crimes would be federally defined, and no Federal court interpretation of state laws on the subject would be necessary.” This conclusion follows in light of the combined effect of: (1) The revisers redefinition of the Assimilative Crimes Act, through which Assimilative offenses are reduced to misdemeanors, and (2) Present Major Crimes Act is superceded by 212 (1). In the proposed Title 18, § 209 *Assimilated Offenses*, would replace the present 18 U.S.C. 13, *Laws of States adopted for areas within federal jurisdiction*. The commentary following proposed 209 explains the effect of the change in present Assimilated Crimes law which is relevant to our inquiry.

“This section would replace 18 U.S.C. § 13. The major change it would effect would be to limit the grading for assimilated crimes to Class A misdemeanors. The policy expressed, which is similar to that of § 806 (no crime outside of Title 18 is more than a class A misdemeanor), is that serious federal consequences should occur only in response to conduct which is outlawed following legislative consideration by those committees in Congress with expertise in penal legislation. The limitation is justified in the context of this Code, which attempts to define all serious crimes, including those whose principal incidence is limited to federal enclaves. With a more comprehensive federal law applicable to enclaves, it is prudent to minimize the consequences of the wholesale purchase of not only the grossly disparate existing state laws and penalties, but also those which may be enacted by state legislatures in the future. See, e.g., the capital crime of grave desecration (Georgia).

"The burden thus shifts to the proponent of any specific felony not included in the Code to add it rather than to rely on assimilation. Offenses which are assimilated become federal offenses and, since they are prosecuted in federal courts, are governed by federal rules of procedure."

It would seem to follow then that since federal jurisdiction over intra-Indian offenses in Indian Country does not extend to nonfelonies as lesser included offenses. (See 112(3) (a).) Since an assimilated offense could never be more than a misdemeanor (proposed 18 U.S.C. 209 (2)), state law could not be applied to intra-Indian offenses at all.

In addition, federal misdemeanor jurisdiction under the Assimilative Crimes Act over Indians for offenses against non-Indians or victimless offenses would be barred if the Indian defendant had already been prosecuted by a tribal court. 25 U.S.C. 212(3) (b).

Of course, as to federal jurisdiction over offenses by non-Indians against Indians in Indian country, the Assimilative Crimes Act applies to misdemeanor grade offenses.

## II. Outline of existing law on the extent of Federal jurisdiction over Indians in Indian country

### A. Historical and Statutory Development

In *United States v. Quiver*, 241 U.S. 602 (1916), a case involving the attempted prosecution of two Indians for adultery alleged to have been committed on one of the Sioux reservations in South Dakota. Mr. Justice Van Devanter succinctly summarizes the early development and scope of Federal jurisdiction in this area :

"At an early period it became the settled policy of Congress to permit the personal and domestic relations of the Indians with each other to be regulated, and offenses by one Indian against the person or property of another Indian to be dealt with, according to their tribal customs and laws. Thus the Indian Inter-course Acts of May 19, 1796, c. 30, 1 Stat. 469, and of March, 1802, c. 13, 2 Stat. 130, provided for the punishment of various offenses by white persons against Indians and by Indians against white persons, but left untouched those by Indians against each other; and the act of June 30, 1834, c. 161 § 25, 4 Stat. 729, 733, while providing that "so much of the laws of the United States as provides for the punishment of crimes committed within any place within the sole and exclusive jurisdiction of the United States shall be in force in the Indian country", qualified its action by saying, "the same shall not extend to crimes committed by one Indian against the person or property of another Indian." That provision with its qualification was later carried into the Revised Statutes as §§ 2145 and 2146. This was the situation when this court, in *Ex parte Crow Dog*, 109 U.S. 550, held that the murder of an Indian by another Indian on an Indian reservation was not punishable under the laws of the United States and could be dealt with only according to the laws of the tribe. The first change came when, by the act of March 3, 1885, c. 341, § 9, 23 Stat. 362, 385, now § 328 of the Penal Code, Congress provided for the punishment of murder, manslaughter, rape, assault with intent to kill, assault with a dangerous weapon, arson, burglary and larceny when committed by one Indian against the person or property of another Indian. In other respects the policy remained as before."

Presently, more than a half century later, federal criminal jurisdiction continues to be based almost exclusively on the prongs of these two federal laws now codified at §§ 1152 and 1153 and Title 18. Section 1152, known as the General Crimes Act, provides that the general federal enclave laws shall extend to Indian country with the exception of offenses committed "by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe.". As of a 1968 amendment, § 1153 specifies thirteen "major" offenses applicable without qualification to any Indian committing the same in Indian country. Conceptually, we may view the Major Crimes Act as an exception to 1152's exception, more easily understood perhaps in view of Mr. Justice Van Devanter exposition of the law's development in this area. (*Supra*, see also Part B II of this memo).

### B. Analysis of Jurisdiction by Person of Offender, or Victim, or Both

Under existing law jurisdiction over an offense in Indian country as between federal, tribal or state courts depends upon the identification of the person of the offender and victim or both. For purposes of further discussion we can briefly outline this division as follows :

(a) Both offender and victim are Indian : Tribal jurisdiction is exclusive except for major crimes offenses listed in 18 U.S.C. 1153 or conduct covered by a federal statute of general applicability. [For example, 18 U.S.C. 1163 makes it a federal offense to embezzle from a tribal organization and federal jurisdiction would extend to an offender regardless of person, i.e., Indians and non-Indians alike.]

(b) Both offender and victim are non-Indians : Under the *McBratney-Draper* [*U.S. v. McBratney*, 104 U.S. 621 (1881) and *Draper v. U.S.*, 164 U.S. 240 (1896)], rule a judicial exception is created to federal jurisdiction and the state courts have jurisdiction where no federal base would otherwise exist, i.e., where there is no basis of federal jurisdiction other than the fact that the offense takes place in Indian country.

(c) Non-Indian offender and Indian victim : The *McBratney-Draper* exception doesn't reach this conduct because of the federal interest in protection of Indians and federal jurisdiction is exclusive of the state. [*Donnelly v. U.S.*, 288, U.S. 243 (1913); *U.S. v. Pelican*, 232 U.S. 422 (1914)].

(d) Indian offender and non-Indian victim : The United States and the tribes have concurrent jurisdiction. Tribal prosecution bar subsequent federal prosecution unless a federal base otherwise exists, i.e., a major crimes offense, etc.. [See para. (a), *supra*, 18 U.S.C. 1152, 1153; *U.S. v. LaPlant*, 156 F.Supp. 600 (D. Mont. 1957); *Henry v. U.S.*, 432 F.2d 114 (7th Cir., 1971)].

(e) Offense by a non-Indian not involving a victim : If there is no federal base other than the fact that the conduct takes place in Indian country, the state has jurisdiction. If the conduct has some relation to a protected federal interest federal jurisdiction may be applicable or tribal courts may take jurisdiction where a tribal interest is involved at least to the extent of exercising their exclusionary power. Case law on the question of tribal jurisdiction over a non-Indian is scarce and applicable federal statutes don't appear to reach the question. There is some authority concluding that the tribes would have no jurisdiction over non-Indian offenders but it is interesting to observe that some tribes have apparently began to assert some authority beyond the scope of just the exclusionary power over non-Indians. [See Part C of this memo for discussion of this issue].

(f) Offenses by an Indian not involving a victim. Once asserted, tribal jurisdiction is exclusive by virtue of the exception of federal enclave law found in § 1152. (*U.S. v. LaPlant, supra*). That is, except for an otherwise overriding federal base. (See (a) and (d) *supra*). There is authority for the proposition that federal jurisdiction for offenses in this category also applies through The Assimilative Crimes Act. (*U.S. v. Sossecur*, 181 F.2d 873 (7th Cir., 1950), gambling offenses under state law). They would be in effect where tribal jurisdiction is not asserted and there is no overriding federal jurisdictional base. However, the U.S. Supreme Court in the *Quiver* case, *supra*, construed this statutory exception to federal jurisdiction broadly enough to include a similar type of victimless offense and these two decisions have yet to be reconciled.

To briefly summarize then, under *McBratney-Draper* the state has jurisdiction over offenses involving only non-Indians in Indian country. The tribe has exclusive jurisdiction over offenses involving only Indians except where the conduct fits an offense defined by either the Major Crimes Act (18 U.S.C. 1153) or a law of general applicability, in which case the federal government will have jurisdiction. As to offenses by non-Indians against Indians, federal jurisdiction applies and is exclusive except for the limited potential for tribal jurisdiction to exclude non-Indians from the reservation and, arguably, to protect tribal interests. Offenses by Indians against non-Indians are within the concurrent jurisdiction of tribe and federal authorities. Under 1152, where the tribe does not prosecute, the federal government may. We see then that the only areas where the federal government may. We see then that the only areas where the federal government can apply federal enclave laws including the Assimilative Crimes Act are to (1) Offenses by non-Indians against Indians or victimless offenses involving a federally protected interest. (2) Offenses by Indians against non-Indians where the tribe elect not to prosecute. (3) Victimless offenses by Indians not prosecuted by the tribe. However, even in the absence of tribal prosecution, the extent to which state law may be applied to Indians through the Assimilative Crimes Act is questionable. [*U.S. v. Quiver, supra*. See also, *In re Mayfield, Petitioner*, 141 U.S. 107 (1891); *State v. Campbell*, (Minnesota, 1893) 55 N.W. 553; *State v. Jackson*, (Minn., 1944) 16 N.W. 2d 752, *In re Fredenberg*, 65 F. Supp. 4 (E. D. Wisc., 1946)]. [See para. f]. All other areas of conduct are either exclusively state, exclusively tribal or exclusively founded on another federal jurisdictional base (e.g., the Major Crimes Act.)

### C. Application of the Assimilative Crimes Act to Offenses by Indians in Indian Country, a Special Problem

Section 152 makes applicable to areas defined as Indian country the "General laws of the United States as to punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States." As the excerpt from the *Quiver* case, (a) *supra*, illustrates, the language of this statute is taken almost verbatim from the 1834 Indian Intercourse Act, (4 Stat. 733). It is clear that historically, by passage of this legislation Congress was providing a jurisdictional basis for the extension of federal authority to Indian country where heretofore there was no such basis, the only governmental entity being the tribal unit. [*Ex parte Crow Dog*, 109 U.S. 556 (1883); *Talton v. Mayes*, 163 U.S. 376 (1896)]. There would appear to be no reason for not concluding that the intent and purpose behind these earlier acts survives through their re-enactment and codification into their present form.

The Assimilative Crimes Act is one of the federal enclave laws and as such is applicable to Indian country through the General Crimes Act. An excellent though brief analysis of the Workings of this law in relation to enclave law in general can be found on page 7 et seq. Vol. I of the Code Revisers Working Papers:

"Section 7 of Title 18, United States Code, defines places that 'all within the 'special maritime and territorial jurisdiction of the United States'. (Federal enclave) Other provisions of Title 18 define specific offenses that become Federal crimes when committed within that jurisdiction. For the special maritime and territorial jurisdiction; §§ 113 and 114 deal with assault and maiming; §§ 661 and 662 treat larceny and receiving stolen property; various homicide offenses are covered in §§ 1111-1113; sex offenses are in §§ 2031-2032; and robbery is in § 2111.

"Section 13 of Title 18, is the so-called Assimilation Crimes Act (See appendix to this memo for 8 U.S.C. § 13).

"This section (§ 13) thus deals with conduct not covered by a specific Federal criminal statute that occurs within the special maritime and territorial jurisdiction and also occurs within the territorial limits of a State, territory, possession or district. For such conduct, § 13 incorporates by reference the State criminal law that would be applicable if the conduct had not occurred on the Federal enclave and makes it applicable as Federal criminal law. The result is that on Federal enclaves that are physically located within the borders of a State, there are two possible sources of Federal crimes-specific Federal provisions or, where there are no such provisions, State criminal law made applicable by force by § 13. The latter category of crime is generally referred to as an assimilated crime—*viz.*, State criminal law is assimilated into Federal law.

"Federal crimes whose Federal connection is based upon the place of commission may be contrasted with other forms of Federal criminal jurisdiction. There is a large category of Federal crimes that may fairly be described as nonterritorial in nature; they are not Federal crimes because of where they occur but rather because some other type of Federal interest is affected—e.g., protection of the integrity of Federal currency, or of Federal officers performing their duties, or because it provides a useful adjunct to State law enforcement."

The first Assimilative Crimes Act (4 Stat. 115, 1825) was enacted with the intent of filling a jurisdictional vacuum which existed in areas where the federal government exercised sole and exclusive jurisdiction, i.e., federal enclaves. There being no federal common law of crimes, prosecution within a federal enclave had to be based on a federally defined offense. Since not all forms of conduct that could be considered disruptive of society has been reached by such statutory definitions, without an assimilative Crimes Act, a jurisdictional vacuum in the law to reach just such conduct would exist. The Assimilative Crimes Act allows federal authorities to reach such conduct by assimilating the laws of the state in which the enclave is located. Thus, the primary intent of this Act has always been to regulate conduct in areas of exclusive federal jurisdiction so that these federal enclaves do not become a haven for criminal activities. (*U.S. v. Sharpnack*, 355 U.S. 286 (1958); see also, "The Federal Assimilative Crimes Act", 70 Harv. L. Rev. 685, 1957).

It seems clear then that the Assimilative Crimes Act has only a limited application to Indian Country along with other federal enclave laws. As opposed to a truly defined federal enclave (18 U.S.C. 7, *supra*) where federal jurisdiction is sole and exclusive and there exists the potential for a complete jurisdictional gap

in regulatory laws, the only such vacuum that would exist in Indian country were it not for the Assimilative Crimes Act would be over offenses by non-Indians against Indians and by Indians against non-Indians where the tribe elects not to prosecute. Of course, the fact that enclave law has only limited application to Indian country is precisely because Indian reservations have never had the same legal status as a properly defined federal enclave. Obviously, the basis for this difference is the fact that tribal authority within the territorial confines of Indian country has always been recognized as filling what would otherwise be a regulatory and governmental vacuum. In speaking of this very distinction, the Supreme Court has explained:

"The words, 'sole and exclusive', in section 2145 (predecessor to the General Crimes Act, 18 U.S.C. 1152) do not apply to the jurisdiction extended over the Indian Country, but are only used in the description of the laws which are extended to it." (In re Wilson, 140, U.S. 575, 578 (1891)).

The distinction that the *Wilson* court draws is between an extension of jurisdiction which is sole and exclusive and an assertion of jurisdiction that is by its very nature "limited". Recognition of this distinction is crucial to seeing the difference between Indian country and federal enclaves properly speaking. Section 1152 properly refers to that generic class of enclave laws as those applicable to "any place within the sole and exclusive jurisdiction of the U.S.," because, as the commentators point out, that is the form in which enclave laws are put when drafted (i.e., 18 U.S.C. 81 makes it a federal offense to commit arson within the special maritime and territorial jurisdiction). However, description of enclave laws in this way inevitably leads to the type of confusion that *Wilson* court was confronted with. As we have attempted to point out, federal jurisdiction over Indian country is not sole and exclusive but concurrent with that of the tribes (see also Part B of this memo) and exclusive only in reference to the state's jurisdictional powers and then only in carefully defined circumstances. (*U.S. v. Kagama*, 118 U.S. 375 (1886)).

The reason that the courts have always accorded a special status to Indian country has been in deference to the long standing recognition of the inherent right of the tribe to govern itself. (*Ex parte Crow Dog*, *supra*; *Williams v. Lee*, 358 U.S. 217 (1958); *Iron Crow v. Oglala Sioux*, 129, F. Supp. 15 (W.D.S.O., 1956), *aff'd* 231 F.2d 89 (8th Cir., 1956).)

### III. Conclusion

On the basis of our relatively brief analysis, it seems evident that the proposed 25 U.S.C. 212 would have a significant impact on the existing jurisdictional relationships in Indian country. By expressly equating Indian country with the existing definition of a federal enclave in subsection (1), federal jurisdiction over Inter-Indian offenses is expanded to include all felony offenses listed in the proposed Title 18. Tribal jurisdiction is reduced to include only minor offenses by Indians which are not prosecuted as a lesser included offense to a federal felony. Other notable effects of the proposals are discussed in Parts B and C of this memorandum.

As the Code Revisers explain in the accompanying Commentary to the proposed 212, their intent is not to change existing jurisdictional relationships but to simply restate them in terms of the proposed code (page 1542. Working Papers, Vol. III). The changes proposed are made for such purposes as the equalization of penalties as between Indian offenders regardless of the identity of the victim (see; *supra*, Part A, I (a)), clarifying the relationships of trials under tribal law to federal prosecutions in cases of minor offenses (see; Part B of this memorandum), etc., the Revisers see these changes as only minor. Under our view of the present status of existing law, the proposals would only either obfuscate an already complex jurisdictional relationship or accomplish a shift of jurisdiction over categories of offenses in derogation of long standing Congressional policies which have consistently recognized an enduring right of self-government in the tribe.

We do not take a position advocating maintenance of the present jurisdictional status quo. But in view of continuing developments in the area of Indian Law we feel there is a need for a careful and thorough examination of how federal interest could be best served by legislative reform. For example, in *City of New Town v. United States*, 454 F.2d 121 (8th Cir., 1972), the eighth circuit found that the Fort Berthold reservation boundaries and resultant federal and tribal jurisdiction encompassed the plaintiff, a community which includes a substantial number of non-Indians. At issue is the extent of remaining state jurisdiction in

the area and scope of newly recognized federal and tribal jurisdiction. Arguably, the state has only *McBratney-Draper* jurisdiction over non-Indians with whatever regulatory and taxing powers that implies; all else falls to either the federal government or tribal authorities. Depending on the sophistication and development of tribal law enforcement and judicial arms among the various tribes, the tribes may or may not be in a position to assume all regulatory, peace keeping, licensing, etc., functions.

It is a debatable point whether present law furnishes adequate support for the exercise of these governmental functions by the tribe over resident non-Indians but what is the alternative? Hopefully questions associated with existing jurisdictional relationships in Indian country rather than be subject to the cursory treatment rendered by the Commission.

**PART B. ANALYSIS OF TRIBAL-FEDERAL JURISDICTION UNDER PRESENT LAW AND AS PROPOSED BY 25 U.S.C. 212 (3)**

***I. Analysis of proposed Title 25 U.S.C. 212 (3)***

Proposed Title 25 U.S.C. 212 (3) seeks to resolve existing question with respect to the divisions of federal and tribal jurisdiction and eliminate the problems of multiple prosecution. See Comment on Jurisdiction in Indian Country; 25 U.S.C. 212, Volume III, Working Papers, page 1521 et seq. (hereinafter cited as Commentary). The provisions of subpart (a) of § 212 (3) present little difficulty in interpretation, except in the area of victimless offenses. See Part A of this memorandum. However, subpart (b) of this section raises a series of interpretive problems, the most serious of which relates to the proposed jurisdiction of tribal courts.

The basic purpose of subpart (b) is not to define jurisdiction but rather to establish in what circumstances prosecution in tribal court will bar subsequent federal prosecution. The jurisdictional questions arise because of the reference in subsection (b) to § 709 of the proposed Title 18 and because of the explanatory commentary which accompanies proposed § 212. Proposed 25 U.S.C. (3) provides as follows:

***(3) Offenses Committed by Indians***

(a) Nonfelonies. Federal jurisdiction under this section shall not extend to any offense which is not a felony if it is committed by one Indian against the person or property of another Indian, unless section 202 of Title 18 applies.

(b) Multiple Prosecutions. Punishment of an Indian under the local law of the tribe for conduct constituting a federal offense which is not a felony shall be a bar to a subsequent federal prosecution of such Indian under this section. Otherwise sections 707 and 709 of Title 18 apply to a federal prosecution subsequent to a prosecution or similar proceeding under the law of the tribe as if such tribal prosecution or similar proceedings were a prosecution in a state.

The question simply presented is this: Do Indian tribes presently share with the U.S. concurrent jurisdiction over major offenses, committed by Indians in the Indian country, particularly offenses set forth in the Major Crime Act? The authors of 25 U.S.C. 212, and the commentary which accompanies it, are of the opinion that the tribes do not share such jurisdiction. It is our opinion that this view is erroneous and that the tribes do share concurrent jurisdiction. The current law on this subject is explored at length in § II of this Part. The corollary question is this: Under the provisions of the proposed 25 U.S.C. 212 (3) will the tribes share concurrent jurisdiction with the U.S. over major offenses? The proposed statute is not clear but as we interpret it the tribes will be divested of jurisdiction over conduct which constitutes a federal felony and also divested of jurisdiction over lesser offenses included within that conduct. The remainder of § I of this Part is devoted to the interpretation of § 212 (3).

At the outset, it is necessary to ascribe some meaning to the use of the word "otherwise" as it appears in § 212(3) (b). It is possible to read this section as saying that failure of the tribe to "punish" the accused Indian will not be a complete bar to federal prosecution. It appears however that the draftsmen intend for the word "punishment" as used in this section to be interpreted as meaning "prosecution" for in explanation of this section they state:

"[A]nyone properly prosecuted under tribal law, whether or not he has been 'punished' (he may have been acquitted), cannot subsequently be prosecuted

federally for the offense except in the rare instance of Attorney General certification." Commentary, page 1525, 1526.

Assuming then that "punishment" really means "prosecution",<sup>1</sup> it follows that the word "otherwise" refers not to the disposition of the case but rather to the nature of the case adjudicated in the tribal court.

Section 212(3) (b) clearly recognizes concurrent jurisdiction of the tribes over some offenses also cognizable by the United States courts. Since federal courts do not have jurisdiction over misdemeanor offenses by one Indian against the person or property of another Indian, this area of concurrency is limited to the following possibilities: (1) misdemeanor offenses other than those committed by an Indian against the person or property of another Indian,<sup>2</sup> (2) conduct constituting a federal offense which is a felony.

The word "otherwise" is a disjunctive term clearly implying that in one given set of circumstances section 707 and 709 shall be applicable and that in another set of circumstances these sections shall not be applicable. Assuming that the distinction in application of these sections to tribal court judgments is not dependent upon the disposition of the case, the only logical meaning only that can be ascribed to the word "otherwise" is that § 212(3) (b) applies two separate standards to tribal court prosecution, depending upon the grade of the offense (conduct) upon which the tribal court has rendered judgment. When the conduct which gives rise to tribal prosecution constitutes a federal offense which is not a felony, i.e., a misdemeanor, then tribal prosecution constitutes a complete bar to subsequent federal prosecution. But, when the conduct which gives rise to tribal prosecution constitutes something other than a federal offense which is not a felony, i.e., a federal offense which is a felony, then §§ 707 and 709 of the proposed Title 18 apply and the bar to subsequent federal prosecution is qualified by those sections. This clearly implies that tribal prosecution for conduct constituting a federal offense which is a felony will bar subsequent federal prosecution in some circumstances. In order to avoid the barring effect of this tribal prosecution the case must come within the provisions of §§ 707 and 709.

While the above conclusions seem clear on the face of the proposed statute, the commentators explanation of the applicability of §§ 707 and 709 to tribal court judgments casts doubt on the validity of this analysis. The commentators explain that in the case of a person "properly" prosecuted under tribal law § 707 shall be applicable, while in the case of a person "improperly" tried, § 709 shall apply. Commentary, page 1525, 1526. The focus of inquiry thus shifts to what is a "proper" prosecution and what is an "improper" prosecution within the tribal court.

Sections 707 and 709 set forth broad rules governing the jurisdiction of federal courts to prosecute an offense subsequent to prosecution in local courts. Section 707 provides that prosecution under the law of a local government shall be a bar to a subsequent federal prosecution except under certain defined circumstances or when the Attorney General certifies that the interests of the federal government would be unduly harmed if federal prosecution were barred. The provisions of this section are in no way conditioned upon the *jurisdiction* of the "local" court or any other element going to the "propriety" of the prosecution in the local court. This section therefore does not contribute to the uncertainty of interpretation of 25 U.S.C. 212(3) (b).

The point of uncertainty is reached when § 709 is read in conjunction with § 212(3) (b). Section 709 provides as follows:

**"709. When Former Prosecution Is Invalid or Fraudulently Procured.**

"A former prosecution is not a bar within the meaning of sections 704, 705, 706, 707 and 708 under any of the following circumstances:

"(a) it was before a court which lacked jurisdiction over the defendant or the offense;

"(b) it was for a lesser offense than could have been charged under the facts of the case, and the prosecution was procured by the defendant, without the knowledge of the appropriate prosecutor, for the purpose of avoiding

<sup>1</sup> If this is in fact the intent of this section, the word "prosecution" should be substituted for the word "punished". It is difficult to understand why the word prosecution was not used in the first instance, unless perhaps it was simply a carry-over from the existing statutory language. 18 U.S.C. 1152.

<sup>2</sup> An example of this type of offense is a misdemeanor committed by an Indian against a non-Indian or a victimless misdemeanor offense.

prosecution for a greater offense and the possible consequence thereof; or  
 "(c) it resulted in a judgment of conviction which was held invalid in a subsequent proceeding on a writ of habeas corpus, coram nobis or similar process."

In determining the application of this section to a judgment of a tribal court, it is important to remember three things:

(1) Section 709 is only applicable to tribal court judgments for conduct constituting a federal offense which is a federal felony. Tribal court judgments for conduct constituting a misdemeanor are not subject to this section.

(2) Unless the tribal court judgment falls within the provisions of this section (or § 707), the subsequent federal prosecution is barred.

(3) The power of a tribal court to punish for any one offense is limited by the 1968 Indian Civil Rights Act to six months or a fine of \$500.00 or both.

The basic question is simply this: Do tribal courts share concurrent jurisdiction with the United States over conduct which constitutes a federal felony? Or is the jurisdiction of the United States over conduct constituting a federal felony exclusive? The provisions of 25 U.S.C. 212(3) (b) imply recognition of concurrent tribal jurisdiction over felonies, but the provisions of the proposed 18 U.S.C. 709 and the commentary to 25 U.S.C. 212(3) (b) both suggest that federal jurisdiction is exclusive.

Assume, then, a case in which one Indian is charged with having committed an assault with intent to kill against another Indian. The offense of assault with intent to kill is now included in the Major Crimes Act and would be included in the revised Title 18 as a federal enclave offense.

A lesser included offense to the charge is simple assault. Assume that the defendant is brought before the tribal court, charged with assault with intent to kill, tried and convicted and sentenced to six months in the tribal jail. Does the tribal prosecution bar a subsequent federal prosecution for this offense? If it is accepted that tribal courts have concurrent jurisdiction with the federal government over conduct constituting a federal felony, then, in the absence of some procedural irregularity which would vacate the tribal judgment under a habeas corpus or coram nobis proceeding, it would appear that the tribal court judgment was "proper" and does in fact bar subsequent federal prosecution. Is this the intent of the draftsmen of 25 U.S.C. 212(3) (b)? It would appear not, for on this question they state:

"... (A)nyone properly prosecuted under tribal law, whether or not he has been 'punished' (he may have been acquitted), cannot subsequently be prosecuted federally for the offense except in the rare instance of Attorney General certification. At the same time, if the defendant is *improperly tried for a minor offense when his crime was a serious one*, proposed section 709 will apply, and Federal prosecution will not be frustrated." Commentary, pages 1525, 1526.

In what way will § 709 avoid frustration of federal prosecution? Under § 709 (b) and (c) frustration of federal prosecution would be avoided only under the most narrow of circumstances. It is clear the draftsmen of § 212 contemplate a far broader application of § 709. This can only be derived from the provisions of § 709(a). And such a broad result under § 709(a) can only be predicated on the premise that tribal courts do not have jurisdiction over the offense charged. In other words, that tribal courts lack concurrent jurisdiction with the United States over serious offenses, i.e., felonies. The judgment of the tribal court is *invalid* as beyond the jurisdiction of the tribal court.

It is hardly surprising that 25 U.S.C. § 212(3) should reach such a result for the draftsmen are apparently of the opinion that under present law Indian tribes lack jurisdiction over "serious" offenses.

"The tribal courts have jurisdiction over a number of minor offenses committed by Indians, defined for most tribes by a Criminal Code drawn up under the guidance of the Department of the Interior. The major penalty authorized under this Code is 6 months' imprisonment, with one exception (use of peyote) which is punishable by up to 9 months' imprisonment. Tribal courts have no jurisdiction to try non-Indians nor can they try any felony cases. Commentary, page 1523.

"Some basic felonies are not enumerated in 18 U.S.C. § 1153—for example, kidnapping—so that, if an Indian commits the crime against another Indian in Indian country there is no jurisdiction, either in a State court, Federal district court or a tribal court, over the offense." Commentary, page 1524.

The statement that in the case of basic felonies not enumerated in 18 U.S.C. § 115—for example kidnapping—committed by one Indian against another Indian, "... there is no jurisdiction, either in a State court, federal district court

or a tribal court . . ." is patently false. See the provision in the Title 25 CFR, Chapter 1, Subchapter B, § 11.41, establishing the offense of Abduction as a crime punishable by Courts of Indian Offenses. The definition of the offense set forth in 25 CFR, § 11.41 corresponds with the definition of the federal offense of kidnapping. Compare Title 18 USCA, § 1201, note 5 (1970 Ed.)

Section 212(3) is thus premised on the assumption that Tribal courts have jurisdiction only over minor offenses and cannot try any felony cases. The Commentary does not support this conclusion with any reference to statute or case law. It is, of course, true that by virtue of the Civil Rights Act of 1968 (Act of April 11, 1968, Title II, § 202, 82 Stat. 77, 25 U.S.C. § 1302(7)), tribal courts may not impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of six months or a fine of \$500.00, or both. The penal power of a tribal court is thus limited to that which could be wielded by a federal court or magistrate for a petty offense. See 18 U.S.C., § 1(2) (1970 Ed.). But it is a great jump to conclude that because the tribes penal power is limited, the conduct over which it can exercise jurisdiction is also limited.

Presumably the assumption of the draftsman that tribal courts lack jurisdiction over serious offenses is an outgrowth of dicta in a few recent decisions suggesting that Indian tribes have no jurisdiction over those offenses which are set forth in the Major Crimes Act. 18 U.S.C. § 1153. These decisions hold that in enacting the Major Crimes Act, Congress "withdrew" from the tribes jurisdiction over the enumerated offenses.

An analysis of these decisions and the history of the Major Crimes Act which rebuts the withdrawal theory and contradicts the basic premise upon which the proposed Title 25 U.S.C. § 212(3) is founded, follows in Part B II of this memorandum.

If the tribal courts do not have concurrent jurisdiction over federal felonies, do they retain any jurisdiction over lesser included offenses? Under the present law tribal jurisdiction over lesser included offenses is unquestioned. *U.S. v. Davis*, 429 F. 2d 522 (8th Cir., 1970); *Kills Crow v. U.S.*, 451 F. 2d 323 (8th Cir., 1971); *U.S. v. Joe*, 452 F. 2d 653 (10th Cir., 1971), cert. den., 32 L.ED. 134 (1972). However, under the proposed 25 U.S.C. 212(3) (b) it appears that tribal jurisdiction over these lesser included offenses would be taken away. Insofar as the provisions of subsection (b) bar subsequent federal prosecution, this bar extends to "conduct" which does not constitute a federal felony.

We have already seen that under the provisions of 25 U.S.C. § 212(3) the tribal court would not have jurisdiction over the charged offense of assault with intent to kill and that this denial of tribal jurisdiction develops from the application of § 709(a) of Title 18 to the tribal court judgment. By the same force of reasoning the tribal court will lose jurisdiction over the lesser included offense. Following our hypothetical, while the charged offense of simple assault would be within the jurisdiction of the tribal court, the "conduct" upon which the charge is based would still constitute a federal felony, i.e., assault with intent to kill. And under the provisions of § 212(3) (b) it is the conduct of the accused, not the charge against him, which triggers the application of § 709(a). Thus the judgment of the tribal court, even on the lesser included offense, would be subject to application of § 709 and the judgment of the tribal court would be nullified as beyond the jurisdiction of the tribal court.

A rule such as that proposed in § 212(3) which would strip tribal courts of jurisdiction over major crimes and lesser included offenses will create a myriad of problems for both the tribal and federal court system. What if, as was the situation in the *Kills Crow* case, *supra*, there is evidence that the defendant was so intoxicated that he may not have been able to form the necessary intent to be guilty of the greater offense? Could the tribal court properly assume jurisdiction over the case on the charged lesser offense of simple assault, knowing that a factual question existed which was beyond the jurisdiction of that court to determine and which, if subsequently found against the defendant in a federal proceeding would nullify the tribal court judgment? And could the U.S. Attorney, knowing that a factual question existed which would establish federal jurisdiction and deny tribal jurisdiction, decline to prosecute in federal court on the grounds that it was a borderline case or because the ends of justice would be satisfied by a prosecution in tribal court? Could the Department of the Interior or even the Department of Justice properly advise the tribal judges to disregard the apparent statutory limitations upon their jurisdiction and proceed as if such limits did not exist? The answer to these questions certainly appears to be No!

What then is the solution to these problems? It lies in the recognition that the tribes now have and should in the future have a full range of "jurisdiction over offense within Indian country—that as to those offenses over which the federal government has asserted some jurisdiction, the tribes nevertheless retain concurrent jurisdiction. The legal ramifications of this question are examined in full in the remaining sections of this Part B of this memorandum.

**II. The Major Crimes Act expanded Federal jurisdiction over Indians but did not thereby limit Tribal jurisdiction. The Tribes share concurrent jurisdiction with the United States over offenses enumerated in both the Major Crimes Act and the General Crimes Act**

Prior to the enactment of the Major Crimes Act in 1885, Indian tribes had sole and exclusive jurisdiction over all crimes committed by one tribal member against the person or property of another tribal member. *Ex parte Crow Dog*, 109 U.S. 556 (1883). Although there appeared no firm constitutional base for asserting federal jurisdiction over crimes by one Indian against another, the legality of the Major Crimes Act was upheld on the grounds that (1) tribal Indians were wards of the federal government, and (2) the weakened condition of the Indian tribes required the imposition of the federal government in order to secure law and order among the Indians. *U.S. v. Kagama*, 118, U.S. 375 (1886).

It has been contended that this statute, enacted for purposes of insuring punishment of tribal Indians and avoiding retaliatory murders in accordance with the customary law of some Indian tribes, effectively withdrew from the tribes jurisdiction over the offenses named therein, thus taking away from them the power to punish their own members. This contention is not borne out by the legislative history of the Act. The first version of the Major Crimes Act was introduced on the floor of the House of Representatives in 1885 as an amendment to the Indian Appropriations Bill. As originally presented, it reads in part as follows:

"Sec. 10. That immediately upon and after the passage of this act all Indians within the provisions of this act committing against the person or property of another Indian any of the following crimes, namely, murder, manslaughter, rape, assault with intent to kill, aggravated assault and battery, arson, burglary and larceny, within any Territory of the United States, and either within or without an Indian reservation, shall be subject therefor to the laws of such Territory relating to said crimes, and shall be tried therefor in the same courts and in the same manner *and not otherwise*, and shall be subject to the same penalties as are all other persons charged with the commission of said crimes respectively. \* \* \*". Congressional Record, volume 16, Part II, page 934.

At the suggestion of Congressman Budd, this amendment was modified so as to delete the words "and not otherwise," in order to avoid stripping tribal courts of concurrent jurisdiction.

"Mr. BUDD. I desire to suggest another modification of the amendment—to strike out the words and not otherwise. The effect of this modification will be to give the courts of the United States concurrent jurisdiction with the Indian courts in the Indian country. But if these words be not struck out, all jurisdiction of these offenses will be taken from the existing tribunals of the Indian country. I think it sufficient that the courts of the United States should have concurrent jurisdiction in these cases." *Ibid*, page 934.

There was no debate on the modification proposed by Mr. Budd but the amendment was adopted by the House in the modified form.

The case of *U.S. v. Whaley*, 37 Fed. 14 (C. C. S. D. Calif., 1898) has been cited by commentators to the effect the Major Crimes Act withdrew tribal jurisdiction. The case itself is inconclusive in this regard and is at best very weak authority on the point. The opinion was written by the trial court, one judge sitting, and involved only the question of whether the court should accept a plea of guilty to manslaughter as opposed to compelling trial for first degree murder. The defendants were accused of having executed a tribal medicine man, suspected of poisoning other tribal members, upon orders from the tribal council. The principal defense was lack of notice of the new federal law, i.e., the Major Crimes Act. The power and jurisdiction of the tribe to order the execution was not specifically treated in the opinion, though lack of such jurisdiction may have been assumed *sub silencio*.

It does not appear that *U.S. v. Whaley, supra*, has ever been cited or relied upon as authority for the above proposition in any subsequent case. A few recent cases have commented to the effect that the Major Crimes Act withdrew jurisdiction from the tribe over offenses named therein but in each instance such

comments were dicta. *Iron Crow v. Ogallala Sioux Tribe*, 129 F. Supp. 15 (W. D. S. D., 1956), *aff'd.*, 231 F.2d 89 (8th Cir., 1956); *U.S. v. LaPlant*, 156 F. Supp. 660 (D. Mont., 1957); *Glover v. U.S.*, 219 F. Supp. 19 (D. Mont., 1963); *Sam v. U.S.*, 385 F.2d 213 (10th Cir., 1967). Of these cases only *Glover* and *Sam* had fact situations which properly raised the question of "withdrawal", and each of these cases was disposed of on other grounds.

The *Sam* case involved an appeal from a conviction of rape under the Major Crimes Act on the Grounds that the trial court erred in denying a motion for continuance in order to secure new counsel. In disposing of the case, the court noted that one defendant's aims was to secure a transfer of the case to the Navajo Tribal Court. The court simply stated that "the case was beyond the jurisdiction of the Tribal Court," citing only the Major Crimes Act, 18 U.S.C. 1153. In the *Glover* case the court denied a writ of habeas corpus from a conviction for driving while intoxicated, no drivers license, and petty larceny in the Tribal Court of the Confederated Salish and Kootenai Tribes of the Flathead Reservation. Defendant's petition was premised on the lack of appellate rights in Tribal Court and lack of proper legal counsel. (These arguments were disposed of against the defendant). Although tribal jurisdiction over the offenses charged does not appear to have been raised by the litigants, the court affirmed tribal jurisdiction over the D. W. I. offense and driving without a license. The court refused to determine the validity of the conviction for petty larceny on the grounds sentence for that offense had not begun to run, but in so holding the court did state that in its opinion the Major Crimes Act did divest the tribes of jurisdiction over the crimes set forth in the Major Crimes Act.

"It has long been settled that, except where withdrawn by Congress in the exercise of its plenary powers over Indian affairs, jurisdiction of criminal offenses by Indians in the Indian country rests with the Indian Tribes. *Ex parte Crow Dog*, 109 U.S. 556, 3 S.Ct. 396, 27 L.Ed. 1030; *Talton v. Mayes*, 163 U.S. 376, 16 S.Ct. 986, 41 L.Ed. 196; *Iron Crow v. Ogallala Sioux Tribe*, 129 F.Supp. 15, D.C.W.D.S.D., *affirmed* 8 Cir., 231 F.2d 89; *United States v. LaPlant*, D.C. Mont., 156 F. Supp. 660. In 1885, Congress passed what has now become known as the Ten Major Crimes Act, which withdrew from Indian Tribes jurisdiction of certain crimes and vested jurisdiction of those crimes, when committed by an Indian in Indian country, exclusively in the federal courts. *In re Carmen's Petition*, D.C.N.D. Cal. S.D., 165 F.Supp. 942, *affirmed* Dickson v. Carmen, 9 Cir. 270 F.2d 809; *Iron Crow v. Ogallala Sioux Tribe*, *supra*; *United States v. LaPlant*, *supra*. The crimes now included in the Ten Major Crimes Act, of which the tribes are divested of jurisdiction and of which jurisdiction rests in the federal courts are murder, manslaughter, rape, incest, assault with intent to kill, assault with a dangerous weapon, arson, burglary, robbery and larceny. 18 U.S.C.A. §§ 1153, 3242. However, withdrawal of tribal jurisdiction as to these major crimes left tribal jurisdiction as to other crimes undisturbed. *United States v. Quiver*, 241 U.S. 602, 36 S.Ct. 699, 60 L.Ed. 1196; *United States v. Jacobs*, D.C.E.D. Wis., 113 F. Supp. 203; *State v. McClure*, 127 Mont. 534, 268 P.2d 629; *Iron Crow v. Ogallala Sioux Tribe*, *supra*; *United States v. LaPlant*, *supra*.

"[8] Therefore, it appears that as to at least two of the offenses with which petitioner was charged, i.e., driving while intoxicated and no driver's license, jurisdiction remains in the tribe, and the tribal court could properly exercise jurisdiction with reference to those offenses. As to the third offense for which petitioner was sentenced, petty larceny, it would seem that the tribal court would be without jurisdiction of that offense, if petty larceny is included within the meaning of the term "larceny" as used in Sections 1153 and 3242. However, this need not be decided now for reasons which will become apparent."

Many cases do refer to the Major Crimes Act as having vested "exclusive" jurisdiction over the offenses in the federal government, but some comments are almost uniformly directed to questions involving a clash of jurisdictional claims between state and federal courts. See for example; *Gray v. U.S.*, 394 F.2d 96 (9th Cir., 1967). *Petition of Carmen*, 165 F.Supp. 942, (N.D. Calif., 1958), *aff'd.*, *Dickson v. Carmen*, 270 F.2d 800 (9th Cir., 1958), *cert. den.*, 361 U.S. 973.

Only one federal case of recent vintage has engaged in any analytical effort to ascertain what Congress intended to accomplish by enactment of the Major Crimes Act. *Henry v. U.S.*, 432 F. 2d 114 (7th Cir. 1971), *cert. den.*, 400 U.S. 1011 (1971), *opinion modified*, 434 F. 2d 1283 (9th Cir., 1971). The case involved a challenge to an indictment of an Indian for rape of a non-Indian under the General Crimes Act. The court agreed but held that defendant was not prejudiced because

whether prosecuted under either statute the elements of the offense charged were the same.

"Henry contends that the indictment is defective because it charges violations of §§ 1152 and 2031, whereas the charges should be violations of § 1153 of Title 18, United States Code.

\* \* \* \* \*

"The appellant argues that the language of this statute, also known as the Major Crimes Act, is plain and clear on its face and should have been used in the indictment.

"The government contends that despite the 'or other person' language of § 1153 legislative history demonstrates that the section was intended to apply only to crimes committed by an Indian against another Indian.

"According to the government, § 1153 was adopted against a backdrop of Congressional outrage over the effects of *Ex parte Crow Dog*, 109 (1883) ousting federal territorial courts of jurisdiction over crimes committed by one Indian against another. In *Crow Dog* the court sustained the validity of a statute which excluded federal jurisdiction over. \* \* \* crimes committed by one Indian against the person or property of another Indian (and to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe \* \* \*.) (Emphasis supplied.)

"The statute construed by the *Crow Dog* court was § 2146 of the Revised Statutes first enacted in the Indian Intercourse Act of 1834. The statute by excluding from federal jurisdiction 'any Indian committing any offense in the Indian country who has been punished by the local laws of the tribe' not only excluded from federal court jurisdiction cases involving Indian offenders and Indians victims, but also excluded cases involving Indian offenders and non-Indian victims when the offense was covered by local laws of the tribe.

"The inclusion in § 2146 of 'any offense,' which obviously includes non-Indian victims, demonstrates the reason why Congress included the words "or any other person" in § 1153. Contrary to the government's contention, the "other person" language cannot be disregarded as not being a Congressional remedy for the lacunae created by the *Crow Dog* decision. Just as Congress found it desirable to find a remedy for the ousting of federal jurisdiction over crimes committed by one Indian against another, it applied the same remedy for the ousting of federal jurisdiction over crimes committed by an Indian against 'any other person.'" [432 F.2d 114, 116-117.]

Without question the "sole and exclusive" jurisdiction exercised by Indian tribes at the time of *Ex parte Crow Dog*, *supra*, was invaded by the Major Crimes Act. But did this enactment establishing federal jurisdiction necessarily strip the tribe of any and all jurisdiction over these crimes, or did it merely diminish tribal jurisdiction, leaving the tribes with residual or concurrent jurisdiction over these offenses? The *Henry* case states that the purpose of the Major Crimes Act was to "remedy the ousting of federal jurisdiction." The assertion by the United States of jurisdiction over certain specified crimes does not, per se, withdraw tribal jurisdiction over those same offenses, nor should that implication be drawn for the prevailing doctrine is that Congress must expressly limit tribal powers.

Since the decision in *U.S. v. Rogers*, 4 How. 507 (1846), the Supreme Court has asserted that the United States had potential jurisdiction to punish offenses by tribal Indians, whether committed against non-Indians or against other tribal Indians. At the time the General Crimes Act was enacted in 1834, however, Congress clearly doubted the scope of its jurisdiction over Indians in Indian country. House Report No. 474, 23rd Cong., 1st Sess. (1834), *infra*. In either event, the provision in the General Crimes Act (18 U.S.C. 1152) excluding application of its provisions to ". . . crimes committed by one Indian against another Indian or to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe . . .", is a statement of policy adhered to from the earliest statutes to leave to the tribes the regulation by themselves of their own domestic affairs and the maintenance of order and peace among their own members by the administration of their own laws and customs. *Ex parte Crow Dog*, *supra* at page 568. It was this statutory provision, read in the light of the treaty provisions which resulted in the failure of federal jurisdiction in *Crow Dog* case, not any inherent limitation on the sovereign powers of the United States compelled by virtue of tribal jurisdiction over the offense.

It was the decision in the *Crow Dog* case which prompted Congress to enact the Major Crimes Act. The act itself does not "withdraw" tribal jurisdiction over the named offenses. It merely asserts federal jurisdiction as to those offenses. The statute was not enacted to prevent tribes from punishing Indian offenders. On the contrary, it was passed to "remedy the ousting of federal jurisdiction" caused by the exceptions contained in the General Crimes Act. *Henry v. U.S.*, *supra*.

With this perspective in mind, the Major Crimes Act should be read in *pari materia* with the General Crimes Act and the Major Crimes Act be construed not as a withdrawal of tribal jurisdiction over the offenses enumerated but rather as a modification of the clause in the General Crimes Act excluding federal criminal jurisdiction. Given this interpretation, the tribes would no longer have sole and exclusive jurisdiction over all crimes committed by one Indian against the person or property of another Indian. As to those crimes enumerated in the Major Crimes Act, the United States would not be bound by the exclusionary clause in the General Crimes Act and the tribes jurisdiction would be concurrent with the United States.

There is no legal impediment to this interpretation. The mere fact that an offense may be cognizable in the United States courts does not per force oust the tribe of jurisdiction. Thus it has been held that tribal courts may exercise jurisdiction over offenses which are also cognizable in federal courts under the General Crimes Act. *U.S. v. LaPlant*, *supra*; *U.S. v. Red Wolf*, dicta, 172 F. Supp. 168 (D. Mont., 1959). In *LaPlant* it was held that prosecution and punishment of the defendant by the tribal court barred subsequent prosecution of defendant by the United States. This decision was based on the exclusionary provision in the General Crimes Act. The court also suggested "double jeopardy" as an alternative ground for the holding but, if the "separate sovereign" doctrine applies between the United States and Indian Tribes, double jeopardy would not constitute a bar to subsequent federal prosecution. (See Part B V of this memorandum).

The holding in *LaPlant* that tribal courts shared concurrent jurisdiction with the federal courts over Indians committing offenses that were subject to prosecution under the General Crimes Act conforms to the opinion which has long been held by the Department of the Interior. See Cohen Memo to Comm. of Indian Affairs—8/1/40; Flanery Memo to Comm. of Indian Affairs—11/12/40; Kirrels Memo to Asst. Secretary—11/26/40. The regulations written in 1935 for courts of Indian Offenses also recognize concurrency of jurisdiction between federal and tribal courts. Title 25, CFR, Chpt. 1, Subchpt. B, § 11.2(b). Indeed, the provision in the General Crimes Act, excluding federal jurisdiction when the offending Indian has been punished by the local law of the tribe, is itself a recognition of the fact that an offense may be subject to the jurisdiction of both the tribe and the United States. It is declarative of a federal policy to encourage the tribes to punish members who have committed offenses against non-Indians and to withhold or restrict the exercise of federal jurisdiction in those cases where the tribe has taken appropriate action.

It might be argued that the effect of the General Crimes Act on tribal jurisdiction is not as far reaching as that of the Major Crimes Act, on the theory that the General Crimes Act specifically recognized continued tribal jurisdiction by inclusion of the exception for crimes already punished by the tribe. *U.S. v. LaPlant*, *supra*, seems to accept this theory. But this provision in the General Crimes Act was not added until 1854 (Act of March 27, 1854, 10 Stat. 269). And tribal jurisdiction over members who offended against non-Indians was never questioned prior to the enactment of this provision. To the contrary, when the General Crimes Act was enacted into permanent law in 1834 (Act of June 30, 1834, 4 Stat. 729, § 25) Congress entertained no doubt that tribes had jurisdiction over their own members for offenses committed against non-Indians and expressed doubt as to federal jurisdiction over such Indian offenders.

"In consequence of the change in our Indian relations, the laws relating to crimes committed in the Indian country, and to the tribunals before whom offenders are to be tried, require revision. By the act of 3d March, 1817, the criminal laws of the United States were extended to all persons in the Indian country, without exception, and by that act, as well as that of 30th March, 1802, they might be tried wherever apprehended. It will be seen that we cannot, consistently with the provisions of some of our treaties, and of the territorial act, extend our criminal laws to offenses committed by or against Indians, of which

the tribes have exclusive jurisdiction: and it is rather of courtesy than of right that we undertake to punish crimes committed in that territory by and against our own citizens. And this provision is retained principally on the ground that it may be unsafe to trust to Indian law in the early stages of their Government. It is not perceived that we can with any justice or propriety extend our laws to offences committed by Indians against Indians, at any place within their own limits. House Report No. 474, 23rd Cong., 1st Sess. (1834), page 13."

Clearly, then, the clause in the General Crimes Act staying the hand of federal authority in those cases where an Indian has been punished by the tribe does not add to the jurisdiction of the tribe. To the contrary, it limits federal jurisdiction in those cases where the tribe has acted. By the same token, the lack of such a clause in the Major Crimes Act cannot be interpreted as either adding to or detracting from the jurisdiction of the tribe. It merely means that as to those major offenses there enumerated the hand of federal authority will not be limited simply because the tribe has acted to punish the offender or because the victim happened to be Indian.

Jurisdictional differences between the General Crimes Act and the Major Crimes Act do thus exist. But these differences are in federal jurisdiction, not tribal. Federal jurisdiction under the General Crimes Act is restricted by the terms of the statute when the tribe has exercised its jurisdiction. But, as to offenses enumerated in the Major Crimes Act, no such limitation applies.

The power of the federal government to exercise jurisdiction over Indian offenses is not contingent upon withdrawal or denial of tribal jurisdiction, and the assertion of federal jurisdiction does not per force impair tribal jurisdiction. It is clear that the two sovereigns can and do exercise concurrent jurisdiction over crimes under the General Crimes Act. It is a cardinal rule that Indian tribes retain all of their attributes of sovereignty except where expressly taken away by Congress. *U.S. v. Quiver*, 241 U.S. 602 (1916); *Iron Crow v. Oglalla Sioux Tribe*, *supra*. There is nothing in the Major Crimes Act specifically withdrawing tribal jurisdiction and the events leading to its enactment do not suggest that Congress intended to accomplish anything more than to remedy the ouster of federal jurisdiction which was brought about by the exclusionary clause in the General Crimes Act. The statements in the cases that tribal jurisdiction over crimes set forth in the Major Crimes Act has been withdrawn are dicta and the conclusion is inescapable that tribes retain concurrent jurisdiction with the United States over conduct which constitutes an offense under the Major Crimes Act.

*III. The problem of lesser included offenses. Although tribes share concurrent jurisdiction with the United States over offenses enumerated in the Major Crimes Act, the United States does not share concurrent jurisdiction with the tribes over lesser included offenses*

Four recent cases have held that the Major Crimes Act does not vest federal courts with jurisdiction over lesser included offenses. Because of the exclusionary clause in the General Crimes Act, the tribal courts have exclusive jurisdiction over these lesser included offenses. Thus, it was held that the trial courts did not err in refusing to give instructions to juries on lesser included offenses such as simple assault or assault and battery in prosecutions under the Major Crimes Act for assault with a dangerous weapon, *U.S. v. Davis*, 429 F.2d 552 (8th Cir., 1970), assault with intent to do great bodily injury, *Kills Crow v. U.S.*, 451 F.2d 323 (8th Cir., 1971); *U.S. v. Keeble*, 459 F.2d 757 (8th Cir., 1972); or rape, *U.S. v. Joe*, 452 F.2d 653 (10th Cir., 1971), cert. den., 321 L. Ed. 134 (1972).

Both *Davis* and *Kills Crow* cite as authority prior cases involving questions of statutory rape as a lesser included offense of forcible rape. *U.S. v. Rider*, 282 F.2d 476 (9th Cir., 1960); *U.S. v. Red Wolf*, 172 F. Supp. 168 (D. Mont., 1959); *Petition of McCord*, 151 F. Supp. 132 (D. Alaska, 1957); *U.S. v. Jacobs*, 113 F. Supp. 203 (E. D. Wisc., 1953), appeal dismissed, 346 U.S. 892 (1953). The reliance of *Davis* and *Kills Crow* on these cases is somewhat questionable since the cases were decided on the ground that Congress had specifically rejected inclusion of statutory rape as one of the major crimes when the Major Crimes Act was amended in 1932. To the same effect, see: *U.S. v. Davis*, 148 F. Supp. 478 (D. N. D., 1957), appeal dismissed, 244 F.2d 717 (8th Cir., 1957). In addition, it appears that in most jurisdictions, statutory rape is not a lesser included offense of forcible rape. *U.S. v. Jacobs*, *supra*.

While the holdings in *Davis*, *Kills Crow* and *Joe* appear to be eminently correct, they result in a serious inequity to the Indian defendant standing before the federal bar. In the *Kills Crow* case, Judge Stephenson, dissenting, would

have held that the denial to defendant of instructions on a lesser included offense abridged a fundamental due process right.

"Because these instructions gave the jury no alternative but to convict on the greater offense or to acquit, and because part of the same evidence supportive of a verdict of the greater offense could have, under other and proper instructions, justified a verdict of the lesser offense, I would hold that the error in refusing to instruct on the lesser offense was prejudicial to the defendant and that, thereby, he was deprived of a fundamental Due Process right.

"Whatever may be the soundness and contemporary vitality of the 'guardian and ward' concept in other contexts of the relationship between the Indian and the federal government, I am unpersuaded by the notion that such a theory can furnish a plausible predicate for the conclusion that because Arnold Francis Kills Crow is an Indian there is a rational basis for extending him less than full Fifth Amendment Due Process treatment. I think, contrarily, that such a conclusion runs afoul of the well established principle of Supreme Court decisional law that the Fifth Amendment proscribed discrimination that is 'so unjustifiable as to be violative of due process.'" 451 F.2d 323, 328.

In addition to denial of lesser included offense instructions, the ouster of federal jurisdiction over lesser included offenses also deprives the defendant of any opportunity to plea bargaining.

This patent inequity is one of the evils which the proposed revision of criminal law in Indian country seeks to remedy. Thus, 25 U.S.C. 212(3) (a) would vest in federal courts jurisdiction over lesser offenses included within a charged federal felony. The objective is salutary but the remedy need not be so sweeping as to divest Indian courts of jurisdiction over conduct which would constitute a federal felony. As will be shown, such a solution will create more problems than it solves. A more expedient solution is a simple amendment to the present Major Crimes Act extending federal jurisdiction to lesser offenses included within the offenses there enumerated.

#### *IV. Denial or withdrawal of concurrent tribal jurisdiction over federal offenders will create problems in both the tribal and federal legal systems*

Divestiture of tribal courts of concurrent jurisdiction over conduct which also constitutes a federal offense as proposed in 25 U.S.C. 212(3) or interpretation of the Major Crimes Act as having withdrawn tribal jurisdiction over the offenses set forth therein will create a myriad of jurisdictional and law enforcement problems in both the tribal and federal systems.

The most glaring example of the difficulties which will be encountered if the Major Crimes Act is held to have "withdrawn" tribal jurisdiction over offenses named therein is found in the case of *Glover v. U.S.*, 219 F.Supp. 19 (D. Mont., 1963), in which the court expressed its opinion that the terms "larceny" in the Major Crimes Act included petty larceny and that tribal jurisdiction over such offenses had been withdrawn. This opinion is dicta since the case was disposed of on other grounds. This statement by the *Glover* court with respect to jurisdiction over petty larceny has apparently been disregarded by the tribal and federal courts,<sup>9</sup> but if it were adhered to, a substantial burden over this minor offense would be added to the federal courts and federal prosecutorial personnel, and the integrity of the tribal court system would be reduced to a farce.

Certain definitions of crimes set forth in various tribal codes parallel or nearly proximate offenses contained in the Major Crimes Act. Among these are offenses such as breaking and entering—proximates burglary; burning—equivalent of arson; sexual offenses such as carnal relations with a minor child; forgery and fraudulent checks—a form of larceny; theft—the equivalent of larceny; and various assault ordinances. If the *Glover* withdrawal rationale were to be ultimately affirmed and the Major Crimes Act interpreted as having taken jurisdiction from the tribes, all of these tribal code provisions would be outmoded and it would be necessary for each tribe to rewrite its tribal ordinances.

Of even greater significance is the problem presented by questions of lesser included offenses. As previously noted in Part B I, the proposed 25 U.S.C. § 212 (3), by reference to 18 U.S.C. 709(a), appears to provide that tribal courts would have no jurisdiction over conduct which might support a federal felony prosecution. The first function of every court is to determine its own jurisdiction over

<sup>9</sup> *Glover* involved a member of the Confederated Salish and Kootenai Tribes in Montana. Four years after *Glover*, however, the Blackfeet Tribe (also subject to the jurisdictional reach of the *Glover* court) declared in Chapter 1, Section 1 (page 3) of the *Blackfeet Tribal Law and Order Code* (1967) that "[A]s a practical matter, the Federal authorities sometimes turn over the Tribal authorities cases of aggravated assault or petty larceny."

the case before it. This statute would cast upon every Judge sitting in tribal court a threshold burden of sorting through a thicket of federal statutes and case decisions to determine whether the offense charged overlapped with a federal felony statute or the evidence in the case would support a charge in the federal court.

A quotation from Judge Stephenson's dissenting opinion in the *Kills Crow* case, *supra*, setting forth the rule regarding instructions on lesser included offenses illustrates the depth of this problem.

"The income tax evasion case of *Sansone v. United States*, 380 U.S. 343, 349-350, 85 S.Ct. 1004, 1009, 13 L.Ed. 2d 882 (1965), affirming 334 F.2d 287, 294-295 (CAS 1964), contains an explication of the applicable standard. The Court stated:

"Thus, "[i]n a case where some of the elements of the crime charged themselves constitute a lesser crime, the defendant, if the evidence justify[s] it \* \* \* [is] entitled to an instruction which would permit a finding of guilt of the lesser offense." \* \* \* But a lesser-offense charge is not proper where, on the evidence presented, the factual issues to be resolved by the jury are the same as to both the lesser and greater offenses. \* \* \* In other words, the lesser offense must be included within but not, on the facts of the case, be completely encompassed by the greater. A lesser-included offense instruction is only proper where the charged greater offense requires the jury to find a disputed factual element which is not required for conviction of the lesser-included offense."

"The focus, then, centers on two factors: (1) evidence to support and justify the lesser offense charged, and (2) whether the greater offense requires the jury to find a disputed factual element not required for conviction of the lesser offense. 451 F.2d 323, 327-28."

Thus, before a court can decide whether an instruction on a lesser included offense is proper, it must examine two factors: (1) Whether the elements of the greater offense include all the elements of the lesser offense plus other elements in addition. If the greater offense requires proof of elements A, B, C and D, and the lesser offense requires only proof of A, B and C, then an instruction on the lesser offense would be in order. But if the elements of the lesser offense include all of the elements of the greater offense—in other words A, B, C and D—then it is completely encompassed by the greater offense and no instruction on the lesser offense may be given. While the second offense may be "lesser", it is not a lesser included offense. (2) Whether there is a factual dispute on the evidence which permits a finding of guilty on the lesser offense but acquittal on the greater offense. If evidence is offered to prove elements A, B, C and D, but point D is subject to dispute, the instruction on the lesser offense is appropriate. If the dispute centers on elements A, B, or C, but element D is not disputed, then an instruction on the lesser offense is not appropriate.

To view this problem from the eyes of the tribal Judge, it would be necessary for him to approach his case in the reverse of the federal court. He would first have to determine that the provision of the tribal code under which the defendant is charged does not overlap or correspond to a federal felony statute. Second, he would have to examine the evidence in the case to be sure that it proved only points A, B, and C. For if point D were also proved or if there were evidence which tended to prove point D, then under the provisions of 25 U.S.C. 212 (3) the case would be beyond the jurisdiction of his court. In short, passage of the proposed 25 U.S.C. 212 (3) in its present form would create a jurisdictional jumble in the tribal courts.

In addition to the problems created in tribal courts, passage of 25 U.S.C. 212 (3) would impose a substantial burden on federal district courts and federal investigative and prosecutorial personnel. The statute would limit the discretion they are now free to employ in determining whether an offense should be prosecuted as a federal offense or whether the ends of justice would be satisfied with a prosecution by tribal authorities. If the facts in the case could reasonably support a conviction of a federal felony, then *per force* the prosecutor must conclude there is no tribal jurisdiction. Thus, it appears he cannot decline to prosecute merely because the facts present a borderline case or because, due to mitigating circumstances, the ends of justice would be amply served by a prosecution in tribal court.

As an additional element of confusion, it is not clear at what stage in the legal proceedings jurisdiction over lesser included offenses finally vests in the federal courts. Section 202 of the proposed Title 18, U.S.C. provides that "(I)f federal jurisdiction of a charged offense exists, federal jurisdiction to convict of an

included offense defined in a federal statute likewise exists." No clarification is offered, either in the proposed code or in the commentary, to explain how or when federal jurisdiction of the charged offense will be determined. In addition, the Committee consciously postponed making any recommendations as to burden of proof on issues of jurisdiction, etc. See Comment on Proof and Presumptions: Section 103, Vol. I Working Papers, pages 11-13.

Since the provisions relating to jurisdiction over Indian offenses are fraught with the same potential for prosecutorial abuse as that suggested with reference to the proposed statute of limitations, i.e., "... arbitrary and unwarranted overcharging for purposes of avoiding a limitation period . . .", or, in the context of the Indian, overcharging in order to secure jurisdiction over an offense which the federal court would otherwise lack, it seems only logical that the same rules would apply in the determination of federal jurisdiction under both sections. See Comment on Limitation of Time upon Prosecutions; Section 701, Vol. 1 Working Papers, pages 281, 297-98. To avoid this potential abuse, section 701 (6) (b) (1) of proposed Title 18 establishing limitations provides that the evidentiary burden to sustain federal jurisdiction over a lesser included offense rests upon the government and in the absence of sufficient evidence to sustain a conviction of the major offense charged (i.e., evidence sufficient to create a question of fact for the determination of the trier of fact), then federal jurisdiction over the lesser offense fails. Federal jurisdiction over a lesser included offense would not vest with finality until all evidence has been submitted at the trial and the case actually submitted to the trier of fact for determination on the charged major offense. In the event of a directed verdict of acquittal on the charged major offense, jurisdiction over any lesser included offense would fail.

Certainly federal jurisdiction should not be finally fixed on the basis of unsupported allegations contained in a criminal complaint or even an indictment by a federal grand jury. A safeguard against prosecutorial abuse such as that proposed above appears appropriate and perfectly in harmony with existing case law placing the burden of proof in criminal cases upon the government.

As between state and federal courts the rule does not create any problems inasmuch as the proposed revision of federal criminal law does not condition federal jurisdiction upon exclusion or withdrawal of state jurisdiction. However, if section 212(3) of Title 25 is held to have "withdrawn" tribal jurisdiction over conduct constituting a federal felony and lesser offenses included therein, then the rule will necessarily delay tribal prosecutions until such time as a determination has been made by a federal instrumentality (either a federal court or a federal grand jury) that there is insufficient evidence to support the charged felony.

So long as the separate sovereignty of Indian tribes is recognized, there does not appear to be any sound reason to make federal and tribal jurisdiction mutually exclusive. See Part B V of this memorandum. If this arbitrary ouster of jurisdiction of tribal courts is avoided and concurrent jurisdiction of tribal courts over major offenses within Indian country is acknowledged, the problems outlined above will be eliminated.

*V. Indian tribes are distinct political entities whose sovereignty is recognized by but not derived from the United States. The doctrine of double jeopardy and collateral estoppel is not applicable between separate sovereigns. There is, therefore, no legal stricture which impels divesting tribes of concurrent jurisdiction with the United States*

The doctrine of double jeopardy and collateral estoppel is not applicable between separate sovereigns and therefore, absent some overriding federal statute or treaty, prosecution of a defendant in a tribal court does not bar subsequent federal prosecution for the same or a related offense.

It is, of course, axiomatic that Indian tribes are distinct political entities whose separate sovereignty has been uniformly recognized by the Federal Government throughout our history, and that the powers of the tribe to govern their own internal matters is derived not from any federal or state grant or charter, but rather from their own inherent sovereignty. *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832); *Ex parte Crown Dog*, *supra*; *Talton v. Mayes*, 163 U.S. 376 (1896); *U.S. v. Quiver*, *supra*; *Iron Crow v. Oglalla Sioux Tribe*, *supra*; *Native American Church v. Navajo Tribal Council*, 272 F.2d 131 (10th Cir., 1959); *Williams v. Lee*, 358 U.S. 217 (1959). Under the doctrine of "separate sovereignties" it has been clearly established that an individual who in a single act offends against the laws of more than one sovereign, i.e., both state and federal,

may constitutionally be punished by both. *Moore v. Illinois*, 14 How. 13 (1852); *U.S. v. Lanza*, 260 U.S. 377 (1922); *Bartkus v. Illinois*, 359 U.S. 121 (1959). If this be true of the state and federal governments, then of necessity it is true of the tribal and federal governments where the sovereignty of each is in no way related to or derived from the other.

Only one case has suggested that the doctrine of double jeopardy is applicable as between tribal and federal courts, and that statement is *dicta*. *U.S. v. LaPlant*, *supra*. As previously noted, that case held that prosecution and punishment of a defendant by the tribal court barred subsequent prosecution of defendant by the United States. The decision was based on the exclusionary provision in the general Crimes Act, but the court suggested "double jeopardy" as an alternative ground for the holding.

Since the holding in *LaPlant*, the "double jeopardy" question has twice been raised in the Eighth Circuit, *U.S. v. DeMarrias*, 441 F.2d 1304 (8th Cir., 1971) and *U.S. v. Kills Plenty*, No. 71-1661 (8th Cir., 1972), and in each case the court has avoided final determination of the issue. In the *DeMarrias* case the defendant asserted that his conviction in tribal court on a charge of driving while under the influence of intoxicating liquor or drugs and of having an open receptacle containing alcoholic beverages in his vehicle barred a subsequent prosecution in federal court for involuntary manslaughter arising from the operation of his vehicle, on the grounds that such prosecution placed him in double jeopardy. The appellant contended that the tribal court and the federal district court should be considered arms of the same sovereign. The court noted that this issue presented a "novel and troublesome question" but found that it was not necessary to resolve the issue since the offenses charged in the tribal court were not the same as that charged in the federal indictment, and therefore would not bar the subsequent prosecution for manslaughter even if the tribal and federal courts were arms of the same sovereign.

In the *Kills Plenty* case a similar fact pattern was presented but with a distinct difference. The prosecution in the tribal court for operating a vehicle while intoxicated, etc., resulted in the acquittal of the defendant. At his subsequent trial in federal court for involuntary manslaughter arising from the operation of his vehicle, appellant objected to introduction of any evidence of intoxication and moved to strike any allegations of intoxication from the federal indictment. Appellant contended that the issue of intoxication had already been litigated in tribal court with a finding in his favor, and presentation of evidence on his question in the federal prosecution was barred under the rules of collateral estoppel, the cousin to double jeopardy. As in the *DeMarrias* case, appellant's argument hinged on the theory that the tribal court and the federal district court were arms of the same sovereign. And as in the *DeMarrias* case, the court again avoided the issue, holding that under the facts of the case collateral estoppel would not lie whether or not the two courts were found to be arms of the same sovereign.

The decision in *Kills Plenty*, however, was by a divided court, the dissenting judge holding that tribal and federal courts should be considered arms of the same sovereign and that the rules of collateral estoppel should apply. By way of footnote, the majority of the court noted its disagreement with the dissenting judge, stating that although their decision does not reach the question of separate sovereignty, ". . . it is our view that the Tribal Courts are not arms of the same sovereign . . .", citing *Iron Crow v. Ojibwa Sioux Tribe*, *supra*.

The dissenting judge in the *Kills Plenty* case premised his opinion on the sovereignty question on the control which the federal government "potentially may exercise and has exercised over the Indian Tribal Courts" citing as evidence of the potential power of the United States the holding in *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903), and as evidence of the exercise of that power the Indian Civil Rights Act of 1968 (25 U.S.C. 1301-1341). Similar historical considerations were the basis for the holdings in *Colliflower v. Garland*, 342 F.2d 369 (9th Cir., 1965) and *Settler v. Yakima Tribal Court*, 419 F.2d 486 (9th Cir., 1969), cert. den., 398 U.S. 903 (1970), which are also relied upon in the dissenting opinion in *Kills Plenty*.

While the *Colliflower* and *Settler* decisions would erode the concept of Indian tribes as separate sovereigns from the United States, they nevertheless stop far short of holding that tribal courts and federal courts are arms of the same sovereign. The sole issue decided in *Colliflower* and *Settler* was to establish that judgments of tribal courts are subject to review by federal courts by means

of the writ of habeas corpus. *Colliflower* and *Settler* reached this result by asserting that tribal courts are sufficiently identified with the federal government to support judicial review of tribal court decisions by habeas corpus but both decisions acknowledge that tribal courts are sufficiently divorced from the federal government that Constitutional standards have not in the past been applicable to tribal court proceedings.

In 1968, Congress passed the Indian Civil Rights Act (Act of April 11, 1968, Title II, 82 Stat. 77; 25 U.S.C. 1302) establishing statutory standards of procedures and rights within the tribal governmental system and providing for federal review of tribal court decisions by means of habeas corpus. While this Act mandated by statute the results which *Colliflower* and *Settler* sought to achieve, at the same time it constituted a Congressional recognition of the continued sovereign powers of the tribes, *Seneca Constitutional Rights Organization, et al. v. George*, Civil No. 1972-152 (W.D.N.Y., 1972), and thus implicitly rejects the rationale of those two cases.

The reasoning processes of the *Colliflower* and *Settler* courts stand in sharp contrast to the continuous line of decisions from *Worcester v. Georgia, supra*, to *Williams v. Lee, supra*, and *Kennerly v. District Court*, 400 U.S. 423 (1971) acknowledging and supporting tribal sovereignty. The *Iron Crow* decision stands in particularly sharp relief against *Colliflower* and *Settler*, for the court in *Iron Crow* held that the source of power of the tribal courts was drawn from the inherent sovereignty of the tribe, whereas *Colliflower* and *Settler* maintained that the power of the tribal courts, at least to some extent, was derived from the federal action which originally established a "tribal court" system.

Under *Colliflower* and *Settler*, the original sin of the tribes was in accepting the white man's institution, i.e., courts, as a means of dispensing justice, for had the tribes retained their traditional systems there would be no taint of federal involvement. Nor is there any apparent means of redemption for the tribes, for the courts in *Colliflower* and *Settler* argue that the reorganization of the tribe under the Indian Reorganization Act of 1934 (48 Stat. 984, 25 U.S.C. 476) and the adoption by the tribe of a code of laws which corresponds to the regulations in Title 25 CFR, Chpt. 1, Subchpt. B, stands as additional evidence of federal involvement. Thus a statute which was intended to reverse the disintegration of tribal governments and foster the sovereignty of Indian tribes is relied upon by the *Colliflower* and *Settler* courts to find an even further diminishment of the independent political status of Indian tribes and their institutions.

The court in *Colliflower* apparently recognized the potential impact of its decision and therefore carefully stated that its decision was restricted to the facts in that case. It cautioned against reading its opinion as expressing any view on the applicability of Constitutional standards to the tribal court system, either directly or even through the Fourteenth Amendment. This is a long measure from finding the tribal court and the federal courts to be arms of the same sovereign for if they were, the Constitutional standards would necessarily apply in both court systems directly and with equal vigour, thus denying tribes even that degree of latitude presently accorded the separate states.

The reasoning of the dissent in the *Kills Plenty* case thus appears to be faulty on at least four scores: (1) It extends the *Colliflower-Settler* rationale far beyond the limitations outlined by the courts in those decisions, (2) It ignores the reaffirmation of tribal sovereignty implicit in the 1968 Indian Civil Rights Act, (3) It runs counter to 180 years of statutory and judicial precedent, and (4) It would declare a change in the political status of Indian tribes in such a fashion as to merge their identity into that of the federal sovereign, thus rendering tribal institutions "arms of the same sovereign". The courts have long recognized that only Congress has the power to define the political relationship of Indian tribes in relation to the United States. It is clearly with good reason that the majority in *Kills Plenty* concluded that tribal and federal courts are not arms of the same sovereign.

Given, then, that the courts will adhere the decisions stemming from *Worcester v. Georgia, supra*, in 1832 to the present recognizing the separate sovereignty of Indian tribes, it follows under the "double jeopardy" doctrine laid down in *Moore v. Illinois, supra*, *U.S. v. Lanza, supra*, and *Bartkus v. Illinois, supra*, that a prosecution in a tribal court will not bar a subsequent prosecution in the federal court or vice versa. The only impediment to subsequent federal prosecution is that found in the exclusionary clause of the General Crimes Act, *U.S. v. LaPlant, supra*. As noted in Part B II of this memorandum, this "impediment" does

not extend to the crimes enumerated in the Major Crimes Act, as that Act was passed simply to remedy the outer of federal jurisdiction contained in the General Crimes Act. *Ex parte Crow Dog, supra*; *U.S. v. Henry, supra*.

Despite the implication in the commentary that tribal sovereignty was terminated by wardship, the proposed revision of federal criminal law recognizes that Indian tribes are separate sovereigns and that tribal courts are not arms of the federal sovereign. This is illustrated by Chapter 7 of the proposed Title 18 setting forth rules barring multiple prosecutions. Section 706 of Title 18 provides rules for application to former prosecutions in courts of the same sovereign under different bodies of law, naming specifically prosecutions under the Uniform Code of Military Justice, and the Codes of the District of Columbia, Canal Zone Code, Puerto Rico and the territories and possessions of the United States. In contradistinction, prosecution in tribal courts are governed by Section 707 and 709 which are applicable to prosecutions in courts of other sovereigns.

Such treatment is consistent with the decision recognizing separate sovereignty of the tribes and contradicts the holding of dissent in *Kills Plenty* and the trust of the reasoning in *Colliflower* and *Settler*. Thus, even under the proposed revision there is no restriction upon subsequent federal prosecution except such as may be imposed by statute.

#### VI. Conclusion and solution

If the Major Crimes Act is interpreted as having limited or withdrawn the general jurisdiction of Indian tribes over the offenses set forth in that Act, a myriad of jurisdictional and law enforcement problems will be created in both the federal and tribal legal systems. The proposed 25 U.S.C. 212 (3) would not only codify this adverse interpretation of the Major Crimes Act it would also extend the doctrine to include all lesser included offenses.

The solution to the problem of preserving the powers of Indian tribes but avoiding ouster of federal jurisdiction lies in the continued recognition of the separate sovereignty of the tribes and an interpretation of the Major Crimes Act which recognizes concurrent jurisdiction of the tribes over crimes included within the Major Crimes Act. The inequities to which an Indian defendant is now subject under the law and which 25 U.S.C. 212 seeks to correct may also be reduced, if not eliminated, by minor amendments of existing statutes.

One of the major thrusts of the proposed revision of Title 18 of the United States Code is to modify the existing law on double jeopardy so as to prohibit multiple prosecutions between the states and federal sovereigns except in the very narrow circumstances described in sections 707-709 of the proposed Title 18, U.S.C. The reference to these sections in proposed 25 U.S.C. 212 (3) would apply to tribal-federal prosecutions the same rules that would apply between state-federal prosecutions. But a cursory examination of the difference in degree of jeopardy attaching to a prosecution in tribal court as opposed to state courts reflects the minimal importance of conforming the tribal-federal jurisdictional divisions to the proposed double jeopardy rules for state-federal prosecutions. The maximum sentence which can be imposed upon a defendant for any one offense in tribal court is limited by the 1968 Civil Rights Act (25 U.S.C. 1301) to six months and \$500.00, whereas the penal power of the individual states is equal to that of the federal courts, including in appropriate circumstances possible imposition of a death sentence.

The court in the *Kills Crow* case, *supra*, made special note of the importance to the Indian community of their court system.

"The remaining question is whether Congress, having elected to afford federal recognition to certain Indian offenses, properly may decline to create federal jurisdiction over all Indian offenses. This question is colored by the likelihood that such selectiveness will result in racially tinged procedural distinctions such as the one here at issue. We conclude, however, that distinctions created through Congressional restraint in enacting Indian criminal legislation are neither invidious nor capricious and are, in fact, generally beneficial to Indians. This is so basically because Indian tribal courts have inherent jurisdiction over all internal criminal matters not taken over by the federal government. *United States v. Quiver*, 241 U.S. 602, 36 S.Ct. 699, 60 L.Ed. 1196 (1916); *Iron Crown v. Oglala Sioux Tribe*, 231 F.2d 89 (8th Cir. 1956). Several recent law review commentaries have discussed the centrality of tribal courts to the preservation of Indian identity and the proper and efficient administration of justice on the reservations. Further, the Indian population itself has demonstrated its objection to interference with the tribal court system. Finally, it is clear that Congress has been both mindful

and solicitous of the importance to Indians of tribal government and courts. See, e.g., 25 U.S.C. § 476, 477, 1301 et seq.

"Given this perspective, it would be difficult indeed for us to ascribe to Congress an invidious motivation for its reluctance to assert federal jurisdiction over minor criminal offenses committed by Indians on reservations. Nor do we think that the particular discriminatory effect relied upon here overbalances the value of leaving with the tribal courts jurisdiction over such offenses. Cf., *United States ex rel. DeFlumer v. Mancusi*, 443 F.2d 940 (2nd Cir. 1971), 451 F.2d 323, 326, 327."

Considering the difference in magnitude of potential punishment in state courts as opposed to tribal courts, the importance to the Indian community of maintaining a viable court system certainly outweighs and overbalances the benefits which might accrue to an individual by conforming the tribal-federal jurisdictional divisions to the proposed double jeopardy rules for state-federal prosecutions as the proposed 25 U.S.C. 212(3) would have it.

An alternative solution to the exposure of the individual to multiple penalties might be a single amendment to the Major Crimes Act which would provide that time served in the tribal jail or fines paid to the tribal court for conduct incidental to the federal charge shall be credited against any sentence imposed under the Major Crimes Act. An additional recommendation on reform of sentencing under both the Major and General Crimes Acts would be language providing that penalties for violations of either of those Acts shall be imposed in accordance with federal law but such sentence may not exceed the maximum sentence which could have been imposed by a court of the state in which the crime occurred for the same or similar conduct. This would have the value of limiting the potential exposure of an Indian in federal court to the same penalty his white brother is exposed to in a state court for the same offense. At the same time it avoids wholesale adoption of state penal laws which frequently prescribe penalties far in excess of those Congress is willing to impose for the same conduct. See commentary to proposed Title 18 U.S.C. § 209, Assimilative Offenses, quoted in Part A of this memorandum.

Assuming that concurrent jurisdiction of tribal courts is continued, another desirable reform in this area might be an addition to existing law to provide that in prosecutions before either federal or tribal courts, the hearing shall be *de novo* and that no evidence admitted in any prior proceeding shall be admissible in the subsequent prosecution without proper proof anew, and testimony by the defendant in one proceeding shall not waive his rights against self-incrimination in a subsequent proceeding. This, at least, would avoid one of the Constitutional dilemmas of the present multiple prosecution rules which the proposed revision seeks to rectify.

PART V, EXHIBIT 4

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U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SOLICITOR,  
Washington, D.C., October 15, 1974.

Memorandum To: Special Assistant to the Solicitor.  
From: Indian Civil Rights Task Force.  
Subject: S. 1400: Criminal Law Reform Proposals of Department of Justice.

S. 1400 was introduced in the Senate in the early months of 1973. An identical bill was simultaneously introduced in the House. These bills are still pending in the Judiciary Committee of each body. Hearings have been held and the Committee staffs are in the process of preparing committee reports. The respective attorneys in charge of each staff are Paul Summit on the Senate side and Roger were never submitted to Congress in the form of a bill. Instead, the Department of Justice.

S. 1400 and its House companion were drafted by the Department of Justice and purport to revise and overhaul in toto Title 18 of the U.S. Code. The impetus for this project was undoubtedly stimulated by the report of the National Commission on Reform of Federal Criminal Laws issued on January 7, 1971.

Because the proposals of the National Commission bore directly on the law pertaining to jurisdiction in Indian country, the Task Force prepared a lengthy analysis of the Commission report. The proposals of the National Commission were never submitted to Congress in the form of a bill. Instead, the Department of Justice prepared S. 1400 as an alternative.

Insofar as Indians are concerned, as originally offered S. 1400 was a substantial improvement over the proposals of the National Commission on Reform of Federal Criminal Laws. However, even in its original form S. 1400 retained some of the questionable elements of the proposals of the National Commission. While it is not reflected in the enclosed copy of S. 1400, the Committees intend to amend Section 1881 so as to assimilate state law into Indian country in the same fashion as it is into any other federal enclave.

Such an amendment to Section 1881 would constitute a complete abandonment and repeal of the historic federal policy of leaving Indians free to govern themselves under their own laws. *Williams v. Lee*, 358 U.S. 217 (1959); *McClanahan v. State Tax Comm. of Ariz.*, 411 U.S. 164 (1973). It is nothing short of a return to Public Law 280, with no exceptions made for any tribes and with no requirement for affirmative action of any state, the only difference being that jurisdiction for the administration of the state laws will rest with the federal government and not the state. For all practical purposes, the governmental power of all Indian tribes in the area of criminal law will be terminated, their only remaining function (if any) being to aid in the administration of the laws written by the state and federal governments. This proposed change in Section 1881 has not been made public and is therefore not generally known in the Indian legal community. Without question, there will be a howl of protest if S. 1400 is reported out of Committee with Section 1881 amended in the above fashion.

But Section 1881 is not the only objectionable feature of S. 1400. By making Indian country a part of the Special Territorial Jurisdiction of the United States, Section 203 of S. 1400 would extend *all* federal enclave laws, both felony and misdemeanor, to the Indian country "except to the extent that a state has exclusive jurisdiction thereover as provided in Title 25 or to the extent that the local tribe, band, community, group or Pueblo has punished an offense committed therein by an Indian." (As originally drafted, the one exception to this extension of federal enclave laws was found in Section 1881 (a) which would specifically exclude the assimilation of state law within the Indian country.) We are advised that this section declaring Indian country to be just another federal

enclave would oust state jurisdiction over non-Indians which they presently exercise under the rules laid down in *U.S. v. McBratney*, 104 U.S. 621 (1881) and *Draper v. U.S.*, 164 U.S. 240 (1896). This carries some rather grave financial implications for the federal government since the Department of Justice will most certainly be called upon to fill the vacuum which Section 203 will create.

An additional problem with the language of Section 203 is the use of the term "exclusive jurisdiction" in lines 39 and 40 to describe the jurisdiction assumed by states under 25 U.S.C. 1321 *et seq.* in the present code. A legal issue presently in litigation involves the question of whether the jurisdiction assumed by the states under 25 U.S.C. 1321 *et seq.* is exclusive or whether the tribes retain concurrent jurisdiction. The language of Section 203 of S. 1400 would legislatively foreclose the interpretation which the tribes are seeking. This completely ignores the problems of many tribes in so called Public Law 280 states who complain that the states, despite having assumed jurisdiction, are not affording the tribes adequate police and other services. To remedy the void which has occurred, many tribes (in many cases with the acquiescence and cooperation of local non-Indian enforcement agencies) are attempting to assert concurrent jurisdiction.

Aside from the Public Law 280 implications, the expansion of federal jurisdiction proposed in S. 1400 raises the same questions and issues as the proposal of the National Commission. The basic fault of both proposals in this respect is that they fail to distinguish between the situation that prevails in a federal enclave in which the jurisdiction of the federal government is sole and exclusive, and the situation that prevails in Indian country where the Indian communities maintain their own political organizations with full authority to legislate on their own behalf as they see their own needs.

Proposal for reform of federal criminal law applicable in Indian country appears to have been prompted by two notable problems of Constitutional dimension which result in discriminatory treatment against Indian defendants charged under the Major Crimes Act (18 U.S.C. 1153). First, a series of decisions held that an Indian charged with an offense under the Major Crimes Act was not entitled to an instruction on a lesser included offense. This problem was resolved in favor of the Indian defendant by the case of *Keeble v. U.S.*, 412 U.S. 205 (1973). On the basis of the *Keeble* decision, it has been held that a federal court may also convict a defendant for such lesser offense. *Felicia v. U.S.*, (8th Circuit, April 9, 1974). Thus this problem appears to have been resolved and does not present any compelling need for amendatory legislation.

The second problem arises from the adoption of state definitions of offenses and state penal provisions which frequently results in harsher penalties and lower quantum of proof than would apply to the same offense committed by a white man against an Indian. This has resulted in dismissal of indictments against Indian defendants on Constitutional grounds. See *U.S. v. Cleveland*, No. 73-3604 and *U.S. v. Chicago*, No. 73-1113, 9th Circuit, September 25, 1974; *United States v. Boone*, 347 F. Supp. 1041 (D.N.M., 1972); *United States v. Kuwaniyoma*, Cr.-70-104 Phx WPC (D. Ariz., 1970). The proposal of the National Commission and the Department of Justice to simply make Indian country another federal enclave and extend without limitation all of the federal enclave laws would cure these Constitutional deficiencies. The Major Crimes Act and the General Crimes Act would be repealed. However, as a practical alternative, the Constitutional deficiencies in sentencing and burden of proof under the Major Crimes Act could easily be accomplished by a simple amendment to that Act, thus avoiding the sweeping application of all federal enclave laws to the Indian country.

Finally it should be noted that Sections 203 and 205 of S. 1400 proceed on certain assumptions regarding the jurisdiction of tribal courts which are not at this time supported by federal law. These assumptions are that (1) a tribe may not exercise jurisdiction over non-Indians and (2) that tribal jurisdiction is limited to misdemeanor grade conduct.

The first of these assumptions is found in Section 203 which would bar federal prosecution "... to the extent that the local tribe, band, community, group, or pueblo has tried an offense committed therein by an Indian." The clear assumption is that a tribe could not exercise jurisdiction over a non-Indian. This purported limitation on the jurisdiction of an Indian tribe has created grave problems of law and order on Indian reservations and has caused many tribes in recent years to move toward an assumption of this jurisdiction and seek a court determination of the issue. The Gila River Pima Maricopa Indian Community has been a leader in this movement. They began exercising jurisdiction over non-Indians about three years ago with the result that non-Indians no longer view

the reservation as an unlimited speed zone, and there has been a substantial decrease in the number of criminal offenses committed by non-Indians. Judge Rhodes of that court has processed nearly 850 cases involving non-Indians without a single case being taken to a federal court to challenge his authority. The efforts of the tribe are generally supported and applauded by adjacent non-Indian law enforcement personnel. This is a very real problem area and if any federal legislation is to be written on the subject, the Department of the Interior should examine and support the Indian position on the question.

The second assumption of S. 1400 is that tribal jurisdiction is limited to misdemeanor grade conduct. Section 205 provides that the existence of federal jurisdiction over an offense does not in itself preempt tribal jurisdiction over the same conduct or the same offense. This implicitly adheres to the concept of separate sovereignties enunciated by the case of *U.S. v. Kills Plenty*, 466 F.2d 240 (8th Cir. 1972) and thus avoids the problems which would otherwise arise by application of the rules of double jeopardy and collateral estoppel which were the subject of *U.S. v. Kills Plenty*, *supra*, and *U.S. v. DeMarrias*, 441 F.2d 1301 (8th Cir. 1971).

While Section 205 makes it clear that the jurisdictional base of the tribal courts is not effected by the assertion of federal jurisdiction, under the provisions of Section 203 tribal prosecution of an offense would oust federal jurisdiction. Under the provisions of the Civil Rights Act of 1968 (25 U.S.C. 1301 *et seq.*) the penal powers of an Indian tribe are limited to six months in jail and a \$500.00 fine for any one offense. The unlimited barring provision found in Section 203 clearly reflects an assumption that the jurisdiction of tribal courts is limited to conduct of misdemeanor grade. Inclusion of this provision in its present form will almost certainly lead to a judicial determination that tribal jurisdiction is so limited. Such a result is not necessary and it certainly is not desirable. Under the present law there does not appear to be any limitation on the types of offenses over which the tribal courts can exercise jurisdiction. There is dicta in a few recent opinions suggesting that the Major Crimes Act (18 U.S.C. 1153) "withdrew" jurisdiction from the tribes, but this dicta appears contrary to the Congressional intent as reflected in the legislative history of the Act. Vol. 16, Congressional Record, Pt. II, p. 934.

A rule which limits the type of conduct over which the tribal courts may exercise jurisdiction will have serious consequences for both federal and tribal courts. Federal prosecutors will be denied the flexibility which they now have to deny prosecution on the grounds that the sanctions provided by prosecution in tribal court is appropriate to the case; tribal judges will be confronted with uncertainty as to their jurisdiction to hear matters presently covered under tribal codes. On the other hand, so long as the penal power of the tribal courts is limited to six months in jail and a \$500.00 fine, it does not make sense to oust federal jurisdiction over all offenses which have been prosecuted by a tribe.

The best solution to the problem would appear to be a combination of the proposals of the National Commission and the Department of Justice which would preserve exclusive tribal jurisdiction over a limited class of offenses, bar federal prosecution subsequent to tribal proceedings in non-felony cases, and reaffirm the separate sovereignty of Indian tribes by providing that in no case shall the existence of federal jurisdiction preempt the laws or jurisdiction of an Indian tribe. We believe this can best be accomplished by retention of the present Major Crimes Act and General Crimes Act with minor amendment to the Major Crimes Act to include specified serious offenses not now covered (for example kidnapping) and to eliminate the present Constitutional deficiencies.

S. 1400 proposes a nearly complete rejection of the policies which have governed federal Indian law since the inception of this country. It does not appear that this is properly understood by the Indian people, by the Department of the Interior, or even by the staffs of Committees which have drafted this legislation. It does appear however that the General Crimes Section, Criminal Division of the Department of Justice is aware of the sweeping and controversial nature of this legislation. It is clearly incumbent upon the Department of the Interior to take a second look at this proposed legislation.

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PART V, EXHIBIT 5

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U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SOLICITOR,  
Washington, D.C., April 20, 1967.

Memorandum To: Commissioner of Indian Affairs—Law and Order.  
From: Acting Associate Solicitor, Indian Affairs.  
Subject: Coeur d'Alene tribal resolution authorizing Indian stick games.

Attached is the subject tribal resolution, which is returned with the recommendation that it not be approved.

In 1959 the Department of Justice advised the United States Attorney, Boise, Idaho, that since the playing of Indian stick games is expressly prohibited by Title 18-3801 of the Idaho Code and there is no enactment of Congress punishing the operation and playing of this game, the State law is adopted as Federal law on the Coer d'Alene Indian Reservation by virtue of 18 U.S.C. 1152 and 13. In this connection, the Department of Justice referred to *United States v. Sosscur*, 181 F. 2d 873 (7th Cir., 1950).

We have recently conferred with a representative of the Department of Justice to see if that Department has changed its 1959 position that the playing of stick games on the reservation is a Federal offense in light of the 1963 decision in *United States v. Pakootas, et al.* In that case, which is the decision by the United States District Court in Idaho referred to in the proposed letter to the Chairman of the Coer d'Alene Tribal Council, the court dismissed criminal charges against Indians for playing stick games on the reservation. We were informed that the Department of Justice regards the *Pakootas* decision as erroneous and that it adheres to its 1959 position that the playing of stick games on the reservations is a Federal offense.

In these circumstances we cannot recommend approval of a tribal ordinance which purports to authorize the playing of stick games on the reservation.

DUARD R. BARNES,  
Acting Associate Solicitor, Indian Affairs.

Attachment

(280)

PART V, EXHIBIT 6

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DEPARTMENT OF TRANSPORTATION,  
U.S. COAST GUARD,  
Washington, D.C., July 16, 1975.

CHARLES M. SOLLER,  
*Acting Associate Solicitor, Division of Indian Affairs, U.S. Department of  
Interior, Washington, D.C.*

DEAR MR. SOLLER: This relates to your letter of 30 April 1975, in which you offered your opinion as to the applicability of the Federal Boat Safety Act of 1971, 46 U.S.C. 1451 et seq. within Indian reservations.

Your response to my inquiry was most helpful in drafting my opinion on the jurisdictional limits of the Coast Guard in these areas. A copy of my opinion is enclosed for your perusal. I am most appreciative of the time and effort you expended in researching this issue of mutual concern. If this office can ever be of assistance to you please do not hesitate to call upon me.

Sincerely,

R. A. RATTI,  
*Rear Adm., U.S. Coast Guard, Chief Counsel.*

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Subject: Coast Guard Jurisdiction under the Federal Boat Safety Act of 1971 as applied to American Indian Reservations.

From: Chief Counsel.

To: Chief, Office of Boating Safety: (a) G-LMI/81 ltr 5903/33-3 of 14 Mar 74 to CCGDS(d1).

1. A memorandum of law, drafted by this office and attached as enclosure (1) to reference (a) set forth the jurisdictional limits of the Federal Boat Safety Act of '71 (FBSA). In specific, the memo delineated what were "waters subject to the jurisdiction of the United States," as used in § 4(a) of the FBSA, for purposes of Coast Guard jurisdiction. A copy of that memo is provided as enclosure (1) to this letter. In short, it stated that Coast Guard jurisdiction under the FBSA extended to "navigable waters of the United States" and to those inland waters on Federally owned land over which the U.S. has asserted concurrent or exclusive jurisdiction from the State in which the Federal enclave is located, or over which the United States has retained such jurisdiction at the time of the State's entry into the union.

2. Comment concerning the applicability of the FBSA to Indian reservations was purposely withheld from reference (a) pending receipt of comments from appropriate Federal agencies. Such input has been received from the Office of the Solicitor, Division of Indian Affairs, Department of the Interior and is included as enclosure (2). Accordingly, my opinion on the applicability of the FBSA to American Indian reservations is as follows. Those portions of the FBSA specified in section 4(b) of the Act, which deal with safety regulations and standards for boats and associated equipment are fully enforceable within the territorial limits of such reservations. Those provisions in the act which deal with vessel usage are applicable to all navigable waters of the U.S., including those which may border or cross Indian reservations. However, these sections do not apply to those bodies of water within the territorial limits of an Indian reservation which are not part of the navigable waters of the United States, regardless of the status of Federal jurisdiction over such lands.

3. The FBSA of 71 is an act of both general and specific jurisdictional scope. A general Federal statute is one which is applicable to all parts of the United States. The general provisions of the FBSA are found in sections 5 through 11 and in subsections 12(a) and 12(b). The legislative history of these sections shows that Congressional intent was to assure that virtually all boats are manufactured in

compliance with the Federal safety standards—regardless of their place of expected use. S. Rep. No. 92-248, 1971 U.S. Code Cong. and Adm. News 1338. The fact that these provisions are specifically made applicable, in section 4(b) of the Act, to boats which are moved or intended to be moved in interstate commerce clearly shows that Congress intended their application to all parts of the U.S., including Indian reservations. Federal statutes of general scope apply to Indian lands, regardless of whether such application is specifically enumerated or not. *Navajo Tribe v. NLRB*, 288 F.2d 162, 165 (D.C. Cir.) cert. denied, 366 U.S. 928 (1961). *Boudinot v. U.S.*, 11 Wall 616, 20 L. Ed. 227.

4. Section 4(a) of the FBSA sets forth the jurisdictional scope of those portions of the Act pertaining to vessel use. The general conclusion of the Department of the Interior with respect to these provisions is that they are not applicable to waters within the exterior boundaries of Indian reservations, as these parts of the act are specific in scope and there is no indication of Congressional intent that application should extend to these areas. I disagree with this analysis in part. As pointed out in reference (a) it is the position of the Coast Guard that the FBSA is applicable to all navigable waters of the U.S. The definition of the term "navigable waters of the U.S.," as developed by case law, is based on the use and physical characteristics of a water system and is in no way affected by the status of surrounding lands through which the waters may flow. Congressional intent to apply the Act to navigable waters of the U.S. is plain. S. Report 92-248, 1971 U.S. Code and Adm. News 1338. It is true that those portions of the FBSA dealing with vessel use may be considered as specific in scope (as opposed to general) as their jurisdictional application is specifically limited by the language in section 4(a). However, Congressional intent was manifest that these provisions in the Act should apply to all navigable waters of the U.S. Specific reference to "Indian lands" was unnecessary. Navigable waters of the U.S. is a jurisdictional concept quite separate from that of "Federally owned lands." Application of the FBSA to navigable waters of the U.S. which cross Indian reservations in no way affects the territorial integrity of the reservation as such waters are separate and apart from the "Federal lands" which comprise the reservation. To hold otherwise would be to go against the express Congressional purpose of the Act found in Section 1 "to improve boating safety . . . and enjoyment of all waters of the U.S." It is inconceivable that Congress intended the act to apply to all navigable waters of the U.S. except for those segments flowing through Indian reservations. The result of such an interpretation when applied to a navigable water of the U.S. such as the Columbia River, would be the existence of Coast Guard jurisdiction on the river above and below the segment of the river flowing through the Spokane Indian Reservation, but not over that segment itself.

5. The last matter for consideration is the issue of whether the "internal waters" of Indian reservations, which are not a part of the navigable waters of the U.S., are covered by the term "waters subject to the jurisdiction of the United States," as used in § 4(a) of the FBSA. As pointed out in reference (a), there is a two pronged test for applicability of the FBSA to internal waters of "Federal enclaves." First, title to such land must be vested in the U.S. Second, the U.S. must have asserted jurisdiction over the lands which is concurrent with or exclusive from that of the State in which such lands are located, or must have retained such jurisdiction over the lands when the State entered the Union. In example, where the U.S. owns title to lands on which a military base is located and has exclusive or concurrent jurisdiction over such property (by retention or by statutory enactment in the case of after acquired lands), then the FBSA would unquestionably apply.

Although the creation of Indian reservations took place in a variety of different ways, the U.S. has always held title to these lands. *U.S. v. Santa Fe Pac. R. Co.*, Ariz., 62 S. Ct. 248, 314 U.S. 339, 86 L. Ed. 26. However, the Federal Government merely holds legal title in trust for the Indian tribes themselves, which hold all use and possessory rights. Therefore, the title rights of the U.S. in such lands are not complete and may be distinguished from U.S. title to other Federal enclaves.

Indian lands are subject to the jurisdiction of the United States, and Congress has broad powers to deal with the Indians and their property which is paramount to the State within whose limits a reservation may be located. *U.S. v. Kagama*, Cal., 6 S. Ct. 1109, 118 U.S. 375, 30 L. Ed. 228. Therefore, absent a relinquishment of Federal jurisdiction and a State's assumption of jurisdiction (by consent of a tribe), Federal jurisdiction over Indian lands is *exclusive* in relation to State

jurisdiction. (See appendix 2 to enclosure (2) for a current listing of reservations where such Federal jurisdiction has been relinquished). However, such Federal jurisdiction is not exclusive in relation to the jurisdiction of the tribal nations themselves. While Congress definitely has the power to legislate with regard to Indian lands, not all Federal laws apply to Indian reservations. *New York ex. rel. Ray v. Martin*, 326 U.S. 496 (1946).

Accordingly, Indian reservations, as Federal enclaves, do not meet the two pronged test necessary for application of the FBSA to internal waters. Since the subject provisions of the FBSA are of a specific scope, and since there is no mention of application of the Act to Indian reservations, it is my opinion that the FBSA does not apply to the internal waters of Indian reservations which are not navigable waters of the U.S. In this regard, I concur with the legal analysis offered by the Department of the Interior at enclosure (2).

R. A. RATTI.

PART V, EXHIBIT 7

FEBRUARY 1, 1971.

SOL. OP. M-36811

APPLICABILITY OF THE WHOLESOME MEAT ACT OF 1967 ON INDIAN RESERVATIONS

INDIAN LANDS: GENERALLY—STATUTES—ACT OF DECEMBER 15, 1967

Syllabus

"The Secretary of Agriculture is not authorized or required to conduct meat inspection programs on Indian reservations under the provisions of the Wholesome Meat Act of 1967, 81 Stat. 584, 21 U.S.C. §§ 601-691 (Supp. V, 1965-1969).

"Indians: Civil Jurisdiction—Indians: Criminal Jurisdiction—Indian Lands: Generally—Statutes—Act of August 15, 1953—Act of December 25, 1967—Regulations: Generally—Act of February 15, 1929.

"States which have assumed the requisite jurisdiction over Indian country under Public Law 280 (Act of August 15, 1953, 67 Stat. 588, as amended, 18 U.S.C. § 1162 and 28 U.S.C. § 1360) or under the Civil Rights Act of 1968 (Act of April 11, 1968, 82 Stat. 77-81, 25 U.S.C. §§ 1321-1322 (Supp. V., 1965-1969)) are required by the Wholesome Meat Act of 1967 to enforce their meat inspection laws on Indian reservations if the enforcement does not involve the regulation of property held in trust by the United States for the benefit of the Indians. States which have not assumed the aforementioned jurisdiction over Indian country are not authorized or required by the Wholesome Meat Act of 1967 to enforce their meat inspection laws on Indian reservations unless the Secretary of the Interior were to enact regulations authorizing such enforcement under the authority granted him by the Act of February 15, 1929, 45 Stat. 1185, as amended, 25 U.S.C. § 231."

Mr. EDWARD M. SHULMAN,  
*General Counsel,*  
*U.S. Department of Agriculture,*  
*Washington, D.C.*

DEAR MR. SHULMAN: We have considered your letter of February 25, 1970, requesting our opinion on the applicability on Indian reservations of the Wholesome Meat Act of December 15, 1967, 81 Stat. 584, 21 U.S.C. §§ 601-691 (Supp. V, 1965-1969) (originally enacted as the Act of March 4, 1907, 34 Stat. 1260-1265, as amended, 21 U.S.C. §§ 71-91). You raise two questions which for convenience we shall consider in reverse order.

1. *Does the Wholesome Meat Act of 1967 require the Secretary of Agriculture to conduct meat inspection programs on Indian reservations?*

Nowhere in the act or in its legislative history is there any reference to Indians or Indian reservations, thus raising the questions of whether legislation which makes no mention of Indians or Indian reservations applies to them. There is case law which indicates that general acts of Congress do not apply to Indians unless Congress has manifested an intent to include them.<sup>1</sup>

However, the recent trend indicates that general acts of Congress applying to all persons includes Indians and their property interests.<sup>2</sup> There is, however,

<sup>1</sup> *Elk v. Wilkins*, 112 U.S. 94, 100 (1884); *McCandless v. United States ex rel. Diabo*, 25 F.2d 71 (3rd Cir. 1928), *aff's sub nom. United States ex rel. Diabo v. McCandless*, 18 F.2d 282 (E.D. Pa. 1927); *United States v. 5,677.95 Acres of Land*, 162 F. Supp. 108, 110, 111 (D. Mont. 1958); *Seneca Nation of Indians v. Brucker*, 162 F. Supp. 580, 581-582 (D. D.C. 1958), *aff'd*; 262 F.2d 27 (D.C. Cir. 1958), *cert. denied*, 360 U.S. 909 (1959); and *Niodesmus v. Washington Water Power Co.*, 264 F.2d 611, 617 (9th Cir. 1959).

<sup>2</sup> *The Cherokee Tobacco*, 78 U.S. (11 Wall.) 616 (1870); *Chateau v. Burnett*, 283 U.S. 691 (1931); *Superintendent v. Commissioner*, 295 U.S. 413, 420 (1935); *Federal Power Commission v. Tuscarora Indian Nation*, 362 U.S. 99, 115, 118, 120 (1960); *Narajo Tribe v. V.L.R.R.*, 288 F.2d 162, 164, 165n.1, (D.C. Cir. 1961), *cert. denied*, 366 U.S. 928 (1961); *Commissioner v. Walker*, 326 F.2d 261, 263 (9th Cir. 1964); *Colliflower v. Garland*, 342 F.2d 369, 376 (9th Cir. 1965); *Holt v. Commissioner*, 364 F.2d 38, 40 (8th Cir. 1966), *cert. denied*, 386 U.S. 931 (1967); and *Mann v. United States*, 399 F.2d 672, 673 (9th Cir. 1958).

limiting language in 21 U.S.C. § 601(g) and (h) which indicates that the Secretary of Agriculture is *not* authorized or required to conduct meat inspection programs on Indian reservations.

The act provides that the Secretary of Agriculture must appoint inspectors to conduct ante-mortem and post-mortem examinations and inspections of various animals and meat food products prepared for "commerce" in any slaughtering, meat-canning, salting, packing, rendering or similar establishment. 21 U.S.C. §§ 603, 604 and 606. In the definition, section 21 U.S.C. § 601(h) provides:

"The term 'commerce' means commerce between any State, and Territory, or the District of Columbia, and any place outside thereof; or within any Territory not organized with a legislative body, or the District of Columbia." (Emphasis added)

The act defines "Territory" in 21 U.S.C. § 601(g), which states:

"The term 'Territory' means Guam, the Virgin Islands of the United States, American Samoa, and any other territory or possession of the United States, excluding the Canal Zone." (Emphasis added)

We do not read these definitions as including Indian reservations. *Ex Parte Morgan*, 20 F. 298, 305-306 (W.D. Ark. 1883); *In re Lane*, 135 U.S. 443, 447-448 (1890). Since an Indian reservation is not included within the definition of "Territory" under 21 U.S.C. § 601(g), the definition of "commerce" in 21 U.S.C. § 601(h) as " \* \* \* commerce between any \* \* \* Territory \* \* \* and any place outside thereof \* \* \*" cannot mean commerce flowing from or to an Indian reservation and any place within the same state but outside the reservation.

In the exercise of its plenary power over Indian affairs and property, the Congress has assigned the management of Indian affairs to the Commissioner of Indian Affairs, under the direction of the Secretary of the Interior, 25 U.S.C. § 2; Reorganization Plan No. 3 of 1950, 5 U.S.C. 1332-15, note. If Congress had intended, through the Wholesome Meat Act, to give the Secretary of Agriculture any regulatory authority over Indian reservations, we think it would have done so by a specific grant of power in the act.

For these reasons, we conclude that the Secretary of Agriculture is not authorized or required to conduct meat inspection programs on Indian reservations under the provisions of the Wholesome Meat Act of 1967, except as hereinafter provided.

2. *Does the Wholesome Meat Act of 1967 require the states to conduct meat inspection programs on Indian reservations within their borders?*

The relevant provisions are contained in 21 U.S.C. § 661. This section authorizes the Department of Agriculture to cooperate with appropriate state agencies in developing and administering a state meat inspection program in any state which has enacted a meat inspection law imposing mandatory inspection and sanitation requirements for *intrastate* operators, at least equal to the Federal requirements under 21 U.S.C. ch. 12, subch. I, 21 U.S.C. § 661(a)(1). Section 661(c)(1) provides for the extension of the Federal standards to *intrastate* operations and transactions within two years after enactment of the Wholesome Meat Act, if the Secretary believes that a state has failed to develop or is not enforcing with respect to all establishments *within its jurisdiction*, requirements at least equal to those imposed under 21 U.S.C. ch. 12, subchs. I and IV. The adequacy of the state system would be determined by the Secretary after consultation with the governor, and the provisions of 21 U.S.C. ch. 12, subchs. I and IV, would become applicable to *intrastate* transactions 30 days after publication in the *Federal Register* of the Secretary's designation of the state. If the Secretary has reason to believe that the state will activate the requirements within one additional year, he may delay the designation for that period of time.

If the state subsequently established a system equal to Federal standards, the designation could be revoked, 21 U.S.C. § 661(c)(1). After the initial period, the Federal system could be made applicable or inapplicable as required by the adequacy or inadequacy of the state system.

As far as the breadth of the state inspection is concerned, the crucial wording is contained in the first part of 21 U.S.C. § 661(c)(1):

"If the Secretary has reason to believe, by thirty days prior to the expiration of two years after enactment of the Wholesome Meat Act, that a State has failed to develop or is not enforcing, with respect to all establishments *within its jurisdiction* (except those that would be exempted from Federal inspection under subparagraph (2)) \* \* \* requirements at least equal to those imposed under subchapters I and IV of this chapter, he shall promptly notify the Governor of the

State of this fact. If the Secretary determines, after consultation with the Governor of the State, or representative selected by him, that such requirements have not been developed and activated, he shall promptly after the expiration of such two-year period designate such State as one in which the provisions of subchapters I and IV of this chapter shall apply to operations and transactions wholly within such State: \* \* \*." (Emphasis added)

Since a state must develop and enforce requirements at least equal to the Federal standards on all establishments *within its jurisdiction*, the question is whether such an establishment, if located on an Indian reservation, is within the jurisdiction of the state? A categorical answer cannot be given.

The Act of August 15, 1953, 67 Stat. 588, as amended, 18 U.S.C. § 1162 and 28 U.S.C. § 1360 (commonly referred to as Public Law 280), invested those states which were granted or have assumed jurisdiction thereunder, with civil and criminal jurisdiction over the persons and private (non-trust) property of Indians within the Indian country.<sup>3</sup>

This Department has recently held that Public Law 280 invested the State of California with jurisdiction to enforce its health and sanitation laws and regulations against the *person* of Indians in the Indian country. However, we concluded that the State of California does not have authority, directly or indirectly, to enforce such laws against property held in trust by the United States for the benefit of the Indians. See Solicitor's Opinion M-36768 (February 7, 1969), two copies of which are enclosed. On page 2 of that opinion we stated:

"In our view both the language of Public Law 280 and its legislative history make quite clear that it was not intended to invest the states with jurisdiction over trust property. This Department consistently has held that the statute furnishes no basis for the application of state or local zoning, construction, or other land use laws, regulations, or standards to trust property. Authority with respect to such property is reposed exclusively in the Federal and tribal governments." See 25 CFR 1.4 and 30 F.R. 8722 (No. 131, July 9, 1965).<sup>4</sup>

Accordingly, those states which have assumed jurisdiction over Indian country under Public Law 280 or under the Civil Rights Act of 1968 are required by the Wholesome Meat Act to enforce their meat inspection laws on Indian reservations, *if* the enforcement does not involve the regulation of trust property in any significant way.<sup>5</sup> In these states, and these states only, we conclude that the operation of meat processing establishments on Indian reservations is *within that state's jurisdiction* as contemplated by 21 U.S.C. § 661 (c) (1).

What if a state, which has jurisdiction over Indian reservations, refuses to enforce its meat inspection laws on the reservation? Section 661 (c) (1) makes it clear that the Secretary of Agriculture can designate that state as one in which the provisions of 21 U.S.C. ch. 12, subchs. I and IV would then become applicable. Since subchs. I and IV require affirmative action on the part of the Secretary of Agriculture, he would have jurisdiction over the Indian reservations in these states to the extent specified in the aforementioned subchapters. To hold otherwise would mean that there would be no penalty for a state which refused to enforce its laws on a particular Indian reservation.

What about states which have not assumed the requisite jurisdiction over Indian country?

Congress has given the Secretary of the Interior discretionary authority to allow state agents to enter upon Indian reservations for the purpose of making inspection of health and educational conditions and enforcing sanitation and quarantine regulations. Act of February 15, 1929, 45 Stat. 1185, as amended 25 U.S.C. § 231. We believe that meat inspections come within the scope of this section. We do not believe Congress intended, by the passage of the Wholesome

<sup>3</sup> States can no longer unilaterally assume jurisdiction over Indian country under Public Law 280 since this power was repealed by the Act of April 11, 1968, 82 Stat. 77, 79, 25 U.S.C. § 1323 (b) (Supp. V, 1965-1969) (commonly known as the Civil Rights Act of 1968). However, this act does grant states the right to assume civil and criminal jurisdiction over Indian country, but *only* with the consent of the Indian tribe. 25 U.S.C. §§ 1321, 1322.

<sup>4</sup> See also *Snohomish County v. Seattle Disposal Co.*, 425 F. 2d 22 (Wash. 1967), *cert. denied*, 389 U.S. 1016 (1967).

<sup>5</sup> A caveat is in order here. Both Public Law 280 and the Civil Rights Act of 1968 provide for *partial* as well as *full* assumption of state jurisdiction over Indian country. A state which has only assumed partial jurisdiction may not have obligated itself to enforce meat inspection laws or laws of a similar nature on the reservations. These states must be treated in the same manner as those which have not assumed jurisdiction under the aforementioned acts.

Meat Act, to limit the powers already granted to the Secretary of the Interior under 25 U.S.C. § 231. The law does not favor repeals by implication. *United States v. Healey*, 160 U.S. 136, 146-147 (1895); *United States v. Greathouse*, 166 U.S. 601, 605-606 (1897); and *Washington v. Miller*, 235 U.S. 422, 428 (1914).

We, therefore, conclude that the Secretary's authority under 25 U.S.C. § 231 controls in those states which have not assumed the essential jurisdiction over Indian country under Public Law 280 or under the Civil Rights Act of 1968. Since the Secretary has not adopted any regulations implementing the provisions of this section, these states are without authority to inspect meat processing establishments on Indian reservations within their borders. We could, however, recommend that the Secretary of the Interior adopt such regulations authorizing state agents to enforce such meat inspection standards on Indian reservations as the Secretary of Agriculture deems necessary. Your Department's jurisdiction over those states would then be equivalent to that possessed over states which have assumed jurisdiction under Public Law 280 or under the Civil Rights Act of 1968.

#### Conclusion

In summary, we are of the opinion that the Secretary of Agriculture, except as hereinafter provided, is *not* authorized or required to conduct meat inspection programs on Indian reservations under the provisions of this act. States which have assumed jurisdiction over Indian country under Public Law 280 or under the Civil Rights Act of 1968 are required by 21 U.S.C. § 661(c)(1) to enforce their meat inspection laws on Indian reservations, but *only* if the enforcement does not, directly or indirectly, involve the regulation of trust property in any significant way. The Secretary of Agriculture can enforce the provisions of 21 U.S.C. ch. 12, subchs. I and IV, in any of these states which may refuse to enforce their laws on the reservations.

States which have not assumed the aforementioned jurisdiction over Indian country are not authorized or required, by the Wholesome Meat Act, to enforce their meat inspection laws on Indian reservations within their borders. However, we could, if your Department so desires, recommend that the Secretary of the Interior enact regulations authorizing state agents to enforce such meat inspection standards as the Secretary of Agriculture deems necessary.

For your convenience, we have enclosed a list of the states which have assumed some measure of jurisdiction over Indian country under Public Law 280. This list must be reviewed periodically, however, as retrocessions of and additions to state jurisdiction may occur at any time.

Sincerely yours,

RAYMOND C. COULTER,  
Deputy Solicitor.

PART V, EXHIBIT 8

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SOLICITOR,  
Washington, D.C., April 30, 1975.

R. A. RATTI,  
Rear Admiral, Department of Transportation,  
Washington, D.C.

DEAR ADMIRAL RATTI: This responds to your letter of March 15, 1974, requesting our opinion on the applicability of the Federal Boat Safety Act of 1971, 46 U.S.C. §§ 1451 et seq., within Indian reservations.

First, please accept my apologies for the extreme lateness of this reply. A response to your inquiry was initially drafted in mid-1974 by one Division of this Office but was sent to another Division for review, whereupon it was misplaced until this month. I understand that Herbert Becker of this Office spoke with your secretary recently to apologize for the delay and to inquire whether a response might still be of use to you. Again my apologies.

I have concluded that as a general matter the Act is not applicable within the exterior boundaries of Indian reservations. The basis for this conclusion is set out below.

Nowhere in the Act or in its legislative history is there any indication that Congress specifically intended the legislation to apply to "Indian country" (see 18 U.S.C. § 1151). Given this fact and the fact that in pertinent part the Act is not a "general" statute applicable in all parts of the United States, compare *Elk v. Wilkins*, 112 U.S. 94, 100 (1884), with *Navaio Tribe v. NLRB*, 266 F. 2d 162, 164-65 (D.C. Cir.), *cert. denied*, 360 U.S. 928 (1961), the presumption is that the Act has no such application to Indian country. This is especially so since the Act contemplates that states may assume certain regulatory powers under its provisions. See sections 1474-75. In light of the originally sovereign nature of Indian tribes and their semi-autonomous nature today, state jurisdiction over Indian country should not be inferred in the absence of clear congressional authorization for such jurisdiction. *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164 (1973). In addition, certain types of regulation imposed under the Act could conceivably be deemed to impair fishing rights reserved to tribes by treaty. Again, such rights are not to be held impaired in the absence of a clear congressional directive. *United States v. White*, No. 74-1283 (8th Cir., filed Dec. 9, 1974).

The jurisdictional provision of the Act, 46 U.S.C. § 1453, states among other things that the Act applies to vessels used on "waters subject to the jurisdiction of the United States. . . ." It is principally this provision which might be thought to make the Act applicable to Indian reservations. I do not regard such language, however, as a sufficiently clear indication of congressional intent to extend application of the Act to Indian country.

As you pointed out in your letter, the jurisdictional provision referred to above was characterized by the Senate Commerce Committee as referring to the navigable waters of the United States and certain internal waters which are in the "exclusive or concurrent jurisdiction" of the United States. S. Rep. No. 92-248, 1971 U.S. Code Cong. & Adm. News 1338. The quoted language is identical to that used in 18 U.S.C. § 7(3), defining the "special maritime and territorial jurisdiction of the United States," which includes jurisdiction over so-called "federal enclaves." The latter provision cannot, however, be deemed applicable to Indian country; otherwise 18 U.S.C. § 1152, a historically important piece of Indian legislation which extends to Indian country the federal criminal laws applicable "in any place within the sole and exclusive jurisdiction of the United States," would be superfluous. Indeed, *New York ex rel. Ray v. Martin*, 326 U.S. 496 (1946), indicates that the federal murder statute (now 18 U.S.C. § 1111) applicable to federal enclaves is not applicable in Indian country. See also *United States v. McBratney*, 104 U.S. 621 (1882); *Draper v. United States*, 164 U.S. 240 (1896).

Nor should 18 U.S.C. § 1152 itself be construed to make the Boat Safety Act applicable in Indian country. For one thing, section 1152 appears in the Criminal

Code and deals only with federal laws relating to the "punishment of offenses," while the Boat Safety Act contains a wide range of non-criminal provisions. Apart from this point, however, section 1152, which was originally enacted as part of the Trade and Intercourse Act of 1834, 4 Stat. 729, was designed at that time basically to ensure that crimes in Indian country involving non-Indians as well as Indians—i.e., crimes committed by Indians against non-Indians and vice-versa—were tried in federal court; the statute in fact contains a specific exception for crimes committed by Indians against Indians. It is thus not plausible that in 1834, when "Indian country" was a largely unsettled area comprising virtually the entire United States west of the Mississippi, Congress intended to subject the members of the many Indian tribes residing there to all federal enclave laws including those which, like the Boat Safety Act, are essentially regulatory in nature and define "victimless" offenses. Such a scheme would have been contrary to Congress' intent, expressed in the language of the 1834 Act and in its legislative history, to support the sovereign power of tribes to regulate the activities of their members. See the exception in section 1152 for Indian defendants who have "been punished by the local law of the tribe. . ." See also H.R. Rep. No. 474, 23 Cong., 1st Sess. 13 (1834).

In addition, it should be noted that in the exercise of its plenary power over Indian affairs, Congress has assigned the supervision of such affairs to the Commissioner of Indian Affairs under the direction of the Secretary of the Interior. See 25 U.S.C. § 2. It is permissible to reason that if Congress had intended through the Boat Safety Act to give the Secretary of the Treasury regulatory authority over Indian reservations, it would have done so by an explicit grant of power in the Act.

There are two respects in which the conclusions expressed above should be qualified.

First, section 1453 makes the Act applicable to vessels "to be used" on waters subject to the jurisdiction of the United States and to boats "intended to be moved in interstate commerce"; and certain obligations are imposed on manufacturers of such boats. See, e.g., sections 1461, 1463-64. It may be that if a boat were manufactured in Indian country for use in areas which are clearly within the jurisdictional reach of the Act, the relevant provisions of the Act would reach the manufacturer. For the portions of section 1453 quoted above make the Act to some extent akin to general federal statutes applicable throughout the country under the commerce power; and, although there is case law which indicates that general acts of Congress do not apply to Indians unless Congress has manifested a clear intent to include them, see, e.g., *Elk v. Wilkins*, *supra*, the recent trend of the law is to the contrary. See *Narajo Tribe v. NLRB*, *supra*; *Holt v. Commissioner*, 364 F. 2d 38, 40 (8th Cir. 1966), *cert. denied*, 385 U.S. 931 (1967); *Mann v. United States*, 399 F. 2d 672, 673 (9th Cir. 1968). This problem is unlikely to arise as a practical matter, however.

The second respect in which my conclusion that the Act is not applicable in Indian country must be qualified concerns Public Law 83-280, 67 Stat. 588 (1953) (commonly referred to as "Public Law 280" or "P.L. 280"). P.L. 280, as amended by the Act of April 11, 1968, 82 Stat. 77, 79, invests certain states with civil and criminal jurisdiction over Indian country within their boundaries, and allows other states to assume such jurisdiction through specified procedures (which today include the approval of the tribe or tribes involved). To the extent, therefore, that states which have assumed appropriate jurisdiction assert boat safety authority over Indian country within their jurisdiction, such assertion of authority would appear to be permissible. It should be noted, however, that in the view of this Office P.L. 280 does not confer upon states the authority directly to regulate property held by the United States in trust for Indians, so that even in "P.L. 280 states" such a "trust property" exception to state jurisdiction would exist. See Solicitor's Opinion M-3676S, Feb. 7, 1969, a copy of which is attached hereto. For your convenience I have also enclosed a list of the states which have assumed some measure of jurisdiction over Indian country under P.L. 280 (partial as well as full assumption of jurisdiction over Indian country has in some instances been assumed). This list should be reviewed periodically, however, as additions to or retrocessions of state jurisdiction may occur.

In summary, for the reasons and with the caveats set out above, it is my view that the Federal Boat Safety Act of 1971 has no applicability within the exterior boundaries of Indian reservations.

Sincerely,

CHARLES M. SOLIER,  
Acting Associate Solicitor.

PART V, EXHIBIT 9

Sol. Op. M-36840

THE EIGHTEEN YEAR OLD VOTE AMENDMENT OF U.S. CONSTITUTION AS APPLIED TO TRIBES

INDIAN TRIBES: SOVEREIGN POWERS—INDIANS: CIVIL RIGHTS—INDIAN REORGANIZATION ACT—UNITED STATES—VOTING

Syllabus

"The Twenty-Sixth Amendment to the Constitution, providing, *inter alia*, that the United States' shall not deny or abridge the right of eighteen-year-olds to vote, applies to Indian tribes' elections called by the Secretary pursuant to the Indian Reorganization Act or other act, but, because of the fundamental right of a tribe to govern itself, the amendment does not apply to Indian tribes in purely tribal elections."

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SOLICITOR,  
Washington, D.C., November 9, 1971.

M-36840

Memorandum to: Commissioner of Indian Affairs.

From: Solicitor.

Subject: The eighteen-year-old vote amendment as applied to Indian tribes.

By memorandum of August 16, 1971, you requested an opinion as to the applicability of the Twenty-Sixth Amendment to the United States Constitution to Indian tribes. A response requires consideration of: (1) the tribes' fundamental right to govern themselves; and (2) criteria for determining actions of "the United States" under the amendment.

The twenty-Sixth Amendment reads:

"Section 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

"Section 2. The Congress shall have power to enforce this article by appropriate legislation."

I

Two important aspects of tribal sovereignty are: (1) the power of a tribe to govern itself;<sup>1</sup> and (2) the applicability to Indian tribes of the United States Constitution and general acts of Congress, unless Congress manifests an intent to include them.<sup>2</sup> *First*: A tribe's power to govern itself must include "the right to define the powers and duties of its officials, and the manner of their appointment or election \* \* \*." Solicitor's Opinion, 55 I.D., 14, 30 (1934). *Second*: On its face, the Twenty-Sixth Amendment does not purport to limit the power of Indian tribes to determine for tribal elections<sup>3</sup> the age qualifications of voters,

<sup>1</sup> See, e.g., *Colliflower v. Garland*, 342 F. 2d 869 (9th Cir. 1965); *Native American Church v. Navajo Tribal Council*, 272 F. 2d 131 (10th Cir. 1959); *Iron Crew v. Oglala Sioux Tribe*, 281 F. 2d 89 (8th Cir. 1956), Solicitor's Opinion, 55 I.D. 14, 30-32 (1934).

<sup>2</sup> *Elk v. Wilkins*, 112 U.S. 94, 100 (1884); *McCandless v. United States ex rel. Diabo*, 25 F. 2d 71 (3rd Cir. 1928), *aff'g sub nom. United States ex rel. Diabo v. McCandless*, 18 F. 2d 282 (E.D. Pa. 1927); *United States v. 5,677.94 Acres of Land*, 162 F. Supp. 108, 110-111 (D. Mont. 1958); *Seneca Nation of Indians v. Brucker*, 162 F. Supp. 580, 581-582 (D.D.C. 1958), *aff'd*, 262 F. 2d 27 (D.C. Cir. 1958), *cert. denied*, 360 U.S. 909 (1959); and *Nicodemus v. Washington Water Power Co.*, 204 F. 2d 614, 617 (9th Cir. 1959). *But see F.P.C. v. Tuscarora Indian Nation*, 362 U.S. 69 (1960).

<sup>3</sup> Tribal elections refer to those that are authorized under tribal constitutions or other organic documents. For tribes organized under the Indian Reorganization Act (48 Stat. 984, 25 U.S.C. §§ 401 *et seq.*) or other act, this would include elections of officials and referenda concerned with domestic and internal business, but not referenda adopting or amending a constitution. For tribes organized traditionally (those not organized under the Indian Reorganization Act or other act) this would include all elections of officials and all referenda, concerning not only domestic and internal business, but also the adoption of tribal constitutions and amendments thereto.

and there is nothing in the legislative history of the amendment that would indicate that Congress intended that the amendment should apply to tribal elections.<sup>4</sup>

In other words, even if a tribe's constitution includes a clause such as the following, for example, from that of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, that the tribes:

"\* \* \* Secure to ourselves and our posterity the power to exercise certain rights of self-government not inconsistent with Federal, State, and local laws, \* \* \*

It is clear that the Twenty-Sixth Amendment was not intended to constitute, and does not constitute, such an "inconsistent" law; the Twenty-Sixth Amendment is not inconsistent because it was not intended to speak, and does not speak, to the basic right of tribal self-government possessed by all recognized tribes.

Actions of "the United States" under the amendment would include not only acts of Congress, but also judicial action and administrative action. See, e.g., for definitions of "state action" under the Fourteenth Amendment, *Shelley v. Kraemer*, 334 U.S. 1, 14 *et seq.* (1948), and cases therein cited; *Smith v. Allwright*, 321 U.S. 649 (1944); *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337, 343 (1938); *Virginia v. Rives*, 100 U.S. 313, 318 (1880).

The provisions in the Indian Reorganization Act that limit the right to vote in Secretarial elections<sup>5</sup> to those persons 21 years of age or older constitute acts of "the United States" which "den[y] or abridg[e]" the right to vote of those Indians between 18 and 21. Such provisions, and any others that would operate with similar effect, are therefore unconstitutional as applied in such elections to otherwise qualified Indians of at least 18 years of age. The right to vote should therefore be extended to 18-year-olds in elections called to adopt new Indian Reorganization Act constitutions or amendments to existing constitutions, even though that particular existing constitution may impose a 21-year-old voting requirement, and to all other Secretarial elections.

In other words, the Twenty-Sixth Amendment is self-executing,<sup>6</sup> which means that all laws and regulations contrary to it are changed without other action on the part of the Congress or federal agencies. Thus, for example, the definition of adult Indian in 25 CFR § 52.1 (e) must be read: "Adult Indian means any Indian who has attained the age of 18 years." And 25 U.S.C. § 479 is, in effect, changed to read:

"The words 'adult Indians' wherever used in said sections shall be construed to refer to Indians who have attained the age of twenty-one years, except that in reference to voting in Secretarial elections, it shall be construed to refer to Indians who have attained the age of eighteen years."

Regarding Secretarial elections concerned with issuing charters of incorporation, 25 U.S.C. § 477 provides:

"The Secretary of the Interior may, upon petition by at least one-third of the adult Indians, issue a charter of incorporation to such tribe: *provided*, That such charter shall not become operative until ratified at a special election by a majority vote of adult Indians living on the reservation."

May 18-year-olds sign such petitions, and thus be counted among the "adult Indians" for the purpose of this statute? We think that the petition is a sufficiently integral part of the Secretarial election process that the 18-year-old vote requirement of the Twenty-Sixth Amendment must apply. See e.g., *Smith v. Allwright*, *supra*.

MITCHELL MELICH, *Solicitor*.

<sup>4</sup> See, for an analogous example, *Groundhog v. Keeler*, — F. 2d — (10th Cir. May 5, 1971), in which the court observes that the Indian Civil Rights Act of 1968, 82 Stat. 77, 25 U.S.C. §§ 1301, 1302, "is much narrower than the language of the Fourteenth Amendment, and it omits entirely the suffrage provisions of the Fifteenth Amendment." The court thus assumes, as we do, that an amendment restricting only "the United States" does not, without more (such as a congressional act), restrict also tribal rights of self-government.

<sup>5</sup> Secretarial elections refer to those that are authorized pursuant to statute and conducted by the Secretary under his regulations. The primary examples are those authorized by the Indian Reorganization Act, which provides that any Indian tribe residing on a reservation may adopt or amend its constitution and bylaws, which shall become effective when ratified by a majority vote of adult members of the tribe (25 U.S.C. § 476). Adult members are defined as those who have attained the age of twenty-one years (25 U.S.C. § 470). Secretarial elections would thus also include elections such as Osage elections, pursuant to the Act of June 28, 1906, 34 Stat. 589, as amended, and 25 CFR Part 78.

<sup>6</sup> *United States v. Amaden*, 6 F. 819, 822 (D. Ind. 1881) (regarding the self-executing nature of the Fifteenth Amendment).

PART V, EXHIBIT 10

DRAFT

Memorandum to: Administrator, Mining Enforcement and Safety Administration.

Through: Assistant Administrator, Metal and Nonmetal Mine Health and Safety.

From: Associate Solicitor, Mine Health and Safety.

Subject: (1) Whether or not the Federal Metal and Nonmetallic Mine Safety Act and the Arizona State Plan approved by the Secretary confer jurisdiction upon the State to inspect mines located on Indian reservations and whether the State of Arizona has authority to inspect mining operations of the Gila River Materials Corporation, and (2) the authority of the states with approved State Plans to inspect and enforce State standards on mining operations located within their boundaries and on Federal and Indian lands.

This is in reply to memoranda from the Assistant Administrator dated April 11, 1973, and the Administrator dated December 11, 1973. MESA, in essence, questioned whether the Federal Metal and Nonmetallic Mine Safety Act (Metal Act)<sup>1</sup> and the Arizona State Plan Agreement approved by the Secretary of the Interior under section 16 of the Metal Act<sup>2</sup> confer jurisdiction on the State to prescribe and enforce State health and safety laws, rules and regulations in mines subject to the Act located on Indian reservations and Federal lands within the State. Also, MESA specifically asked if the Arizona State Mine Inspector's Office has the authority to inspect and enforce the mining Code of the State of Arizona including health and safety regulations at the sand and gravel operations of the Gila River Materials Corporation located on the Gila River Indian Reservation at Bapchule, Arizona.

On December 11, 1973, MESA raised additional questions concerning the authority of the State Plan States<sup>3</sup> to inspect and enforce State health and safety laws, rules and regulations applicable to metal and nonmetal mining operations on Indian and Federal lands.

For the reasons hereinafter provided in more detail in Attachment No. 1 you are advised:

1. Neither the Metal Act nor State Plan grant jurisdiction to a State to prescribe, or legislate, and enforce State health and safety laws, rules, and regulations in metal and nonmetal mines subject to the Metal Act and located within the State on Indian reservations and federal lands; and, the State of Arizona lacks authority to enforce State standards at the Gila River Material Corporation's sand and gravel operation on the Gila River Indian Reservation.

The authority vested in the Secretary of the Interior under section 16 of the Metal Act is simply the authority to enter into a cooperative agreement, which provides for a joint Federal-State program of inspection and enforcement, with each State desiring and qualifying for a State Plan. Included among the qualifying conditions in section 16(c) are the requirements that the sole State agency responsible for administering the Plan throughout the State has the authority to carry out the Plan<sup>4</sup> and adequate legal authority to enforce State health and safety standards which are substantially as effective as the Federal mandatory standards.<sup>5</sup>

<sup>1</sup> Public Law 80-577, 80 Stat. 772, 30 U.S.C. 721-740.

<sup>2</sup> 30 U.S.C. 735.

<sup>3</sup> Arizona—effective July 28, 1970; Colorado—September 25, 1970; California—July 15, 1971; New York—August 17, 1971; New Mexico—February 3, 1972; Utah—July 6, 1973; Virginia—February 6, 1974.

<sup>4</sup> Supra, footnote 2, subsection (c)(1).

<sup>5</sup> Supra, footnote 2, subsection (c)(2).

The Gila River Materials corporation is a tribal enterprise located on the Gila River Indian Reservation and, in the absence of the State of Arizona acquiring jurisdiction under the State's Enabling Act, Constitution, or other federal statutes, the Arizona State Mine Inspector's Office lacks authority to enter, inspect and enforce State health and safety laws, rules and regulations at this mine.

2. With respect to the comprehensive questions concerning the authority of the State Plan States to inspect and enforce State health and safety standards on Indian reservations and federal lands, respectively, you are advised:

#### *Indian Reservations*

On March 27, 1973, the Supreme Court held, in a landmark decision, *McClanahan v. State Tax Commissioner of Arizona*,<sup>6</sup> and a companion case, *Mescalero Apache Tribe v. Jones*,<sup>7</sup> that the traditional Indian sovereignty doctrine has given way to more individualized treatment of particular treaties and specific federal statutes including statehood legislation, as they are taken together and effect the rights of the Indians, states and Federal Government. The modern trend of judicial thinking is to preserve the unique legal status of Indians and to rely on Federal treaties and statutes to define the boundaries of Federal and State jurisdiction.

Congress has enacted legislation consenting to State jurisdiction over Indians on Indian reservations in the States of New York and California. Under the Acts of July 2, 1948<sup>8</sup> and September 13, 1950<sup>9</sup> the State of New York was granted criminal and civil jurisdiction, respectively, over the persons and private (non-trust) property of Indians on reservations. Under the Act of August 15, 1953,<sup>10</sup> popularly referred to as "Public Law 280," the State of California acquired criminal and civil jurisdiction over actions to which Indians are parties. There is no clear and unequivocal language consenting to jurisdiction over land use in these statutes. Furthermore, in our opinion, neither the State of New York, under 25 U.S.C. 232 and 233, nor the State of California under Public Law 280 acquired jurisdiction over trust property, whether real or personal, that is owned, held and administered by the United States for the benefit of individual Indians or groups of Indians. Therefore, New York and California lack authority to apply State health and safety laws, rules, and regulations on such property.

In addition to consenting to criminal and civil jurisdiction under Public Law 280 over certain Indian affairs to the States of California, Minnesota, Wisconsin, Oregon, and Nebraska, Congress also gave its consent to any other State to acquire this jurisdiction unilaterally by proper State action between 1953 and 1968. In 1968, with passage of the Indian Civil Rights Act,<sup>11</sup> an Indian consent provision was added so that today any State may obtain jurisdiction over Indian affairs on Indian reservations, provided the State has the consent of the tribe occupying the particular Indian reservation. To obtain this consent the enrolled Indians within the affected area of the reservations must accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose and called by the Secretary of the Interior when requested to do so by the tribal council, or other governing body, or by 20% of the enrolled adults within the affected area.<sup>12</sup> Moreover, the State's assumption of such jurisdiction will not be effective until the State appropriately amends their State constitution or statutes.<sup>13</sup>

Considering the complicated jurisdictional situations that may arise during the administration of various State Plans and consistent with the modern trend of judicial thinking, each State Plan State should be encouraged to obtain specific jurisdiction under 25 U.S.C. 1321-1326 to enter, inspect and enforce State laws, rules and regulations covering occupational health and safety in each and every metal and nonmetal mining operation which involves internal Indian affairs of individual Indian tribes on Indian reservations.

We suggest that MESA confirm whether or not (1) the State agencies are enforcing State health and safety laws and regulations in all operating mines subject to the Metal Act and located on Indian reservations, (2) identify each

<sup>6</sup> 411 U.S. 104 (1973).

<sup>7</sup> 411 U.S. 145 (1973).

<sup>8</sup> The Act of July 2, 1948, 62 Stat. 1224, 25 U.S.C. 232.

<sup>9</sup> The Act of September 13, 1950, 64 Stat. 845, 25 U.S.C. 233.

<sup>10</sup> The Act of August 15, 1953, 67 Stat. 589, as amended, 18 U.S.C. 1102 and 28 U.S.C.

1300.

<sup>11</sup> The Act of April 11, 1968, 82 Stat. 77-81, 25 U.S.C. 1321-1322.

<sup>12</sup> 25 U.S.C. 1326.

<sup>13</sup> 25 U.S.C. 1324.

mine and mine operator, such as the Gila River Materials Corporation, in which either representatives of MESA or the State agencies question the State's jurisdiction or are of the opinion that the State lacks adequate legal authority, and (3) obtain sufficient facts to assist both the Federal and State authorities to determine whether the State has adequate legal authority. These are significant undertakings of major importance and our office will furnish any advice and assistance you deem necessary.

The Secretary of the Interior has the duty, responsibility and obligation to enforce the Metal Act and Federal regulations in all mines covered by the Act. If any State lacks jurisdiction to inspect and enforce State laws and regulations in any mine located on an Indian reservation, Federal inspectors must inspect that mine until such time as the State acquires jurisdiction.

#### *Federal Lands*

There are various federal statutes dating back over 100 years that may be applicable to the disposal of minerals on federal lands, which include public domain, acquired lands, and public lands. Since jurisdictional questions are usually the most complicated legal and administrative problems that may arise under the Metal Act, we necessarily have to consider each individual problem on its particular merits.

As you are aware, the administration of federal lands is primarily carried out by the Secretary of the Interior through the Bureau of Land Management, Geological Survey, Bureau of Indian Affairs, Bureau of Outdoor Recreation, and the National Park Service. The Secretary of Agriculture has the responsibility to administer lands located in the National Forest through the Forest Service. Since only the Secretary of the Interior is authorized to issue federal leases, all disposal of leased minerals located within National Forests are issued by the Secretary of the Interior subject to the approval of the Secretary of Agriculture.

Based upon our construction of the most significant federal statutes that apply to mining operations extracting metal and nonmetal minerals from their natural deposits on federal lands, all existing State Plan states have adequate legal authority to enforce State health and safety laws, rules and regulations in mines located on such lands under one or more of the following federal statutes:

1. The General Mining Act of 1872.<sup>14</sup>
2. The Mineral Leasing Act.<sup>15</sup>
3. The Mineral Leasing Act for Acquired Lands.<sup>16</sup>
4. The Multiple Mineral Development Act.<sup>17</sup>
5. Certain special acts that have particular application to the seven State Plan states.<sup>18</sup>
6. The Surface Resources Act.<sup>19</sup>

Federal lands subject to leasing under the foregoing statutes do not include National parks and monuments; Indian reservations; incorporated cities, towns, and villages; naval petroleum and oil shale reserves; and, lands acquired under the Appalachian Forest Reserve Act, 16 U.S.C. 513-519.<sup>20</sup>

ROBERT W. LONG,  
*Associate Solicitor, Mine Health and Safety.*

<sup>14</sup> The Act of May 10, 1872, 17 Stat. 91, 30 U.S.C. 21-54.

<sup>15</sup> The Act of February 25, 1920, 41 Stat. 437, 30 U.S.C. 181 *et seq.*

<sup>16</sup> The Act of August 7, 1947, 161 Stat. 918, 30 U.S.C. 351-359.

<sup>17</sup> The Act of August 13, 1954, 68 Stat. 708, 30 U.S.C. 521-531.

<sup>18</sup> See 43 C.F.R. 3500.1-3 (a), (d), (g), and (h).

<sup>19</sup> The Act of July 28, 1955, 59 Stat. 367; the Act of September 28, 1962, P.L. 87-718, 76 Stat. 652, 30 U.S.C. 611-615.

<sup>20</sup> 43 C.F.R. 3501.1-5 Act, 16 U.S.C. 513-519.

PART V, EXHIBIT 11

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STATEMENT OF J. KEMPER WILL, ASSISTANT REGIONAL COUNSEL, REGION VIII, ENVIRONMENTAL PROTECTION AGENCY, AT THE FEDERAL BAR ASSOCIATION-INDIAN LAW SEMINAR, PHOENIX, ARIZONA, MAY 24, 1978

I would like to offer comments this morning on several areas that fall in-between the jurisdictional issues discussed this morning. EPA is an agency that has considerable dealings with Indian tribes but doesn't have direct responsibility as does the BIA or the Indian Health Service for the mainstream of federal services to Indian tribes. However, our statutes are of general applicability. They speak of bringing environmental programs to all persons within the United States. We interpret that as also applying to Indians. Three of our statutes, the Water Act, the Safe Drinking Water Act, and the Solid Waste Disposal Act, specifically mention Indians, but only in the Definitional Section. These statutes include Indian tribes within the definition of municipalities and also within the definition of persons. This raises for an agency such as ours, a problem of interpreting our statutes with regard to the jurisdictional issues. Where our states say that the statute will apply to Indians, it doesn't resolve the question of whether or not that applicability to Indians also confers jurisdiction for court purposes. We can look at that under several aspects.

First of all, most of our statutes assign or delegate the brunt of the enforcement authority for environmental control to states or state agencies. The question then is, does that delegation under our statutes also confer delegation over Indian lands within that state? We're taking the position on that issue that, no it doesn't and, for this reason. We feel that where there is a delegation of jurisdiction to the state, following the *Kennerly* and *Tuscarora* cases and the rules of statutory construction, then that delegation should be expressed. The mere statement of inclusion of Indians within the Definitional Sections is not sufficiently express to confer upon the state and state courts enforcement jurisdiction over Indian land. An example of the kind of issue this raises was brought up by the significant deterioration regulations that were published about a year ago. These regulations specifically state in the preamble that we're not going to alter the jurisdictional relationships of the Tribes and states by these regulations. But the regulations do say that the Indian tribes can petition EPA to have the authority to re-classify their lands to allow either that the air can degrade more than its present levels or that it must remain at present good quality levels (i.e. more stringent than the present Class II). The effect of reclassifying to a more stringent air quality standard would mean that most likely it would be very difficult for any major industry, especially the power industry, to move into the area of redesignation. Obviously, in those reservations impacted by energy development this could be significant. If the tribe would petition EPA for approval of a reclassification to a Class I designation it would be very difficult for power companies to build major power facilities on the reservation.

Another issue that really hasn't been talked about by the panel, and I think a significant one, and which is particularly appropriate for EPA, is the question of the limitation of state jurisdiction under Public Law 280 and especially as regards the saving clause, Clause B, of that statutory authority, which says, as I am sure is familiar to all of you, that no state action shall encumber, and so forth, the trust lands involved under a Public Law 280 delegation. Under the *Santa Rosa* case, it is my opinion that the state including Public Law 280 states, do not have authority over Indian lands for environmental purposes. This is based on the fact that the land use cases are now going against the state for state authority over Indian lands for land use purposes. In my opinion, environmental issues so closely parallel the land use cases that the same rationale would apply for environmental purposes. Therefore, it is currently my position that under the existing cases the states, even a Public Law 280 state, will not have

jurisdiction for environmental purposes on Indian lands. It is somewhat safe to make these policy positions because until there is a case specifically on point, you don't have a clear application of the law to Indian issues.

One last comment on the sort of difficulties that we are running into as an agency trying to responsibly bring environmental control to Indian lands, and that is that there has just been a district court appeals case in D.C. that freed up \$138 million of past EPA funds for water quality planning. Some of this money will be available for Indian lands, and our region, Region VIII in Denver, has already earmarked a considerable amount of money for the tribes within our region for water quality planning.

This money is generally divided up to the states on a formula basis and we are doing the same thing with Indian tribes; we divide it up on a formula basis. The question that arises is the effect of the reservation diminishment cases—what is the basis for your formula? For example, the Standing Rock Reservation, in South Dakota, was recently held in a district court case to be partially diminished. That case is now on appeal.

That raises the question of authority of the state within that diminished area and the Tribe in that area which is not diminished. And where there is a case on appeal, what is the position that our agency should take regarding jurisdiction within those diminished areas. These issues become very complicated.

This issue of authority of the Indian tribe over non-Indians is also important for us. Much of the environmental difficulty on Indian land is caused by non-Indian enterprises and it raises the question of whether a tribe which wishes to protect its land from environmental degradation has authority to develop its own environmental controls that would apply to that non-Indian enterprise. We obviously take the position that they do and our agency will work with the tribes to develop regulations and we would also assist them in enforcing those regulations if necessary.

(Transcribed from oral presentation.)

PART V, EXHIBIT 12

[S. 268, 93d Cong., 1st sess.]

AN ACT To authorize the Secretary of the Interior, pursuant to guidelines established by the Executive Office of the President, to make grants to assist the States to develop and implement State land use programs and to coordinate land use planning in interstate areas; to coordinate Federal programs and policies which have land use impacts; to coordinate planning and management of Federal lands and planning and management of adjacent non-Federal lands; to make grants to Indian tribes to assist them to develop and implement land use programs for reservation and other tribal lands; to encourage research on and training in land use planning and management; and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Land Use Policy and Planning Assistance Act".

\* \* \* \* \*

TITLE V—LAND USE PROGRAMS FOR RESERVATION AND OTHER TRIBAL LANDS

GRANTS TO INDIAN TRIBES

SEC. 501. The Secretary is authorized to make annual grants to any Indian tribe to assist such tribe in developing and administering a land use program for reservation and other tribal lands of such tribe.

LAND USE PLANNING PROCESSES FOR RESERVATION AND OTHER TRIBAL LANDS

SEC. 502. (a) Prior to making any grant pursuant to this title to any Indian tribe, the Secretary shall first be satisfied that the tribe intends to expend such funds for the development of a land use planning process for the reservation and other tribal lands of such tribe.

(b) The land use planning process shall include—

(1) the preparation of an inventory of the reservation and other tribal lands and their natural resources and the nature, quantity, and compatibility of such land and resources required to meet economic, social, and environmental needs;

(2) the establishment of methods for identifying areas of critical environmental concern; areas which are, or may be, impacted by key facilities; and any areas suitable for potential large scale development;

(3) the establishment of arrangements for the exchange of data and information pertinent to land use planning with the Federal Government, the State agencies in the State or States in which the reservation and other tribal lands involved are situated, and neighboring local governments;

(4) the dissemination of information to and the assurance of participation of reservation residents and tribal members in the development of the land use planning process; and

(5) the hiring of competent professional and technical personnel and, whenever appropriate, the use of special consultants.

LAND USE PROGRAMS FOR RESERVATION AND OTHER TRIBAL LANDS

SEC. 503. (a) Prior to making any grant pursuant to this title to any Indian tribe after the five complete fiscal year period following the first grant to such tribe, the Secretary shall first be satisfied that—

(1) the tribe has established an adequate land use planning process as provided for in section 502 hereof;

(2) has developed, or is in the course of developing, a land use program for the reservation and other tribal lands of such tribe, which program shall include methods for—

(A) assuring control over large-scale development, development of public facilities or utilities of regional benefit, land sales or development projects, and use and development in areas of critical environmental concern and areas impacted by key facilities;

(B) assuring dissemination of information to and participation of reservation residents and tribal members in the development and implementation of the land use program; and

(C) coordinating, pursuant to section 505, the land use program with any State land use program approved pursuant to this Act and with the use of Federal lands adjacent to the reservation and other tribal lands;

(3) in designating areas of critical environmental concern, the Indian tribe has not excluded any areas of critical environmental concern which are of more than tribal and statewide concern; and

(4) the Indian tribe is demonstrating good faith efforts to complete the land use program, and, upon completion thereof, is demonstrating good faith efforts to implement the purposes, policies, and provisions of such program. For the purposes of this clause (4), the inability of an Indian tribe to take any action the purpose of which is to implement the land use program, or any portion thereof, because such action is enjoined by the issuance of an injunction by any court of competent jurisdiction shall not be construed as failure by the tribe to demonstrate good faith efforts to implement the purposes, policies, and provisions of the land use program.

(b) In the implementation of its land use program, the governing body of each Indian tribe is hereby authorized to enact zoning ordinances or otherwise to regulate the use of the reservation and other tribal lands of such tribe, subject to the approval of the Secretary.

#### DEFINITIONS

SEC. 504. The definitions of "areas of critical environmental concern", "key facilities", and "large scale development" provided in section 601 shall be applicable to the same terms contained in sections 502(b) (2) and 503(a) (2) (A), except that, for the purposes of sections 502(b) (2) and 503(a) (2) (A) the following substitution of words shall be made within such definitions:

(1) "reservation and other tribal lands" for "non-Federal lands", and (2) "Indian tribe" or "tribal", whichever is appropriate, for "State".

#### COORDINATION WITH STATE LAND USE PROGRAMS AND FEDERAL LANDS PLANNING

SEC. 505. (a) To the extent that the laws governing the management of the Federal lands permit, all agencies of the Federal Government charged with responsibility for the management of Federal lands adjacent to reservation and other tribal lands subject to a land use program of a tribe which is eligible for financial assistance pursuant to this title shall control the use of such Federal lands so as to insure that such use is consistent with such land use program.

(b) All State and local government agencies with authority to control the use of non-Federal lands adjacent to reservation and other tribal lands subject to a land use program of a tribe which is eligible for financial assistance pursuant to this title shall control the use of such non-Federal lands so as to insure that such use is consistent with such land use program. The requirement of this subsection shall serve as a further condition of eligibility of any State for grants pursuant to part A of title II after the five complete fiscal year period following the enactment of this Act.

(c) The land use program prepared by any Indian tribe pursuant to this title shall provide for control of the use of that portion of the reservation and other tribal lands which is adjacent to the exterior boundaries of the reservation and other tribal lands so as to insure that such use is consistent with the use of Federal lands adjacent to the reservation and other tribal lands and the use of any non-Federal lands which are subject to a State land use program approved pursuant to this Act and are adjacent to the reservation and other tribal lands. If no land use program is prepared after the five complete fiscal year period following the first grant to any such Indian tribe, the tribe shall assume interim control of that portion of the reservation and other tribal lands which is adjacent to the exterior boundaries of the reservation and other tribal lands so as to fulfill the requirement of this subsection. The requirement of this subsection shall serve as a further condition of eligibility of any Indian tribe for grants pursuant to this title after the five complete fiscal year period following the first grant to such tribe.

## CONFLICTS RESOLUTION

**SEC. 506.** Any State, Indian tribe or the Secretary at the direction of any Indian tribe, or Federal agency with Federal land management responsibilities, which believes that the requirements of section 505 have not been met and has jurisdiction over any portion of the particular lands involved, may institute a civil action in the district court of the United States in the jurisdiction of which the lands involved are located for a restraining order or injunction or other appropriate remedy to enforce the provisions of section 505.

## TRIBAL REPORTING REQUIREMENTS

**SEC. 507.** (a) Any Indian tribe which is receiving or has received a grant pursuant to this title shall report at the end of each fiscal year to the Secretary, in a manner prescribed by him, on activities undertaken by the tribe pursuant to or under this title.

(b) Upon completion of a land use program, the relevant Indian tribe shall submit such program annually with the report required in subsection (a) hereof.

## REPORT OF THE SECRETARY

**SEC. 508.** The Secretary shall report annually to the President and the Congress on all actions taken in furtherance of this title and on the impacts of all other programs or services to or on behalf of Indians on the ability of Indian tribes to fulfill the requirements of this title.

## ANNOUNCEMENT OF PROGRAM

**SEC. 509.** Within one year of the enactment of this Act, the Secretary shall make known the benefits of this title to all Indian tribes. The Secretary shall make every effort to insure that the provisions of this title are fully understood by such tribes. The Secretary may fulfill the requirements of this section by contract with any non-profit educational or service organization. On entering into such contract or contracts, the Secretary shall give preference to such organizations the primary responsibility of which is service to Indians or education on subjects of Indian concern.

## FEDERAL REVIEW

**SEC. 510.** The standards for review to determine eligibility of Indian tribes for grants pursuant to this title shall be the same as those provided for determination for eligibility of States for grants under this Act. The review shall be conducted entirely by the Secretary of the Interior and the review procedures provided in section 308 (a) through (f) shall be inapplicable to this title.

## TITLE VI—GENERAL

## DEFINITIONS

**SEC. 601.** For the purposes of this Act—

(a) "Secretary" means the Secretary of the Interior.

(b) "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(c) "General purpose local government" means any general purpose unit of local government as defined by the Bureau of Census and any regional, inter-governmental, or other public entity which is deemed by the Governor to have authority to conduct land use planning on a general rather than a strictly functional basis.

(d) "Local government" means any "general purpose local government" as defined in subsection (c) hereof or any regional combination thereof, or, where appropriate, any other public agency which has land use planning authority.

(e) "Federal lands" means any land owned by the United States without regard to how the United States acquired ownership of the land and without regard to the agency having responsibility for management thereof, except reservation and other tribal lands as defined in subsection (g) hereof.

(f) "Non-Federal lands" means all lands which are not "Federal lands" as defined in subsection (e) hereof, reservation and other tribal lands as defined in subsection (g) hereof of this section and are not held by the Federal Government in trust for the benefits of Indians, Aleuts, and Eskimos.

(g) "Reservation and other tribal lands" means all lands within the exterior boundaries of any Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands held in trust for or supervised by any Indian tribe as defined in subsection (h) hereof.

(h) "Indian tribe" means any Indian tribe, band, group, or community having a governing body recognized by the Secretary.

\* \* \* \* \*

PART V, EXHIBIT 13

Sol. Op. M-36860

HOGAN and HARTSON,  
Washington, D.C.

Attention: Sherwin J. Markman, Esq. and Joseph M. Hassett, Esq.

GENTLEMEN: By letter to the Bureau of Indian Affairs dated October 26, 1970, you requested a complete copy of a 1965 agreement between the Seneca Nation of Indians, the First Seneca Corporation, the United States Pillow Corporation and certain individuals, and all drafts of the agreement which are contained in the Bureau's files. This request, submitted pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and Departmental regulations, 43 CFR 2.1 *et seq.*, was denied by the Bureau on February 11, 1971, for the following reasons:

First the documents were actually tribal business records and not agency records subject to the provisions of the Freedom of Information Act; second, the documents were received in confidence from the Seneca Nation and were being held by the Federal Government as trustee; third, a specific statutory exemption for the documents was claimed pursuant to the provisions of 5 U.S.C. § 552(b)(4).

On August 19, 1971, you appealed that decision to the Solicitor and on September 8, 1971, Mr. Hassett and counsel for the Seneca Nation, Mr. Lazarus, were afforded an opportunity to present their respective views orally.

There has been some question whether the requested documents are "agency records" within the meaning of the Act. For the purposes of this appeal I shall assume *arguendo*, that they are "agency records."

At the outset we note that your original request sought the "agency agreement." The Bureau of Indian Affairs is not a party to the agreement, which in fact was prepared by or on behalf of the tribe and title to which is vested in the tribe. It should also be noted that the final agreement is merely submitted to the Secretary for approval because it involves the expenditure of funds made available to the Seneca Nation pursuant to Public Law 88-533, 78 Stat. 738. The agreement is not required to be filed with the Secretary, although a copy is retained as evidence of Secretarial approval.

Section 552(b)(4) of Title 5 U.S.C. provides:

"(b) This section does not apply to matters that are \* \* \* (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential \* \* \*"

The basis of the Bureau's reliance on this important exemption is, of course, the unique fiduciary relationship between the Department of the Interior and Indians. This fiduciary and confidential relationship has been aptly described by the Supreme Court in *Seminole Nation v. United States*, 316 U.S. 286, 296-297 (1942):

"In carrying out its treaty obligations with the Indian tribes, the Government is something more than a mere contracting party. Under a humane and self-imposed policy which has found expression in many acts of Congress and numerous decisions of this Court, it has charged itself with moral obligations of the highest responsibility and trust. Its conduct, as disclosed in the acts of those who represent it in dealings with Indians, should therefore be judged by the most exacting fiduciary standards."

In the discharge of this fiduciary obligation it is essential that a confidential relationship be established and maintained. It has been long understood that documents such as these are submitted to the Department in confidence and we would be remiss in discharging this fiduciary obligation if these documents were released unilaterally without the concurrence of the tribe. As you are aware, the tribe has not consented to the release and, in fact, has urged that the Department reject your request. We are led to the conclusion that the documents requested clearly are encompassed within the scope of the exemption of 5 U.S.C. § 552(b)(4).

Departmental regulations require that upon a determination that the requested records fall within one or more of the categories exempted under the Public Information Act, there be a further determination that sound grounds exist which require the invocation of the exemption, 43 CFR 2.2. While we feel that the fiduciary and confidential relationship between the Department of the Interior and Indians is a sufficient ground in and of itself requiring invocation of the exemption, we also point out that when Mr. Hassett was afforded an opportunity to state the interest of your client in the documents he declined to do so, and even disclaimed any knowledge of the litigation pending in the state courts of New York between the First Seneca Corporation and its construction contractor, in which, we are advised, the contractor unsuccessfully sought to obtain the documents.

Thus Mr. Hassett declined to urge any grounds on behalf of your client why the exemption should not be invoked. Accordingly, the decision of the Bureau of Indian Affairs of February 11, 1971, is hereby affirmed.

**MITCHELL MELICH, Solicitor.**

PART V, EXHIBIT 14

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SOLICITOR,  
Washington, D.C., March 11, 1975.

Memorandum to: Assistant Secretary—Program Development and Budget.  
Subject: Freedom of Information Appeal of Will Thorne.

This memorandum outlines our views on the legal issues involved in the Freedom of Information appeal of Mr. Will Thorne of the Press Enterprise Company, a newspaper concern in Riverside, California.

On February 5, Mr. Thorne asked the Bureau of Indian Affairs to provide him with a copy of a legal services contract between the Agua Caliente Band of Mission Indians and Richard Kleindienst. The contract had been submitted to the Bureau by the Tribe for Bureau approval. The Bureau's Area Director in Sacramento denied the request and Mr. Thorne has appealed.

Before the initial decision on the Thorne request, the parties were queried about release. The Tribe objected on the basis that the contract was privileged under the attorney-client privilege. We have checked with Mr. Kleindienst and he does not wish the contract disclosed if his client does not.

The only exemption from the Freedom of Information Act's general disclosure requirements potentially applicable to the contract is the fourth exemption, which applies to trade secrets and to matters that are (1) commercial or financial information, (2) obtained from a person and (3) privileged or confidential. *Consumers Union of the United States, Inc. v. Veterans Administration*, 301 F. Supp. 769 (S.D.N.Y. 1969).

The contract is "commercial or financial" in nature, dealing as it does with a business relationship between the Tribe and Mr. Kleindienst. We believe the Tribe is a "person" within the definition of that term in 5 U.S.C. § 551(2); therefore, the contract was also "obtained from a person."

As to whether the contract is "privileged or confidential," there is a relatively weak argument that the attorney-client privilege applies. Ordinarily, this privilege attaches to communications made in preparation for, or contemplation of, litigation. Consequently, the terms of a contract for an attorney's services probably are not covered, see generally, 7 Am. Jur. 2d, *Attorneys* § 91 *et seq.* (1963).

The generally accepted test for determining whether information is "privileged or confidential" is set out in *National Parks and Conservation Association v. Morton*, 498 F.2d 705 (D.C. Cir. 1974), in which it was held that information is privileged or confidential if (1) it is of a type which would not customarily be released to the public by the person from whom it was obtained and (2) that release would (a) undermine the ability of the Government to obtain such information in the future or (b) seriously jeopardize the competitive position of the person from whom it was obtained.

The Tribe's objection to release can be taken, I think, to indicate that they would not ordinarily release such documents, meeting the first test. The second test is not so easily surmounted, however. Release of the information would not jeopardize the ability of the Government to obtain such material in the future; the Tribe must submit such contracts to the Bureau of Indian Affairs for approval. This leaves only the question of competitive harm as a basis for finding the contract to be privileged.

In most situations in which the release of information disclosing an employee's salary is at issue (and that is really the issue involved here), two types of competitive injury are possible. First, knowledge of the salaries of a competitor's employees permits a company to more finely tune its price when it bids against (or otherwise competes with) the competitor. Second, disclosure of salaries may lead to competitors hiring employees away or, alternatively, to lower-paid employees demanding higher salaries.

The first of these dangers is not posed by disclosure of the contract between Kleindienst and the Tribe. Kleindienst has been retained to represent the Tribe in connection with general problems of Tribal business. Since Kleindienst practices in Washington, this presumably means, in particular, the Tribe's relationship with the Government. In any event, Kleindienst is apparently representing the Tribe in its governmental capacity, rather than in connection with particular proprietary or commercial ventures in which it is involved. The Tribe as a governmental body is not in commercial competition with others.

An argument could be made that disclosure might cause the second type of competitive harm. Since Kleindienst is, presumably, not sorely pressed to take the highest fee available there is little danger, I would think, that he will be hired away. (This is particularly so because he has only promised the Tribe 100 hours of his time a year, leaving ample time to take more lucrative commissions if they are offered.) There is a possibility, however, that other lawyers might be disinclined to accept less than \$100 an hour from the Tribe if they knew that the Tribe was paying Kleindienst this fee.

The likelihood that we could employ this test to fit the Kleindienst contract within the *National Parks and Conservation Association* test is probably not good, though. The argument rests on the premise that lawyers are fungible. This premise is, of course, false. Kleindienst is an attorney of some stature. His political and legal connections are presumably such that his services are well in demand and he can thus easily ask \$100 an hour, if not more. Other attorneys cannot realistically do the same. The stature of a single practitioner of no particular personal repute in Southern California may be such that he can compete with Kleindienst and other more prestigious lawyers only if he asks for a significantly lower fee.

In summary, the legal arguments for concluding that the contract is "privileged or confidential" within the *National Parks and Conservation Association* test are very weak. In my judgment, they do not, in this case, provide an adequate legal basis for invoking exemption (4).

Should you have questions or desire to discuss this appeal further, we will be happy to meet with you at your convenience.

KENT FRIZZELL, *Solicitor.*

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U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington, D.C., March 18, 1975.

MR. WILL THORNE,  
*State Capitol Bureau, Press Enterprise Co.,  
Sacramento, Calif.*

DEAR MR. THORNE: Your February 13 letter to the Department Solicitor, Mr. Frizzell, appealing a denial of information under the Freedom of Information Act, was received in this office February 18. Departmental regulations now place responsibility for appeals in this office.

It is the opinion of the Solicitor that, in this case, the information you requested (the Special Attorney Contract between the Agua Caliente Band and Richard Kleindienst) is required to be disclosed under the Freedom of Information Act. Therefore, you may arrange to inspect the document, as you originally requested, in the office of the Area Director, Bureau of Indian Affairs, Sacramento.

Sincerely yours,

ROYSTON C. HUGHES,  
*Assistant Secretary, Program Development and Budget.*

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PRESS ENTERPRISE CO.,  
*Sacramento, Calif., February 13, 1975.*

KENT FRIZZELL,  
*Office of Solicitor, U.S. Department of the Interior,  
Washington, D.C.*

DEAR SIR: I have formally requested from William Finale, area director in Sacramento for the Bureau of Indian Affairs, permission to inspect a proposed contract between the Agua Caliente Band of Mission Indians, Palm Springs, Calif., and Richard G. Kleindienst, of Washington, D.C.

Mr. Finale has notified me of denial "pursuant to 5 U.S.C. 552(b)(4) and because the contract has an attorney-client privilege", going on to state that "The contract was submitted by the Band in confidence to this office for approval, and they in turn claim an attorney-client privilege".

He also very fairly notes that I have "a right of appeal to this decision to the Solicitor of the Department of the Interior, Washington, D.C., pursuant to Title 43 C.F.R., Sub-title A, Part 2.2(b)."

I do so hereby appeal; requesting that permission be granted to inspect the document to myself, if it remains in Sacramento, or to our Washington representative, Martin Salditch, 14 Tenth St., N.W., Washington 20002, if and when it is transferred to Washington.

Sincerely,

WILL THORNE.

PART V, EXHIBIT 15

U.S. DEPARTMENT OF THE INTERIOR,  
BUREAU OF INDIAN AFFAIRS,  
January 7, 1974.

HON. HENRY M. JACKSON,  
Chairman, Committee on Interior and Insular Affairs,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further response to your letter of December 7, 1973, concerning Federal recognition of Indian tribes and related questions.

In response to your request that we review the history of extending Federal recognition to Indian tribes for the past 20 years, listing the tribes that have been granted recognition and the specific authority for such recognition, we provide the following information:

TRIBE	AUTHORITY USED
1. Menominee Indian Tribe of Wisconsin.	Public Law 93-197, 93rd Cong., 1st Session, Approved December 22, 1973 (87 Stat. 770).
2. Original Band of Sault St. Marie Chippewa Indians (Michigan).	Commissioner's letter of September 7, 1972, and Solicitor's Opinion of February 27, 1974.
3. Yavapai-Tonto Apache Tribe (Arizona).	Public Law 92-470 (86 Stat. 783) Approved October 6, 1972.
4. Nooksack Indian Tribe of Washington.	Solicitor's Opinion M-36833, dated August 13, 1971.
5. Burns Palute Indian Colony (Oregon).	Solicitor's Opinion M-36759, dated November 16, 1967.
6. Upper Skagit Indian Tribe (Washington).	Act of June 30, 1913 (38 Stat. 101) Deputy Commissioner's letter of June 9, 1972.
7. Sauk-Sulattle Indian Tribe (Washington).	Same as above. These two groups have common ownership in land purchased pursuant to the 1913 Act.
8. Coushatta Indians of Louisiana.	Letter of June 27, 1973, from Marvin L. Franklin, Assistant to the Secretary of the Interior, and June 13, 1973, supporting memorandum of Acting Director, Office of Indian Services.
9. Miccosukee Tribe of Indians of Florida.	Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended. Approved by John A. Carver, Assistant Secretary of the Interior, January 11, 1962, and November 17, 1961, Order by Assistant Secretary of the Interior.

Attached for your convenience are copies of the Solicitor's opinions and letters mentioned above.

Enclosed with your letter was one you received of November 13, 1973, from Mr. Dewey Sigo, Executive Director of STOWW, Inc., asking for a report on the status of Federal recognitions of member tribes of that organization. The following is the requested status:

## RECOGNIZED

1. Chehalis.
2. Jamestown-Clallam.
3. Lower Elwa-Clallam.
4. Huckleshoot.
5. Niaqually.
6. Nooksack.
7. Port Gamble-Clallam.
8. Squaxin.
9. Suquamish.
10. Skokomish.
11. Sauk-Suiattle.

## NOT RECOGNIZED

1. Cowlitz.
2. Chinook.
3. Marietta-Nooksack.
4. Stillaguamish.
5. Snohomish.
6. Samish.

With regard to the six unrecognized STOWW members, the Stillaguamish was one of the entities found in the recent *United States v. Washington* case to have treaty (Point Elliott) fishing rights. In light of this determination, we have researched the matter to determine whether the Stillaguamish group can be recognized as constituting a tribe and made a recommendation to the Secretary.

As to two other unrecognized STOWW members—the Snohomish and Samish entities—research is being conducted on their status in view of the fact that they were also parties to the Point Elliott Treaty, although not parties in *United States v. Washington*. We are also researching the other STOWW members' status.

"Federal recognition" is a subject which is extremely complex. Consistency of practice in giving "Federal recognition" is difficult to discern, but we believe this apparent lack can be explained. In this discussion we will quote extensively from the *Handbook of Federal Indian Law*. The quotations are from the original published in 1945 (herein referred to as Cohen) which differs in some respects from the revision and updating of it published in 1958. These differences are not, in our view, pertinent to this discussion.

First, it seems important to note the significance of the term—Federal recognition; recognition—not creation. It is our assumption that the term means that there is an entity—something in being.

The following is from the discussion of The Scope of Tribal Self-Government in Cohen:

"Perhaps the most basic principle of all Indian law, supported by a host of decisions hereinafter analysed, is the principle that *those powers which are lawfully vested in an Indian tribe are not, in general, delegated powers granted by express acts of Congress, but rather inherent powers of a limited sovereignty which has never been extinguished*. Each Indian tribe begins its relationship with the Federal Government as a sovereign power, recognized as such in treaty and legislation," p. 122. Italics are in Cohen.

The questions which are faced with regard to "Federal recognition" are—does a tribe exist (does a particular group of Indians constitute a tribe) and which branch of the Federal Government can give the "Federal recognition"?

In Cohen's discussion of The Legal Status of Indian Tribes, after pointing out that the term "tribe" can be used in an ethnological, a legal or political or a social sense, this is stated:

"The question of tribal existence, in the legal or political sense, has generally arisen in determining whether some legislative, administrative, or judicial power with respect to Indian "tribes" extended to a particular group of Indians.

"The most basic of these issues has been the constitutional issue arising from the grant of power to Congress to regulate 'commerce with \* \* \* the Indian Tribes.' The Supreme Court has, in a number of cases, taken the position that the applicability or constitutionality of congressional legislation affecting individual Indians, and the inapplicability or unconstitutionality of state legislation affecting such individuals, depended upon whether or not the individuals concerned were living in tribal relations.

"While thus making the validity of congressional and administrative actions depend upon the existence of tribes, the courts have said that it is up to Congress and the executive to determine whether a tribe exists. Thus the 'political arm of the Government' would seem to be in a position to determine the extent of its power. In this respect the question of tribal existence and congressional power has been classed as a 'political question' along with the recognition of foreign governments and other issues of international relations.

"Thus in the case of *United States v. Holliday*, the Supreme Court held that federal liquor laws were applicable to a sale of liquor to a Michigan Chippewa Indian, despite a treaty provision looking to the dissolution of the tribe, for the reason that the Interior Department regarded the tribe as still existing. The Court declared:

"In reference to all matters of this kind, it is the rule of this court to follow the action of the executive and other political departments of the government, whose more special duty it is to determine such affairs. If by them those Indians are recognized as a tribe, this court must do the same. (P. 419.)" p. 208

From the above it appears that Federal recognition of Indian tribes can be given by either the executive or the legislative branch of government.

One of the primary methods utilized by the executive branch in giving Federal recognition to particular groups of Indians as tribes was by setting aside reservations for them by executive order. Several groups of Indians were recognized as tribes by the executive in this manner, particularly in the Southwest. This method of extending Federal recognition was made unavailable to the executive branch by the Act of June 3, 1919 (41 Stat. 3, 34)—see also the Act of March 3, 1927 (44 Stat. 1347).

The 1919 Act provided:

That hereafter no public lands of the United States shall be withdrawn by Executive Order, proclamation, or otherwise, for or as an Indian reservation except by act of Congress.

The 1927 Act provided:

That hereafter changes in the boundaries of reservations created by Executive order, proclamation, or otherwise for the use and occupation of Indians shall not be made except by Act of Congress: *Provided*, That this shall not apply to temporary withdrawals by the Secretary of the Interior.

See also a 1918 Act applicable to Arizona and New Mexico codified at 25 USC 211.

The Indian Reorganization Act of June 18, 1934 (48 Stat. 984), in Section 18, provided that the provisions of that act would not apply "to any reservation wherein a majority of the adult Indians, voting at a special election duly called by the Secretary of the Interior, shall vote against its application." This Section 18, as amended in 1935, gave the Secretary 2 years in which to call such elections. Section 16 of the Indian Reorganization Act provided for elections to be authorized and called by the Secretary of the Interior on the adoption of a constitution and bylaws by "Any tribe, or tribes, residing on the same reservation \* \* \*" which desire to organize under the Act.

In calling these elections it was necessary for the Secretary to make determinations which in effect give Federal recognition to a particular group of Indians as constituting a tribe. As to the fact that the question is dealt with by the executive and the criteria that is used, we quote again from Cohen:

The question of what groups constitute tribes or bands has been extensively considered in recent years by the administrative authorities of the Federal Government in connection with tribal organization effected pursuant to section 16 of the Act of June 18, 1934. A showing that the group seeking to organize is entitled to be considered as a tribe, within the meaning of the act, is deemed a prerequisite to the holding of a referendum on a proposed tribal constitution, and the basis for such a holding is regularly set forth in the letter from the Commissioner of Indian Affairs to the Secretary of the Interior recommending the submission of a tribal constitution to a referendum vote. In cases of special difficulty, a ruling has generally been obtained from the Solicitor for the Interior Department as to the tribal status of the group seeking to organize. The considerations which, singly or jointly, have been particularly relied upon in reaching the conclusion that a group constitutes a "tribe" or "band" have been:

(1) That the group has had treaty relations with the United States.

(2) That the group has been denominated a tribe by act of Congress or Executive order.

(3) That the group has been treated as having collective rights in tribal lands or funds, even though not expressly designated a tribe.

(4) That the group has been treated as a tribe or band by other Indian tribes.

(5) That the group has exercised political authority over its members, through a tribal council or other governmental forms.

Other factors considered, though not conclusive, are the existence of special appropriation items for the group and the social solidarity of the group." pp. 270, 271. Footnotes omitted.

The one remaining question from your and Mr. Sigo's letters is whether Federal recognition can be extended to a tribe that does not have a land base. A land base is not a requirement for Federal recognition.

The Associate Solicitor for Indian Affairs has reviewed this letter and agrees with its contents.

We regret the delay in replying to your letter; if you have further questions we would be glad to meet with you or your staff.

Sincerely yours,

I.A.FOLLETTE BUTLER,  
*Acting Deputy Commissioner of Indian Affairs.*

PART V, EXHIBIT 16

OFFICE OF THE SOLICITOR GENERAL,  
May 30, 1974.

Memorandum to: The Solicitor General.

From: Harry R. Sachse.

Subject: *Tonasket v. Thompson and Nicholson v. Laramie*, No. 73-1281.

These are two combined cases in which the Supreme Court has asked the Solicitor General to express his views. In each, a person denied adoption into a tribe brought suit in federal district court against the tribe and the members of its Council as a Council, asking the court to require enrollment and to award them money damages. One plaintiff also alleged that the tribe, in 1957, had unlawfully removed her from its rolls because she had moved to Canada and lived there 20 years.

The district court dismissed the suits for lack of jurisdiction. The court of appeals reversed and remanded for trial without any discussion of the various claims—i.e., mandamus against officer, mandamus against tribe, money judgment against officer, money judgment against tribe. In a two page opinion it relied on its prior opinion in *Johnson v. Lower Elwha Tribal Community*, 484 F. 2d 200 in which it had held that 25 U.S.C. 1301-3, the Indian Civil Rights Act (the Act) "by implication has waived whatever immunity Indian tribes had in this area prior to its enactment".

The Tribe has petitioned for certiorari. The Department of Interior strongly urges us to support the Tribe's petition. The Solicitor of the Department of the Interior, exercising the agreement made with Mr. Griswold, has requested that if we do not support the Tribe that we express his views in our brief—and he has sent us a 12 page carefully prepared statement of these views. The Civil Rights Division, which has prepared the draft brief for us, while finding considerable areas of disagreement with the Ninth Circuit's decision believes the district court did have jurisdiction over some of the claims, and that we should not ask the Supreme Court to grant certiorari.

Interior has stated they want a conference on the case if we do not petition—and Brad Patterson, who handles Indian Affairs for the White House, (under Leonard Garment) has called me to say that if there is a conference he would like to attend.

I recommend that we petition and I have worked out a position which I believe Civil Rights and Interior will both find acceptable and which I think is our proper position based on the law.

1. THE FACTS

(a) *Thompson*.—Alice Thompson, a person of one-half Indian blood was born in the State of Washington in 1911 and was enrolled as a member of the Colville Tribe. About 1937 she moved to Canada where she settled. 20 years later on January 4, 1957, the Colville Tribe wrote Mrs. Thompson that it was considering removing her name from its roll because she had taken up permanent residence in Canada and had abandoned her membership. This was in accord with the Tribal constitution's provisions on loss of membership, which were approved by the Secretary of the Interior. See Pet. App. B, p. A-7. The letter said that the Tribe would hold a meeting on the subject on January 25 and that she "• • • might appear at said meeting, introduce evidence, examine or cross-examine witnesses, and be represented by counsel." She received the notice January 5, and attended the meeting, where she admitted her 20 year residence in Canada and that she had voted in Canadian elections. By formal resolution, with findings of fact, she was disenrolled on January 27, 1957.

On February 10, 1970, Mrs. Thompson applied for adoption by the Tribe. The ordinance of the Colville Tribe on adoption, approved by the Secretary of the Interior provided among other things:

**SEC. 5. Applicants must possess good character and otherwise be acceptable to the Business council as a tribal member (See Pet. App. B-A.8).**

In other words the decision of who to adopt is left to the discretion of the Tribe. The Tribe denied her application without formal hearing.

Mrs. Thompson then brought suit in federal district court against the Tribe itself and 14 members of the Colville Business Council (the Tribal Council) "as members of the Colville Business Council." She alleged that she had been "improperly stricken from the tribal rolls on the ground that she was a Canadian citizen, but that she had never given up her American citizenship (the Tribal Constitution uses residence, not citizenship as its test).<sup>\*</sup> She alleged that the Tribe had discriminated against her both by removing her name from the Tribal roll and refusing to reinstate it—in violation of the Equal Protection Clause of 25 U.S.C. 1302 of the "Indian Civil Rights Act".

She prayed that the court:

1. Order the Tribe to pass an appropriate resolution to restore her to membership retroactively;
2. that she have judgment against the Tribe and the named members of its enrollment committee for all Tribal per capita payments since her disenrollment together with 8 percent interest per annum;
3. that she have judgment against the defendants for \$5000 attorney's fees and costs.

(b) *Laramie*.—This suit was brought by the same attorney and followed the same pattern as Thompson—suit against named councilmen as councilmen and against the Tribe seeking enrollment, back-payments and attorney's fees. The Laramie facts are the following: Mrs. Laramie was an enrolled Canadian Indian (Okanogan) and Mr. Laramie was apparently at least part Colville.

They had three children all of whom were enrolled Okanogans and were Canadian citizens. In April 1963, Mrs. Laramie and her children were "enfranchised" under Canadian law—which means they were disenrolled from the Okanogan tribe and made ordinary Canadian citizens (in American Indian law this is called term nation). They then applied for adoption in the Colville Tribe and were turned down under a Tribal resolution approved by the Secretary denying adoption to anyone who has ever been an enrolled member of a foreign Indian Tribe. This suit followed for back payments etc.

The pressure to get into the Colville Tribe is, of course, because there are Tribal assets which adopted members share. Hence the person terminated in Canada wants part of the pie here.

## 2. SOME BACKGROUND ON THE LAW

Indian tribes are treated in the Constitution in *part materiae* with states and foreign nations. Art. 1, Sec. 8, cl. 3. In *Worcester v. Georgia*, 6 Pet. 515 the Court described their situation at some length describing them as "domestic, dependent nations" possessed of a sovereignty predating the U.S. Constitution and not dependent on it, but under the protection of the United States and subject to the lawmaking power of Congress. While Tribal sovereignty means much less today because of the extent of federal legislation, the Court last Term stressed this background as a guide for determining the rights of Indian tribes (*McClanahan*). Generally the Court has continued to refer to the right of tribes to make their own laws and be governed by them and the unwillingness of the court to interfere with matters between tribal Indians—which are left to the Tribes and the political branches of government.

As a result of their sovereignty Indian tribes are also immune from suits unless Congress waives the immunity. *United States v. U.S.F. & G.*, 309 U.S. 506, 512. This immunity is more important for a tribe than for a state or the federal government because of the slender financing of most tribes—which affects both hiring lawyers to defend suits and paying judgments. As a consequence the courts have held that a waiver of the immunity of an Indian tribe must be in "plain and unambiguous terms" *Thebo v. Chocktay Tribe*, 66 Fed. 372, 376 (C.A. 8) as must any statute taking away tribal rights. See, e.g., *McNominnee Tribe v. United States*, 391 U.S. 404, *Squire v. Capoeman*, 351 U.S. 1-7.

3. What I have just described is the situation before the passage of the Indian Civil Rights Act of 1968, 25 U.S.C. 1301-1308. What these cases concern is the extent to which that Act has modified the situation and permitted suits against

<sup>\*</sup>With Secretarial approval.

Tribes and against Tribal officers acting in their official capacity. The Act does three things:<sup>1</sup>

1. It provides that no Indian tribe exercising the right of self-government shall make or enforce any law prohibiting the free exercise of religion, abridging freedom of speech or press; that selected Fourth, Fifth and Sixth Amendment rights shall apply to the tribes and that a tribe shall not take property without due process of law or deny anyone equal protection of the law.

2. It provides that the writ of habeas corpus shall be available in federal court to test the legality of detention by order of an Indian tribe.

3. It amends P.L. 280, which permitted States to assume limited jurisdiction within reservations, to henceforth require the consent of the Indians and allow retrocession of jurisdiction to the Tribes if the Tribe and a state which has assumed jurisdiction agreed.

Its only jurisdictional provision is the habeas corpus section.

The petitioners argue that the Colville Tribe is immune from suit in federal court without express congressional authorization (correct) and that the Indian Civil Rights Act does not give such authorization except in the limited instance of habeas corpus jurisdiction. They say that the express grant of habeas jurisdiction, and the rejection of an earlier proposal for broader jurisdiction not only is less than an express waiver of immunity but indicates an intent that federal courts have only the jurisdiction expressly given. This, they argue does not make the non-criminal provisions inoperative but puts them into every Tribal constitution and binds the Tribes and the Secretary of the Interior to follow them. They do not seem to differentiate the situation of the tribal officials. They argue however that having every tribal decision subject to review by a federal judge destroys the last vestige of their independence—even as between themselves—and that unless Congress has specifically done this to them the courts should not do it.

There is merit to this argument particularly as to suits against the tribe itself, but it does not adequately consider the applicability of 28 U.S.C. 1343(4) which gives federal courts jurisdiction in cases brought under civil rights statutes, and which, as applied in non-Indian civil rights cases would allow suit against individual officials but not a state.

Interior, in contrast, divides the case into two parts. As to the jurisdiction of federal courts under 1343(4) outside of the habeas corpus jurisdiction provided by the Indian Civil Rights Act, it concludes that the answer is not clear cut; that the matters at issue here are purely "intratribal controversies", that the 10th Circuit has avoided finding jurisdiction to rule on such issues which are usually left to Tribal and Secretarial discretion and that the statute and legislative history are not as clear as they should be to undo this immunity. As to liability of the tribe and its council for money judgments—they argue that the Indian Civil Rights Act clearly did not set out to end, nor did it end, this tribal immunity and that the Ninth Circuit, to the extent that it permits trial on these issues, is in error.

The Civil Rights Division's views are not as different from Interior's as they might seem. Civil Rights says it is clear that a federal court under 28 U.S.C. 1343(4) has jurisdiction to hear a complaint under the Indian Civil Rights Act at least against the individual officers. They say, however, that the Tribe may still have immunity, perhaps just against money judgments or perhaps against suit all together. They observe that the Ninth Circuit failed "to discuss the various aspects of the complaints with particular reference to the nature of the relief sought and the type of defendant \* \* \*". They conclude that since some of the claims against individuals are cognizable "and perhaps a suit against the Tribe for injunctive relief" there should be no review by the Supreme Court until after a trial on the merits.

4. There have now been seven or eight cases against Indian tribes based on the Indian Civil Rights Act. The Ninth Circuit has dealt with them overbroadly, as here. The 10th Circuit has found peculiarities in the pleadings to deny jurisdiction as in *Slattery v. Arapahoe Tribe*, 453 F. 2d 278. No court has dealt carefully or learnedly with the extent of jurisdiction a federal court has in these cases or the immunities remaining to the Tribes and their officers. The Supreme Court has not yet ruled on any of these questions. I think the questions are

<sup>1</sup> The Act actually does two other things as well—it requires the Department of the Interior to draft a model law and order code for the Indian tribes and to recompile the laws on Indian affairs—i.e. bring Cohen and Kappler up to date.

important, the time is ripe for presenting them to the Supreme Court and these are appropriate cases in which to present them. The remand for trial does not make certiorari inappropriate. Civil Rights agrees that the suit may lie exclusively against the tribal officers. The Tribe itself should not have to stand a needless trial if this is so. The appropriateness of certiorari despite the remand is at least as strong as it is in *Cronrath v. Johnson*, No. 73-1688 in which we recently petitioned on behalf of a prison guard whose claim of immunity had been rejected by a court of appeals which remanded for trial on the merits. The Supreme Court rules, of course, do not require a final judgment for certiorari to lie. Moreover, the Court's recent cases in *Scheuer v. Rhodes* discussing the liability of a state officer and in *Edelman v. Jordan* concerning money damages against a state, as well as our petition in *Cronrath*, will mean that the Court will already have refreshed itself on immunity issues.

I have talked about this a good deal with Civil Rights. I do not think they are rigid on the question of petitioning or not. What they feel strongly is that we should not attack 28 U.S.C. 1343(4) as a jurisdictional basis for bringing a civil rights suit in federal court, at least against individuals.

I propose the following position which I hope will be satisfactory to both Civil Rights and Interior.

a. We should recommend that the Court grant the writ stressing that this is a case of first impression for the Supreme Court involving the interpretation of a major act of Congress applicable to all tribes.

b. We should state that in our view 28 U.S.C. 1343(4) gives federal courts the right to enforce substantive provisions of the Act but that such actions cannot be brought against the Tribe as such because of its immunity—discussing civil rights cases which are uniformly brought against state officials not the states. This position is within the area that Civil Rights considers arguable, and supports our client's (Interior's) position.

c. As to money judgments, we should argue that the tribes immunity has not been waived and we should point out *Edelman v. Jordan*, decided March 25, 1974, as an analogy plus the specificity with which this kind of attribute of sovereignty must be waived. I think both Civil Rights and Interior would agree we are on strong ground here.

d. We should also argue that by analogy to *Barr v. Matco* (and our petition in *Cronrath*) the tribal officers working within their scope of duty, have an immunity from suit for a money judgment.

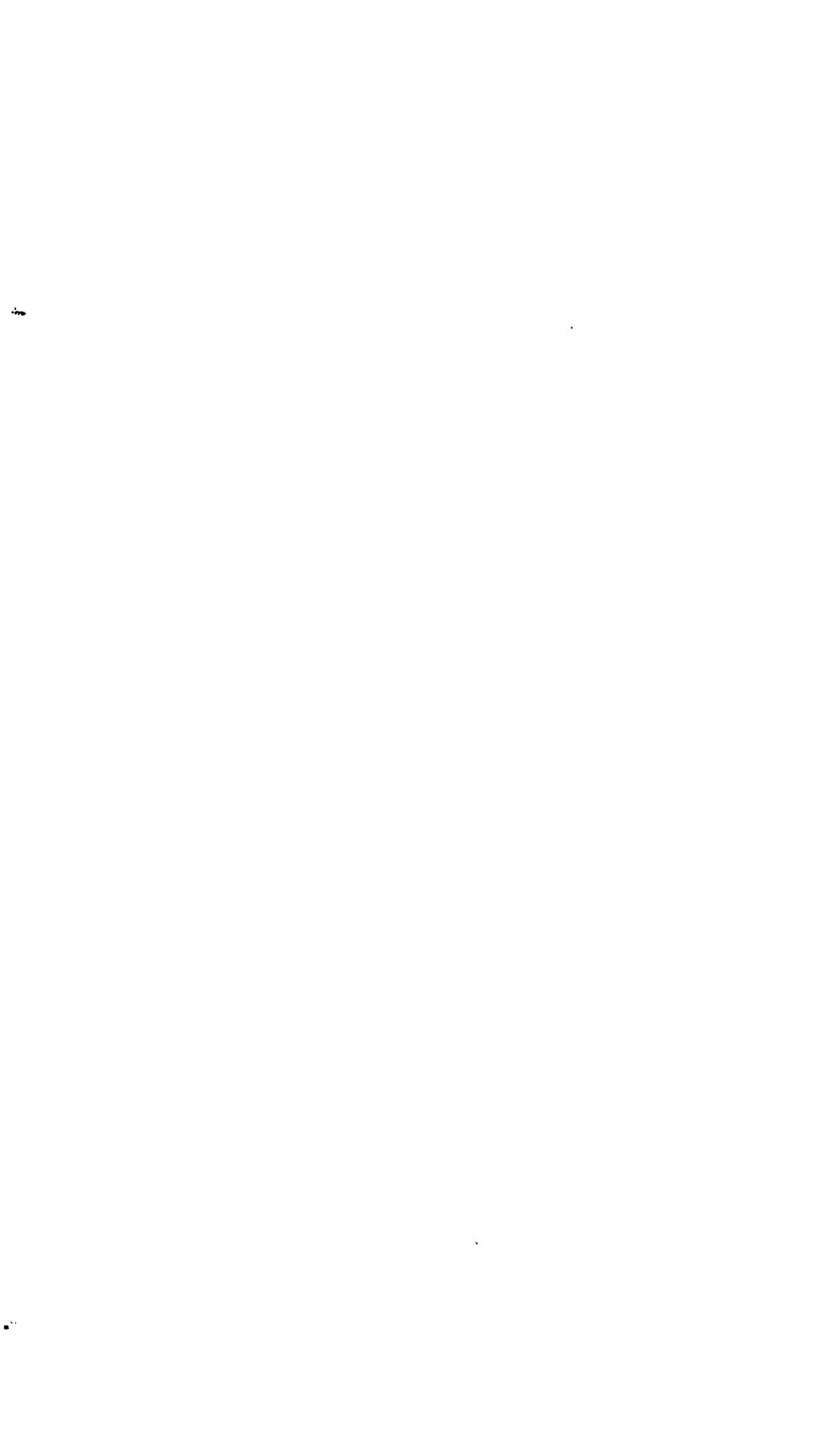
In other words we should argue that an Indian tribe, like any government, must have some sovereign immunity and some protection for its officers if it is to be able to govern fairly—rather than under intimidation by legal action. See Justice Harlan's opinion in *Barr* for an exposition of this. But Congress has also passed a civil rights act giving rights to individual Indians which must be enforced.

In doing so, Congress also has indicated its intent to interfere as little as possible with the right of the Indians to manage their own affairs. The scheme which we present, which allows mandamus of officials to enforce rights but protects the Tribe from suit and the Tribe and the officials from money judgments is the accommodation of these principles accepted in other areas of the law and particularly appropriate here in light of the self-determination promised Indians, and their lack of financial resources.

e. We should argue that in the area of tribal membership and adoption large discretion is left to the tribes and a court should be reluctant to interfere.

f. We should also argue, as Civil Rights and Interior agree, that the Indian Civil Rights Act was clearly not meant to be retroactive in any sense and would not apply to review of the dis-enrollment of Mrs. Thompson.

From preliminary discussions with each, I think both Interior and Civil Rights will be able to accept this position.



## APPENDIX II

### PART VI. RESEARCH MEMORANDA SUPPORTING MAJOR RECOMMENDATIONS ON CONSOLIDATION, REVISION, AND CODIFICATION OF TITLE 25

- Exhibit 1. Bureau of Indian Affairs Preference File. (This exhibit contains 50 letters, documents, opinions, and reports, each of which is separately indexed at the beginning of the exhibit, page 317.)**
- Exhibit 2. Indian Health Service Preference File. (This exhibit contains 16 letters, documents, opinions, and reports, each of which is separately indexed at the beginning of the exhibit, page 399.)**
- Exhibit 3. Contracting and Grant Preference File. (This file contains nine letters, documents, opinions, and reports, each of which is indexed at the beginning of the exhibit, page 417.)**
- Exhibit 4. Report of vacancies advertised in the Indian Health Service during fiscal years 1975 and 1976, prepared by IHS, pages 431-467.)**

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## APPENDIX II

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PART VI, EXHIBIT 1

"Indian Preference Exhibits, Bureau of Indian Affairs"

[Exhibit 1, Index No. 51]

U.S. CIVIL SERVICE COMMISSION,  
BUREAU OF RECRUITING AND EXAMINING,  
Washington, D.C., September 30, 1976.

Mr. KARL A. FUNKE,  
Specialist, Task Force on Indian Law Revision, Consolidation and Codification,  
American Indian Policy Review Commission, Washington, D.C.

DEAR MR. FUNKE: This is a further reply to your letter concerning the Department of Interior's request to change the definition of "Indian" used in the Commission's regulations authorizing appointments in the Bureau of Indian Affairs without competitive examination.

After a thorough review of all the matters involved, including the legislative history of the Indian statutes, the Commission has decided to delete the present definition of "Indian" from the appointment authority and to replace it with an authority for the Secretary of Interior to define the term.

The revised regulation will be published shortly in the Federal Register.

Sincerely yours,

ARCH S. RAMSAY, Director.

[Exhibit 1, Index No. 50]

U.S. CIVIL SERVICE COMMISSION,  
Washington, D.C., May 14, 1973.

Mr. JOHN F. MCKUNE,  
Director of Personnel,  
Department of the Interior,  
Washington, D.C.

DEAR MR. MCKUNE: I understand that representatives of our Bureau of Recruiting and Examining and Bureau of Personnel Management Evaluation met recently with Mr. Spillers of your staff and Mr. Reed of the Bureau of Indian Affairs to discuss the appointment of Indians in your Department in bureaus other than BIA.

It is good that our staffs were able to get together to discuss this subject. Frankly, we have been concerned about some of the appointments made recently under the Department's special Schedule A authority for Indians. We are concerned too that improper appointments may be inadvertently encouraged by the language of your Department's Personnel Management Letter No. 71-40, dated July 15, 1971. Speaking of the special Schedule A authority, that Letter says, in part:

Some bureaus may have utilized this authority occasionally in the past, but special attention should be paid to circumstances in which it can be applied more extensively in the future. These circumstances, involving Departmental programs which may affect Indian communities, include such matters as irrigation facilities, water resources, forestry management, electric power, land surveying, range management, mining, mineral resources, fishery management, and public recreation areas.

It certainly is true that this Schedule A authority is available for use outside BIA. But in this connection it is important to consider the circumstances under which such use was authorized by the Commission.

For years, the only bureau covered by the authority was BIA. However, in July and again in November 1954 Mr. D. Otis Beasley, then Administrative Assistant Secretary of your Department, wrote to the Commission and asked that the authority be amended to cover other bureaus as well. He explained that some functions being performed in BIA were being transferred to other bureaus and that the Department wanted to be able to "permit the continuation of existing employment practices relative to Indians" in connection with the transfer of those functions which "still retained their identity." After obtaining our General Counsel's opinion that the Indian preference laws would continue to apply under these circumstances, the Commissioners approved Mr. Beasley's request. Indians appointed under the Schedule A authority who were in transferred functions that did not retain their identity were permitted to acquire a competitive status noncompetitively. It was held that under these conditions, use of the Schedule A authority was no longer appropriate for them. Their positions came into the competitive service, even though occupied by Indians.

It is clear from this background that the extension of coverage of the Schedule A authority to other bureaus was approved by the Commission solely to permit its use in those instances in which a BIA function was transferred intact to another bureau and retained its identity there, with the Indian preference laws still applicable. No other use of this authority was intended or authorized.

It should be emphasized that this Schedule A authority for Indians represents a form of preference based on race. In this respect it is, on its face, contrary to the prohibitions in the Equal Employment Opportunity Act of 1972 and the Government's longstanding policy of assuring equal opportunity to all citizens regardless of race, color, religion, sex or national origin. However, our General Counsel has held that the Schedule A authority is consistent with the laws and regulations governing equal employment opportunity when it is used to carry out the preference provisions of the Indian Reorganization Act of 1934 and other Indian preference statutes because they are overriding under these circumstances.

It follows from these considerations that using the Schedule A authority—and thus giving preference to Indians—is justified only when the Indian preference statutes apply. Of course, in such cases, the Department *must* give preference to Indians both in initial appointment under Schedule A and in subsequent personnel actions. It would be illegal to use the special Schedule A authority when the Indian preference statutes do not apply.

By way of recapitulation, and to assure that there is no misunderstanding concerning use of the Schedule A authority in bureaus other than BIA, I should like to speak to three types of situations:

In the case of functions transferred from BIA to another bureau, the Schedule A authority may be used if the functions retain their identity in the new bureau and the Department determines that the Indian preference statutes must still be applied;

In the case of functions transferred from BIA to another bureau, but which no longer retain their identity or for which the Department determines Indian preference statutes no longer apply, the Schedule A authority may not be used;

In the case of functions in another bureau that are not transferred from BIA, but for which your Department determines Indian preference statutes must be applied, use of the Schedule A authority should be withheld unless the Commission grants its specific approval. Since the Commission's action in 1955 was taken only with respect to functions transferred from BIA, I feel the Commissioners should have the opportunity to consider the matter carefully before the authority is used more broadly.

I can assure you that the Commission shares your desire to broaden employment opportunities for Indians and that we will be pleased to continue working closely with you to this end. If you have any questions or problems that we may be of help in resolving, my staff and I are at your disposal.

Sincerely yours,

BERNARD ROSEN,  
*Executive Director.*

[Exhibit 1, Index No. 49]

OCTOBER 26, 1973.

Memorandum to: Various Addresses

From: Assistant Administrative Officer, Washington, D.C.

Subject: PM Letter re Schedule A Authority re Appointing Indians.

Attached for your information is PM Letter 73-54(213) dated 8/17/73. We call this to your attention as the Departmental Manual sections referring to the Schedule A authority re appointments of Indians have not as yet been revised. The paragraphs relating to the authorities previously used for Indian employment are located in 370 DM 302 and 370 DM 213.

MAXINE,  
Assistant Administrative Officer.

Enclosure.

[Exhibit 1, Index No. 48]

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington, D.C., August 17, 1973.

Personnel Management Letter No. 73-54 (213).

Subject: Schedule A Authority—Appointing Indians Outside BIA.

To: Personnel Officers.

Enclosed is a copy of the Civil Service Commission's letter of May 14, 1973. This is a clarification of circumstances where Schedule A authority may be used in bureaus other than BIA. (See PMI, No. 71-40, dated July 15, 1971.) Special attention should be given to the three types of situations spelled out on pages 2 and 3 of the Commission's letter.

Bureaus outside of BIA are permitted to use this authority only in those instances in which a BIA function was transferred intact to another bureau and retained its identity there, with the Indian preference laws still applicable. No other use of this authority was intended or authorized by the Commission.

In all other instances, use of the Schedule A authority to appoint Indians in bureaus outside of BIA, where Indian preference laws are applicable, must have prior Commission approval. These requests will be prepared for the signature of the Director, Organization and Personnel Management.

HARLEY M. FRANKEL,  
Chief, Division of Program Operations.

Enclosure.

[Exhibit 1, Index No. 47]

[Excerpt from Personnel Management Action Plan for the BIA—Sept. 7, 1976]

#### AN ALTERNATIVE OPTION FOR FURTHER CONSIDERATION

The basis for the Action Plan above consists of the principles and policies of the Federal government's personnel management system as it exists today. This system has as its foundation certain values and key institutions of the "majority culture," e.g. equal pay for equal work, hiring on the basis of merit and fitness, position structuring for efficiency of operations, consistency of basic policies within an organization, etc.

It seems logical that if the Federal government's policy in programmatic matters is to ensure that Indian tribes have an opportunity to determine for themselves what their priority needs are and how they will be met through Bureau operations, a similar opportunity might exist for them to determine the type of human resource management they want used in these programmatic areas. In other words, if each Bureau agency and school is now consulting with tribal governments and advisory boards regarding the nature of natural resource, community service, education, etc., programs to be funded and conducted at the reservation or school, it would make sense to let the same tribal governments and school boards have a determining voice in the management of the persons conducting the programs.

The alternative for further consideration, then, is to give tribal groups the opportunity to establish their own version of a personnel management system

for Bureau operations. Excepted from the various laws, rules and regulations of the "majority culture" pertaining to personnel management, each tribe which wished to do so would design the type of operation that best fitted its concepts of position structure, compensation, employment practices, etc. Since there is some variation in basic values from tribe to tribe, this alternative recognizes the potential inappropriateness of trying to have one consistent policy or practice throughout the Bureau. If it is true that the Bureau in effect deals with a large number of entities comparable to local governments, scattered throughout the country, why attempt to force conformity when diversity is the rule in actual local government matters in the United States?

Some tribes may choose to remain with the Federal government's personnel management system—which would be their choice. Others might want to use several of its features, but not all. For example, the basis for qualifications to be met for Bureau positions in some agencies might well be entirely different from those in the "majority system" because they reflected a tribe's sense of values for local language knowledge, various personal characteristics and cultural attitudes important to the tribe, and so on. Similarly, the relative value placed on various occupational services rendered might be distinctly different from that reflected in the position classification standards of the "majority system."

What is being proposed as an alternative is the possibility that the best way to solve the Bureau's personnel management problems is not to go about the task in the traditional manner, as described in the Action Plan, by improving the Bureau's management system to bring it into conformance with the principles and policies of the "majority system;" but to recognize Indian values and differences as a possible basis for constructing a system (or collection of systems) which abandons the quest for consistency and provides freedom for "local option." Each school—as has been said recently—may very well be the best organizational entity to set its own qualifications, pay rates, and management procedures for the personnel it needs. Each tribe may be the best judge of how to organize and staff and manage its agency's personnel dimension.

To have this opportunity now, Indian tribal governments must opt for contracting under PI, 93-638, and then still abide by very specific "majority culture" terms under the contract. Would it be possible to permit one part of the Federal government—the Bureau of Indian Affairs—to operate under a personnel system which had built into it a wide variety of different methods and procedures conforming to and chosen by the various groups of constituents it serves? If the Federal government is serious about giving Indians real choice, why not also the choice of personnel management systems? The manner in which Indian preference is applied, the variety of qualification factors and their relative weight, the elements important to evaluating performance—all of these personnel questions, and still others, could be made the subject of self-determination by each tribe.

Many persons will probably object that pursuing this alternative in effect would destroy the Bureau as an organization as it has been known. But that has already to a great extent occurred. The Bureau has been buffeted by extremely powerful forces of change and at present has neither evolved into a new, effective instrument nor maintained its traditional management style. The situation described in the pages above adds up to an organization "in the middle," conforming to neither the principles of effective management of the "majority system" nor those of an effective difference orientation.

The steps described in the Action Plan are essential to attain effective human resource management as understood in the Federal government. The alternative here raised is the possibility of constructing an entirely different system, as determined by Indian people, but still part of the Federal government. The further consideration needed of this option must answer the question whether the Federal government has the breadth of view and spirit of adventuresomeness within it to give Indian people the opportunity to determine what they would decide upon as their system of Federal personnel management; and the flexibility and risk-taking ability to implement the result.

[Exhibit 1, Index No. 46]

U.S. DEPARTMENT OF THE INTERIOR,  
BUREAU OF INDIAN AFFAIRS,  
ANADARKO AREA OFFICE,  
*Anadarko, Okla., July 21, 1976.*

DIRECTOR, DALLAS REGION,  
U.S. CIVIL SERVICE COMMISSION,  
*Dallas, Tex.*

SIR: The purpose of this letter is to request an investigation into the employment practices of the Bureau of Indian Affairs at the Anadarko Area Office.

This request is initiated because there are many irregularities in personnel actions which we feel do not meet Civil Service requirements.

The following types of actions which have occurred within the last three years concern us:

1. Personnel actions are circumventing Indian and Veterans Preference.
2. Position Descriptions are being written to fit individuals preferred for certain positions.
3. Temporary employees are given appointments to permanent positions with no consideration for qualified permanent employees.
4. Position Descriptions are rewritten and positions downgraded without the knowledge of the incumbents.
5. Transfers are being effected without prior consultation with the affected employees.
6. Women are not represented on the Area Manpower Committee or on any other Committee making decisions that effect all employees within this Area, even though a specific request was made to management that this be done.
7. Interested and qualified temporary employees seeking permanent employment are advised they are ineligible to be detailed into a permanent vacancy one day, and a "preferred" temporary employee moving into the position the very next day for a 30-day detail.
8. Area Personnel management informing employee that the Area Director is the last authority to make final decisions that affect personnel actions at any installation under the jurisdiction of the Area Office even though Administrators have the line authority at the installation.

We have evidence to support our allegations and feel that this is the only channel we can pursue to have a fair and unbiased hearing to right the wrongs that have caused employee morale to drop to a low ebb.

Sincerely yours,

FEDERAL WOMEN'S COMMITTEE,  
*Anadarko Area Office.*

Catherine G. Lamar, Chairman, Alene M. Martinez, Libby B. Little-  
chief, Helen Wetselline, Ruby A. Waaster, Patricia Englenest,  
Tillie A. Redbird, Arlene H. McLemore, Freda Hooper, Mary  
Hight, Kathy L. Keaton, and Ida C. Hannah.

[Exhibit 1, Index No. 45]

U.S. DEPARTMENT OF THE INTERIOR,  
BUREAU OF INDIAN AFFAIRS,  
*Washington, D.C., September 17, 1976.*

Memorandum To: Unit Heads: Central Office, Eastern Area.

From: Chief, Branch of Personnel Services.

Subject: Testing of Indian Preference Eligibles.

Many questions have been asked recently regarding the Bureau's requirement that candidates, including Indian preference eligibles, pass specific tests in order to qualify for some jobs. We wish to explain BIA's policy on the subject of testing for job placement.

In a memorandum dated June 29, 1976, Commissioner of Indian Affairs, Morris Thompson stated: It is the policy of the Bureau to use the qualification requirements established by the Civil Service Commission. . . . We will continue the policy of using the written test when filling positions for which a test is part of the qualification requirements for the position.

Unless there is a specific Bureau need to develop special qualification requirements, the Bureau policy is to use qualification standards specified by the Civil Service Commission.

If a qualification standard requires certain education requirements, the passing of a written test, or a specified number of years of experience, individuals must meet these requirements before they are considered eligible for the job.

As a service to those currently working in the Bureau, Personnel Services is prepared to administer the Office Assistance, Clerk-Typist and Clerk-Stenographer tests, non-competitively. Those in need of additional testing will be referred to the Civil Service Commission. Call Personnel Services on 38481 if you wish to discuss a testing appointment.

Please read the attached copy of the Commissioner's memorandum and the other enclosures for more information on the testing of Indian preference eligibles.

EDWIN D. FORD, *r*

[Exhibit 1, Index No. 44]

U.S. DEPARTMENT OF THE INTERIOR,  
BUREAU OF INDIAN AFFAIRS,  
Washington, D.C., June 29, 1976.

Memorandum to: All Area Directors.

From: Commissioner of Indian Affairs.

Subject: Non-competitive examination of Indian preference eligibles.

Questions have been raised repeatedly in the past few years regarding the Bureau's policy of requiring Indian preference eligibles to successfully pass an examination prior to being considered for a position in the Bureau.

It is the policy of the Bureau to use the qualification requirements established by the Civil Service Commission for all positions within the Federal service, except in the instances where we have found that it has been necessary to develop excepted qualification requirements. Excepted qualification standards have been developed where there has been a problem in recruiting Indian candidates at the established entrance level, for positions which are unique in the Bureau, and for a variety of clerical, and technical positions.

In December, the Juneau Area Office requested a legal interpretation from the Field Solicitor regarding the use of the written test in making excepted appointments in the Bureau. Enclosed for your information is the response from the Office of the Solicitor.

We will continue the policy of using the written test when filling positions for which a test is part of the qualification requirements for the position. While we strive to increase our Indian employment in the Bureau, we must also keep in mind that we are to provide services to the Indian people. In order to do this in the most effective manner, we must find capable and well qualified employees for each position.

MORRIS THOMPSON.

[Exhibit 1, Index No. 43]

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SOLICITOR,  
Washington, D.C., June 11, 1976.

Memorandum to: Commissioner of Indian Affairs—Attention: Personnel Management.

From: Assistant Solicitor, Indian Affairs.

Subject: Non-competitive examination of Indian preference eligibles.

By a memorandum dated March 2, 1976 the Juneau Field Solicitor requested our views on the question posed by the Juneau Area Director of the Bureau of Indian Affairs of whether the Bureau policy of requiring that an Indian preference eligible in seeking a position take and pass a written test, if it is part of a Civil Service Commission qualification standard for that position, is in compliance with statutory requirements. Copies of the memoranda are attached.

The pertinent statutory provisions is the preference provision of the Indian Reorganization Act, 25 U.S.C. § 472. It, in part, provides:

"The Secretary of the Interior is directed to establish standards of health, age, character, experience, knowledge, and ability for Indians who may be appointed, without regard to civil service laws, to the various positions maintained,

now or hereafter, by the Indian Office . . . . Such qualified Indians shall hereafter have the preference to appointments to vacancies in any such positions."

The last sentence is mandatory in that no exceptions can be made in filling vacancies. *Freeman v. Morton*, 499 F. 2d 494 (D.C. Cir. 1974). However, the first sentence provides for discretion. Furthermore, it is clear this discretion involves the establishment of standards which do not have to conform to those of the Civil Service Commission. Since preference is implemented in non-competitive selections by conferring a Schedule A appointment, 5 CFR § 213.3112 (a) (1), requiring examination seems a confusion with a Schedule B appointment; *see* 5 CFR §§ 213.3201 and 213.3212.

Nevertheless, the Secretary is empowered to establish standards and to adopt Civil Service standards which he finds appropriate for the Indian positions. It is a matter of policy as to the standard adopted and the Secretary must insure that the candidate is qualified as the final sentence of § 472 mandates.

Thus, existing Civil Service tests which are found by the Secretary to be appropriate measures of standards for Indian positions may be utilized for determining appointments to those positions.

DUARD R. BARNES.

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[Exhibit 1, Index No. 42]

JUNEAU, ALASKA, March 2, 1976.

Memorandum To: Duard R. Barnes, Assistant Solicitor Division of Indian Affairs.

From: Field Solicitor, Juneau.

Subject: Indian Preference for Employment.

Enclosed please find opinion request dated December 11, 1975, which asks if Indians may be appointed to positions in the Bureau without examination.

The Commissioner's Office has adopted a policy that Indian candidates must take and pass a written test when said test is part of an existing Civil Service Commission Qualification Standard, if such tests are available. Because the above policy has been promulgated by the Commissioner's Office and because the determination on the request for opinion may effect Indian preference employment nation-wide, Charles Soller has advised that I forward the opinion request to your office for disposition.

If additional information is required in this matter, please advise.

JOHN H. KELLY,  
Field Solicitor.

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[Exhibit 1, Index No. 41]

BIA, JUNEAU AREA OFFICE,  
December 11, 1975.

Memorandum to: Field Solicitor.

From: Area Director.

Subject: Indian Preference for Employment.

I am requesting a legal interpretation regarding the administration of Indian Preference to effect employment in the Juneau Area of the Bureau of Indian Affairs. The decision requested could affect the manner in which Indian Preference is administered in the BIA in total. I have set forth first the information relied upon to support my conclusion, which is followed by the result I believe is justified.

The basis for Indian Preference in employment is, in part, as follows: 48 Statute 984 of 1934 known as the "Indian Reorganization Act" also, as the "Wheeler-Howard Act." Section 12 additionally identified as 25 USC Section 472, provides:

"The Secretary of the Interior is directed to establish standards of health, age, character, experience knowledge, and ability for Indians who may be appointed, *without regard to Civil Service laws*, to the various positions maintained, now or hereafter, by the Indian Office, in the administration of functions or services affecting any Indian tribe. Such qualified Indians shall hereafter have the preference to appointments to vacancies in any such positions."

This has been reiterated in the "Composite Indian Reorganization Act for Alaska." Alaska Amendment of May 1, 1936.

The U.S. Civil Service Commission Federal Personnel Manual (FPM) Chapter 302 is concerned with employment in the Excepted Service. Part 370 DM

(Departmental Manual) 302 (copy attached) prescribes regulations implementing excepted appointments, including the Indian Preference appointing authority. 44 IAM (Indian Affairs Manual) 302 (copy attached) specifies eligibility standards including Indian Preference. FPM Chapter 213 (copy attached) identifies the basis and provisions for the excepted service. Part 370 DM 213 (copy attached) identifies the Indian Preference appointing authority as Schedule "A," Section 213.3112(a) (7). 370 DM 300 (copy attached) identifies the Department's responsibilities in the employment of Indians. FPM Chapter 271 (copy attached) is concerned with the need for and development of qualification standards. 370 DM 271 (copy attached) identifies parties responsible for the development of qualification standards and provides guidelines for the content. FPM Chapter 338 (copy attached) prescribes the manner in which excepted qualification standards will be utilized. 370 DM 338 (copy attached) prescribes the same. 44 IAM 338 (copy attached) prescribes the same.

By memorandum dated May 30, 1973 (copy attached) the then Acting Chief Personnel Officer for the BIA in Washington, D.C. stated that when a written test is part of an existing CSC Qualification Standard, Iranian candidates must take and pass such test in order to meet that qualifications. By memorandum dated July 30, 1975 (copy attached) the current Chief Personnel Officer reiterated the policy and provided an alternative for isolated locations where there are no CSC approved test monitors available.

By memorandum dated April 4, 1975 (copy attached), the Commissioner of Indian Affairs stated policy in the administration of Indian Preference.

In correspondence dated August 7, 1975 (copy attached) from the Commissioner of Indian Affairs to all Tribal Chairmen, discussed was Indian Preference and the results of research on the issue.

The Indian Affairs Manual cites as the authority to effect Indian Preference appointments the Indian Reorganization Act of 1934 and Executive Order 8043. The Act has been recognized and interpreted in the Supreme Court decision on *Mancari vs. Morton* wherein Indian Preference does not constitute invidious racial discrimination violative of the Due Process Clause of the Fifth Amendment nor was it repealed (by implication) with the passage of the Equal Employment Opportunity Act of 1972, and the Court of Appeals decision on *Freeman vs. Morton* wherein it states:

"It is accordingly ordered this 21st day of December 1972, that all initial hirings, promotions, lateral transfers, and reassignments in the Bureau of Indian Affairs as well as any other personnel movement therein intended to fill vacancies in that agency, however created, be declared governed by 25 U.S.C. Section 472 which requires that preference be afforded qualified Indian candidates."

On January 31, 1939 the President issued Executive Order 8043 which permits the appointment of Indians of one-quarter or more degree of Indian blood to any position in the Indian Service *without examination*. FPM Chapter 213 subchapter 2.a(1) identifies Schedule A (which includes Indian Preference) as positions other than those of a confidential or policy determining character for which it is not practicable to examine.

I am of the opinion that there has been sufficient promulgation, by law and regulation, to determine that, in the administration of Indian Preference appointments in the Bureau of Indian Affairs, such appointments may be effected without examination (written test).

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Acting Area Director,  
Juneau, Alaska.

[Exhibit 1, Index No. 40]

U.S. DEPARTMENT OF THE INTERIOR,  
BUREAU OF INDIAN AFFAIRS,  
Washington, D.C., September 1, 1976.

HON. JAMES AROUREZK,  
Chairman, American Indian Policy Review Commission,  
Washington, D.C.

DEAR SENATOR AROUREZK: This is in response to your letter of July 29 requesting information for the Task Force on Indian Law Revision.

As was discussed with Mr. Karl A. Funke, Specialist, Task Force on Indian Law Revision at a meeting with officials of this Bureau, due to the comprehensive

nature of the information requested, it will be necessary to ask the various Area Field Offices of the Bureau to do the extensive research required by your request.

As we receive the reports from our Area Field Offices, we will forward the information to Mr. Funke.

An identical reply has been furnished Congressman Lloyd Meeds.

Sincerely yours,

MORRIS THOMPSON,  
*Commissioner of Indian Affairs.*

[Exhibit 1, Index No. 39]

APPENDIX I

The following excerpts of legislative history of the Indian Reorganization Act of 1934 (Wheeler-Howard Act) further clarify congressional intent.

SECTION A: RELATING TO THE GENERAL CONGRESSIONAL PURPOSE OF THE WHEELER-HOWARD ACT

Senator Wheeler:

"... the rules and regulations of the Bureau of Indian Affairs and the civil service have been such that it has been necessary to employ white men to do the Indian work when there were Indians who were thoroughly competent to carry on their own business. . . . The result has been that the Indians have been given no opportunity to handle their own affairs. This bill, we think, gives them the opportunity to which they are entitled." (Cong. Rec. 11123)<sup>1</sup>

"This bill, however, seeks to get away from the bureaucratic control of the Indian Department, and its seeks further to give the Indians the control of their own affairs." (Cong. Rec. 11125)

Commissioner of Indian Affairs John Collier:

"The definite goal [of the Wheeler-Howard Act] is to have Indians eventually handling everything. . . ." (Senate Hearings 322)

"So we have this bill to enable the Indian to run his own affairs, to help himself, and to give him the mere privilege of getting a chance to do his own work in the employ of the Government." (House Hearings 38)

Representative Howard:

"Its [our Indian administration] formula for civilizing the Indians has always been the policy of intolerance and suppression combined with forcible religious and educational proselytism designed to compel the Indian to give up his own beliefs and views of life, his languages and arts and customs, and accept those of the white man." (Cong. Rec. 11729)

"It should be possible for Indians to enter the service of their own people without running the gauntlet of competition with whites for these positions. Indian progress and ambition will be enormously strengthened as soon as we adopt the principle that the Indian service shall gradually become, in fact as well as in name, an Indian service predominantly in the hands of educated and competent Indians." (Cong. Rec. 11731)

"This measure has been under consideration by the Committee for nearly three months. . . . Every person or organization so desiring was heard or given opportunity to present a written statement. Testimony concerning all phases of the measure were received from a wide variety of interested persons, especially from the Indians themselves, from the Department, from numerous associations concerned with Indian welfare, from Members of Congress, from scientists, attorneys, and many others. Few measures have had more thorough consideration and discussion by those to be affected thereby than this proposed legislation.

"The hearings left no doubt as to imperative need of comprehensive legislation to remedy the existing conditions among the American Indians generally." (House Report 5-6) Letter from the American Indian Defense Association, Inc., to Representative Howard (reported at House Hearings 322):

"The departmental Bill [the Wheeler-Howard bill] crystallizes in legislative form the fundamentals of a solution which have been dictated by the facts re-

<sup>1</sup>"Cong. Rec." refers to Volume 78 of the Congressional Record, 73d Cong., 2d Sess. (1934); "House Report" refers to House Report No. 1804, 73d Cong., 2d Sess. (1934); "Senate Hearings" refer to Hearings on S. 2755 and S. 3645 before Senate Committee on Indian Affairs, 73d Cong., 2d Sess. (1934); and "House Hearings" refer to Hearings on H.R. 7002 before House Committee on Indian Affairs, 73d Cong., 2d Sess. (1934).

vealed in the investigations of recent years . . . (1) In its self-government provisions, the bill basically provides a mechanism by means of which a developmental policy may be applied to the Indians as a substitute for the present paternalism of the Indian Office. The bill recognizes the elementary fact that the Indians will never enter the life of the Nation on a level of decency and honor, and that they will never go forward until they are extended power as well as responsibility for their own welfare and destiny. . . . (7) The bill in its educational features makes adequate provision, for the first time, for Indian higher education, and it expressly directs that Indians shall be trained to positions of responsibility and leadership among themselves. (8) The bill sets up an Indian civil service, without which it is only pious wishful thinking to urge that the Indians be given a chance in the Indian Service."

Excerpt from a Memorandum of Explanation on H.R. 7902 submitted to the members of the House Committee on Indian Affairs by Commissioner John Collier (reported at House Hearings 19) :

"The bill admits qualified Indians to the position in their own service. . . .

"Thirty-four years ago, in 1900, the number of Indians holding regular positions in the Indian Service, in proportion to the total of positions, was greater than it is today. . . .

"The reason primarily is found in the application of the generalized civil service, and the consequent exclusion of Indians from their own jobs. . . .

"This is an intolerable situation, universally and properly resented by the Indians. The bill contains a carefully thought out series of provisions designed to correct the indefensible situation. . . .

"(2) The bill would take nothing from an Indian; it would only add to the property and the advantages of such Indians as it affected."

Letter dated April 28, 1934, to Representative Howard from President Franklin D. Roosevelt (reprinted in House Report) :

"Indians throughout the country have been stirred to a new hope. They say they stand at the end of the old trail. Certainly, the figures of impoverishment and disease point to their impending extinction, as a race, unless basic changes in their conditions of life are effected.

"I do not think such changes can be devised and carried out without the active cooperation of the Indians themselves.

"The Wheeler-Howard Bill offers the basis for such cooperation. It allows the Indian people to take an active and responsible part in the solution of their own problems."

Senator King :

"The records of our government's dealings with the Indians is a dark and discreditable one. . . . The Indians have been plundered by the government and have been the victims of unjust treatment by the whites. The Indian Bureau has been incompetent, oppressive, and too indifferent to the needs of the Indians. Protests against the unjust and harsh treatment of the Indians have been unheeded, and as the years have gone by the lot of the Indians, speaking in a general way, has become more unbearable.

". . . I have no hesitancy in saying that the rational treatment accorded the Indians cannot be secured with any rational, humane or moral conduct.

"The civil service as applied to the Indians has built up an inefficient and incompetent bureaucracy, under which the progress of the individual, economic, and moral development has been impeded.

". . . I insist that the appropriations which we make shall inure to the advantage of the Indians.

"I hope that a new deal shall come to the Indians; that the Indian Bureau will be informed and rational and sound policies put into operation. The heavy hand of an incompetent and inefficient bureaucracy has cursed our Government, and the Indian has been caught within its powerful sweep." (Cong. Rec. 11126-27)

Senator Shipstead :

"I hope that under the administration of this bill . . . we may make some restriction for the injury and injustice we have done to the noble people who were the original Americans." (Cong. Rec. 11127)

Senator Wheeler :

"This bill . . . seeks to impose upon the Indians self government in their own affairs." (Cong. Rec. 11123)

" . . . this bill proposes to give the Indians an opportunity to take over the control of their own resources and fit them as American citizens." (Cong. Rec. 11124)

"This bill, however, seeks to get away from the bureaucratic control of the Indian Department, and it seeks further to give the Indians the control of their own affairs and of their own property." (Cong. Rec. 11125)

Senator Norbeck :

"I think we have utterly fallen down in the present system. The Indian has been excluded. The reservation has been filled up with white people who live off the Indians." (Senate Hearings 259)

House Report :

"It liberalizes the present rigid civil service requirements so as to admit qualified Indians to the Indian Service, which is largely paid for by the Indians themselves.

"It penalizes Government employees who interfere with the free exercise of the new Indian powers.

\* \* \* \* \*

"Section 12 authorizes an appropriation of \$250,000 annually for the vocational and technical education of Indians.

"Section 13 enables the secretary to establish standards which will admit to the Indian Service qualified Indians now barred by the severe academic requirements of the general civil service examinations." (House Report 6, 7)

#### SECTION B: RELATING TO THE CONGRESSIONAL CONCERN TO TRAIN AND ADVANCE INDIAN EMPLOYEES WITHIN THE INDIAN SERVICE

Representative Howard :

"Theoretically, the Indians have the right to qualify for the Federal civil service. In actual practice there has been no adequate program of training to qualify Indians to compete in these examinations, especially for technical and higher positions, and even if there were such training, the Indians would have to compete under existing law, on equal terms with multitudes of white applicants. . . . It should be possible for Indians with the requisite vocational and professional training to enter the service of their own people without the necessity of competing with white applicants for these positions. This bill permits them to do so." (Cong. Rec. 11729)

"It does mean a preference right to qualified Indians for appointments to future vacancies in the local Indian field service and an opportunity to rise to the higher administrative and technical posts." (Cong. Rec. 11731)

". . . the Indian service shall gradually become, in fact as well as in name, an Indian service predominantly in the hands of educated and competent Indians." (*Id.*)

"It should be possible for Indians to enter the service of their own people without running the gauntlet of competition with whites for these positions." (*Id.*)

Commissioner John Collier :

"The definite goal is to have Indians eventually handling everything, although for many years, until the Indians are fully trained and have acquired ample experience, there will be many jobs filled by white men." (*Washington Post* May 6, 1934, reported at Senate Hearings 322)

"This is an intolerable situation, universally and properly resented by the Indians. This bill contains a carefully thought out series of provisions designed to correct the indefensible situation." (Memorandum of Explanation of H.R. 7002 submitted to House Committee on Indian Affairs reprinted at House Hearings 19)

"[U]ntil now there have not been extended to Indians the educational opportunities which would equip them for leadership among their own people or for the holding of technical positions in the Indian Service." (*Id.*)

"[The bill] provides [the Indian] with the opportunity for education and experience in administrative and technical functions." (*Id.*)

Senator Wheeler :

". . . Indians have been given no opportunity to handle their own affairs or to be trained in their own affairs. This bill, we think, gives them the opportunity to which they are entitled. (Cong. Rec. 11123)

Ward Shepard, Specialist on Land Policies, Bureau of Indian Affairs:

"... this bill itself sets up an educational program for the technical training of Indians to undertake some of these services that are being performed by white employees of the Indian Bureau. . . . There is no reason why they should not. But they have never had a chance; and we propose in this bill to extend technical training to Indians to undertake those services—nursing, law enforcement, forestry, range management, business administration, and that type of thing." (Senate Hearings 162)

Letter dated April 30, 1934, from Secretary of Interior Harold Ickes to all employees of the Indian Service (reprinted at Cong. Rec. 11738):

"To all employees of the Indian Service: The authorities in Washington have endeavored during the past year to develop a coordinated, modern Indian Policy. Its purpose is to . . . train [Indians] to manage their own affairs."

**SECTION C: RELATING TO CONGRESSIONAL INTENT TO WAIVE CIVIL SERVICE REQUIREMENTS TO ALLOW QUALIFIED INDIANS TO TAKE HOLD, AND ADVANCE IN POSITIONS WITHIN THE INDIAN SERVICE**

**Representative Hastings:**

"I have always favored the employment of the Indians who are competent and honest in the Indian Service, regardless of civil service rules and regulations. Section 14 authorizes the Secretary to establish standards for employees, which, of course, means doing away with civil service requirements." (Cong. Rec. 9270)

**Senator Wheeler:**

"The bill . . . has a provision to open the way for qualified Indians to hold positions in the Federal Indian Service. . . . At the present time, by reason of the civil-service rules and regulations, we find that competent Indians are absolutely unable to take or hold positions in the Indian Service." (Cong. Rec. 11123)

**Representative Howard:**

"Section 13 directs the Secretary of the Interior to establish the necessary standards of health, age, character, experience, knowledge, and ability for Indian eligibles and to appoint them without regard to civil service laws; and it gives to such Indians a preference right to appointment to any future vacancy. This provision in no wise signifies a disregard of the true merit system, but it adapts the merit system to Indian temperament, training, and capacity. Provision for vocational and higher education will permit the building up of an entirely competent Indian personnel." (Cong. Rec. 11731)

Statement of Luther C. Steward, President of the National Federation of Federal Employees, Washington, D.C., before Senate Committee on Indian Affairs, Senate Hearings 250-57:

"Mr. STEWARD. 'Mr. Chairman and gentlemen of the Committee, I merely want to call attention to the fact that the effect of Section 14 is to withdraw from the classified service of the Federal Government the entire personnel of the Indian Service. . . .'

"The CHAIRMAN. 'That is the purpose of it. That is what should be done, in my judgment. You are discriminating at the present time. We are setting up in the United States a civil service rule which prevents Indians from managing their own property. It is an entirely different service from anything else in the United States, because these Indians own this property. It belongs to them. What the policy of this government is and what it should be is to teach these Indians to manage their own business and control their own funds and to administer their own property, and the civil service has worked very poorly so far as the Indian Service is concerned, because of the fact that it has discriminated against Indians.'

"Mr. STEWARD. 'Granted that, Mr. Chairman. . . .'

"Senator FRAZIER. 'This is just for Indians—Indian employees.'

"Mr. STEWARD. 'Yes, sir; granted.'

"Commissioner COLLIER. 'Mr. Chairman, we have never found it possible through civil-service examinations open to everybody to get Indians made eligible. They just haven't got the academic equipment which has to be called for in the civil-service examinations.'

"The CHAIRMAN. ' . . . You have Indians who have practical knowledge and yet they have been shut out of handling their own work, because you have a civil-service examination that makes it impossible for them to pass the examination. You have carried the civil service, as a mater of fact, in the Indian Bureau to the height of absurdity.'

"Mr. STEWARD. 'May I suggest, Mr. Chairman, there, the objection is to the technique of the recruiting agency, which could be readily adjusted.'

"The CHAIRMAN. 'I think that you do not understand the Indian Service very much when you say that . . . [F]or instance, you have them required to take civil-service examinations which no Indian can possibly understand, and it is difficult to lay down regulations so that they can pass the examinations, though they have the practical experience to do it a lot better than some white civil-service employees, . . . but they cannot get in the civil service because they have not had the education to do so.'"

Commissioner John Collier :

"Following that, let me give you some startling facts. Look at the employment of Indians in the regular Indian Service. For years and years it has been common belief that it was time to get Indians in the Indian Service. I know that is a policy of the present administration. But what are the facts? In 1900 there were more Indians in the regular Indian Service in proportion to the total number than there are today. The record since 1900, in spite of all our big talk and hundreds of millions of dollars of expenditures on schools is a retrograde one. They have lost ground. Why? Basically because the Indians are required to qualify under the generalized Civil Service intended for the general population. The Indians cannot qualify although they may be as fit as the successful candidate, yet they are shut out. There are other reasons but that is the authentic one . . . So, we have this bill to enable the Indian to run his own affairs, to help himself, and to give him the mere privilege of getting a chance to do his own work in the employ of the government." (House Hearings 38)

\* \* \* \* \*

"Mr. WERNER. 'Is it to be construed that the policy of the Indian Department is to be against the retention of the present civil-service status as it applies here?'

"Commissioner COLLIER. 'No, it is against compelling the Indian to qualify under provisions which only the white people can meet. However, we must not blind ourselves to the fact that the effect of this bill if worked out would unquestionably be to replace white employees by Indian employees, I do not know how mast, but ultimately it ought to go very far indeed.'

"Mr. ROGERS. 'It is the system which is fatal.'

"Commissioner COLLIER. 'I go further than that and I may be talking heresy. I do not think that the broad horizontal civil-service requirements fit; I do not think they are of the type to meet the peculiar requirements of the Indian Service generally.'

"Mr. ROGERS. 'They are not the right test, or the right basis of test.' " (House Hearings 39)

\* \* \* \* \*

"In the matter of employing Indians, I think we all understand that the fundamental stumbling block there is the civil service. They haven't got the academic equipment to qualify under the civil service." (Senate Hearings 163)

Representative Howard :

"The Indians have not only been thus deprived of civic rights and powers, but they have been largely deprived of the opportunity to enter the more important positions in the service of the very bureau which manages their affairs." (Cong. Rec. 11720)

"This provision in no wise signifies a disregard of the true merit system, but it adapts the merit system to Indian temperament, training, and capacity. Provision for vocational and higher education will permit the building up of an entirely competent Indian personnel." (Cong. Rec. 11731)

Senator King :

". . . I insist that the appropriations which we make shall inure to the advantage of the Indians and not to the payment of an army of Federal employees." (Cong. Rec. 11127)

**Representative Hastings:**

"I have always favored the employment of Indians who are competent and honest in the Indian Service, regardless of civil-service rules and regulations." (Senate Hearings 307)

**Commissioner John Collier:**

"In other words, those Indians who qualify and are able to take the position, being qualified, should be admitted to the general Indian Service." (House Hearings 104)

**Senator Wheeler:**

"This bill, however, seeks to get away from the bureaucratic control of the Indian Department, and it seeks further to give the Indians the control of their own affairs." (Cong. Rec. 11125)

". . . [Indians] are unable to be employed in the Indian Service because of the fact that they have not had sufficient training outside. . . ." (Cong. Rec. 11123)

"My observation has been that while the Government has been seeking to train the Indians of the United States, as a matter of fact most of them are in a much more deplorable condition economically than they have ever been in their lives." (*Id.*)

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[Exhibit 1, Index No. 38]

AMERICAN INDIAN POLICY REVIEW COMMISSION,  
CONGRESS OF THE UNITED STATES,  
Washington, D.C., July 21, 1976.

PATTIE FULGHAM,  
*Personnel Office,*  
*Department of the Interior South,*  
*Washington, D.C.*

DEAR MS. FULGHAM: I have enclosed a copy of BIA Circular 86949 titled Analysis and Explanation of The Wheeler-Howard Indian Act [The Indian Reorganization Act of 1934] by then Commissioner John Collier. It explains briefly what the various provisions of the law mean, including the definition of "Indian" provisions of section 19. The explanations of the definition of "Indian" given by Collier are as clear and as short as they possibly can be and would provide an excellent model for your promotion plan guidelines. The explanations by Collier are in complete conformity with the interpretations which I and the Solicitor's Office have made. If you would like reassurance of this you could talk with Associate Solicitor Reid Chambers whom I've had extensive contact with on this matter.

It is evident that the language of the statute itself does not clearly and concisely define who is entitled to preference under the statutory definition. This is demonstrated on the face of the statute and the fact that the Solicitor's Office worked over a year off and on in attempting to clarify the legislative intent of the definition.

It is almost a certainty that the personnel administrators and the preference eligible employees of the BIA will be asking the same questions regarding the interpretations and scope of the definition as stated by the statutory language alone. It is very likely to cause confusion for both the administrators and those seeking preference appointments. This confusion could result in a denial or unnecessary delay in determining whether a particular individual is eligible for preference or not.

Since the BIA Manual is for the guidance of the BIA personnel and since the definition can be concisely and briefly explained as demonstrated by Collier's circular and since such an explanation would likely reduce to a considerable extent any confusion over the application of the definition, I would urge you to consider placing an explanatory definitional paragraph rather than merely using the unclear statutory definitional language.

You would, of course, have to add the three year exception to the definition for quarter blood descendants of members of presently recognized tribes whose

rolls were closed by an Act of Congress. (Primarily affecting four of the Five Civilized and Osage Tribes in Oklahoma).

Please let me know what decision you make. If I can be of any assistance to you in this matter—please call.

Yours cordially,

KARL A. FUNKE,  
*Specialist Task Force No. 9.*

[Exhibit 1, Index No. 37]

AMERICAN INDIAN POLICY REVIEW COMMISSION,  
CONGRESS OF THE UNITED STATES,  
*Washington, D.C., July 29, 1976.*

HON. MORRIS THOMPSON,  
*Commissioner, Bureau of Indian Affairs,  
Department of the Interior,  
Washington, D.C.*

DEAR COMMISSIONER THOMPSON: The Task Force on Indian Law Revision requests the following information from your office; (Please respond to the first four items without regard to the Five Civilized and Osage Tribes of Oklahoma).

1. A listing of all federally recognized tribes which currently have a one-fourth or more degree of Indian blood requirement for purposes of tribal membership. (This is without regard to any other additional requirements they might have for membership).

2. The current number of enrolled members of each of the respective tribes above. (Please state the source of authority for the figures).

3. A listing of all federally recognized tribes who currently have blood quantum requirements for membership of less than one-fourth degree Indian blood. Please state what the respective minimum blood quantum requirements are if any.

4. The total number of enrolled members in each of the respective tribes listed in item 3 above who are one-fourth degree or more Indian blood and the total number of enrolled members of each of the respective tribes who are less than one-fourth degree Indian blood.

With regard to the Five Civilized and Osage Tribes of Oklahoma please provide the following information:

1. The current service population for each of the respective tribes and the source or authority for the figures.

2. The current number of living members of the respective tribes enrolled pursuant to the Act of April 26, 1906 (34 Stat. 137) and the Act of June 28, 1906 (34 Stat. 539).

3. The combined number of enrolled members and descendants of members who are one-fourth or more degree Indian blood for each of the respective tribes. (Please provide source or authority for the figures).

4. The combined number of enrolled members and descendants of members who are less than one-fourth degree Indian blood for each of the respective tribes. (Please provide the source or authority for the figures).

If accurate figures are not readily available or cannot be compiled for any of the above requests please give us your best estimate together with any qualifying remarks you deem necessary.

Your diligent and timely response to this request is deeply appreciated. Please address your response to Karl A. Funke, Specialist, Task Force on Indian Law Revision.

If you have any questions or if something is unclear please do not hesitate to call the Commission offices.

Thank you.

Sincerely,

JAMES ABOUREZK,  
*Chairman.*  
LLOYD MEEDS,  
*Vice-Chairman.*

[Exhibit 1, Index No. 36]

[Circular No. 3123]

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
Washington, D.C., November 18, 1935.

Re Membership in Indian Tribes.  
To Superintendents, Field Agents, and Others  
Engaged in Indian Reorganization Work.

In connection with the organization of Indian tribes, the question of membership is of much importance, particularly as it applies to those who may seek membership hereafter on the strength of birth or of adoption.

Section 19 of the Indian Reorganization Act in defining the term "Indian" uses the following language:

"The term 'Indian' as used in this Act shall include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood."

The above language shows on the part of Congress a definite policy to limit the application of Indian benefits, under the Indian Reorganization Act, to those who are Indians by virtue of actual tribal affiliation or by virtue of possessing one-half degree or more of Indian blood. In line with this statutory declaration, it is our opinion, and will be our policy, in connection with the approval of constitutions and by-laws of tribes, to urge and insist that any constitutional provision conferring automatic tribal membership upon children hereafter born, should limit such membership to persons who reasonably can be expected to participate in tribal relations and affairs. Such a limitation may be framed on the basis of a requirement that both parents are recognized members of the tribe, or that the residence of the parents is within the reservation, or that the child is of a certain degree of Indian blood, or some combination of these conditions as may be best suited to the particular reservation or to the tribe or tribes occupying the same. Where automatic membership is conferred upon children born of mixed marriages wherein the parents reside permanently away from the reservation, there should be included a minimum requirement that such children be of at least one-half degree of Indian blood.

The provisions for the adoption of non-members should require approval by the Secretary of the Interior for each applicant, unless such individual must be a person of Indian descent related by marriage or descent to the members of the tribe.

This general declaration is made at the present time for the information not only of those engaged in working with the Indians in the matter of organization, but of the Indians themselves. It is important that the Indians not only shall understand this policy but shall appreciate its importance as it applies to their own welfare through preventing the admission to tribal membership of a large number of applicants of small degree of Indian blood.

JOHN COLLIER,  
Commissioner.

Approved: December 9, 1935.

CHARLES WEST,  
Acting Secretary of the Interior.

[Exhibit 1, Index No. 35]

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
Washington, D.C., September 22, 1936.

Subject: Registration as an "Indian" in accordance with Section 19, Indian Reorganization Act.

In order to be eligible for the benefits of the Indian Reorganization Act, an individual must qualify as an "Indian" as defined in Section 19 of the Act, which reads in part as follows:

"SEC. 19. The term 'Indian' as used in this Act shall include all persons of Indian descent who are members of any recognized Indian tribe now under Fed-

eral jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood."

The establishment of eligibility through enrollment in a recognized Indian tribe under Federal jurisdiction or through descent from an enrollee and residence on an Indian reservation on June 1, 1934, presents little difficulty. But the provision that "all other persons of one-half or more Indian blood" shall also be eligible under the Act confronts the Indian Office with an administrative problem of some complexity.

This memorandum outlines the policy which the Indian Office will pursue in determining whether or not an applicant for registration as an Indian meets the requirement of the Indian Reorganization Act as to degree of Indian blood.

Determination of the degree of Indian blood is entirely dependent on circumstantial evidence; there is no known sure or scientific proof. Nor has any legal standard of universal applicability been set up by statute for the determination of who is, and who is not, an Indian. These circumstances would seem to require that the Office of Indian Affairs establish a useful and practical definition of the term, and fix upon a method of ascertaining blood degree which will admit of some administrative latitude.

There will be few cases which will not be marked by some measure of reasonable doubt. We hold that it is proper to resolve this reasonable doubt favorably or unfavorably to the applicant in accordance with factors not strictly biological, but which may be fairly considered indicative of an Indian heritage.

The evidence upon which a determination of blood degree may be made divides naturally into five classes: (1) Tribal rolls which have been accepted as accurate for official purposes and which record the percentage of Indian blood; (2) Testimony of the applicant, supported by family records, official records other than tribal rolls showing blood degree, and similar documents; (3) Affidavits from persons who know the applicant and are familiar with his family background; (4) Findings of a qualified physical anthropologist based on examination of the applicant; (5) Testimony of the applicant and supporting witnesses, tending to show that the applicant has retained a considerable measure of Indian culture and habits of living.

The premise on which the Indian Office will act in considering the application of an unenrolled Indian claiming one-half or more of Indian blood is that the burden of proof must rest upon the applicant; provided, that if the applicant's of an unenrolled Indian claiming one-half or more of Indian blood is that the parents or other direct ancestors have been enrolled on a tribal roll or census giving positive information as to degree of Indian blood, such evidence will ordinarily be accepted as sufficient. If such a tribal roll or census is subject to doubt on the question of blood degree, the burden of proof will be upon the Indian Office to show why such evidence shall not be accepted.

Applications for enrollment will be presented to the Washington Office of the Office of Indian Affairs. If accompanied by sufficient proof, the application may be passed on without further investigation. Usually, however, investigation of the applicant's claim will be required, and to this end the Commissioner of Indian Affairs will appoint an investigator or a committee consisting of two or more investigators to make such studies in the field as may be necessary. The Commissioner may appoint as a member of an investigating committee the Superintendent having supervision over the tribe or band with which the applicant claims tribal affiliation or relationship. The Commissioner will ordinarily appoint as another member of the committee an Indian Office employee equipped with legal training or otherwise experienced in the taking of testimony. Where the available evidence is insufficient to establish degree of blood, the Commissioner may appoint as a member of the committee a competent physical anthropologist to examine the applicant.

The investigator or committee of investigators designated by the Commissioner of Indian Affairs shall make a report upon each application submitted for investigation. Such reports will be submitted to the Commissioner of Indian Affairs for his consideration and approval or disapproval. The approval or disapproval of the Commissioner of Indian Affairs shall be final; provided, that an applicant shall have the right to appeal to the Secretary of the Interior for a review of the case. The action of the Secretary of the Interior upon such an appeal shall in all cases be final.

In addition to the procedure described above, especially where applicants claim affiliation or relationship with a recognized tribe, or where it is shown that applicants if enrolled will seek tribal membership, the Superintendent having supervision over the tribe involved may appoint, or request the Tribal Council to appoint, a committee of Indians to act for the tribe. Such a committee should be composed of members of the tribe who may be relied upon for their knowledge of individual applicants and for their disinterestedness. Such a committee will be wholly advisory, and have no authority in any way to direct the activities of the investigator or investigators appointed by the Commissioner of Indian Affairs.

The application for registration as an Indian will be made upon a standard form, a copy of which is attached.

The report upon an application shall include a summarized transcript of any testimony taken, and shall record any supporting documents examined. If the opinion of a physical anthropologist is included, it shall incorporate a brief summary of his findings and, wherever possible, a copy of the form on which the results of his biometric tests were recorded, and copies of any photographs taken as part of his study of an applicant. The report shall include a statement asserting the belief of the investigator or investigators that the applicant is or is not of one-half degree or more of Indian blood, as required by section 19 of the Indian Reorganization Act. A form for such a statement is attached.

In reviewing the findings of the investigator or investigators, the Commissioner of Indian Affairs will exercise administrative discretion in determining what comparative weight shall be given to the various kinds of evidence. Where the genealogical or biological data still leave doubt as to the applicant's claim, the Commissioner may consider whether or not the attitude of the applicant and his manner of living tend to show the inheritance of Indian characteristics.

JOHN COLLIER,  
*Commissioner of Indian Affairs.*

Approved :

T. A. WALTERS,  
*Acting Secretary of the Interior.*

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[Exhibit 1, Index No. 34]

PUBLIC HEARING, MAY 13, 1976, AT THE TRADEWINDS MOTEL, MUSKOGEE, OKLA.

AMERICAN INDIAN POLICY REVIEW COMMISSION INVOLVING TASK FORCE  
NOS. 1, 2, 3, 4, AND 9

Hearing Panel:

Mr. Jake Whiterow, Commission Member.  
Mr. Kevin Gover, No. 1, Research Specialist.  
Mr. Alan Parker, No. 2, Member.  
Mr. Ray Goetting, No. 3, Member.  
Judge W. R. Rhodes, No. 4, Member.  
Mr. Matthew Calac, No. 4, Member.  
Mr. Don Wharton, No. 4, Task Force Specialist.  
Mr. Peter Taylor, No. 9, Chairman.  
Mr. Karl Funke, No. 9, Task Force Specialist.  
Mr. Jack Peterson, No. 3, Member.  
Mr. Jack Ross, No. 9, Task Force Specialist.  
Mr. Michael Cox, No. 2, Task Force Specialist.

Judge RHODES. Thank you.

Chairman WHITECROW. Let's see, I believe Mr. Funke, you were next.

Mr. FUNKE. Mr. Swimmer, you stated earlier that the tribal population is roughly about twenty-one thousand (21,000)?

Chief SWIMMER. That's called service population. Tribal population according to the 1970 census is sixty-one thousand (61,000), making us the second largest tribe. This was of course a census study that was done without consideration being given particularly to Indian Tribes. And in my mind it is not very realistic. I think that our population within the fourteen (14) counties could easily exceed forty thousand (40,000) but the reason I differentiate this is because of the way it is differentiated within the government itself. As far as the tribe's concerned all sixty-one thousand (61,000) Cherokees are members of the tribe.

As far as us participating in a particular program within the fourteen (14) counties, we go by what's called service population and that was recognized by the 1970 census of twenty-one thousand four hundred (21,400) some people.

Mr. FUNKE. How is the service population defined?

Chief SWIMMER. Those Cherokees who have apparently put themselves down as Cherokee on the 1970 roll in the fourteen (14) counties, the 1970 census.

Mr. FUNKE. The larger number of sixty thousand (60,000) covers?

Chief SWIMMER. Those people who put themselves down in 1970 as Cherokees but who are living in California or New York or Oklahoma.

Mr. FUNKE. Do you have a figure for number of enrolled people who were enrolled in 1906 and their descendants?

Chief SWIMMER. No, sir, the enrolled number in 1906 was approximately forty-one thousand eight hundred eighty-nine (41,889). If we were to try to determine the number of Cherokees who are descendants of those enrollees or who are still living enrollees, you would have to consider those figures of the 1970 census of sixty-one thousand (61,000) as being the figure. But I think that one of the things that we plan to do within the tribe is to conduct a census of tribal members within the fourteen (14) counties.

Mr. FUNKE. In terms of services from the Bureau of Indian Affairs, how is your service population defined?

Chief SWIMMER. Twenty-one thousand (21,000).

Mr. FUNKE. And what criteria does the Bureau use in providing services to

Chief SWIMMER. Twenty-one thousand (21,000).

Generally there's a one-quarter degree blood requirement before services from the Bureau of Indian Health Service can be given to the Cherokee or a member of the Five Tribes.

Mr. FUNKE. So are the twenty-one thousand (21,000) quarter bloods?

Chief SWIMMER. That is assumed so. I believe so, yes, but his again I don't believe there was a blood quatum put in the 1970 census. I don't think they asked for this. Now, we currently have voter registration list in excess of twenty-two thousand (22,000) Cherokees who have qualified to vote within tribal elections. Most of those from the fourteen (14) counties but when a census is conducted, it will give us a lot more information concerning degrees of blood and the total number of Cherokees. But that is the figure used by the Bureau. As I said, Bureau services are confined to quarter blood, so you would have to assume that those twenty-one thousand (21,000) are quarter blood.

Mr. FUNKE. Does the Bureau make any effort to determine whether these people are in fact quarter blood?

Chief SWIMMER. Yes, sir, everytime somebody does apply for aid, they must furnish a certificate of the degree of blood, which goes back to the Dulles roll and the Bureau actually issues that certificate which states on there whether they are—what degree of blood they are, whether it's quarter or less. The Bureau determines through the historical data there available to it that they're less than a quarter, then they're denied service.

Mr. FUNKE. Are there any quarter bloods who are not listed in that 1970 census?

Chief SWIMMER. Yes.

Mr. FUNKE. That are quarter blood?

Chief SWIMMER. Yes. There are quarter bloods that were listed in 1906 that are not listed in 1906. The 1906 roll for practical purposes, the Cherokee's was as good as any, better—probably better than the other five (5) tribes because most of the time sworn testimony was taken when the people enrolled. But because of the difference in the total to the allotment that was given, many Cherokees who were fullbloods enrolled as less than half blood and by the same token, many people who wanted their land restricted, non-taxable who were quarter bloods enrolled as fullbloods. So on the 1906 roll there are a lot of discrepancies between brothers and sisters and sons and daughters and their fathers and mothers. You'll find full brothers in the same family, one who is full and one who is quarter. You may find one who is on the roll and one not on the roll. And these are problems that we're faced with every day. So, of course throughout history then today, you know when this happens, a niece or nephew may be entitled to services while a brother or sister is not or cousin who is not.

Mr. FUNKE. Would the people who were not listed in the 1970 census but were more than quarter blood, are they presently eligible for Bureau services?

Chief SWIMMER. Yes.

Mr. FUNKE. Then it really isn't based on the 1970 census? The services?

Chief SWIMMER. The services are not based on the 1970 census, service population is. Speaking from the knowledge I have about how the 1970 census was taken, the Bureau of Indian Affairs in order to justify its existence and all of the other tribal programs I have mentioned to justify their existence, they have to say that we are serving so many Indian people. There has never been an independent census taken of how many Indian people there are. So what they have done, the Bureau of Census who did the 1970 census, they have separated out those people who have identified themselves as Indian and then they have the—the Bureau in turn uses these figures as being their service population. Now, if you were to go back and interview all twenty-one thousand (21,000) of those people, you'll probably find many who are not quarter bloods and they would be denied service. But the Bureau doesn't have these records available. There was no blood quantum asked for when the census takers were coming around.

Mr. FUNKE. And on the other hand, people who were not listed in the census but who were more than a quarter blood would be eligible for services?

Chief SWIMMER. That's right and I feel like personally there are a lot more of those than were shown on the '70 census. I think you can almost double that number or triple it perhaps, the number who did not identify as being Indian at all and in some cases the census takers wouldn't even put it down. It was either caucasian or black.

Mr. FUNKE. So there's really very little correlation between these service population figures and the actual number of Cherokees who are eligible for Bureau services?

Chief SWIMMER. I believe that to be a fact and I can prove it when we do the census.

Mr. FUNKE. With regard to your voting criteria, how does the tribe determine who is eligible to vote?

Chief SWIMMER. I believe that to be a fact and I can prove it when we do the through registration, applications that were picked up or sent out to Cherokees. They were required to put on that registration certificate the ancestor that was on the Dulles Commission roll together with that roll number. They returned that registration application to the tribe. That roll number was checked and they were certified as an eligible voter, regardless of the degree of blood. Then the current system that is being used to certify membership within the tribe and this is for minors as well, is that they will furnish not only their application for membership with the roll number on it but they will furnish a certificate of the degree of blood from the Bureau of Indian Affairs certifying from the Bureau that they are in fact a direct descendent of an enrolled Cherokee.

Mr. FUNKE. Does the tribe use any type of blood quantum criteria?

Chief SWIMMER. No sir. I think as a practical matter, one-two hundred and fifty-sixth or something is all the Bureau recognizes for any tribe.

Mr. FUNKE. You had mentioned earlier that the—I was not here for the earlier part of your statement so I may be covering old territory, you'll have to bear with me on this. You had mentioned that you were opposed to re-opening the 1906 roll and yet the tribe, you advocate that the tribe should base its membership on descendants, what would the problem be in terms of re-opening the 1906 roll as opposed to defining the membership based on descendants? I mean, are you not in fact now defining your membership without regard to the 1906 roll?

Chief SWIMMER. No, the membership of the tribe today is based on the 1906 roll. You must be a descendent of one of those forty-one thousand (41,000) Cherokees in order to qualify as a member of the tribe, regardless of the degree of blood. There are problems with this and these problems involve the people who were never enrolled in 1906. But the government for all practice purposes limited the membership of the tribe by law to those people who were enrolled. They said, these people are members of the Cherokee Nation. All other Cherokees who are not enrolled, the Government did not say they were not Indians, they said they were simply not members of the Cherokee Nation. And I think that there needs to be some legislation affecting those people who never got on the rolls, assuming they can prove back to a prior roll. You see, since 1836, there were several rolls that were made of the Cherokee people and some people can trace back to an earlier roll but their ancestors moved on to Texas and Mexico and never got on the Dulles roll and I think that they need to have some help in identifying themselves as Indian people for whatever benefits there might be as a result of the treaties and what have you that the government signed with the Indian people and with the Cherokees. But the 1960 roll, to open the 1906 roll, to get an act of Congress to allow us to open that roll to re-enroll or add to that

roll today, I think would create more problems, many more problems than what we had in 1906. It was difficult enough in 1906 to get the people to enroll and to determine some kind of membership in the tribes and as I said there was sworn testimony taken.

There were errors that were made but to wait now 70 some years later after the tribe has gone through this sort of vacuum period where there hasn't been much concern for the Cherokee people, I think would give us all sorts of problems. We would have people from all over the world coming in to enroll and of course, it's a great time to be an Indian because, you know, we're all getting ready to settle several claims cases and the whole business so I don't think that you would have any more fair a roll than you had then. But there are inequities in the 1906 roll. I don't think that we can do anything other than to recognize Indians who were not on that roll, perhaps through some other legislation but we can correct the inequities. My recommendation is and will be that legislation is enacted to allow changes to be made to the 1906 roll where adequate proof can be furnished showing the degree of blood is different than what is shown on the roll and that there be allowed specific rules of evidence to be weighed and admission of evidence before a court of competent jurisdiction for this purpose and such things as affidavits, hearsay testimony, testamentary documents and things like that be admitted into evidence so that a brother or sister who is enrolled who is say a quarter and they know they're a half, they can produce evidence to the effect that they are more than a quarter for this particular purpose and as long as we're going to have blood quantum in the government at all, that they should have a fair chance of proving what their degree of blood really is and that these changes can be made but additions or deletions from the rolls scare me to death. I just can imagine all of the problems that would be inherent in trying to redo that roll and I would rather see us have a separate membership roll as we are doing now.

Mr. FUNKE. Okay, let me explain some of the background so you understand the basis of some of my questioning. There seems to be a very subtle change being made either within the Department of Interior of the Bureau of Indian Affairs with regard to their characterization of Indians from the Five Civilized and Osage Tribes in that they are contending or it appears to be their contention that the 1906 roll closed the membership of these tribes and that therefore the people who are descendants of those people are not really members of those tribes but are descendants of members and so my question was not leading to re-opening the 1906 roll to either expand or contract, the standard by which people's blood quantum is determined but merely in terms of the tribe's right to define their own membership at this point.

Chief SWIMMER. This is something I mentioned earlier. I think that the tribe's right to define their own membership is of utmost importance. The closing of the 1906 roll by the federal government certainly should not be to the detriment of any of the Cherokee people or the Five Tribes. We have no authority to open that roll but yet other tribes who have been favored by the federal government with the idea that they can have a continuous ongoing roll, they are no more an Indian than any one of the Five Civilized Tribes. They are descendants of those people that were born in 1906 and existed in 1906 just as our people are descendants of those same people and to say that, you know, for the government now to come back and say, well, the Five Tribes, they closed their rolls in 1906 so they cease to exist. It is much a fiction as saying we will cut off the Navajo population in 1906 and only those who survived that particular date are now Indians. It is a total fiction within the federal government itself. I think it should be resolved and it is involved a little bit in the 1934 Act that was passed and there is—I think there is some interpretation of that Act regarding the definition of an Indian that is creating a hang-up in the Department today about the Five Tribes because it lists three (3) or four (4) specific items. But we're not a 1934 tribe and we shouldn't be governed by any of the statutes passed subsequent to the 1906 Act for sure unless we chose to come under those Acts. And as I said before, we haven't existed any differently for the last four hundred (400) years than we do right now. We're just as much Indian in spite of the 1906 Act as we were before the 1906 Act.

Mr. FUNKE. Let me say that in reality it's a fiction but in terms of legality it's a reality.

Chief SWIMMER. I don't believe so. I don't believe there's any law that says that and I appreciate what you're saying there because this is what the Federal Government and what the Interior and Civil Service Commission is trying to allege

that there is a law that simply says, those tribes that have closed rolls no longer exist and that's in effect what they're saying. When those members that were on that roll die, that tribe is gone. Now, there is no law to that effect that I'm aware of. Now, there's laws for recognition and what is an Indian and which—you know, what tribes get to be recognized and blood quantum and the whole business but there is not with respect to that particular item, that the federal government being the guardian of the people themselves, or the Cherokees particularly can disqualify the Cherokees by saying that their rolls closed in 1906 and therefore they're nothing but descendents. We're all descendents of somebody. But the law can't stop you from being an Indian and that's what they're trying to say, 1906 you no longer—any of your kids, fullblood or otherwise—are no longer Indians.

Mr. FUNKE. Is it your contention that the tribes should be able to define its membership?

Chief SWIMMER. Absolutely.

Mr. FUNKE. Does the tribe presently have any laws or resolutions defining what its membership is?

Chief SWIMMER. Yes sir.

Mr. FUNKE. Could you tell us what those are?

Chief SWIMMER. An enrolled member of the 1906 or a descendent of an enrolled number of the 1906 roll.

Mr. FUNKE. Without regard to blood quantum?

Chief SWIMMER. That's right.

Mr. FUNKE. Do you think there should be—you mentioned earlier that there should be an across the board definition or a criteria for preference. Let's get into the preference question because I know it's a very critical question with regard to it. Five Tribes and the Osage Tribe. Do you think there should be a standard definition?

Chief SWIMMER. I think there should be a standard definition for Indian, period. Without regard to where they live or how they live. An Indian is entitled to Indian preference if any other Indian is entitled to Indian preference. If all tribes have no blood quantum, then there is no blood quantum. If all the tribes want to establish a blood quantum, then we'll abide by a quantum. This is the consensus of all the tribal governments of the tribal leaders, then that's what we will do. But it is the membership determined by the tribe and by the tribal government body and from that point it is a standard definition across the board. We're getting back to the definition of Indian now.

Mr. FUNKE. What definition or what criteria do you think would be appropriate? Do you think it should be determined through a federal legislation or do you think each tribe should define it? Or it should be defined in terms of tribal membership?

Chief SWIMMER. You won't necessarily run into the problem with tribal definition. I think it's almost got to be national legislation, tribal. In other words, it wouldn't be fair for one tribe to because of some factor, say their size or something to say, okay everyone in our tribe, if you're a member of the tribe, regardless of degree of blood can be eligible for Indian preference and that tribe only have three hundred (300) members, and then take a tribe of sixty thousand (60,000) members and their tribal governing body said, well, who all happened to be half bloods or more, and they say we're going to restrict our tribe. We just want our tribe to be half blood or more and they pass such a resolution. I think that the inequities would result here and that it should be—I would prefer to have a policy that's across the board for the Indian people, just on a people basis, not on location basis. I'd prefer that it simply be without blood quantum but membership of tribes. And let the tribes define their own membership.

Mr. FUNKE. Do you see any potential problems involved—let me ask you first, are you aware that most tribes do have a quarter blood membership criteria?

Chief SWIMMER. I don't know how many people that represents. You say most tribes, are you talking about most tribal governments throughout the United States or are you talking about those tribes with the most people?

Mr. FUNKE. Most tribal governments now speculate that that takes into consideration or effects the large majority of Indian people throughout the United States.

Chief SWIMMER. There are more Indians in Oklahoma than any state and I don't know of any tribe in Oklahoma that has quarter blood, although there are probably some I just don't know about for membership purposes. This directly affects us in the use of the Indian Hospital. We do have quarter bloods in our tribe that by tribe self-imposed for the use of the Indian Hospital that the other

tribes don't so we often stand in line while one-sixty-fourth Shawnee or Delaware or whatever tribe wants to use the hospital can use it while we're waiting there with quarter bloods and full bloods. And it creates problems here in Oklahoma but as far as tribal membership, I would say that I think we are defining our tribal membership as narrowly as any tribe in the United States is when we do define it to the living enrollees and descendants of the enrollees of the Dulles Commission roll. I don't think any tribe in the United States has that critical a definition. Whether it's blood quantum or not.

Mr. FUNKE. Do you think that problems would arise if say most tribes define their membership in terms of quarter blood; preference is accorded to those tribal members just on that criteria and other tribes would define their membership without regard to blood quantum and that a substantial number of less than quarter bloods would be eligible for preference?

Chief SWIMMER. I think you would have inequities. It's going to happen one way or the other, though, if the tribes determine their own membership. It's going to be up to the tribal governing bodies and the people to vote their membership and the membership requirements. If some tribes desire to limit their membership by blood quantum, then I think that's their prerogative and I don't think it would be necessarily inequitable for those people in those tribes then to limit it to Indian preference on quarter bloods, if all of the other tribes or several of the other tribes said that our membership is based on a particular roll or is based on some other resolution of the tribal council. Because all of the tribes have that opportunity in determining who their membership would be, what it would be.

Mr. FUNKE. Many tribes don't have rolls such as the Five Civilized Tribes do but they have to go back to some basis in order to determine membership or blood quantum and oftentimes those are allotment. The ancestor who received the allotment usually there's an indication of blood quantum and oftentimes the tribe has to trace back to that. Do you see that as a similar kind of reference point for determining tribal membership of those tribes compared with the Cherokees?

Chief SWIMMER. Basically.

Mr. FUNKE. Does the Cherokee Tribe have any plans to organize or to formulate what to declare to the Department of Interior what their membership is, in view of the apparent new characterization on behalf of the Interior Department and/or the Bureau of Indian Affairs? That there aren't any members except those enrolled in 1906?

Chief SWIMMER. Yes, sir, we plan to go along with the fiction and try to develop a membership roll that will qualify within the terms of the BIA and Interior and what we have proposed for many years now is a tribal constitution, reconstituting the tribe since 1906 and to set out guidelines of operation so that—and also the primary difference would be an elected counsel or representative body that would operate along with myself. At the present time the principal officers of the Five Tribes except the Seminoles which have a constitution and more or less incorporated. The principal officers operate as absolute monarchs and there is no other authority within the tribe that Bureau recognizes at this time. What I am proposing is that we submit a constitution to the people of the Cherokee, all sixty thousand (60,000) or the twenty-two thousand (22,000) registered Cherokees throughout the United States, then go to a vote and they decide whether they want it or they don't want it. If they vote yes on the constitution and it passes, then we will immediately go into the election of a fifteen (15) member council.

This council will have checks and balances over me and me over them regarding tribal resolutions or laws if you will, regulating the development of the Cherokee Nation that will also have requirements for membership. The Interior Department tells me that these requirements for membership which are as I have said, the relationship back to the roll, the degree of blood would qualify our tribe then as a federally recognized tribe and these people that are descendants or members of the federally recognized tribe. And we would fall within one of those categories that they have said is suitable for Indian preference. In my way of thinking, personally, this won't change the status of the tribe legally and shouldn't except for the fact that we would have an elected council. But passing the constitution will not change the status of the tribe from what it was the day before the constitution was passed as far as its legal status and the people's legal status in relationship to the federal government. But this is what the Bureau of Interior tells us. They said that well, once you get this constitution passed and you establish in there by vote of the people your membership which is any person who is a descendent of the Dulles roll, then we'll recognize that membership. Until you do that, technically you're not a tribe, for membership purposes.

**Mr. FUNKE.** Are you of the opinion that the tribe could establish blood quantum if it wants to in that membership?

**Chief SWIMMER.** I think so. That would be recognized, yes. If they wanted to they could—and this has been discussed many times and it may be sometime that the tribe votes this because within the constitution there is no blood quantum at this time and the constitution does have a referendum and petition provision and the people could easily change the constitution or adopt requirements that membership be limited to quarter blood or more. I don't foresee this happening, though.

**Mr. GOVER.** I think it's fairly obvious that one of the principal concerns shared by the smaller tribes in the west to have quarter blood or more as a minimum membership standard is that if for purposes of Indian employment preference within BIA and IHS and for purposes of federal services, the basic test is membership in a tribe regardless of blood quantum, that this would significantly expand the class of eligible beneficiaries. In other words, statistically you cited figures of sixty-one thousand (61,000) Cherokees, twenty-one thousand (21,000) approximately who meet the Bureau's general standard of quarter or more Indian blood. It's an issue that obviously divides Indian people quite significantly. How do you look at that issue in general, in terms of specifics if a Cherokee with less than a quarter blood could go to work through Indian preference on a reservation with a standard—where the standard for employment, or the membership standard is a quarter or more blood and vice versa if someone could come to Cherokee lands or the Tahlequah Agency and get a job.

**Chief SWIMMER.** This is the point that I've been trying to address also. I think that it would create problems. I don't—I would prefer to have as far as Indian preference is concerned a national standard for Indian people that is the same for all tribes. As it is now we have four (4) criteria for Indian preference. One, simply being the membership in a federally recognized tribe with no blood quantum. The other one being, residing on a reservation. I don't think there's a blood quantum in that one either. The other one is for Alaska and the last one is for all other members who are half blood or more. Now, I don't think there are any—I'm not sure if any other of those three (3) carry a blood quantum. I don't think they do. I think you've got to be a member of a federally recognized tribe, live on a reservation, be an Alaskan Native or the catchall which is all others who are half blood or more. And what we've been told is that we fall within the all others who are half blood or more. I don't think that's any more fair than saying, any tribal member who is living on a reservation or who is less than half blood or quarter blood should have Indian preference in Oklahoma as opposed to Oklahoma tribes that must be a half blood or more. Right now the unfairness is against us. If a national policy were developed to where with the Indian leaders being involved in the development of the policy that Indian preference was a quarter blood across the board, then I don't think that affects us as far as our tribal membership. Our tribal membership would still be based on the Dulles roll and descendants but for Indian preference in hiring in the Bureau and in Indian Health Service, we would be limited to a quarter blood. And I think that would be fair but if you have one tribe that isn't and one tribe that is, I don't think that's necessarily fair. So I would favor the national policy.

**Mr. FUNKE.** Just in terms of clarifying the definition as contained in the IRA, the IRA provides a three-tier definition of Indian. One would be based on tribal membership, any person of Indian descent who is a member of a federally recognized tribe. That would be without blood quantum when in fact a large majority of tribes do have a quarter blood quantum so it almost retains the quarter blood standard. The second one would be if you were a descendent of a member and living on a reservation that you would have had to have resided, been alive and residing on that reservation on June first, 1934. So it was only intended to take into consideration those people who were alive and living the tribal or reservation way of life at that time but were not enrolled in a tribe. And the third category would be half bloods regardless of federal recognition or not. And the part relating to Alaskan Natives is not really an addition, it's saying they will be considered Indians for purposes of this definition so they would have to meet one of the other three (3) criteria.

**Chairman WHITECROW.** Chief, I just have a couple of short questions on this preference. It's my understanding that up to this time preference has been extended to Indians, particularly Indians in Oklahoma on the basis of quarter blood requirement, plus tribal membership. That's the way the Bureau of Indian Affairs Manual reads.

**Chief SWIMMER.** That's right.

Chairman WHITECROW. It's also my understanding that people from the Five Civilized Tribes have been accorded preference treatment under these criteria.

Chief SWIMMER. That's right.

Chairman WHITECROW. So don't we have here a situation where the Bureau or the Department of Interior in the past has said that descendants from the 1906 roll are tribal members and they're now changing their position to say, no, they're not tribal members. They're now descendants. So it's this change then in the characterization of the descendants that is really creating this problem.

Chief SWIMMER. Yes, or creating the potential problem.

Chairman WHITECROW. This new constitution that's being proposed, did I understand you to say it does contain a blood quantum limitation?

Chief SWIMMER. No, it's just membership requiring that they be members of the tribe, they must identify to the Dulles roll.

Chairman WHITECROW. You said something at one point about new enrollments or something that required quarter blood. You said it even applied to minors or juveniles.

Chief SWIMMER. No, it doesn't have anything to do with the blood quantum. The current membership roll of the tribe and the way we're doing it would allow minors to have a membership part in the tribe. They simply would have to prove their relationship back to the Dulles roll also. But that would be different from voting purposes. We would have membership in the tribe and then we would have registration for voting purposes in the tribe. This is the first time that we've ever made minor memberships available in the Cherokee Nation currently.

Chairman WHITECROW. Well, is the tribe moving in the direction here then of having really two (2) classifications of membership, one of which would adopt the blood quantum?

Chief SWIMMER. No, blood quantum is not involved in any of them. Our current membership, to be a member of the Cherokee Nation of Oklahoma you must be a living enrollee or the descendent of a enrollee and you have to prove your ancestry to that enrollee in order to be qualified as a member. No degree of blood required.

Chairman WHITECROW. And any person who falls within that definition would have the same rights as any other person, is that correct?

Chief SWIMMER. That's right.

Chairman WHITECROW. Apparently I misunderstood what you said earlier, thank you.

Mr. FUNKE. Mr. Swimmer, just a couple more short questions. I was involved in negotiations with the Department of Interior in terms of coming to a legal analysis of what the IRA definition meant and I have been handed a article which was presented in the Tulsa Tribune in which a number of misquotations were stated and just for the purposes of tribes in Oklahoma and for your purposes I would like to clarify some the statements. Have you seen this article?

Chief SWIMMER. When was it published?

Mr. FUNKE. April 27, 1976. Do we have an extra copy?

Chief SWIMMER. I think I read that and I'd like to have a copy of it.

Mr. FUNKE. Okay, at the top of the second column the first paragraph it stated "Interior's contention from the outset was that the law now in effect does not include those eastern Oklahoma tribes with closed membership rolls and that everyone in those tribes are descendants rather than members of the tribes and that in the past they have been included for hiring preference as such." I think we have already explored that contention and that the Bureau was previously applying membership criteria to those descendants of the 1906 roll. The second paragraph says "That position was challenged by a conflicting opinion from myself" and I would like to make it clear that I did not challenge that and did not make any statement with regard to whether descendants should presently be considered members or that they shouldn't be considered members and also with regard to—well, the third paragraph from the bottom says that I contended the Oklahoma Indians in question are in the latter category, so they must be halfblood to receive Indian hiring preference. I didn't—I have not expressed any opinion with regard to whether the Oklahoma Indians go under the halfblood criteria. Also, the—about the middle of the third column it says, the government closed the rolls in question and has held the tribes can't unilaterally reopen them. I'd like to point out that there is a solicitor's opinion on this matter which is in conflict with that position which I did make available to the Department of the Interior and the Solicitor's Office and did point out to them that in my opinion, my personal opinion, that I believe that the tribes in Oklahoma

did have the right to define their membership and that the 1906 roll did not prevent them from doing that.

Chief SWIMMER. I think you're absolutely right. But I think that the statement is true that the government closed the rolls and you can't unilaterally reopen the rolls. But I do think we can define our membership and that's what we're trying to do and we're using those rolls. As far as I'm concerned since 1776 there have been no other people in America than Americans and the federal government has recognized prior to that time by treaty certain independent sovereign nations which were the Indian people. Since the Declaration of Independence, since the formation of the United States Government, in my way of thinking, an Indian person is a descendent of somebody who existed prior to that time and you know, we're all, as I said, descendants of the original native American people and those people following . . .

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[Exhibit 1, Index No. 33]

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington, D.C., May 20, 1976.

HON. CARL ALBERT,  
Speaker of the House of Representatives,  
Washington, D.C.

DEAR MR. SPEAKER: I appreciate your interest, expressed in your April 27 letter, in the difficulties we are facing on the question of Indian preference employment. Let me share with you my current thinking on this problem.

As you note, the law seems to preclude a mere descendancy standard for preference eligibility of Indians of the Five Civilized Tribes (or, with only some exceptions, of any non-Alaskan Indians who are not members of recognized tribes under federal jurisdiction). I have recently been advised by the Solicitor that under 25 U.S.C. §§ 472, 479, and related statutes, a half-blood requirement is mandated for such Indians. This conclusion will necessitate modification of my March 18 request for Civil Service Commission approval of new preference standards (copy enclosed), by requiring deletion of subsection (a)(7)(v) of our proposed 5 C.F.R. § 213.3112, set out on page 4 of my March 18 letter.

At the same time, I am anxious—as you are—to avoid the inequity and disruption of legitimate expectations which would accompany an immediate imposition of a half-blood requirement in every such instance. It is my present intention, therefore, to take two steps to attempt to alleviate that difficulty. First, I intend to specifically request that the Civil Service Commission approve a plan—alluded to on page 4 of my March 18 letter—under which current Bureau employees who satisfy the heretofore-used quarter-degree ancestry standard will be eligible for preference for as long as they continuously remain employed by the Bureau. And second, I plan to propose to the Commission a standard under which descendants of tribes whose rolls have been closed by Congress—*i.e.*, the Five Civilized Tribes and the Osage Tribe—will for a three-year period be eligible for preference if they have at least one-quarter Indian ancestry.

The first proposal is of course based on equitable considerations and a desire to protect the rights and interests of current Bureau employees. The second would be designed to provide the tribes in question with time to organize under the Oklahoma Indian Welfare Act, 25 U.S.C. § 501 *et seq.*, and thereby to put their members on a par with other Indians by allowing them to be preference-eligible under 25 U.S.C. §§ 472 and 479 simply by virtue of their tribal membership. It would also provide time for a legislative solution to the problem to be achieved if such an approach is viewed as appropriate. This may, if I understand your letter correctly, be what you had in mind in suggesting that the members of the Five Tribes "be given the opportunity to propose a remedy." Officials of the Bureau have already, of course, discussed the basic problem in some depth with representatives of the affected tribes, and they believe that the two steps I have outlined above would generally be regarded by the tribes as satisfactory.

Some question exists, of course, as to whether the two plans are fully consistent with legal requirements. But I have decided on grounds of policy and fairness to propose them to the Commission—whose approval of initial hiring practices may well be legally required in any event—and to implement them if they are approved by the Commission.

On the basis of your letter, I believe that your thinking and mine are pretty close on this matter. I would of course be happy to hear from you if you have further thoughts on this somewhat knotty problem.

Sincerely yours,

THOMAS S. KLEPPE,  
*Secretary of the Interior.*

Enclosure.

[Exhibit 1, Index No. 32]

AMERICAN INDIAN POLICY REVIEW COMMISSION,  
CONGRESS OF THE UNITED STATES,  
Washington, D.C., May 7, 1976.

HON. CARL ALBERT,  
*Speaker, House of Representatives,*  
Washington, D.C.

DEAR MR. SPEAKER: In response to your inquiries regarding the American Indian Policy Review Commission and the proposal of the Department of the Interior to amend the Indian preference regulations, we wish to advise you that we have discussed this matter in detail with Ernest L. Stevens, Director of the Commission, Karl Funke, Specialist for Task Force #9, and other members of that Task Force staff. We are well satisfied from this discussion and a review of Mr. Funke's correspondence with the Solicitor's Office at Interior that the legal opinions of Mr. Funke pertaining to this subject were never advanced as representing the official or even unofficial position of the Policy Review Commission. In fact, Mr. Funke's involvement in this matter and his contact with the Solicitor's Office pre-dated his employment with the Commission.

It appears that numerous claims have been made that Mr. Funke has contended that Oklahoma Indians can only qualify for preference if they are half-bloods. We find that this allegation is entirely without foundation. The only position Mr. Funke has advocated is that preference in Oklahoma is governed by the Indian Reorganization Act of 1934. He has expressed no opinion as to the eligibility or non-eligibility of any segment of the Indian community of Oklahoma under that Act. In fact, it appears from the attached letter of Mr. Funke to Ernest Stevens that the spectre of non-eligibility of Indian people in Eastern Oklahoma (particularly the Choctaw, Chickasaw, Cherokee, Creek and Osage) was raised by the Department of the Interior itself. This results from their apparent indecision as to whether persons who are descendants of members who were enrolled under the 1906 Acts are themselves members or are only descendants of members.

Under the policies followed by Interior up to this time these people were apparently treated as if they were tribal members. Under Interior's newly proposed regulations it appears that Interior will view these people as descendants rather than members. Based on this change in characterization it was Interior which has concluded that people from these tribes may only be able to qualify for preference if they are one-half or more degree Indian blood. Mr. Funke at no time ever advanced such a position.

In order to avoid any confusion on this score we have requested that Mr. Funke direct a letter to the Department of the Interior and the Civil Service Commission clarifying the fact that he has never expressed an opinion on the membership or non-membership status of people tracing to ancestors enrolled in these tribes.

Sincerely,

JAMES ABOUREZK,  
*Chairman.*  
LLOYD MEEDS,  
*Vice-Chairman.*

[Exhibit 1, Index No. 31]

To: Ernest L. Stevens.

From: Karl Funke, Specialist Task Force No. 9.

Subject: Contacts with Interior Department—Re Indian Employment Preference.

Date: May 7, 1976.

The current policy of the BIA in according Indian preference is contained in the BIA Manual. It provides in relevant part:

To be eligible for preference, an individual must be one-fourth or more degree Indian blood and be a member of a Federally-recognized tribe.<sup>1</sup>

IHS follows the same standard but apparently has not published it. This standard is apparently based on an executive order issued by President Roosevelt on January 30, 1939.<sup>2</sup>

While working for the Native American Rights Fund in the winter of 1975 it came to my attention that this preference standard is in violation of the law even if it was based on the executive order. The primary preference law is contained in the Indian Reorganization Act of 1934<sup>3</sup> (IRA). This law provides its own definition of Indian for purposes of preference eligibility. The definition stated that you are an Indian under the Act if you fit within one of the following classes:

1. All persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction or
2. All persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation or
3. All other persons of one-half or more Indian blood.<sup>4</sup>

A Congressional enactment cannot be overridden by an executive order. The IRA is a Congressional enactment and thus where the IRA is applicable it cannot be overridden or modified by an executive order. It follows that the BIA standard premised on the ineffectual executive order cannot stand.

In the spring of last year I decided to do an extensive investigation of the definition of "Indian" contained in the IRA as part of my J.D. thesis. In the course of my research and investigation I learned that the BIA was being sued by a member of a South Dakota tribe who was less than one-fourth Indian blood. As a result of this suit the Solicitor's Office at Interior was researching the definition of "Indian" in the IRA for purposes of preparing a Solicitor's Opinion on the matter and advising the BIA of what changes in their regulation they would have to make in order to conform with the law. I discussed the various issues which were involved in the matter with David Jones, a staff attorney in the Solicitor's Office, on March 21, 1975.

The Solicitor's Office continued to research the matter for purposes of their opinion and I continued to research it independently for purposes of my J. D. thesis. At the time I met with David Jones we agreed to exchange our respective analyses when they were completed.

In June of 1975, the Solicitor's Office sent me a copy of their opinion on the IRA definition of "Indian" and I sent them a copy of my thesis. The Solicitor's Opinion was correct in many respects; however it was incorrect and deficient on a number of very critical points.<sup>5</sup>

On September 6, 1975, I received a copy of a letter which was sent by Commissioner Thompson to a number of tribal chairmen. This letter presented two different sets of proposed regulations defining who would be eligible for Indian preference. Both sets of regulations contained language modifying the statutory language of the IRA defining "Indian" and adding totally new definitions or classes of Indians who would be made eligible for preference.

During the week of November 10th, 1975, I attended the Annual Convention of the National Congress of American Indians in Portland, Oregon. While I was in Portland I had occasion to talk with James Schermerhorn, Deputy Director, Office of Indian Rights, Civil Rights Division, U.S. Department of Justice. He informed me that BIA had requested Justice to defend them in the suit which

<sup>1</sup> 44 BIAM 335, 3.1 (revised Oct. 30, 1972).

<sup>2</sup> Exec. Order No. 8043 (Jan. 30, 1939). This order did not deal in any way with who was entitled to Indian preference. The order merely provided exemptions from competitive civil service examinations for "Positions in the Bureau of Indian Affairs . . . when filled by the appointment of Indians who are one-fourth or more Indian blood."

<sup>3</sup> 25 USC Sec. 461 *et seq.*

<sup>4</sup> 25 USC Sec. 479 (1970).

<sup>5</sup> Reid Chambers, Associate Solicitor for Indian Affairs, readily stated that the opinion was not exhaustive and did not address all the issues which needed to be addressed in a meeting I had with him on January 9, 1976.

was brought against BIA challenging BIA's preference standard. Mr. Schermerhorn informed me that Justice reviewed the legality of the BIA preference standard in light of the statutory definition contained in the IRA and that Justice informed BIA that the case was indefensible.

Later that same week I met James (Jim) Robey, Special Assistant to the Commissioner of the BIA. Jim and I happened to get into a discussion on Indian preference. Jim informed me of the interpretations that the BIA was thinking of adopting concerning the definition of "Indian" stated in the IRA. I informed him that I had written part of my J.D. thesis on this very subject and that based on the extensive research I had conducted on the issue a number of interpretations which were about to be adopted by the BIA were incorrect. Jim informed me that the Solicitor's Office had informed BIA that there was nothing to clarify the meaning of certain provisions of the IRA definition. I informed Jim that they were incorrect and that there was substantial material and legislative history which very clearly and concisely explained the intent and meaning of the IRA definition. Jim asked me if I would provide a copy of my thesis for him when I returned to Washington, D.C.

It was after returning from Portland that I informed you of the fact that BIA was changing their preference eligibility regulations and that it appeared the new regulations would be very damaging to preference if BIA applied the interpretations they had expressed to me.

As you know sometime thereafter in early December I stopped in Jim Robey's office. At that time I provided him a copy of my thesis and we further discussed the definition of "Indian" provided in the IRA. He stated that he would bring the copy of my thesis over to the Solicitor's Office and get their opinion on whether my opinions on the matter were correct. (Jim is not a lawyer and did not feel capable of judging the legal merits of my thesis by himself.) Jim also provided me with a draft letter which was prepared for the Secretary of Interior to sign and send over to the Civil Service Commission requesting a change in the regulations defining "Indian" for purposes of preference. See attachment.

At this point in time there was no dispute with regard to the Five Civilized Tribes. The letter did not create any special exception for these tribes other than a grandfather clause.

The clause and explanation provided:

(v) An employee of one-quarter degree or more Indian ancestry of a federally-recognized tribe who was a preference eligible prior to the change in this subsection, as long as the person is continuously employed.

\* \* \* \* \*

Because in some cases Oklahoma tribes have not maintained organizations and current memberships and there are now, with several exceptions, no reservations in the State, the provisions of the definition of Section 19 may be inapplicable to persons of such tribal ancestry except to the extent they are one-half or more Indian. In order to insure that no person, such as an Oklahoma Indian, who is presently a preference eligible is deprived of continuing to receive it, we propose the last category in the interest of justice to such employees.<sup>9</sup>

The other provisions of the proposed regulations merely tracked the language of the IRA definition and on their face they would have appeared to present no problem. However, there were very grave problems because BIA was going to place interpretations on what the definition meant clearly in conflict with the intent and meaning of the statutory definition. The ultimate result, in no uncertain terms, would have been to destroy Indian preference by making preference available to descendants of all tribes without regard to blood, or membership or relationship to a tribe.

Sometime during the middle of December, 1975, I called Jim Robey back to see what response he had gotten from the Solicitor's Office regarding their review of my thesis. Jim was out of town so I called Reid Chambers the Associate Solicitor directly and inquired as to their review of my thesis. Reid informed me that Jim had not provided him or his office a copy of the thesis. I informed Reid that I had some concern over the regulations and interpretations which were going to be placed on them. He said that he would be willing to meet with me and representatives from BIA to discuss the potentially troublesome interpretations but that he would only review the legal constraints and aspects of the implementing regulations and that he could not and would not get involved

<sup>9</sup> See Attachment at 4-5 [not included here].

in anything involving policy matter. I told him that I would not attempt to deal with any of the policy issues but rather address only the legal issues presented by the statute.

On December 23rd, 1975, I spoke with Jim Robey on the phone and he informed me that they were going to remove the grandfather clause for the Five Civilized Tribes and replace it with a new category making all the descendants of the Five Civilized Tribes eligible for preference regardless of blood quantum or present political or social relationship with the respective tribes. We also discussed the impending meeting with Reid.

As you know the meeting with Reid and others from the Solicitor's Office and BIA took place on January 9th, 1976.

At that meeting Reid Chambers invited me to identify the problems I had with the proposed regulations which were subject to strictly legal as opposed to policy issues. Reid made it very clear that he would not get involved in matters of policy nor would he make any legal interpretations concerning the requirements of the law which would alter the interpretations the BIA was placing on the law unless the law clearly indicated or required such an interpretation. In other words Reid was not favorably disposed to making legal interpretations which would affect the interpretations BIA thought were possible. The burden of proof rested on me to (1) demonstrate that each issue I raised was a legal issue and not a policy issue and (2) demonstrate that the law required a definite interpretation as opposed to a number of possible interpretations. I think it is very safe to say that Reid did not feel compelled to agree with any of my legal analysis simply because he happened to know I was working for the American Indian Policy Review Commission.

During the course of the meeting I stated that based on my research and knowledge on this particular subject I believed that the law placed certain constraints upon the interpretations of the definition of "Indian" contained in the IRA. I asked Reid to review the legal merits of my analysis on a number of issues and make a determination based on my analysis and his own. Half of the issues I raised at the meeting were agreed on by Reid and his staff at the time of the meeting. The other half of the issues were not resolved at that meeting and Reid said that due to the complexity of some of the issues he would like to research and review them more carefully. He asked me if I could provide him with more extensive material and citations on these matters and I informed him that I could. The issues which were raised at that meeting were summarized in my subsequent follow up letter to Reid on February 6th, 1976. See attachment.

For ease of reference I will briefly restate the issues which were:

1. Whether the language "a descendant of a member who was living on a reservation on June 1, 1934" meant:

(a) the member who was living on a reservation on that date and all of his descendants would be eligible for preference without regard to blood quantum, or present political or social relationship to any tribe; or

(b) whether the descendant himself had to reside on the reservation as of that date thus limiting the class to a very finite number of people who would eventually die out.

The BIA contended that the first interpretation was permissible. I contended that the latter position was intended and the only legally correct interpretation.

The issue was not decided on by the Solicitor's Office at the time of the meeting.<sup>1</sup>

2. Whether the language "all other persons of one-half or more Indian blood" was intended to apply only to federally recognized tribal Indians, or whether it was intended to apply to non-federally recognized Indians.

The BIA contended the first interpretation was correct. I contended the latter interpretation was the only legally correct interpretation.

<sup>1</sup> Letter of Karl A. Funke to Reid Chambers of February 6, 1976 and an accompanying memorandum, (see attachments) addressed item number 1 above. On March 10, 1976, Reid sent a letter to me stating that he agreed with my legal analysis on that point. See attachment. Shortly after receipt of Reid's March 10 letter I came into possession of a circular by former Commissioner John Collier, (the primary draftsman and advocate of the IRA in 1934). This circular titled "Analysis and Explanation of the Wheeler-Howard Indian Act" provided in part that a comprehensive explanation of the definition of "Indian" provided in the IRA. This circular written contemporaneously with the IRA by the person who was the prime draftsman of it supported my analysis and conclusions on each point presented to the Solicitor's Office. On March 16, 1976 I sent a letter and a copy of the circular to Reid. See attachment. On March 25, 1976, David Jones a staff attorney in Reid's office sent me a letter and a copy of a Solicitor's Opinion which agreed with my position with regard to item number 1. (See attachment [not included here].)

Reid reviewed the legal merits of my argument at the meeting and decided this issue in favor of my position.

3. Whether Indians are subject to Civil Service Regulations, or whether the IRA exempts Indians from Civil Service laws and regulations and mandates that the Secretary of Interior establish separate standards for the appointments of Indians in the Indian Service. My position was the latter and Reid agreed with me on this issue at the meeting.

4. Issue No. 4 concerns the Five Civilized and Osage Tribes of Oklahoma. Interior's position was that the IRA didn't apply to the tribes in question therefore the Secretary of the Interior had discretion to accord preference to all descendants of 1906 enrolled members of the Five Civilized and Osage Tribes on the basis of pre-IRA preference laws which did not provide a definition of Indian. My contention was that the IRA definition applied to these tribes and thus there was no discretion to create a new definition in derogation of the legally mandated IRA definition. Where the IRA definition applies there is no administrative discretion to create an open ended descendant category which would make individuals eligible for preference without regard to degree of Indian blood, tribal membership or present social or political relationship to any tribe.

Since this issue appears to be the critical one at this time I will elaborate on the matters involved so that you have as complete an understanding of the issue as I can present in writing.

As a matter of background I think it is *critically important* to understand a certain judgement or perception which BIA and/or Interior was making under their earlier preference standard and an apparent change in judgment or perception which is apparently being made by BIA and/or Interior with regard to the Five Civilized and Osage Tribes of Oklahoma at the present time.

Under the preference standard which has been in effect for some time, a person had to be one-fourth Indian blood *and a member of a federally recognized tribe*. Under this standard one-fourth blood Indians from the Five Civilized and Osage Tribes who could trace descendanty to rolls made in 1906 were accorded preference. Thus, even though the rolls of these tribes were supposedly closed in 1906 the BIA and/or Interior was apparently treating descendants of the 1906 enrolled members as if they were members of a federally recognized tribe. If they hadn't done this none of the Indians from these tribes would have qualified under their preference standard which required such membership.

The definition provided in the IRA states that one eligible class of "Indian" under the Act is: "all persons of Indian descent who are members of any recognized tribe now under Federal jurisdiction."

Secretary Kleppe in his March 18th, 1976, letter to the Civil Service Commission stated that it was necessary to add an open ended descendant class because the Acts of April 26, 1906, 34 Stat. 539 closed the rolls of the Cherokee, Choctaw, Creek, Chickasaw and Osage tribes "so that today there are no current membership rolls for these tribes."

Based on their own reasoning Interior concluded that: "the provisions of the definition of Section 19 may be inapplicable to persons of such tribal ancestry except to the extent they are one-half or more Indian."<sup>8</sup>

The effect of this letter is to throw into question whether or not these descendants are member's of these tribes.

At no time have I ever advocated this position. The only legal issue that I have presented to Interior is that the IRA definition is made directly applicable to these tribes by the law itself and thus Interior has no authority to derogate from the statutory definition.

Whether the Indians from the Five Tribes should presently be considered members of those tribes or whether they should not be considered members but descendants of members is an issue which the BIA and/or Interior has to decide *and which I have never addressed* in any of my discussions and/or correspondence with them. What I have advocated is that: "The Oklahoma tribes in question can organize and establish membership criteria the same as the other tribes throughout the United States."<sup>9</sup>

In the January 9th meeting, Reid, under the assumption that the IRA definition didn't apply to the Five Civilized Tribes, felt that the BIA's open ended descendanty category was a matter of policy and therefore agreed with the BIA

<sup>8</sup> See attachment—at 4 [not included here].

<sup>9</sup> See my letter of April 1, 1976, to Reid Chambers attachment—at 6 [not included here].

on this issue although he stated he would be willing to review his position if I could demonstrate that the open ended descendency category was illegal.<sup>19</sup>

On April 1, 1976, I wrote a letter to Reid which demonstrated that the IRA definition of "Indian" applied to the Five Civilized and Osage Tribes. Reid had earlier conceded the point that if the IRA applied to these tribes that there was no discretion to adopt that definition.

I also presented my analysis and copies of Solicitor's Opinions which stated even if it was a correct interpretation of the law that Indians from these tribes are not members but descendants, they nonetheless have the present power to organize either independent of the Oklahoma Indian Welfare Act or under that Act and define their membership in any manner they wish. Once having done that it is very clear that they would fall within the membership eligibility criteria of the IRA.

[Exhibit 1, Index No. 30]

AMERICAN INDIAN POLICY REVIEW COMMISSION,  
CONGRESS OF THE UNITED STATES,  
Washington, D.C., May 6, 1976.

HON. LLOYD MEEDS,  
Vice Chairman, American Indian Policy Review Commission, Rayburn Office  
Building, Washington, D.C.

DEAR MR. MEEDS: In response to your letter of April 29 to Ernie Stevens, Director of this Commission, I wish to advise you that I have not at any time asserted or held forth my opinions on the preference question, or any other legal issue in which our task force is engaged, as being anything other than my own personal views. Specifically, with reference to the preference issue I have never stated or even suggested that my opinions were those of the Congress or of the American Indian Policy Review Commission. In fact, my involvement with the Solicitor's Office of Interior on this question pre-dates my employment with the Commission. All parties in every discussion I have had on this subject clearly understood that the views I expressed were my own; and all correspondence I have had on this subject clearly reflect that the position I advanced was personal to me. To the extent anyone has drawn a contrary inference, I am sure a review of the facts and correspondence in this matter will clarify the situation.

It is apparently from recent publicity which has occurred and statements which have been made that the views I have expressed are either not fully understood or are being misrepresented. This letter will serve as a clarification of the position I have asserted. A more detailed memorandum explaining the chronology of events and analysis of law is being prepared for Ernie Stevens.

With respect to the question of Indian preference and eligibility of members of Oklahoma tribes, it is and has been my position that Oklahoma Indians, including members of the Five Civilized Tribes and Osage Tribe, are covered by the provisions of Sections 12 and 19 of the Indian Reorganization Act of 1934 (25 U.S.C. 472, 479). Under this statute an Indian qualifies for employment preference regardless of blood quantum if (1) he is a member of a recognized tribe under Federal jurisdiction, or (2) he resided on a reservation on June 1, 1934 and was a descendant of a member of a recognized Indian tribe. If he does not meet either of these criteria, then he is still eligible if he is one-half or more Indian blood.

Under past procedure (44 BIAM 335, 3.1 10/30/72) and regulations 5 CFR, Chpt. 1, Pt. 213, Sec. 213.3112) B.I.A., I.I.S. and the Department of the Interior have required that an applicant be at least one-fourth Indian blood and be a member of a federally recognized tribe. In *Whiting v. U.S.*, filed last year the one-fourth blood requirement was challenged in Federal court by a member of the Rosebud tribe in South Dakota. The Department of Justice advised the Department of the Interior that the one-fourth blood standard could not be defended. It was thus necessary to draft new regulations dropping the one-fourth blood standard for persons who were members of federally recognized tribes.

<sup>19</sup> Even if the IRA did not apply to the Five Civilized Tribes and they were eligible for preference under the pre-IRA preference laws they would still have to meet the one-fourth blood requirement because the 1930 Executive Order would still be binding with regard to these earlier preference laws. Thus, under either IRA or pre-IRA preference laws the proposed open ended descendency standard for the Five Civilized Tribes is in derogation of the law.

On March 18, 1976, the Secretary of the Interior wrote to the Civil Service Commission asking that new preference regulations be promulgated. These proposed regulations tracked the language of Section 19 of the I.R.A. except that they would have added an additional preference class as follows: "A decedent of an enrolled member of a currently Federally recognized tribe whose rolls have been closed by an Act of Congress." The Cherokee, Choctaw, Creek, Chickasaw and Osage tribes were cited as tribes whose rolls had been closed by the Act of April 26, 1906 (34 Stat. 137) and the Act of June 28, 1906 (34 Stat. 539).

Preference has previously been extended to these tribes on the same basis as all other tribes, i.e., one-fourth blood plus tribal membership. Descendants of members who were enrolled at the time of the closure Act were extended preference as if they themselves were members. However, in his March 18 letter to Civil Service Commission, Secretary Kleppe stated that the addition of the "descendant" class was necessary because the Act of April 26, 1906 and the Act of June 28, 1906 "closed the rolls" of these tribes. He thus concluded "The provisions of the definition of Section 19 (I.R.A.) may be inapplicable to persons of such tribal ancestry except to the extent they are one-half or more Indian. In order to achieve the utmost uniformity in standards of eligibility, we propose the fifth criterion so as to include descendants of the members of these tribes."

The effect of this letter is to throw into question whether or not these descendants are members of these tribes. If these descendants are deemed members, as was the practice under the prior preference regulations, then the dropping of the one-fourth blood standard as required by *Whiting*, will open preference eligibility to any person, regardless of his blood quantum and regardless of his present affiliation with the tribe, so long as he can trace to an ancestor enrolled in 1906. The same result pertains if the "descendancy" test is adopted without retaining the one-fourth blood cutoff.

If, as I believe and the Solicitor's Office of Interior now believes, the Indian Reorganization Act is applicable to the tribes in Oklahoma insofar as the preference provisions are concerned, then the "descendancy" test is simply contrary to law. If, as Interior originally argued, preference in Oklahoma is governed by earlier preference statutes and not by the I.R.A., then the earlier 1939 Executive Order which established a one-fourth blood quantum limitation is still applicable and the open-ended "descendancy" test proposed by Interior would still be in conflict with existing law until such time as the Executive Order is amended or withdrawn.

It is my belief that the 1906 Act does not preclude the Oklahoma tribes in question from establishing membership criteria the same as other tribes throughout the United States. That Act did not freeze the tribal membership for all times and purposes. The Department of the Interior apparently agrees with this position for the Seminoles, a tribe which is also covered by the Act of April 26, 1906, recently adopted a Constitution which includes criteria for membership.

It is my understanding that adoption of an open-ended "descendancy" test without limitation as to blood quantum or membership in a tribe will quadruple the number of preference eligibles in Oklahoma. As a matter of policy I do not believe this is wise. More importantly, believing as I do that the Indian Reorganization Act preference provisions are applicable to the Oklahoma tribes, I do not believe such a policy can lawfully be adopted. The Solicitor's Office at Interior has reluctantly come to the conclusion that my analysis is correct.

Under the circumstances, I do not see how I can withdraw my personal opinion from consideration. After considering this letter and the memorandum which I am supplying to Ernie I am sure you will agree with me in this regard.

Respectfully yours,

KARL A. FUNKE,  
*Specialist, Task Force No. 9.*

[Exhibit 1, Index No. 29]

THE SPEAKER'S ROOMS,  
U.S. HOUSE OF REPRESENTATIVES,  
Washington, D.C., April 27, 1976.

HON. THOMAS S. KLEPPE,  
*Secretary of the Interior, Washington, D.C.*

DEAR MR. SECRETARY: A very difficult problem has arisen with respect to the Five Civilized Tribes of Eastern Oklahoma. As you know, pending before the

Civil Service Commission are proposed regulations by your Department redefining the word "Indian" for purposes of Indian preference employment. In the initial communication from Interior to CSC, the Department suggested a definition for Indians of the Five Tribes based on descendancy. The practice among the Five Tribes since the Rolls were closed in 1906 has been to recognize all individuals who can prove a minimum of one-quarter degree of blood of the particular tribe. However, since the submission of this proposed regulation to CSC, an American Policy Review Commission staff member has commented to the Solicitor General that the legal grounds were very tenuous for a one-quarter degree requirement, especially in light of 25 U.S.C. § 479. Specifically, the Review Commission has suggested that it is a legally defensible ground that a one-half degree requirement should be imposed on the Five Tribes for purposes of Indian preference. Thus, the Department of the Interior is without authority to issue a regulation which only requires descendancy as a standard.

While the legal reasoning of this staff memorandum is well taken, the practical situation dictates against such a position being taken. The shock of an administrative determination that the degree requirement must now be one-half will severely disrupt the Eastern Oklahoma Tribes. Because of far-reaching implications of such a determination, I would respectfully request that any rulemaking proceeding regarding the Five Tribes be indefinitely postponed.

However, I realize that this might not be feasible, especially in light of *Whiting v. United States*, Civ. No. 75-3007 (D.S. Dk.). Thus, I would suggest that consideration be given to the inclusion of an exception within the new regulation specifying that for purposes of the Five Tribes, an Indian will be defined as a one-quarter degree descendant. I feel that this particular definition is appropriate since first, it won't cause widespread administrative disruption in Eastern Oklahoma, and second, it will provide the Tribes and the Congress the proper amount of time to consider this particularly complex matter and arrive at a solution to the problem of membership in the Five Tribes.

Finally, it is my understanding that your staff members have suggested a similar alternative to the original. Specifically, we have been told by the staff of the Solicitor General's office that the particular regulations affecting the Five Tribes might be altered to include an exception for the Five Tribes that would expire in three years. We would suggest that this also include a provision that the Five Tribes be given the opportunity to propose a remedy. This seems to be a perfectly sensible and reasonable alternative in light of all the difficulties that would be posed by defining the Five-tribe membership as one-half.

Your serious consideration of this comment would be most appreciated.

Many thanks for your attention to this matter.

Sincerely,

THE SPEAKER.

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[Exhibit 1, Index No. 28]

CONGRESS OF THE UNITED STATES,  
AMERICAN INDIAN POLICY REVIEW COMMISSION,  
Washington, D.C., April 29, 1976.

ERNIE STEVENS,  
Executive Director, American Indian Policy Review Commission,  
House of Representatives,  
Washington, D.C.

DEAR ERNIE: As Vice Chairman of the American Indian Policy Review Commission, I wish to register my strong objections to the recent opinion concerning the eligibility of certain Oklahoma Indians under the Indian preference law which was communicated by the Commission to the Solicitor of the Department of the Interior and the Chairman of the U.S. Civil Service Commission. I do so on the following grounds.

I reject any assertion or belief held by any employee of the Commission (including the Executive Director, General Counsel, or Administrative Director) that he, on his own volition and without prior approval from the Commissioners, has the legislative mandate, authority, or power to express either orally or in writing a "Commission" position or policy concerning present laws or regulations affecting American Indians, to any agency of the government.

I hesitate to again remind the Commission that it is a *Congressional* creation, which is mandated only to recommend changes in policy or law to the *Congress*—and not until January, 1977. The employees of the Commission are *Congressional* staff. As such, they are not empowered to offer opinions to any branch of the Government which purports to be the position of the Commission or Congress, unless they have prior approval from the Commissioners or Congress.

Regarding the opinion which was sent to the Department of the Interior and the Civil Service Commission, the law on the subject of Indian preference and the definition of an Indian has become increasingly cloudy. Like many other instances in the law, the definition of an Indian is subject to many interpretations and views. The opinion of Mr. Funke, although well supported, is only one of many such opinions that could be rendered on the subject and equally well supported. Notwithstanding the legalities and equities of his opinion, it was not sanctioned or approved by the Commissioners or the Congress as an official position.

Therefore, I request that the Commission communicate to the Department of the Interior and the U.S. Civil Service Commission that the opinion was not "official" and as such must not be accorded the weight of a Congressional opinion and that the opinion should be withdrawn from consideration. Furthermore, I insist that the Commission make clear to the respective agencies that there is room for several legal interpretations on this subject and that in no respect, did the Commission intend to imply that any Oklahoma Indians are ineligible for consideration under the preference law. If the Commission believes that it is necessary to comment on this matter, I suggest that it include a study on the subject in its final report to the Congress.

As a result of the recent "opinion" which was approved by the Commission staff concerning the eligibility of Oklahoma Indians under the preference law, an unnecessary turmoil has occurred in Oklahoma. The interjection of the Commission into the controversy dismays me as much as it does colleagues from Oklahoma, particularly the Speaker of the House, Carl Albert. It was from the kindness of the Speaker that the Commission obtained additional space for their work. It was the Speaker who actively supported the legislation which created the Commission. And it is to the Speaker that any future requests must be addressed should the Commission need additional assistance. The Speaker has been a friend of the Commission and his continued support is needed.

I direct that the import of this letter be brought to the attention of every employee of the Commission.

Sincerely,

LLOYD MEEDS, *Vice Chairman,*  
*American Indian Policy Review Commission.*

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[Exhibit 1, Index No. 27]

U.S. DEPARTMENT OF THE INTERIOR,  
BUREAU OF INDIAN AFFAIRS,  
Washington, D.C., April 20, 1976.

To: All Area Directors, Field Administrator, Administrative Services Center.  
From: Commissioner of Indian Affairs.  
Subject: Indian Preference Policy.

During the past several months an extensive study has been made of the definition of Indian in terms of the present policy and the statutory definition in the Indian Reorganization Act, June 18, 1934.

Effective April 20, 1976, the definition of Indian as stated in Section 19, Indian Reorganization Act of June 18, 1934, 25 USC 479, will be the criteria used in recognizing an individual for the purpose of Indian preference in certain personnel actions in the Bureau. Indian means persons of Indian descent:

Who are members of any recognized Indian tribe now under Federal jurisdiction;

Who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation;

All others of one-half or more Indian blood, and

Eskimos and other aboriginal peoples of Alaska.

An individual meeting any one of the above criteria of the statutory definition will be afforded preference in actions filling a vacancy by a promotion, reassign-

ment or lateral transfer, in the Bureau. This policy will not apply to initial hiring until a new Schedule A appointing authority has been received from the Civil Service Commission. Employees will be responsible for providing the Personnel Office with certificates verifying that they meet one of the criteria above.

You are urged wherever there is exclusive union recognition that this information be brought to their attention at the earliest possible time.

MORRIS THOMPSON.

[Exhibit 1, Index No. 26]

U.S. CIVIL SERVICE COMMISSION,  
BUREAU OF RECRUITING AND EXAMINING,  
Washington, D.C., April 12, 1976.

Mr. KARL A. FUNKE,  
*Specialist, Task Force on Indian Law Revision, Consolidation, and Codification,  
American Indian Policy Review Commission, Washington, D.C.*

DEAR MR. FUNKE: This is in reply to your April 2 letter to the Chairman asking that work be suspended on a Department of the Interior request to change the definition of "Indian" used in the Commission's regulations authorizing appointments in the Bureau of Indian Affairs without competitive examination. The Chairman referred your letter to our office since we are responsible for excepted service appointment policies.

We are reviewing the Department's request and will consult with Interior officials concerning resolution of the issues you have raised.

Sincerely yours,

JOHN W. FOSSUM,  
*Acting Director.*

[Exhibit 1, Index No. 25]

NATIVE AMERICAN RIGHTS FUND,  
Boulder, Colo., April 7, 1976.

Mr. ROBERT E. HAMPTON,  
*Chairman, U.S. Civil Service Commission,  
Washington, D.C.*

DEAR CHAIRMAN HAMPTON: I have been informed by Commissioner Morris Thompson's office and Associate Solicitor for Indian Affairs, Reid P. Chambers, that a letter dated March 18, 1976, from Secretary of Interior Thomas Kleppe has been sent to you requesting "a change in the definition of 'Indian' for purposes of the Schedule A excepted appointment authority now contained in 5 C.F.R. S. 213, 3112(a) (7)."

We share the opinion of the American Indian Policy Review Commission as expressed in Mr. Karl Funke's letter to you of April 2 that the proposed regulations are in derogation of the law with respect to item (v) of page 4 of the Secretary's letter.

I understand that the Associate Solicitor for Indian Affairs and the Commissioner of Indian Affairs will be reviewing the legality of item (v) of the proposed regulations. Since the processing of the proposed regulations is presently taking place in the Civil Service Commission, I hereby request that the processing of the proposed regulations be immediately suspended until this matter has been resolved.

Please advise me as to your plans on this matter as soon as possible.

Sincerely,

JOHN E. ECHOHAWK.

[Exhibit 1, Index No. 24]

AMERICAN INDIAN POLICY REVIEW COMMISSION,  
CONGRESS OF THE UNITED STATES,  
Washington, D.C., April 2, 1976.

Mr. ROBERT E. HAMPTON,  
*Chairman, Civil Service Commission,  
Washington, D.C.*

DEAR CHAIRMAN HAMPTON: I have been informed by Commissioner Morris Thompson's Office and Associate Solicitor for Indian Affairs, Reid P. Chambers, that a letter dated March 18, 1976, from Secretary of Interior Thomas Kleppe

has been sent to you requesting "a change in the definition of 'Indian' for purposes of the Schedule A excepted appointment authority now contained in 5 CFR S. 213, 3112(a) (7)."

It is our opinion that the proposed regulations are in derogation of the law with respect to item (v) on page 4 of the Secretary's letter.

I have prepared and delivered a letter to Reid Chambers which demonstrates the basis of our contention. I have met with Mr. Chambers this morning and he will be reviewing the legality of item (v) of the proposed regulations. A copy of my letter to him is enclosed.

Since the processing of the proposed regulations is presently taking place in the Civil Service Commission, I hereby request that the processing of the proposed regulations be immediately suspended until this matter has been resolved.

Your early response and cooperation in this matter will be deeply appreciated. If you have any questions regarding this matter, please call me.

Yours cordially,

KARL A. FUNKE,  
*Specialist, Task Force on Indian Law Revision,  
Consolidation and Codification.*

[Exhibit 1, Index No. 23]

AMERICAN INDIAN POLICY REVIEW COMMISSION,  
CONGRESS OF THE UNITED STATES,  
*Washington, D.C., April 1, 1976.*

REID P. CHAMBERS, Esq.,  
*Associate Solicitor for Indian Affairs,  
U.S. Department of the Interior, Washington, D.C.*

DEAR REID: This letter follows up on our previous discussions and your letter of March 10, 1976, concerning the proposed BIA regulation expanding preference to all descendants of members of the Five Civilized and Osage Tribes of Oklahoma who were enrolled pursuant to 1906 legislation closing the rolls of said tribes.

This proposal is misconceived to the extent that it cannot be premised upon either any explicit statutory authority or any permissible administrative discretion.

My analysis, detailed below, is that descendants of such 1906 enrollees are ineligible for preference under Section 12 of the Indian Reorganization Act (IRA), 25 U.S.C. Sec. 472, unless they *also* meet one of the three explicit criteria of "Indian" as defined in Section 19 of IRA, 25 U.S.C. Sec. 479. I also conclude that such descendants cannot be accorded preference as "Indians" or "persons of Indian descent" under pre-IRA legislation because the tribes in question, as well as other Oklahoma tribes, were not permitted to reject the IRA pursuant to tribal vote under Sec. 18 thereof, 25 U.S.C. Sec. 478.

Consequently, there is no statutory authority for the proposed regulation respecting these Oklahoma descendants. In addition, there is no discretion to erect a policy preferring such descendants solely because of their descendancy since the governing statutes, 25 U.S.C. Secs. 472, 479, establish a mandatory definition of "Indian" for preference purposes which cannot be altered administratively.

In your March 10 letter, you stated as follows:

Our position is that Section 472 replaced the other preference statutes only insofar as tribes organized under the Indian Reorganization Act are concerned. Thus, the other [pre-IRA preference] statutes, cited by the [*Mancari*] Court survive and are applicable to those tribes that voted to reject the Act.

We have advised the Commissioner that since the term "Indian" is not defined in any of the other statutes, he has the discretion to establish reasonable criteria. He has chosen to use the same criteria as Section 479 except for those of the Five Civilized and Osage Tribes where the tribes have not organized and the membership rolls were closed by an act of Congress.

Pursuant to this advice, the Secretary's letter of March 18, 1976, to the Civil Service Commission proposes the following definition of "Indian" in order to encompass the Oklahoma descendants in question:

"(V) a descendant of an enrolled member of a currently federally-recognized tribe whose rolls have been closed by an act of Congress."

The Secretary's letter (see page 4 thereof) sets forth the following explanation for this proposal:

"Under Section 18 of the Reorganization Act, tribes could vote to reject the application of it to their reservation. Nevertheless, other preference statutes, note 1, *supra*, would allow for the application of the same preference and the same definition of Indian. Thus, the above criteria would set a uniform standard throughout the Bureau; although membership standards and degrees of Indian ancestry vary.

While Section 13 provides that some Oklahoma tribes cannot organize under the Act, the preference and definition sections do apply so that Indians of Oklahoma tribes are under these provisions. However, there are now no Indian reservations within the State and the rolls of several Oklahoma tribes (Cherokee, Choctaw, Creek, Chickasaw and Osage)—were closed by acts of Congress so that there are today no current membership rolls for these tribes. The provisions of the definition of Section 19 may be inapplicable to persons of such tribal ancestry except to the extent they are one-half or more Indian. In order to achieve the utmost uniformity in standards of eligibility, we propose the fifth criterion so as to include descendants of the members of these tribes."

The Secretary correctly notes that by virtue of Section 13 of IRA, 25 U.S.C. Sec. 473, Indians of Oklahoma tribes are eligible for preference under Secs. 472, 479, but they cannot, as specified in Sec. 473, organize or incorporate under Sections 16 and 17 of the Act, (25 U.S.C. Secs. 476, 477). He significantly fails to mention, however, that Sec. 473 also explicitly excluded designated Oklahoma tribes, including the Five Civilized and Osage, from coverage under the tribal referendum provision of Section 18 of the Act, (25 U.S.C. Sec. 478). Thus, the Act itself applies IRA preference in Oklahoma even though tribes therein could not organize under the Act *and could not vote to reject the Act*.

I understand the Secretary's position to be that 25 U.S.C. Sec. 479 governs the definition of "Indian" for preference purposes unless a tribe has voted to reject the IRA under 25 U.S.C. Sec. 478. Upon such rejection, pre-IRA preference statutes may be invoked to accord preference to Indians of the rejecting tribe; and in determining eligibility under such statutes administrative discretion exists to adopt "reasonable criteria" which could differ from the definitional restraints of Sec. 479.

I have grave reservations about this position, which was explicitly rejected in *Mancari v. Morton*, 359 F. Supp. 585, 588 (D.N.M. 1973), *rev'd on other grounds*, 417 U.S. 535 (1974), and I am preparing an analysis of the Sec. 478 issue which I will forward to you. But even assuming, *arguendo*, the validity of the Secretary's Sec. 478 interpretation, the authority to adopt the proposed descendancy regulation cannot be founded thereon because Oklahoma tribes never rejected, nor could they, any provisions of IRA. Thus, pre-IRA preference statutes, and any discretion they may confer, do not apply to any Oklahoma tribes in light of Sec. 473.

I note that your letter and the Secretary's letter contain language suggesting that organization under Sec. 476 may be a prerequisite to application of Sec. 472 preference. Organization under IRA, however, is a second stage after a tribe, in your view, has voted under Sec. 478 to accept or reject the entire Act, including Sec. 472 preference and the *option* of organizing under Sec. 476. Thus, a determination of whether Sec. 472 applies to tribal members precedes, and is not dependent upon, actual organization of such members under Sec. 476.

Since Sec. 473 effects an automatic application of preference under Secs. 472 and 479 to all Oklahoma tribes, any authority to establish the proposed descendancy regulation must be found in these statutes. The language thereof confers no such authority. Under Sec. 472 the Secretary is directed to establish certain standards for preferential appointment of Indians but Sec. 479 establishes, as the Secretary concedes, the "statutory standard" for defining "Indian" for preference purposes. (See page 2 of his letter). *Freeman v. Morton*, 409 F. 2d 404, 501 (D.C. Cir. 1974) also clearly holds that Sec. 472 confers no discretion upon the Secretary beyond that expressly specified therein, i.e., to establish standards of health, age, character, etc.

Section 479 provides that "Indian" for purposes of Sec. 472 "shall include" individuals meeting the three-fold standard specified therein. The mandatory

"shall", coupled with the specification of the standard, totally militates against the grant of any discretion to expand or restrict the same. The rationale of *Freeman v. Morton*, *supra*, is clearly apposite in this respect.

I find no legislative history that would support Secretarial expansion of the Sec. 479 definitional standard to encompass the proposed Oklahoma descendancy regulation. Moreover, such expansion would frustrate directly the Congressional purpose behind IRA preference by according favorable treatment to Oklahoma descendants regardless of Indian blood quantum or political or social relations with any Indian tribe.

Thus, it is submitted that where Sec. 479 governs, as it does with respect to Oklahoma tribes, any preference applicant must meet one of the three criteria mandated therein. Mere descendancy cannot suffice unless that descendant: (1) is a current member of a federally-recognized tribe; (2) was living on a reservation on June 1, 1934 and descended from a federally-recognized tribal member; or (3) possesses one-half degree of Indian blood.

The Secretary expresses concern, as the above quotation from his letter states that the descendants in issue may be able to qualify only under the one-half blood category of Sec. 479. That concern, however, along with the desire to achieve "utmost uniformity" in eligibility standards cannot justify creation of administrative authority which simply does not exist. Surely, if Presidential executive orders cannot derogate from the Sec. 479 standard, as the Secretary concedes (see pages 1-2 of his letter) neither can any regulations promulgated by the Secretary himself or the Civil Service Commission effect such a derogation.

Finally, I note that all Oklahoma tribes, even those whose rolls have been closed, may organize under the Oklahoma Indian Welfare Act, 25 U.S.C. Sec. 503, by adopting a constitution thereunder which may define tribal membership to include the descendants in issue. Such descendants would then qualify, if accorded membership status, under the first criterion of Sec. 479. I attach two opinions by former Solicitor Margold, discussing the organizational rights of Oklahoma tribes, dated October 1, 1941, and May 17, 1941 (these are the best copies I could secure). At page 7 of the latter opinion he states:

"A third category of tribal rolls consists of those rare instances where Congress has provided for a final tribal roll for the complete distribution of all tribal property. Statutes authorizing such rolls contemplate the ending of tribal relations. Such rolls would be final for all tribal purposes, unless later legislation authorized a new enrollment or the reestablishment of tribal activities. The Indian Reorganization Act and the Oklahoma Indian Welfare Act are such legislation."

Thus, an avenue does exist whereby Oklahoma Indian descendants not otherwise eligible for preference presently under Sec. 479 may become eligible. Such an approach is consistent with the tribal self-determination thrust of IRA preference; Congress has left no other alternative if individuals cannot meet the dictates of Sec. 479.

The crux of the Secretary's position as stated on page 4 of his letter is that although Oklahoma tribes are bound by Secs. 472 and 479 of the IRA, it is necessary to ignore the law in order to "achieve utmost uniformity."

Uniformity is not achieved by creating unnecessary exceptions in derogation of the law. True uniformity is possible in this matter without violating the law and subverting the policy and purposes of IRA preference.

The Oklahoma tribes in question can organize and establish membership criteria the same as the other tribes throughout the United States.

I request that the processing of the proposed regulations on the definition of Indian for purposes of preference be suspended until this matter has been resolved.

I would appreciate your consideration of these views as soon as possible. I will be glad to meet with you or provide additional assistance on this matter.

Yours cordially

KARL A. FUNKE,  
Specialist, Task Force No. 9.

[Exhibit 1, Index No. 22]

DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SOLICITOR,  
October 1, 1941.

## SYLLABUS

Re: 1. Are the Freedmen of the Five Civilized Tribes entitled to vote on the acceptance of a constitution in pursuance of section 3 of the Oklahoma Welfare Act?

2. Would it be admissible under the act to adopt a constitution containing provisions whereby Freedmen who might be on the rolls would and could be eliminated?

Held: 1. The Freedmen having been admitted by treaties and formal tribal actions as full-fledged members in all of the Five Civilized Tribes excepting the Chickasaw Nation, they have the right to vote on any constitution to be adopted by these tribes under the Oklahoma Welfare Act.

2. As the Oklahoma Welfare Act constitutes the basis for complete reorganization of the Oklahoma tribes, the Five Civilized Tribes have full authority to reorganize their membership on a new basis excluding the Freedmen.

## Memorandum for the Commissioner of Indian Affairs:

Your inquiry of August 11, 1938, presented a question concerning the status of the Freedmen in the Five Civilized Tribes in connection with the desire of some of these tribes, and particularly the Seminole Nation, to organize under the Oklahoma Welfare Act of June 26, 1936.

This question involves two problems which will be taken up in order.

1. Are the Freedmen of the Five Civilized Tribes entitled to vote on the acceptance of a constitution in pursuance of section 3 of the Oklahoma Welfare Act?

2. Would it be admissible under the act to adopt a constitution containing provisions whereby Freedmen who might be on the rolls would and could be eliminated?

1. The memorandum of the Director of Lands to Indian Organization, dated October 23, 1937, which was attached to your inquiry, would appear to deal adequately with this question. The Freedmen were adopted as full members into the Cherokee, the Choctaw, the Seminole, and the Creek Tribes pursuant to the treaties of July 19, 1866 (14 Stat. 799) (Cherokee), April 28, 1866 (14 Stat. 769) (Choctaw), June 14, 1866 (14 Stat. 785) (Creek), and March 21, 1866 (14 Stat. 755) (Seminole), and in conformity with the amendment to section 5 of article 3 of the constitution of the Cherokee Nation of November 28, 1866, and the act of May 21, 1883, passed by the General Council of the Choctaw Nation and recognized by Congress in the act of March 3, 1885 (23 Stat. 366). Only the Chickasaw Nation refused admission to the Freedmen by act of its legislature dated October 22, 1885, which provided:

"That the Chickasaw people hereby refuse to accept or adopt the Freedman as citizens of the Chickasaw Nation upon any terms or conditions whatever and respectfully request the Governor of our Nation to notify the Department at Washington of the action of the legislature in the premises." (See *United States v. The Choctaw Nation, et al.*, 38 Ct. Cl. 558.)

The Freedmen thus having been made full-fledged members of four of the five tribes which in accordance with various acts of Congress granted them all rights of citizenship in the Nations, including the right of suffrage (see *Whitmire v. Cherokee Nation et al.*, 30 Ct. Cl. 138 at 157; *Choctaw and Chickasaw Nations v. United States*, 81 Ct. Cl. 63; Opinion of Secretary of the Interior of August 9, 1898, No. 15030-1913, J-D), the Freedmen are entitled to vote on any constitution along with all other members of these tribes. This case is thus different from that of the Kiowa Indians dealt with in the proposed letter of the Commissioner to Mr. Ben Dwight, Organization Field Agent at Oklahoma City, Oklahoma, transmitted to the Assistant Commissioner of Indian Affairs by the Solicitor with his memorandum dated October 9, 1937. In that letter it was stated:

"There is no treaty nor statute which has come to my attention which conveys membership in any of the tribes under the Kiowa Agency to persons not of Indian blood. \* \* \* If, therefore, these persons or other white persons have in fact been adopted as members of the tribes, the basis for such adoption must have been some definite tribal action taken with departmental approval. If no such tribal

action occurred, those persons have no legal claim to membership, and no recognition as members need be accorded them by the tribe."

As in the case of these four tribes clear action had been taken to make the Freedman full citizens, these Freedmen have in principle the right to vote on any proposed constitution to be adopted under the Oklahoma Welfare Act.

It has, however, been suggested that the Secretary may issue regulations to the effect that only tribal members of Indian blood may vote on the adoption of such a constitution. It is true that section 3 of the Oklahoma Welfare Act provides that the Secretary of the Interior may prescribe rule and regulations to govern the adoption of a constitution by any tribe organized under this act. This provision corresponds to section 16 of the Indian Reorganization Act which has been held to confer a broad authority upon the Secretary of the Interior to pass upon the qualifications of voters without therein being limited by past enrollments (Solicitor's opinion M. 27810, December 13, 1934). This opinion, however, pointed out that the Secretary in the exercise of his authority is bound by any statutes which may determine tribal membership. As the membership rights of the Freedmen in the Five Civilized Tribes have been fixed by treaties, which are the equivalent of statutes, and by formal tribal action in pursuance of these treaties, the Secretary would not appear to be authorized to issue regulations which would deprive the Freedmen of their right to vote on constitutions to be adopted by the Five Civilized Tribes under the Oklahoma Welfare Act.

2. The question whether Freedmen now citizens of various Nations of Oklahoma may be excluded by appropriate provisions in constitutions to be adopted by these Nations pursuant to the Oklahoma Welfare Act must be answered in the affirmative. The Oklahoma Welfare Act represents a turning point in the organization of Indian tribes. A new type of organization on a new basis is provided by this act. It thus takes its place beside the various treaties of 1866 which after the end of the Civil War similarly provided for a new organization of the Five Civilized Tribes on a new membership basis. With the consent of Congress and pursuant to these treaties the tribes resolved to modify their membership basis and to include a large number of Freedmen who thus became Indians by law only. It would appear that the tribes should be able to modify their membership once more and, having obtained the consent of Congress through the Oklahoma Welfare Act, to arrange their membership and other affairs in a constitution to be adopted by their free vote. They are thus entitled to decide that in the future only Indians by blood shall be members of the new tribal organization that is to come into being by adoption of these constitutions. A number of Indian tribes have incorporated similar provisions in their constitutions in order to limit membership to persons of Indian blood. Among those the Cheyenne River Sioux Tribe of South Dakota, and Quileute Tribe of Quileute Reservation, Washington, and the Kickapoo Tribal Town of Oklahoma. The customary provisions read as follows:

"The membership of the \* \* \* Tribe shall consist of the following:

"(a) All persons of Indian blood whose names appear on the official census roll of the tribe as of June 18, 1934.

"(b) All children born to any member of the \* \* \* Tribe who is a resident of the reservation at the time of the birth of said children."

Such a provision has the effect of dropping from tribal rolls those members who cannot satisfy the Indian-blood requirement. Such exclusion from membership does not interfere with any vested individual rights such as title to allotted land, but does deprive the Freedmen so excluded of benefits arising in the future out of tribal membership.

NATHAN R. MARGOLD,  
*Acting Solicitor.*

[Exhibit 1, Index No. 21]

DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SOLICITOR,

May 21, 1934.

Memorandum to the Commissioner of Indian Affairs:

You have asked my advice on the general problem of the place in present-day tribal activities of the final tribal rolls compiled under section 28 of the act of May 25, 1918 (40 Stat. 591, 25 U.S. C.A. sec. 162), and the act of June 30, 1919 (41 Stat. 9, 25 U.S. C.A. sec. 163), and various acts relating to specific tribes.

Your memorandum states that these rolls were made "with a view to closing out the affairs of the several Indian tribes, of distributing their assets and terminating their legal existence." You report that as late as 1932 the Department held in the Solicitor's opinion of August 13, 1932 (M. 26320) that an Indian born subsequent to the closing of the Fort Hall tribal roll could not be added to the tribal membership for the purpose of sharing in a tribal payment authorized subsequent to the closing of the roll. However, as you indicate, the tribes were not in fact disbanded and their tribal activities have increased rather than diminished in recent years, particularly as a result of the Indian Reorganization Act. The question of the present effectiveness of the tribal rolls compiled under sections 162 and 163 of title 25 of the Code is complicated, you add, by the fact that section 162 was repealed by the act of June 24, 1938 (52 Stat. 1037).

In order to point the problem for my consideration you have formulated the following two questions:

"No. 1. The act of May 25, 1918 authorized the segregation of tribal funds; the Act of June 30, 1919 authorized the making of final rolls for the purpose of carrying out the intention of the prior Act: Does repeal by the Act of June 24, 1938, of the applicable section of the prior Act terminate the validity of the final rolls compiled in accordance therewith?

"No. 2. In view of the fact that the Blackfeet Indians have organized under the Indian Reorganization Act: (a) Is the roll authorized by the Act of June 30, 1919 (41 Stat. 3,16) still the determining tribal roll for all purposes: (b) Here specifically, have vested interests in tribal property devolved upon those persons whose names appear on the final roll to such an extent as to prevent any distribution either of tribal property or of earnings derived from the use of tribal property to the membership provided for in the Blackfeet Constitution and By-laws."

No. 1. In asking whether the repeal of section 162 of title 25 of the Code terminated the validity of the final rolls compiled in accordance with that section and section 163, the use of the word "validity" is not precise or appropriate in this connection. The repeal did not terminate the validity of the rolls for all past distributions of tribal funds but, in my opinion, as will be shown, it did terminate the utility and function of these rolls in the future since no further segregation of tribal funds is possible under section 162.

Section 162 authorized the segregation of the funds of any tribe susceptible of segregation, so as to credit an equal share to each recognized member of the tribe, as individual Indian moneys, provided that a final roll should first be made of the membership of such tribe. Section 163 supplemented this section by authorizing the Secretary of the Interior to cause a final roll to be made of the membership of any tribe which, when approved by the Secretary, was to "constitute the legal membership of the respective tribes for the purpose of segregating the tribal funds as provided in the preceding section." The language quoted makes clear that the rolls prepared under that section are for the purpose of distributing tribal funds segregated under section 162. The rolls are not declared to be the final tribal rolls for all purposes of tribal life.

The Comptroller General's decision of March 15, 1923 (2 Comp. Gen. 554), cited by you, does not necessitate a contrary view. In fact it substantiates the opinion that rolls prepared under section 163 need be considered final only for the purpose of distributing funds segregated under section 162. The decision holds that a fund segregated under section 162 subsequent to the making of a roll for the purpose of a prior distribution must be distributed in accordance with that roll, since the roll once made "constitutes the legal membership of the tribe for the segregation of not only the particular tribal fund considered at the time such final roll is made but for all other tribal funds susceptible of and subsequently segregated for distribution."

While the Solicitor's Opinion of August 13, 1932, referred to by you, relies upon the Comptroller General's holding above quoted, it does carry the holding beyond its limit by determining that a roll compiled under section 163 must be used for the pro rata distribution of a tribal funds authorized under a special act and not made under section 162. In reaching this determination the opinion holds, in effect, that a roll made under section 163 is final for all subsequent pro rata distribution of tribal funds, whether or not the fund is one susceptible of segregation under section 162.

I cannot agree with this extension of the Comptroller General's decision. It is, in fact, inconsistent with the advice given by the Comptroller General in his letter to this Department of December 20, 1922, that a final roll made under sec-

tion 163 need not be adhered to for the purpose of a per capita distribution of a treaty annuity appropriated annually by Congress since such appropriations are not tribal funds in the Treasury susceptible of segregation within the meaning of section 162.

In any case, there is nothing in any decision of this Department or of any other agency, of which I am aware, nor in sections 162 and 163 themselves, which requires that the rolls compiled under section 163 shall govern tribal membership thereafter in the matter of voting in tribal affairs, organizing under a tribal constitution, sharing in the use of tribal land and credit funds, or for any other tribal purpose, even the allotment of land, except a pro rata distribution of funds.

This office has previously taken the position that the tribal rolls compiled under section 163 were only for the purpose of distributing tribal funds. This statement was made in a discussion of the power of Indian tribes to define their membership, wherein it was held that "The power of the Indian tribes in this field is limited only by the various statutes of Congress defining the membership of certain tribes for purposes of allotment or for other purposes, and by the statutory authority given to the Secretary of the Interior to promulgate a final tribal rolls for the purpose of dividing and distributing tribal funds (citing section 163)." (Solicitor's Opinion, October 25, 1934 (55 I. D. 14, at 33).) Under this opinion the power of the tribe to determine its membership must be considered limited only by the express terms of congressional enactments.

The Department has already narrowed down the limitations on tribal action in this field imposed by section 163 by a definite holding that rolls prepared under section 163 were final as against tribal action only for the purpose expressly stated in that section; i. e., for the distribution of funds segregated under section 162. This holding occurred in the case of the application of Annie Sloan for enrollment on the Puyallup tribal roll prepared under section 163 and for her proportionate share of tribal funds. In a letter of November 29, 1938, approved February 24, 1939, to her attorneys the Department held that, while there was no authority to add her name to the final roll made under section 163 nor to pay her the share of funds previously distributed to persons on that roll, she could be adopted by the tribe with all rights to share in tribal funds except such funds as had already been segregated under section 162.

Under this holding, which I believe correct, the tribal rolls made under section 163 are, as a result of the repeal of section 162, historical unalterable documents, required to be used only for the completion of the distribution of such funds as have been segregated under section 162 and remain undistributed.

No. 2(a). The second question you raise concerns the Blackfeet tribal roll compiled under the act of June 30, 1919 (41 Stat. 3, 16) and it is asked (a) whether this tribal roll is still the determining tribal roll for all purposes. The act of 1919 authorized the Secretary of the Interior to make allotments under existing laws to all Blackfeet Indians not previously allotted, who were living six months after the approval of the act, and to prorate among these Indians all remaining unallotted and unreserved lands within the reservation, with the proviso that "the Blackfeet tribal rolls shall close six months after the approval of this act and thereafter no additional names shall be added to said rolls." The act reserved the minerals for the tribe.

If the interpretation of this act were an open question, it would be my opinion that the act provided for a tribal roll final only for the purposes of the required allotment. The provision for enrollment is placed as a proviso on the directions for making the allotments and the act did not contemplate the dissolution of the tribe in view of the continuance of tribal property interests and activities. However, the Department and Congress treated this roll as the determining roll for subsequent Federal distribution of tribal funds. This is demonstrated by the act of March 3, 1931 (46 Stat. 1495), which authorized the addition to the 1919 roll of children born since that date and living six months after approval of the act. The express purpose of the act was to permit such persons to participate in the subsequent distribution of tribal property, following the 1931 act.

Therefore, it must be assumed that at the time of the organization of the Blackfeet Tribe under the Indian Reorganization Act the tribal roll of 1919, as amended, was the determining roll for all distribution by the Federal Government of tribal property. Statements appear in the file that the Department considered the roll final "for all purposes," but whether it actually governed in internal tribal activities is not clear. I do not believe that there was any legal compulsion that it should do so, since it would take specific statutory direction to modify the right of the tribe to determine its own membership for such activities. How-

ever, it is not necessary to determine this point as section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), reaffirmed and reestablished the right of the tribe to determine its membership for all tribal activities. Section 16 authorized Indian tribes to organize for their common welfare, to adopt appropriate constitutions and to exercise the powers vested in the tribe by existing law. Such authority to reestablish a tribal organization necessarily carried with it the authority to determine the membership of the organization. If there remained any doubt as to the authority of the tribe to manage tribal property for the benefit of such members, it was removed by incorporation of the tribe under section 17 of the Indian Reorganization Act, which authorized the incorporated tribes to manage and dispose of tribal property.

Accordingly, I conclude that the membership of the tribe, as determined by the tribal constitution, governs all use and distribution of tribal property, except such as has already been segregated for distribution under authority of law prior to the organization of the tribe, and except such as may be authorized to be distributed by the Federal Government under an act of Congress specifying how the property shall be distributed. An example of such act of Congress is the act of June 20, 1936 (49 Stat. 1563), which authorized the per capita distribution from the Blackfeet judgment fund of \$83 to each member of the tribe living and entitled to enrollment on the date of the judgment in the Court of Claims, and which authorized the balance of the judgment fund to be disposed of by the tribal council with the approval of the Secretary of the Interior in accordance with the constitution and bylaws of the tribe. This act indicates that Congress will no longer authorize distribution of tribal funds in the United States Treasury according to the original 1919 roll but will direct distribution in accordance with present day tribal developments.

No. 2(b). On the basis of the foregoing analysis, section 2(b) must likewise be answered in the negative. The members of the tribe on the final allotment roll have no vested interests in the tribal property such as to prevent or affect the distribution or use of tribal property under the Blackfeet tribal constitution or charter. The same statement applies to the persons whose names appear on the rolls compiled under section 163, discussed in connection with question 1. Such persons have a vested interest only in property which may have been set aside for segregation and distribution under section 162.

This follows from the general rule that no member has a vested individual interest in the tribal property. This rule has been repeatedly applied in the cases before the Supreme Court refusing to restrain at the suit of individuals congressional or departmental management of tribal funds and other property (*Wilbur v. United States*, 281 U.S. 206 (1930); *Chippewa Indians of Minnesota v. United States*, 307 U.S. 1 (1939)) and is discussed in full in the Solicitor's Opinion of October 29, 1934, above cited (pp. 50-54).

The reasoning in the *Wilbur* case is particularly relevant. It had been argued that Congress in the act of January 14, 1889, had intended to abolish the tribe and to vest in individual Indians the funds derived from the sale of tribal lands. However, the court refused to interfere with the action of the Interior Department based upon its determination that the tribe still existed and the funds remained tribal funds for such tribal activities as Congress might authorize. The court pointed out that Congress intended a gradual rather than an immediate transition from tribal status to individual responsibility and had continued to recognize and deal with the Indians as a tribe. This case is one of a number of cases in which the courts have restricted the effect of acts of Congress looking toward the disincorporation of the tribe in view of the stubborn fact that the tribes did not cease to exist.

With your memorandum there was attached for my reference a list of special enrollment acts affecting various tribes. I have reviewed those acts and classified them according to the legal effect which may be drawn from the language of the acts. In the first place, these acts may authorize the Secretary of the Interior to make a specific distribution of tribal property and for that purpose may expressly or impliedly authorize him to prepare a list of the beneficiaries. Where these statutes do not specify that the list is to be final and conclusive, the list is not only open to amendment and correction by the Secretary of the Interior (*Wilbur v. United States*, *supra*), but the decision on the facts may be reconsidered by the courts (*Oakes v. United States*, 172 Fed. 305 (C.C.A. 8th, 1909)). Such a roll is final only as to the date specified for the distribution of the funds or as to the date upon which the beneficiary must be a member of the tribe (12 L.D. 168).

The second category consists of rolls for specific distributions of tribal property which Congress has designated shall be final and conclusive." The effect of this language is to make the Secretary's determination of eligibility conclusive on the facts and preclude court review. *Stokey v. Wilbur*, 58 F. (2d) 522 (C.A. D.C. 1932), although the Secretary is privileged to correct the rolls for mistake or fraud, giving notice and an opportunity to be heard, unless any changes in the roll after a certain date are prohibited by Congress. *United States v. Fisher*, 223 U.S. 95 (1912); *Garfield v. Goldsby*, 211 U.S. 249 (1908). The rolls in this group are final and conclusive only for the distribution of funds for which they were prepared.

A third category of tribal rolls consists of those rare instances where Congress has provided for final tribal roll for the complete distribution of all tribal property. Statutes authorizing such rolls contemplate the ending of tribal relations. Such rolls would be final for all tribal purposes, unless later legislation authorized a new enrollment or the reestablishment of tribal activities. Op. Solicitor, L.D. M.27759, January 22, 1935. The Indian Reorganization Act and the Oklahoma Indian Welfare Act are such legislation.

Most of the statutes listed by the Indian Office fall into the first category. On the basis of the language of the acts I would place the following in this class:

The acts of March 3, 1891 (26 Stat. 1016), and March 3, 1891 (26 Stat. 1021), ratified agreements with the Citizen Pottawatomie and Absentee Shawnee Indians which provided for the allotment of certain lands of these Indians and the payment to the allottees of certain treaty funds designated for making improvements on the allotments. These statutes assumed the making of a list of allottees, rather than directed the making of such a list, and specified no finality except as to the date upon which the allotments are to be completed.

The act of March 2, 1899 (25 Stat. 1013), provided for allotment of the Peoria and Miami Indians under the general allotment act according to the lists of members of the tribe furnished by the Chiefs. This act was the subject of the decision in 12 L.D. 168 holding that the Secretary was not authorized to make new allotments to persons becoming members of the tribe after the date specified for the completion of the allotments but that the Secretary could make corrections in the allotment roll.

The act of March 2, 1895 (28 Stat. 903), authorized distribution of treaty funds to the Indiana Miamis entitled to receive such funds. The authority for making a list of beneficiaries is implied rather than expressed.

The act of April 21, 1904 (33 Stat. 194) ratified an agreement with the Turtle Mountain Indians for the cession of lands, the reservation of other lands, the allotment and opening of the reserved lands and the payment of a consideration to the tribe. This act did not provide for any tribal roll and any roll prepared by the Secretary would be effective only for the purpose of executing the act. This act, like most of the others, clearly recognized the continuance of the tribe as a functioning entity.

The act of July 1, 1912 (37 Stat. 187), provided for the final division of a capitalized trust fund among the Winnebago Indians of each branch of the Winnebago Tribe, according to a special census to be prepared as of a certain date. This roll, designated by the statute as a special census, clearly relates only to the particular transaction of distributing the treaty funds due the tribe.

The act of July 1, 1912 (37 Stat. 187), provided for the final division of a Bad River Indians not previously allotted, for the purpose of receiving allotments and certain proceeds from the timber on the allotments. This act by its own terms did not contemplate a complete tribal enrollment.

The act of March 3, 1925 (43 Stat. 1102), provided for a per capita distribution of a certain sum to the Clallam Indians as consideration for their relinquishment of all claims, to be based upon an enrollment under the Secretary's direction. This was also an individual transaction.

In the second category of tribal rolls may be placed the allotment rolls prepared for the Crow Tribe under the act of June 4, 1920 (41 Stat. 751), for the Fort Belknap Tribe under the act of March 3, 1921 (41 Stat. 1375), and for the Tongue River Tribe under the act of June 3, 1936 (44 Stat. 690). The Crow act provides for the enrollment of several classes of Indians, which rolls shall be the "final allotment rolls" for the allotment of Lands and distribution of the tribal funds, existing on the date of the act. The Fort Belknap act provides for a complete and final roll of Indians having rights on the reservation "which shall be conclusive and final evidence of the right to an allotment." The Tongue River act authorizes the Secretary to prepare a complete roll to be the basis for allotting

lands. Actually, only the Fort Belknap act specifies the legal effect of the roll as "final and conclusive," but the other acts imply such effect as they provide for the same type of departmental action. All three acts recognize the continuance of tribal activities and of tribal property, but there is no indication that the allotment rolls prepared under the act are to govern in the future use of such tribal property. I would place the Blackfeet tribal roll prepared under the 1919 act in this category as it provides for an allotment roll and for activities by the Federal Government similar to those provided for in the other three cases. However, since the roll was treated as a roll for distribution of all funds subsequent to the activities covered by the act, it must be placed in the third category.

There is only one statute in the list prepared by the Indian Office which clearly comes by its own terms in the third category of tribal rolls. This is the act of July 1, 1902 (32 Stat. 636), which provides for the complete distribution of all tribal property of the Kansas or Kaw Indians in Oklahoma. Under this act the Secretary is to prepare a roll to be the "legal membership" of the tribe and all lands and funds are to be divided among these members, as well as all funds that may be found due in the future. As a result of the act no tribal property is to remain, except the tribal cemetery. However, if the tribe continues to exist in spite of this 1902 act, it would be privileged to reestablish a tribal organization under the Oklahoma Indian Welfare Act and to provide for a roll of tribal membership to govern all present-day activities.

NATHAN R. MARGOLD,  
Solicitor.

[Exhibit 1, Index No. 20]

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington, D.C., March 18, 1976.

MR. ROBERT E. HAMPTON,  
Chairman, U.S. Civil Service Commission,  
Washington, D.C.

DEAR CHAIRMAN HAMPTON: This is to request the Commission's consideration of a change in the definition of "Indian" for purposes of the Schedule A excepted appointment authority now contained in 5 CFR § 213.3112(a) (7).

The Schedule A authority is conferred in order to implement a preference in employment of Indians. At present eligibility for preference in the selection for positions in the Bureau of Indian Affairs is extended to persons of one-quarter degree Indian ancestry. Numerous statutes<sup>1</sup> provide the basis for a preference for Indians in employment in the Indian Service. All except one do not define "Indian." The one statute which does, establishes a different definition of "Indian" than that embodied in the present excepted appointment authority. Thus, it is to harmonize the excepted appointment authority with the statutory definition that we request your approval.

The quarter-degree standard is based on executive orders.<sup>2</sup> Obviously, executive orders cannot derogate from a statutorily set standard. The statutory standard is established by Section 19 of the Indian Reorganization Act of June 18, 1934, *supra*, note 1, 25 U.S.C. § 479. Section 12 of the Indian Reorganization Act established an absolute preference for Indians in their selection to fill all vacancies in the Bureau. *Freeman v. Morton*, Civ. No. 327-71 (D.D.C.), filed December 21, 1972; *aff'd* 499 F. 2d 494 (D.C. Cir. 1974). Furthermore, the Supreme Court has held that the Indian preference statutes, particularly § 472,<sup>3</sup> were not impliedly repealed by the 1972 Equal Employment Opportunity amendments to the 1964 Civil Rights Act, 42 U.S.C. (Supp. II 1973) § 2000e-16(a); nor are non-Indian employees deprived of property rights in the application of preference to Indians. *Morton v. Mancari*, 417 U.S. 535 (1974). The Associate Solicitor for Indian Affairs has advised that the definition of "Indian" in Section 19 of the

<sup>1</sup> Act of June 30, 1834, 25 U.S.C. § 45, 4 Stat. 737; Act of July 4, 1884, 25 U.S.C. § 46, 23 Stat. 97; Act of February 8, 1887, 25 U.S.C. § 348, 24 Stat. 389; Act of August 18, 1894, 25 U.S.C. § 44, 28 Stat. 313; Act of April 30, 1908, 25 U.S.C. § 47, 36 Stat. 861; and Section 12, Act of June 18, 1934, 25 U.S.C. § 472, 48 Stat. 984. Several treaties with Indian tribes also have preference provisions. *Handbook of Federal Indian Law*, 534-535 (1958 ed.).

<sup>2</sup> E.O. 6676, April 14, 1934; E.O. 7016, 3 CFR 350 (June 24, 1938); E.O. 8043, 3 CFR 419 (January 31, 1939); E.O. 8383, 3 CFR 636 (March 28, 1940).

<sup>3</sup> The Court indicated that Section 472 replaced the earlier and more narrowly drawn preference statutes. *Morton v. Mancari*, 417 U.S. at 538, n. 2; see also note 1, *supra*.

Indian Reorganization Act must be read in *pari materia* with Section 12. This opinion was rendered in response to several administrative appeals of persons who are members of federally-recognized tribes, but who were denied preference eligibility because they are less than a quarter-degree. In addition, another person—a member of a tribe organized under the Indian Reorganization Act but of less than a quarter-degree Indian ancestry—has filed suit claiming eligibility. *Whiting v. United States*, Civ. No. 75-3007 (D. S. Dak.).

The definition established in Section 19 is that for purposes of the Act "Indian" means persons of Indian descent:

- (1) who are members of any recognized Indian tribe now under Federal jurisdiction;
- (2) who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation;
- (3) all others of one-half or more Indian blood, and
- (4) Eskimos and other aboriginal peoples of Alaska.

The objective of the Indian Reorganization Act was to put an end to the diminution of the Indian land base and to allow tribes, which at that time were frequently coopted by Indian Service agents, to reorganize into organizations which would have some measure of self-government. Thus, rather than have standards of membership established by Federal officials, viable tribal organizations established under the Act were to set standards. The difficulty has been that from a personnel administration standpoint tribal membership standards vary from tribe to tribe; and in some instances, tribes do not maintain current membership rolls. Furthermore, some tribes, the largest—the Navajo—in particular, elected not to organize under the Act and others, particularly Oklahoma tribes, could not organize under it, but individuals were not exempt from the preference and definition provisions. What this has meant is that it has been in the Bureau's interest to maintain a uniform standard of preference eligibility for all Indians: but it has been at the expense of depriving some individuals of a right conferred by law.<sup>4</sup> That deprivation can no longer be upheld. The Court in *Mancari* stated that "[t]he preference, as applied, is granted to Indians not as a discrete racial group, but, rather as members of quasi-sovereign tribal entities . . ." 417 U.S. at 554.

Thus, we request that 5 CFR 213.3112(a)(7) be modified to provide as follows:

(7) All positions in the Bureau of Indian Affairs and other positions in the Department of the Interior directly and primarily related to the providing of services to Indians when filled by the appointment of persons of Indian descent who are either:

- (i) a member of a recognized tribe under federal jurisdiction; or
- (ii) a descendent of a member of a tribe who was on June 1, 1934, residing within the boundaries of any Indian reservation; or
- (iii) a person of one-half degree or more Indian ancestry; or
- (iv) an Eskimo and other aboriginal persons of Alaska; or
- (v) a descendant of an enrolled member of a currently federally-recognized tribe whose rolls have been closed by an act of Congress.

Current employees of the Bureau of Indian Affairs who are of one-quarter or more Indian ancestry of a federally recognized tribe and who received preference prior to this change, shall continue to be preference eligibles as long as they are continuously employed in the Bureau. This "Grandfather" clause will be included in the Bureau's regulations to protect current employees' rights.

These criteria will also apply to competitive personnel actions within the Bureau for promotions, reassignments and transfers.

Under Section 18 of the Reorganization Act, tribes could vote to reject the application of it to their reservation. Nevertheless, other preference statutes, note 1, *supra*, would allow for the application of the same preference and the same definition of Indian. Thus, the above criteria would set a uniform standard throughout the Bureau; although membership standards and degrees of Indian ancestry vary.

While Section 13 of the Reorganization Act provides that some Oklahoma tribes cannot organize under the Act, the preference and definition sections do apply so that Indians of Oklahoma tribes are under these provisions. However, there are now no Indian reservations within the State and the rolls of several

<sup>4</sup> While many tribes have blood quantum requirements of one-quarter degree and thus a change in the preference eligibility standard proposed would result in little real change in the number of eligibles, a few have no minimum but obviously require some ancestry of the tribe.

Oklahoma tribes (Cherokee, Choctaw, Creek, Chickasaw and Osage)—were closed by acts of Congress<sup>5</sup> so that there are today no current membership rolls for these tribes. The provisions of the definition of Section 19 may be inapplicable to persons of such tribal ancestry except to the extent they are one-half or more Indian. In order to achieve the utmost uniformity in standards of eligibility, we propose the fifth criterion so as to include descendants of the members of these tribes.

Since this modification is dictated by statute, we believe it can be achieved through the rulemaking authority of the Commission, 5 U.S.C. § 1302. Therefore, we request that approval be given to the proposal and that it be published according to your rulemaking procedures for modification in an agency's expected appointment authority.

Upon your approval and publication of the new authority, these provisions will become effective within the Bureau of Indian Affairs and the Department of the Interior. If there are any questions, please do not hesitate to contact us.

Sincerely yours,

Tom, *Secretary of the Interior.*

[Exhibit 1, Index No. 19]

NATIVE AMERICAN RIGHTS FUND,  
Boulder, Colo., March 18, 1976.

Memorandum to: Board of Directors, National Center for Indian Preference.  
From: John E. Echohawk, Board Member.  
Re: Definition of "Indian" for Purposes of Indian Preference.  
Date: March 15, 1976.

At a meeting of the NCIP on February 23 in Denver at the office of Bryan Morgan, NCIP's Counsel, Board members Tillie Walker, Chuck Trimble, Doug Sakiestewa and myself were present. Among the many preference issues discussed was the definition of "Indian" for purposes of preference, which is now under review by BIA. Tillie asked that I make the information on this issue available to the Board.

In recent years, BIA's definition of "Indian" for purposes of preference has been ¼ blood and a member of a federally recognized Tribe. Indian preference in filing BIA vacancies, of course, stems from Section 12 of the Indian Reorganization Act of 1934. Section 19 of the Act then defines "Indian":

The term "Indian" as used in this Act shall include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were on, June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of ½ or more Indian blood. For the purposes of such section, Eskimos and all other aboriginal people of Alaska shall be considered Indians. . . . 25 U.S.C. § 479, 48 Stat. 988.

As a result of a lawsuit and several administrative appeals on this issue, BIA has decided to conform with the law and recognize the 25 U.S.C. § 479 definition. As I understand it, BIA is about to adopt the following definition:

- (1) A member of a recognized Tribe under federal jurisdiction; or
- (2) a descendant of a member of a tribe who was on June 1, 1934, residing within the boundaries of any Indian reservation (this requires descendant to have resided on the reservation in 1934, in accordance with the legislative history of the Act); or
- (3) a person of ½ degree or more Indian ancestry (from a recognized or non-recognized tribe, in accordance with the legislative history of the Act); or
- (4) an Eskimo or a descendant of the other aboriginal people of Alaska; or
- (5) a descendant of an enrolled member of a currently federally recognized tribe whose rolls have been closed by an Act of Congress.

Everything seems to be in accordance with Section 479 and the legislative history of the Act, with the exception of (5). It represents BIA's attempt to resolve the problem of the Cherokee, Choctaw, Creek, Chickasaw, Osage in

<sup>5</sup> Act of April 26, 1906, 35 Stat. 137; Act of June 28, 1906, 34 Stat. 539.

Oklahoma who have no current membership rolls. It ignores the fact, however, that sub-classes (2) and (3) could be applied to them and that (5) opens up the preference to many people without regard to blood quantum. Although BIA relies on the earlier, narrower Indian preference statutes, and not § 479, for (5), this is weak authority. As Supreme Court noted in *Morton v. Mancari*, 417 U.S. 535 (1974):

"There are earlier and more narrowly drawn Indian preference statutes, 25 U.S.C. §§ 44, 45, 46, 47 and 274. For all practical purposes, these were replaced by the broader preference of Section 12." 417 U.S. at 538, footnote 2.

I understand that BIA will soon be finalizing this definition. Any comments you may want to make individually or collectively should be addressed to the Commissioner as soon as possible.

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[Exhibit 1, Index No. 18]

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SOLICITOR,  
Washington, D.C., March 25, 1976.

Mr. KARL FUNKE,  
American Indian Policy Review Commission,  
House Office Annex Bldg. No. 2,  
Washington, D.C.

DEAR KARL: Enclosed is a copy of our opinion on the descendant class definition of "Indian" in 25 U.S.C. § 479 as promised in Reid's letter of March 10.

Regards,

DAVID JONES,

Enclosure.

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U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SOLICITOR,  
Washington, D.C., March 24, 1976.

Memorandum To: Commissioner of Indian Affairs—Attention: Director, Office of Administration.

From: Associate Solicitor, Indian Affairs.

Subject: Application of Definition of Indian in 25 U.S.C. § 479 to Descendants of Members Born after June 1, 1934.

In recent discussions concerning the change of the definition of "Indian" for purpose of the preference in employment from the present quarter-degree standard to one coinciding with the definition in 25 U.S.C. § 479, the question of the ambiguity in the descendants category has been frequently raised.

Section 19 of the Wheeler-Howard or Indian Reorganization Act, Act of June 18, 1934, 48 Stat. 984, 988, 25 U.S.C. § 479, in pertinent part provides:

"The term 'Indian' as used in this Act shall include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, *and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation.*"

The part in italics is ambiguous in that it is unclear whether the referent for the term "who" after "members" is members or descendants. If it is the member who must have resided within the reservation on June 1, 1934, then the class of descendants is one which is not closed, but which could be of significant size and could—over time—be composed of persons of remote degrees of Indian ancestry. If it is the descendant that must have resided within the reservation, that person must have been a living person on June 1, 1934, so that the class is a closed one, gradually diminishing as such persons pass away.

In my opinion, the latter interpretation is the correct one. First, it is consistent with the overall scheme of the Reorganization Act which was that descendants could become members of tribes reorganizing under the Act. Prior to the Act, there were few tribes with current official membership rolls and even fewer with formal standards. The most common means of identifying persons as Indian at that time was by census rolls—rolls that listed persons who were reservation residents and who were identified by Bureau census-takers as mem-

bers.\* But without formal membership standards, such rolls were reliable for only indicating residents having some Indian ancestry of the tribe or tribes settled on the reservation. With adoption of a basic organic tribal document pursuant to the Act, formal membership criteria were established for the first time. Descendants could vote to accept the Act and constitution which would then officially make them members as defined under the first category (members of tribes as quoted above) if they met the requirements specified in the constitution. Until a tribe formally organized under the Act (see 25 U.S.C. § 478) and adopted a constitution and membership requirements, then persons alive in 1934 of Indian ancestry descended from persons listed on earlier official rolls would be within the definition.

Secondly, it seems unlikely that Congress intended a proliferation of preference eligibility over time. Such a class of preference eligibles would have a minimal Indian blood quantum (less than the statutory one-half degree) and no membership in any federally recognized tribe served by the Bureau. Such persons would be simply a racial classification bearing little relationship to the needs and functions of either the Bureau of Indian Affairs or its service population.

Finally, the legislative history of the Act shows that at least the Senate Committee considering the revision of the Department's original bill, H.R. 7902, 73d Cong. 2d Sess. (1934), was made aware of this feature of the definition. Each version of the original and revised bills had a definition provision including a descendant class of reservation residents. When the final bill, S. 3645, was before the Senate Committee on Indian Affairs, the following explanation of the descendant class was given by BIA Commissioner Collier:

Senator THOMAS of Oklahoma. Well, if someone could show that they were a descendant of Pocahontas, although they might be only five-hundredth Indian blood, they could come under the terms of this act.

Commissioner COLLIER. If they are actually residing within the present boundaries of an Indian Reservation at the present time.

Hearings on S. 3645, Senate Comm. on Indian Affairs, 73d Cong., 2d Sess., at 263-264 (1934).

It is clear that Senator Thomas was referring only to descendants and Commissioner Collier explained that it was the descendants who had to be residing on the reservation. Since the BIA drafted the original bill, and since this exchange is the only legislative history instructive on this point, Commissioner Collier's comment is entitled to some weight.

In applying this provision of the definition of "Indian", I conclude that only persons residing within any Indian reservation on June 1, 1934, who are descendants of members may be considered preference eligibles. "Members" in this context means persons identified on approved census rolls or through other means prior to June 1, 1934. Persons born after June 1, 1934, must meet any of the other criteria in order to qualify for preference eligibility.

REID PEYTON CHAMBERS.

MARCH 16, 1976.

[Exhibit 1, Index No. 17]

REID P. CHAMBERS,  
*Associate Solicitor, Indian Affairs,*  
*U.S. Department of the Interior,*  
*Washington, D.C.*

DEAR REID: I thank you for your prompt response to my letter of February 6, 1976, and look forward to receiving copies of your opinions to the Commissioner when they are finished.

I have enclosed a copy of a circular by John Collier titled "Analysis and Explanation of the Wheeler-Howard Indian Act" which was probably written sometime in 1934 or 1935. You will note that John Collier's explanation of the definition of "Indian" for purposes of the IRA is consistent with our interpretation.

\*Some other types of rolls were also of value in identifying persons as tribal members. Two examples are: (1) rolls prepared to effect payments of funds derived from reservation resources; and (2) rolls prepared to identify specific tribes on specific reservations due annuity payments. An example of a roll which cannot be relied on for identifying members is one which was prepared to effect annuity payments which became descendant oriented and wherein reservation residency was unnecessary.

I have also enclosed the paper by Bill Mauk which you loaned to me a couple months ago. Thanks for letting me borrow it.

Yours cordially,

KARL A. FUNKE,  
*Specialist, Task Force on Law Revision,  
Consolidation and Codification.*

[Exhibit 1, Index No. 16]

## ANALYSIS AND EXPLANATION OF THE WHEELER-HOWARD INDIAN ACT

(By John Collier, Commissioner of Indian Affairs)

The Wheeler-Howard Bill became law on June 18, 1934, when it was signed by the President, after having passed both houses of Congress.

There follows a detailed explanation of the provisions of the Wheeler-Howard Act.

### SEC. 1. Prohibition against Future Allotment :

This section provides that no Indian land which is now unallotted shall hereafter be allotted. The section does not disturb or affect in any way existing Indian allotments. Neither does it deprive Indians of the right to secure "fourth section allotments" upon the public domain. The purpose of this section is simply to preserve tribal lands for the use of the Indian tribes and to prevent these lands from being broken up and turned over to individual Indians who may sell the land, or lose it in other ways, to non-Indians.

### SEC. 2. Continuance of Restrictions on Alienation :

This section provides that land which is now held by Indians under trust patents or under any restriction on alienation shall continue to be held in that manner, unless Congress enacts legislation to the contrary. This section changes all existing laws which provide that the trust period on Indian lands or other restrictions on alienation shall, regardless of the consent of the Indians, expire upon a definite date, usually 25 years after the original allotment. This section does not change existing laws or regulations regarding Indian applications for fee patents. The policy of issuing such fee patents in exceptional cases, laid down in Order 402, will continue in force.

In accordance with Section 13 of this Act, the Indians of Oklahoma are excluded from the benefits of Section 2.

### SEC. 3. Restoration of Surplus Lands :

This section gives the Secretary the right to turn back to an Indian tribe any surplus lands of the reservation that have not yet been sold or otherwise disposed of under existing laws. The surplus lands affected by this section are lands not allotted to Indians, which have been opened for sale or entry as public domain lands. This section does not disturb the rights of those Indians or whites who have already acquired or entered upon such lands. Furthermore, this section does not apply to any "Reclamation Project" heretofore authorized. A Reclamation Project, under this section, is an area of land which has been selected from a reservation, improved by irrigation, and then opened for settlement to the general public, subject to assessments upon each irrigable acre for the cost of developing the land.

A final proviso to this section deals with the lands of the Papago Indians. This proviso is explained in a separate statement.

### SEC. 4. Transfer of Restricted Land :

This section sets forth the three permissible ways in which restricted Indian lands may be transferred and prohibits any transfers of such lands except as so authorized.

First, restricted land may be transferred by an Indian owner, with the approval of the Secretary, to an Indian tribe or corporation, by sale or by will or in any other way.

Second, restricted Indian land may be inherited by members of an Indian tribe or corporation or any other heirs, Indian or non-Indian, of the deceased. Any will disposing of restricted allotted lands must be approved by the Secretary of the Interior, as is the case at present. The Secretary may approve such will only if the beneficiaries are either members of the same tribe or corporation as the deceased or heirs of such deceased. In the absence of a will, restricted allotted lands will descend, as is now the case, in accordance with State laws in force at the time. On those unallotted reservations where rights of occupancy to tribal land

are now inherited by tribal custom or department regulation, this section does not change the existing situation.

Third, restricted Indian lands may, with the approval of the Secretary of the Interior, be exchanged for other lands of equal value, whether such lands are owned by Indians or by non-Indians. Title to the lands thus acquired through exchange is to be taken in the name of the United States in trust for an Indian tribe or for individual Indians, and such land will be exempt from State and local taxation. (See last paragraph of Sec. 5.) Such exchanges may be authorized only when they do not interfere with the policy of consolidating suitable areas of land under Indian ownership. Thus an Indian whose land is surrounded by other Indians' lands will not be allowed to exchange lands with a non-Indian.

The foregoing statement of the methods by which restricted Indian land may be transferred has no application to unrestricted land owned by individual Indians in fee.

This section applies to heirship lands, as well as to lands owned by living allottees. Under the provisions of this section, heirship lands which are not partitioned among the heirs of the deceased can be sold only to the local Indian tribe or corporation.

Under this section, the same restrictions that apply to the transfer of restricted Indian lands are applied to the transfer of shares in the assets of any Indian tribe or corporation, whenever such shares shall be issued by any organized tribe or corporation.

This section does not apply to the Indians of Oklahoma or to the Klamath Indians.

#### SEC. 5. Land Acquisition:

This section authorizes the Secretary of the Interior to acquire lands for Indians in need. Under this section, the Secretary may acquire lands, water rights, or simply surface rights to lands. He may acquire lands within or without existing reservations. He may acquire white owned or Indian owned lands, fee patented or restricted lands, lands of living Indians or lands in heirship status.

It is the primary purpose of the Interior Department, under the authority granted by this section, to purchase white-owned lands interspersed in Indian reservations or adjacent to such reservations, so as to block out suitable grazing, timber, or farm areas for Indian use. Such lands will be acquired through outright purchase, whenever Federal appropriations shall be made available, and also by exchange, wherever a non-Indian, who owns land within an area that is predominantly Indian-owned, is willing to exchange such land for land of equal value that is now occupied by an Indian, who would prefer to move into the area that is being consolidated under Indian ownership.

A second purpose of the Department under this bill will be to acquire lands outside of existing Indian reservations, upon which Indians who are now landless and are not affiliated with any tribe that still has land, may settle.

A proviso to the second paragraph of this section excludes the Navajo Indians of Arizona and New Mexico from the benefits of any money that may be appropriated in the future under this section, if the two Navajo boundary bills become law. The Arizona bill has already been enacted. The New Mexico bill has not yet been enacted. Until the latter bill is enacted, the proviso against land purchases for Navajo Indians is without force.

This section authorizes the appropriation of not to exceed two million dollars each year for the purchase of lands. This Act, however, does not actually appropriate any money. Appropriations of Federal funds are customarily made by a "general appropriations bill", which covers all the various Government services. Such a bill will be passed at the next session of Congress, which begins in January, 1935.

Title to lands acquired under this Act will be taken in the name of the United States, and held in trust either for an Indian tribe or for individual Indians. It will be the policy of the Interior Department to hold such title in trust for Indian tribes, and to assign individuals possessory rights in such lands as long as the lands are actually occupied and improved. Where an Indian surrenders land which he now owns, in exchange for white owned land, such white owned land may be taken by the United States in trust for the individual Indian who has made the exchange.

#### Sec. 6. Conservation of Indian Resources:

This section requires the Secretary of the Interior to see that Indian forestry units are lumbered in such a way as to assure a continued stand of timber. Likewise the Secretary is directed to restrict the number of livestock grazed on

Indian range units to the estimated carrying capacity of such ranges, to protect such range units against overgrazing, to prevent soil erosion and to ensure full utilization of such range units. In carrying out these purposes, the Secretary is given authority to issue proper rules and regulations.

**Sec. 7. Proclamation of Reservations :**

Under this section, land acquired by the Secretary of the Interior for the use of Indians may be added to an existing reservation or else set-apart as a new Indian reservation. If added to an existing reservation, the land is to be used for the benefit of Indians entitled to reside on that reservation. If set aside as a new reservation, such land will be open to settlement by landless Indians.

This section does not apply to the Indians of Oklahoma.

**Sec. 8. Exemption of Public Domain Lands :**

This section provides that Indian holdings of allotments or homesteads upon the public domain shall not be affected by this Act, unless they fall within the boundaries of some Indian reservation, now existing or established hereafter.

**Sec. 9. Expenses of Organization :**

This section authorizes the future appropriation of not to exceed \$250,000 each year to be spent at the order of the Secretary of the Interior for the expenses of organizing Indian chartered corporations, tribal councils, and other forms of organization which are contemplated by this Act.

As with the appropriation for the purchase of land, no money is made available by this Act. The actual appropriation of money for the named purposes must wait until the next session of Congress.

Among the contemplated organization expenses are: The expenses of tribal meetings and conventions for the preparation and discussion of constitutions, charters and by-laws; the traveling expenses of Indians and of Government officials in connection with such conventions; the expenses of employing persons to assist Indian tribes that request such assistance in the drawing up of constitutions, charters and by-laws; and the payment of stenographic, clerical and printing expenses.

**Sec. 10. Indian Loan Fund :**

This section authorizes the appropriation of \$10,000,000 as an Indian Loan Fund. Such money is to be loaned, at the direction of the Secretary of the Interior, to Indian corporations that may be chartered under Section 17 of this Act. Such corporations may either use the sums loaned to them for corporate purposes, such as the purchase of heirship lands and the development of tribal lands and resources, or loan such funds to individual members of the tribe for private economic purposes. The Secretary of the Interior is authorized to prescribe rules and regulations covering such matters as repayment, interest rates, and security. Money paid back into the Indian Loan Fund is to be used for further loans. The Secretary is to report each year to Congress concerning all transactions made under this section.

**Sec. 11. Indian Educational Loans :**

This section authorizes the future appropriation of not to exceed \$250,000 every year for educational loans to Indians. When such money shall be actually appropriated by Congress, it will be made available by the Secretary of the Interior to Indians who desire to attend high schools, colleges, vocational schools or trade schools. Loans made from this fund will be reimbursable. The Commissioner of Indian Affairs is directed to regulate the manner of repayment of these loans.

Of the sum of \$250,000 which may be appropriated each year for such loans, not more than \$50,000 is to be loaned to Indians attending high school or college. The rest is to be loaned to Indians attending trade schools and vocational schools, such as schools of agriculture, nursing, medicine, education, mining, or business. It will be the purpose of the Indian Office to make these loan funds primarily available to Indian students who have shown marked ability, so as to fit such students for the service of their people in all the essential vocations of a healthy community.

**Sec. 12. Indian Preference in Employment :**

This section requires that qualified Indians are to have preference in appointments to vacancies in existing positions in the Indian Service as vacancies occur. It directs the Secretary of the Interior, without regard to Civil Service regulations, to establish standards of eligibility for Indians for all positions maintained now and hereafter by the Indian Office. This calls for a review and revision of the requirements for present positions, and also for advance planning for positions which may hereafter develop in connection with local self-government by Indian tribal organizations.

**SEC. 13. Application of Act :**

This section provides that none of the provisions of this Act shall apply outside of the United States, except that certain provisions shall apply to Alaska, namely, Sec. 9 (appropriation for expenses of organization), 10 (appropriation for loans to Indian corporations), 11 (appropriation for educational loans), 12 (Indian preference in appointments), and 16 (tribal organization).

This section excludes all the Indians of Oklahoma from certain important provisions of the Act, namely, Sec. 2 (extending trust periods), 4 (restricting alienation), 7 (providing for enlargement of old reservations and establishment of new reservations), 16 (tribal organizations), 17 (tribal incorporation), and 18 (tribal referendum).

This section also provides that Section 4 (restricting alienation) shall not apply to the Indians of the Klamath Reservation in Oregon.

**SEC. 14. Continuance of Sioux Benefits :**

This section applies only to certain Sioux Indians. It provides that Sioux Indians who would have been entitled to allotments, but for the fact that this Act abolishes further allotments, may henceforth receive the Sioux benefits.

**SEC. 15. Claims, Suits, and Judgments :**

This section provides that no claims or suits of Indian tribes against the United States shall be in any way impaired or prejudiced by anything in this Act. It also provides that Federal expenditures made under this Act shall not be deducted from any future judgment which any Indian tribe may secure against the United States on any claim.

**SEC. 16. Tribal Organization :**

Under this section, any Indian tribe that so desires may organize and establish a constitution and by-laws for the management of its own local affairs.

Such constitution and by-laws become effective when ratified by a majority of all the adult members of the tribe, or the adult Indians residing on the reservation, at a special election. It will be the duty of the Secretary of the Interior to call such a special election when any responsible group of Indians has prepared and submitted to him a proposed constitution and by-laws which do not violate any Federal Law, and are fair to all the Indians concerned. When such a special election has been called, all Indians who are members of the tribe, or residents on the reservation if the constitution is proposed for the entire reservation, will be entitled to vote upon the acceptance of the constitution. Such constitution can be adopted only by a majority of all such Indians (not merely a majority of those voting). If a tribe or reservation adopts the constitution and by-laws in this manner, such constitution and by-laws may thereafter be amended or entirely revoked only by the same process.

The powers which may be exercised by an Indian tribe or tribal council include all powers which may be exercised by such tribe or tribal council at the present time, and also include the right to employ legal counsel, (subject to the approval of the Secretary of the Interior with respect to the choice of counsel and the fixing of fees), the right to exercise a veto power over any disposition of tribal funds or other assets, the right to negotiate with Federal, State and local governments, and the right to be advised of all appropriation estimates affecting the tribe, before such estimates are submitted to the Bureau of the Budget and Congress.

The following Indian groups are entitled to take advantage of this section: Any Indian tribe, band, or pueblo in the United States (outside of Oklahoma) or Alaska, and also any group of Indians who reside on the same reservation, whether they are members of the same tribe or not.

**SEC. 17. Tribal Incorporation :**

This section authorizes any Indian tribe (outside of Oklahoma) to obtain a charter of incorporation, issued by the Secretary of the Interior. A petition for such a charter should be signed by one-third of the adult Indians of the tribe or reservation for which a charter is sought. Such a charter of incorporation becomes effective when ratified by a majority vote of the adult Indians living on the reservation. When once ratified, such a charter may not be revoked by the Secretary of the Interior. Only future legislation of Congress can revoke such a charter.

A charter of incorporation may convey to any tribe the right to engage in business, to obtain loans from the Indian Loan Fund authorized by Section 10 of this Act, to acquire property, to issue certificates of corporate interest to the members of the corporation who transfer land to the corporation, and to do all other incidental things necessary to the conduct of corporate business. Among these incidental powers may be mentioned the power to elect or appoint officers

and employees of the corporation, to promulgate and amend by-laws, to pay out dividends, etc. No Indian corporation, however, may sell or mortgage any land at all within the reservation nor may it lease such land for a period exceeding ten years.

Any tribe which desires a corporate charter may request the assistance of officials of the Interior Department in preparing such a charter, or may, if it so chooses, consult private attorneys or advisers in the preparation of such a charter.

**Sec. 18. Referendum on Application of Act:**

This section provides that the Indians of any reservation may, by a vote of a majority of the adult Indians on the reservation, exclude themselves from the operation of the entire Act. It is the duty of the Secretary of the Interior to call a referendum election for this purpose upon each reservation, at some time before June 18, 1935. Such an election must be held by secret ballot, and 30 days' notice of the election must be given to the Indians of the reservation.

**Sec. 19. Definitions:**

This section defines certain terms, namely, "Indian", "tribe", and "adult", as these terms are used in various provisions of the Act.

The term "Indian" is to be construed as including three classes of persons:

(a) All persons of Indian descent who are members of a recognized tribe, whether or not residing on an Indian reservation and regardless of the degree of blood.

(b) All persons who are descendants of any such members of recognized Indian tribes and were residing within an Indian reservation on June 1, 1934, regardless of degree of blood.

(c) Persons of one-half or more Indian blood, whether or not affiliated with any recognized tribe, and whether or not they have ever resided on an Indian reservation.

This section further provides that Eskimos and other aboriginal people of Alaska may be considered Indians, under those provisions of the Act which apply to Alaska.

The term "tribe" is defined to include any Indian tribe, organized band, or pueblo, and also to include any group of Indians residing on a single reservation, whether or not they have been previously organized as a single tribe. Wherever practicable, the Interior Department will treat the Indians of a single reservation as a single tribe.

This section finally specifies that the term "adult" is used to refer to persons who have reached the age of 21 years.

JOHN COLLIER,  
*Commissioner of Indian Affairs.*

[Exhibit 1, Index No. 15]

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SOLICITOR,  
Washington, D.C., March 10, 1976.

Mr. KARL FUNKE,  
*American Indian Policy Review Commission,  
House Office Annex Building No. 2,  
Washington, D.C.*

DEAR KARL: I am in agreement with you on the two issues, mentioned in your letter of February 6, 1976. The one-half blood part of the definition of "Indian" in 25 U.S.C. § 479 applies to persons whose ancestry is of unrecognized tribes. I am also in agreement with your interpretation on the question of whether descendants of members had to be alive on June 1, 1934, and be residing within a reservation.

I am presently working on an opinion to the Commissioner on the latter question and also plan to formally advise the Commissioner of the interpretation of the statute on the former question. I will furnish you with copies of those opinions.

You also raised a question in a phone conversation with me on March 5, 1976, that this office was taking the position in the letter to the Civil Service Commission concerning the change in the definition of "Indian" for preference eligibility that Section 472 impliedly repealed the other preference statutes.

The statement in the letter to the Civil Service Commission is a reference to the *Mancari* decision where the Supreme Court stated in footnote 2, after quoting 25 U.S.C. § 472:

"There are other and more narrowly drawn Indian preference statutes, 25 U.S.C. §§ 44, 45, 46, 47, and 274. For all practical purposes these were replaced

by the broader preference of § 12. Although not directly challenged in this litigation, these statutes, under the District Court's decision, clearly would be invalidated." 417 U.S. at 538.

Our position is that Section 472 replaced the other preference statutes only insofar as tribes organized under the Indian Reorganization Act are concerned. Thus, the other statutes cited by the Court survive and are applicable to those tribes that voted to reject the Act.

We have advised the Commissioner that since the term "Indian" is not defined in any of the other statutes, he has the discretion to establish reasonable criteria. He has chosen to use the same criteria as Section 479 except for those of the Five Civilized and Osage Tribes where the tribes have not organized and the membership rolls were closed by an act of Congress.

Sincerely,

REID PEYTON CHAMBERS,  
*Associate Solicitor, Indian Affairs.*

[Exhibit 1, Index No. 14]

U.S. DEPARTMENT OF THE INTERIOR,  
BUREAU OF INDIAN AFFAIRS,  
*Washington, D.C., February 6, 1976.*

Memorandum to: Commissioner of Indian Affairs, Jim Robey, Special Assistant  
Director, Policy Planning Staff.  
From: B. Thomas Vigil.  
Subject: Indian Preference.

Attached is a Position Paper which was drafted in consultation with several members of the Central Office staff.

We sincerely hope this paper will help you in resolving this important issue.

POSITION PAPER ON INDIAN PREFERENCE

*I. Purpose of Position Paper*

It is the purpose of this paper to express concern about the proposed policy changes on Indian preference which are presented in the attached draft letter to Robert E. Hampton, U.S. Civil Service Commission. Of particular concern is the proposed definition of an "Indian" for purposes of preference in employment which is presented on page 4 of the draft letter. The opinions expressed herein are those of the writer, other Policy Planning staff members and key Central Office personnel who volunteered opinions.

General areas of concern are first enumerated after which specific points relating to Indian preference are discussed.

A. This body of individuals are not against the court ordered conformity to the law which is the Indian Reorganization Act (IRA) of June 1, 1934; however, it appears that the Bureau has deviated from a position of non-enforcement and/or non-compliance with the law to a point of diluting Indian preference to the maximum limits in the opposite direction—the long term effect of which, it would seem, would go against the very intent and spirit of Indian preference.

B. There is strong conflicting opinions of persons with legal backgrounds, within the Bureau and outside, and other authorities on the subject of Indian preference, such as:

(1) It is understood that the Solicitor's opinion on the subject was not definitive and that he may be considering a revised opinion.

(2) There is serious differences of opinion and interpretation, particularly on Proposal Items II, III, and IV of the proposed definition of an "Indian". (Each item is discussed below.)

(3) There is differences of interpretation and questioned legality of item V of the proposal.

(4) There are suggestions that certain executive orders on Indian preference may not have been superseded or voided by the 1934 IRA.

C. It is felt that such an important decision must not be made for short term administrative expediency without regard to its long term effects.

D. Documents on the subject of Indian preference state that preferences for employment is granted so that the Bureau can be staffed with "Indians". And by "Indians", it is meant that a person must have demonstrated some degree of

"Indianness" such as through the following criteria offered by Felix S. Cohen (Handbook of Federal Indian Law) :

" . . . (a) that some of his ancestors lived in America before its discovery by the European and (b) that the individual is considered an Indian by the community [Indian] in which he lives."

E. It is strongly felt that any deviation from the definition of "Indian" in Section 19 of the IRA, and the executive orders, if in fact they are still in effect, would be extending/restricting benefits beyond the scope of the law or at the very least beyond the Commissioner's and Secretary's authority—this is particularly relevant for Proposal Items II, IV and V.

F. It seems that uniformity in the application of Indian preference on the surface would appear desirable; however, it is clear from Congressional history and other records on the subject that uniformity, although it may have been considered, was not intended.

**II. A Brief Comparative Analysis of the Definition of an Indian as it Appears in Section 19 of IRA and the Corresponding Items in the Proposed Policy.**  
*Proposal Item I: A member of a recognized tribe under Federal jurisdiction*

**IRA.**—All persons of Indian descent who are members of any recognized Indian tribe new under Federal jurisdiction.

*Comments and Recommendations.*—Although there are questions over the meaning of the phrase "new under Federal jurisdiction" under IRA, this group is of the opinion that this part of the proposal could legally stand as this is the interpretation which is generally accepted. It is felt that there is sufficient evidence that the proposal as stated can be defended and is in harmony with the Bureau's effort in extending self-determination to tribes.

It is *recommended* this part of the proposal be retained.

**Proposal Item II**

A descendant of a member of a tribe who was born on June 1, 1934 residing within the boundaries of any Indian reservation.

**IRA.**—All persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation.

*Comments and Recommendations.*—There is serious disagreement and a difference in interpretation on this part of the proposal. Lawyers from the Native American Rights Fund (NARF) and other legal authorities strongly contend that legislative history and the intent of this part of IRA meant that the "descendant of a member" must have been physically residing on a Federally recognized reservation in 1934.

Changes in the language in this part of the proposal alters the meaning given in the IRA by requiring a person only be a descendant of someone who was living on a Federal reservation in 1934. It appears that the latter or this proposal would seriously dilute Indian preference as this would result in preference eligibility for persons with even the barest/slightest amount of Indian blood and this dilution would occur to infinity. It seems also that it would tend to conflict with the tribal membership requirements, the one-half Indian blood requirement and other parts of the IRA definition.

It is *recommended* that the language of IRA be retained, and further, that it require the descendant(s) under this criteria to have been living on a Federally recognized reservation on June 1, 1934.

**Proposal Item III**

A person of one-half degree or more Indian ancestry.

**IRA.**—All others persons of one-half or more Indian blood.

*Comments and Recommendations.*—Legislative intent and a reading of this part of the IRA definition is self-explanatory. No comments or recommendation is offered.

**Proposal Item IV**

An Eskimo or a descendant of the other aboriginal peoples of Alaska.

**IRA.**—Eskimos and other aboriginal peoples of Alaska would be considered Indians.

*Comments and Recommendations.*—Because Eskimos and other aboriginal people of Alaska were to be considered Indians under the IRA definition, it

appears that they should be required to meet at least one of the other requirements under the IRA definition. Therefore, it is so *recommended*.

#### *Proposal Item V*

A descendant of an enrolled member of a currently Federally recognized tribe whose rolls have been closed by an act of Congress.

*IRA.*—None. (Executive order requiring one-fourth degree Indian blood may apply.)

*Comments and Recommendations.*—It is the opinion of NARF Attorneys that the two major court decisions (Freeman and Mancari) did not supercede or negate (wipe out) the standing or existing executive orders on Indian preference and therefore, Indians not meeting the requirements of the IRA definition could be granted Indian preference under the existing one-fourth degree blood quantum requirement.

However, Carl A. Funke, in his Juris Doctorate thesis on Indian preference offers the following: “. . . there is nothing in the statute or in the legislative history which indicates that either the Secretary of the Interior or the Commissioner of Indian Affairs would have any authority to alter the definition by administrative regulations of practice . . .” and that “. . . any definition by administrative regulations of practice . . .” and that “. . . any administrative attempt to alter the definition of Indian violates the express statutory language and legislative history of the act . . .” and that “. . . the only discretion vested in the Secretary of the Interior with regard to preference is provided in Section 12. That discretion is limited to establishing ‘standards of health, age, character, experience, knowledge and ability’ for Indians who shall be entitled to preference. Nowhere in the Act is there discretion to alter who is an Indian . . .”

The court cases mentioned seemed to confirm the latter.

It also appears that under the broader definition of Federally recognized tribe under Proposal I, it will make this part of the proposal unnecessary. Further, it seems that when Congress was debating who would be eligible under the one-half degree blood requirement (IRA), it was speaking in part of those persons for which Proposal Item V is intended.

It is *recommended* that as very minimum, if legal, the one-fourth degree requirement be retained under Proposal Item V.

#### *III. Long Term Effects of the Proposed Policy*

It is quite clear that the intent of Indian preference was twofold. First, it was to have the Indian Bureau staffed by Indians; and second, it was to foster self-determination and sovereignty (self-determination efforts under IRA) by having the maximum number of Indians who demonstrate “Indianness” and also a knowledge of “Indianhood”. Recent legislation and statements of U.S. Government officials and tribal leaders suggest that this has not changed. It is sincerely felt that this liberal proposal would go against the very intent of Indian preference and against those most entitled to it. The history of Indian preferences and IRA clearly shows that any deviation from the law has not resulted in an appreciable increase in the proportion of Indian employees in the Bureau (with the possible exception of the year since the Freeman case) especially of positions at the higher level.

#### *IV. Consultation with Tribes*

Indian preference was an important cornerstone to the 1934 self-determination efforts (IRA) and is an important compliment to the present Public Law 93-638, Indian Self-Determination and Education Assistance Act. However, there is little record showing that the Bureau has made a concerted and formal effort to consult with tribes on this very important issue.

When the writer inquired about past efforts the Bureau has made to allow for Indian participation and/or the efforts it has made to inform tribes of the law, he was sited two examples on how tribes have been allowed to participate. The Bureau's first effort to consult was in 1935 when apparently some Indian leaders were asked to comment on Civil Service standards. This was done through a structured questionnaire to which at least two Indian people, Jim Balmer and Vine Deloria gave responses. It is felt that this was not a true effort to solicit opinions on Indian preference as they were merely responding to a set of questions without giving opinions on how they felt Indian preference should be administered, especially in view of Section 12 of IRA.

The second effort was made in August, 1975 when a letter was sent under the Commissioner's signature, to tribal leaders and organizations regarding Indian preference. There are several important points which should be brought forth in regard to this letter.

A. The contents of the letter gave the impression that tribes had a choice to make in the preference policy they wished to see implemented. This in fact appears not to be the case as the court cases on Indian preference clearly demonstrate that the law is absolute and there is very little leeway. The central theme of the court cases was that the law was not being adhered to.

B. Of the 250 or so letters which were mailed, less than 25 tribes responded, from which it can reasonably be construed, that the proposal was in fact defeated as only eight were in favor. Even more important, however, was that in the responses, it is clearly evident that tribes really did not understand the letter.

The above is given to illustrate the need for further consultation. Consultation and participation, not so much to solicit opinions, but to explain the law or facts of Indian preference. Consultation will gain even greater significance when the administrative policy and procedures, suggested below, have been completed. It is believed that this effort can be accomplished with a minimum of staff and staff time.

Also at present there are five different groups or agencies who are expressing concern or working on the topic, and they are NCAI, NARF, Indian Policy Review Commission and the Solicitor's Office. All are Washington based organizations and they seem very willing to meet if only to help resolve the definition of an Indian for purposes of preferences.

#### V. Administrative Policy

Section 12 of the Indian Reorganization Act provides that: "The Secretary of the Interior is directed to establish standards of health, age, character, experience, knowledge, and ability for Indians who may be appointed, without regard to civil-service laws, to the various positions maintained, now or hereafter, by the Indian Office, in the administration of functions or services affected but had failed to establish adequate administrative policies and procedures to appointment to vacancies in any such positions."

Until the present Interior and Bureau administration, the Department has been derelict, remiss and negligent in not only the implementation of this section, but had failed to establish adequate administrative policies and procedures under the "old Indian preference" over-thrown by the courts.

It is believed extremely important, that very specific administrative policies should be established for implementing this part of the law. It is felt that, even if the accepted appointment procedures under Schedule A of the U.S. Civil Service Commission were to be retained, there still must be established administrative procedures and policies, especially in view of the fact that the court cases previously mentioned generally overruled the few procedures now operative and stated that Indian preference is absolute and more extensive. Clear and precise administrative policies must be established and adopted as manual releases in all areas of personnel management which are affected by Indian preference. The following are examples:

(1) recruitment (2) classification and reclassification (3) qualification procedures including suitability and reemployment (4) staffing (5) reassignments (6) promotions (7) career training and (8) reduction-in-force.

It is felt that administrative mechanisms are established, such as the Personnel Management Policy Review Board, to accomplish this task. Also, the writer and certain members of the group feel this issue is important enough that they are willing to volunteer any required staff work. It is felt this effort could be accomplished over a very short time period.

#### VI. General Recommendations

It is recommended that the Commissioner appoint a small group of individuals to draft an acceptable definition of "Indian" for preference purposes, and also administrative policies and procedures.

It is further recommended that the Bureau work very closely with Indian organizations who are working on the subject in establishing procedures.

Also, the group would like to meet with the Commissioner to discuss the above concerns on a personal basis.

1. Personnel, more than any other discipline in the Bureau, places more reliance on procedures and guidelines.

2. Problems encountered as a result of Indian Preference in the Bureau are the result of the lack of procedures. It does not make a difference what definition of an "Indian" you may have, you will still encounter problems so long as you don't have procedures and guidelines and adequate appeals.

3. The Bureau is blessed with opportunities to set standards both for qualifications and classification under the present Schedule A appointment authority and under Section 12 of the Indian Reorganization Act.

4. I in no way advocate the establishment of a personnel system outside the present and Civil Service requirements because if you were to do so, it is more than likely that you will end up with basically the same thing; however, not tested. Any personnel system has to be tested over a long period of time to be functional. If you were to write separate procedures, they would be so full of loopholes that you would in effect have no procedures.

5. Personnel procedures and guidelines in all fields of management, whether in private industry or in all levels of government, are basically the same.

6. Consultation with tribes is very important. However, it is very apparent that it is done at the wrong stage of personnel actions. It would seem more logical to have consultation when qualifications and suitability for employment are being determined for individuals. It seems that, it is more important for tribes to be involved in the appointment or selection of individuals, as it is to involve them in determining a person's qualifications for a position.

7. The most important area for the establishment of procedures are in the areas of determining basic qualifications.

8. Minimum qualification in the Civil Service system it would seem mean quite a different thing than what we would construe as minimum qualifications for employment in the Bureau under Indian preference. For instance, a person receiving a 70 rating in the Civil Service system would not necessarily be able to compete with those receiving a score of 85 and above. As in Civil Service standards, we must get the best qualified Indian person(s). Someone with a score of 70 under USSSC, in all practical purposes, does not have a chance of ever receiving an appointment with the Federal government. It is believed that by setting up procedures and guidelines you could establish criteria so that only the best qualified Indians could be eligible for employment.

It is believed that tribes and tribal organizations as well as the Bureau managers would prefer having the best qualified person. Therefore, it becomes extremely important that qualification and suitability standards be established. An example, a person who was recently released from Bureau employment because of lack of performance or because something was lacking relating directly to his work in a Bureau position should not be eligible for appointment. Some examples of what procedures would do if they were established in the disciplines of personnel follow:

(a) In the areas of recruitment, strict procedures on how to recruit on an open continuous basis would be established. Announcement procedures would be established. One of the main areas of concern recently has been in the area of classification because there are certain jobs that do not fit the present Civil Service system. And yet because of a lack of effort on the part of the Office of Personnel we have tried to fit positions into job series which the Civil Service may very easily find out to be classified properly or a person serving in them being overgraded and in some instances having a position in a series outside the purposes for which the standards was established.

Qualification standards again are probably the most important area in which procedures and guidelines should be established because from this base everything should basically fall into place.

The Bureau has established some classification standards such as the 1712 series for training instructors. However, a determined effort needs to be made to determine which other jobs would require standards not usually found in other governmental agencies.

9. All procedures above can be established within a short time period because they will be a mere modification of the present Civil Service requirements. It is believed that a body of not more than three people can complete this task for presentation and approval within a period of not more than three months.

10. There are certain elements ("Indians") within the Bureau who are still in the school of thought that you must have a person of light colored skin in order to have a job properly performed. These people have a tendency to think that problems in management are a direct result of hiring Indians over non-Indians. It is difficult, and I doubt that these persons will ever change, since it is a brainwashing job which took place with youth and which is well engrained.

These types of individuals because of their own success can not see the importance of Indian preference to Indian people who do not presently have the benefit of employment in the Bureau.

Even if you were to get an M.D. coming out of the same medical school with an Indian coming out academically higher, these people would still prefer to be treated by other than the Indian because of their brainwashing. This is not fiction. You merely need to look around in the Bureau and you may find one in your midst. I believe this is very dysfunctional because a person who is unable to help his own, like a father unwilling to help his children, should not be there. And yet it is very likely that the same individual may have been a benefactor of Indian preference.

[Exhibit 1, Index No. 13]

AMERICAN INDIAN POLICY REVIEW COMMISSION,  
CONGRESS OF THE UNITED STATES,  
Washington, D.C., February 6, 1976.

REID P. CHAMBERS,  
*Associate Solicitor, Division of Indian Affairs, U.S. Department of the Interior,  
Washington, D.C.*

DEAR REID: I'm sorry for the delay in following up on our meeting concerning preference. I've been extremely busy with a number of other issues and it's taken me time to get the materials on the Indian Reorganization Act together.

Just for the record and to refresh the issues, there were a number of disputes as to the definition of "Indian" as defined by 25 USC Sec. 479 (1970).

There was a dispute as to whether the one-half blood class of Indians defined in 25 USC Sec. 479 (1970) was intended to apply to unaffiliated and/or unrecognized Indians. This matter was resolved at our meeting with you on January 9, 1976, and it was agreed upon that the definition was intended to apply to one-half blood Indians who are unaffiliated and/or not members of a recognized tribe.

There was a dispute as to whether the Oklahoma tribes whose rolls have been closed should be required to comply with the definition of "Indian" in 25 USC Sec. 479 (1970) or whether they should be allowed to qualify for preference by mere descendency from an enrolled member without regard to tribal membership, present political or social affiliation with a tribe or degree of Indian blood. This issue was not conclusively resolved.

The point was raised that 25 USC Sec. 472 (1970) exempts Indians from the application of civil service laws and that the Secretary of Interior is mandated to establish separate standards for the appointment of Indians in the Indian Service. This point was agreed upon by you, however, you stated that it would take time to seek correction of this matter and implementation of the law.

Finally, there was a dispute as to the definition of the descendant class of Indians as defined by 25 USC Sec. 479 (1970). The dispute concerns whether the requirement of having to have lived on a reservation on June 1, 1934 applies to the descendant himself or herself thus limiting the definition to a finite number of descendants who will eventually die out or whether the reservation residency requirement applies not to the descendant but to the member from whom he or she descends thus allowing the descendant class to geometrically increase to extremely vast numbers without regard to residency, political or social relation to a tribe or blood quantum. It is readily apparent that the latter application of the definition will immediately and drastically waterdown preference and virtually destroy the purpose behind the preference laws.

I have enclosed a brief analysis of this last issue which cites the relevant legislative history and, I think, clarifies the matter beyond any reasonable doubt.

I would appreciate your informing me as to your decision and advice to the Bureau of Indian Affairs on this matter.

If I can assist you further in this matter or if you have any questions, please call me at your convenience.

Yours cordially,

KARL A. FUNKE,  
*Task Force Specialist on Law Revision,  
Codification, and Consolidation.*

Enclosure.

[Exhibit 1, Index No. 12]

FEBRUARY 6, 1976.

Memorandum to: Reid P. Chambers, Associate Solicitor, Division of Indian Affairs, Department of the Interior.

From: Karl A. Funke, Task Force Specialist on Law Revision, Codification, and Consolidation.

Re: Analysis with Regard to the Descendant Class of Indians 25 USC Sec. 479.

The original IRA bill, H.R. 7902, contained four major titles.<sup>1</sup> Each title contained a definition of Indian or described in some fashion to whom the title was to apply. The first title, "Title I—Indian Self-government" contained a comprehensive definition of "Indian" for purposes of defining who could take part in the organizational and other provisions of that title.

'Section 13(b)<sup>2</sup> of the original bill H.R. 7902 provided in part:

The term "Indian" as used in this title to specify the persons to whom charters may be issued, shall include all persons of Indian descent who are members of any recognized Indian tribe, band, or nation, or are descendants of such members and were, on or about February 1, 1934, actually residing within the present boundaries of any Indian reservation, and shall further include all other persons of one fourth or more Indian blood.

After some modification, it was this definition which was eventually enacted to apply to the entire IRA.

The definition stated in this form caused concern that there might be confusion that the reservation residency requirement might be interpreted to apply to all three classes of Indian defined by the section (the membership class and one-quarter blood class *as well as* the descendant class). In order to guard against this, the Department of the Interior (the drafters of the original bill) offered the following amendment specifically for the purpose of clarifying that the reservation residency requirement was intended *only* to apply and modify the descendant class and not the other two classes.

"Section 14 (formerly section 13): Paragraph (b), substitute for the phrase 'persons of Indian descent who are members of any recognized Indian tribe, band, or nation, or are descendants of such members who were, on or about February 1, 1934, actually residing within the present boundaries of any Indian reservation,' the following phrase: "persons of Indian tribe, band, or nation, and all persons who are descendants of such members,' etc.

Although the amended language in the definition obviously did not accomplish its purpose as clearly as it was hoped, the explanation which was given for this change in language makes it very clear that the requirement of having to have been alive and living on a reservation as of the specified date applies *directly and exclusively* to the descendant class and in no way was it applicable to either the members or the one-fourth blood Indians.

This amendment is designed to clarify the intent of the section that residence upon a reservation is deemed an essential qualification of charter members in a community *only with respect to persons who are not members of any recognized Indian tribe and not possessed of one fourth degree of Indian blood.*<sup>3</sup>

This amendatory language was adopted by the House Committee. When the Senate Committee addressed the bill, they had many problems with certain major sections of the original bill and finally appointed a subcommittee which, together with Commissioner Collier, completely rewrote the bill.<sup>4</sup> The new bill renumbered S. 3645 did not contain any separate titles. The new Senate bill adopted the House amended definition of "Indian" for purposes of the entire Act.

Section 21 of the new Senate S. 3645 provided:

The term "Indian" as used in this act shall include all persons of Indian descent who are members of any recognized Indian tribe, and all persons who are descendants of such members who were, on or about June 1, 1934, actually

<sup>1</sup> Readjustment of Indian Affairs on H.R. 7902 before the House Committee on Indian Affairs, 73d Cong., 2nd Sess. (1934).

<sup>2</sup> *Id.* at 6.

<sup>3</sup> *Id.* at 190.

<sup>4</sup> Hearings on S. 2755 and S. 3645 Before the Sen. Comm. on Indian Affairs, 73rd Cong., 2nd Sess. (1934) [hereinafter 1934 Senate Hearings].

<sup>5</sup> *Id.* at 237.

residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-fourth or more Indian blood.<sup>6</sup>

The only change in the definition was the reservation residency date which was changed from February 1, 1934, to June 1, 1934.<sup>7</sup>

The following excerpt from a debate on the descendant definition in the Senate hearings demonstrates once again that the reservation residency requirement was intended to apply specifically to the descendants themselves.

Senator THOMAS of Oklahoma. Then, on page 10 . . . it says "and all other persons who are descendants of such members."

The CHAIRMAN. Yes.

Senator THOMAS. Well, if someone could show that they were a descendant of Pocahontas, although they might be only five-hundredth Indian blood, they would come under the terms of this act.

Commissioner COLLIER. If they are actually residing within the present boundaries of an Indian reservation at the present time.<sup>8</sup>

This discussion in the Senate hearings and the explanation in the House hearings clearly demonstrate that the descendant himself or herself had to reside on the reservation as of June 1, 1934 in order to qualify under the Act.

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[Exhibit 1, Index Nos. 10 and 11]

[Draft]

U.S. DEPARTMENT OF THE INTERIOR,

OFFICE OF THE SECRETARY,

Washington, D.C., January 7, 1976.

Mr. ROBERT E. HAMPTON,  
Chairman, U.S. Civil Service Commission,  
Washington, D.C.

DEAR CHAIRMAN HAMPTON: This is to request the Commission's consideration of a change in the definition of "Indian" for purposes of the Schedule A excepted appointment authority now contained in 5 CFR § 213.3112(a) (7).

The Schedule A authority is conferred in order to implement a preference in employment of Indians. At present eligibility for preference in the selection for positions in the Bureau of Indian Affairs is extended to persons of one-quarter degree Indian ancestry. Numerous statutes<sup>1</sup> provide the basis for a preference for Indians in employment in the Indian Service. All except one do not define "Indian." The one statute which does, establishes a different definition of "Indian" than that embodied in the present excepted appointment authority. Thus, it is to harmonize the excepted appointment authority with the statutory definition that we request your approval.

The quarter-degree standard is based on executive orders.<sup>2</sup> Obviously, executive orders cannot derogate from a statutorily set standard. The statutory standard is established by Section 19 of the Indian Reorganization Act of June 18, 1934, *supra*, note 1, 25 U.S.C. § 479. Section 12 of the Indian Reorganization Act established an absolute preference for Indians in their selection to fill all vacancies in the Bureau. *Freeman v. Morton*, Civ. No. 327-71 (D.D.C.), filed December 21, 1972; *aff'd* 499 F.2d 494 (D.C. Cir. 1974). Furthermore, the Supreme Court has held that the Indian preference statutes, particularly § 472,<sup>3</sup> were not impliedly repealed by the 1972 Equal Employment Opportunity amendments to the 1964 Civil Rights Act, 42 U.S.C. (Supp. II 1973) § 2000e-16(a); nor are non-Indian employees deprived of property rights in the application of preference to Indians. *Morton v. Mancari*, 417 U.S. 535 (1974). The Associate Solicitor for Indian Affairs has advised that the definition of "Indian" in Section 19 of the Indian

<sup>6</sup> *Id.* at 264.

<sup>7</sup> The one-fourth blood standard for unaffiliated Indians was subsequently raised to a one-half blood standard. 1934 Senate Hearings at 263-64.

<sup>8</sup> *Id.*

<sup>1</sup> Act of June 30, 1834, 25 U.S.C. § 45, 4 Stat. 737; Act of July 4, 1884, 25 U.S.C. § 46, 23 Stat. 97; Act of February 8, 1887, 25 U.S.C. § 348, 24 Stat. 389; Act of August 18, 1894, 25 U.S.C. § 44, 28 Stat. 313; Act of April 30, 1908, 25 U.S.C. § 47, 36 Stat. 861; and Section 12, Act of June 18, 1934, 25 U.S.C. § 472, 48 Stat. 984. Several treaties with Indian tribes also have preference provisions. *Handbook of Federal Indian Law*, 574 535 (1958 ed.).

<sup>2</sup> E.O. 6676, April 14, 1934; E.O. 7916, 3 CFR 350 (June 24, 1938); E.O. 8043, 3 CFR 449 (January 31, 1939); E.O. 8383, 3 CFR 636 (March 28, 1940).

<sup>3</sup> The Court indicated that Section 472 replaced the earlier and more narrowly drawn preference statutes. *Morton v. Mancari*, 417 U.S. at 538, n. 2; see also note 1, *supra*.

Reorganization Act must be read in *pari materia* with Section 12. This opinion was rendered in response to several administrative appeals of persons who are members of federally-recognized tribes, but who were denied preference eligibility because they are less than a quarter-degree. In addition, another person—a member of a tribe organized under the Indian Reorganization Act but of less than a quarter-degree Indian ancestry—has filed suit claiming eligibility. *Whiting v. United States*, Civ. No. 75-3007 (D. S.Dak.).

The definition established in Section 19 is that for purposes of the Act "Indian" means persons of Indian descent:

- (1) who are members of any recognized Indian tribe now under Federal jurisdiction;
- (2) who are descendants of such members who were on June 1, 1934, residing within the present boundaries of any Indian reservation;
- (3) all others of one-half or more Indian blood; and
- (4) Eskimos and other aboriginal peoples of Alaska.

The objective of the Indian Reorganization Act was to put an end to the diminution of the Indian land base and to allow tribes, which at that time were frequently coopted by Indian Service agents, to reorganize into organizations which would have some measure of self-government. Thus, rather than have standards of membership established by Federal officials, viable tribal organizations established under the Act were to set standards. The difficulty has been that from a personnel administration standpoint tribal membership standards vary from tribe to tribe; and in some instances, tribes do not maintain current membership rolls. Furthermore, some tribes, the largest—the Navajo—in particular, elected not to organize under the Act and others, particularly Oklahoma tribes, could not organize under it, but individuals were not exempt from the preference and definition provisions. What this has meant is that it has been in the Bureau's interest to maintain a uniform standard of preference eligibility for all Indians; but it has been at the expense of depriving some individuals of a right conferred by law.<sup>4</sup> That deprivation can no longer be upheld. The Court in *Mancari* stated that "[t]he preference, as applied, is granted to Indians not as a discrete racial group, but, rather as members of quasi-sovereign tribal entities . . ." 417 U.S. at 554.

Thus, we request that 5 CFR 213.3112(a) (7) be modified to provide as follows:

(7) All positions in the Bureau of Indian Affairs and other positions in the Department of the Interior directly and primarily related to the providing of services to Indians when filled by the appointment of persons of Indian descent who are either:

- (i) a member of a recognized tribe under federal jurisdiction; or
- (ii) a descendant of a member of a tribe who was on June 1, 1934 residing within the boundaries of any Indian reservation; or
- (iii) a person of one-half degree or more Indian ancestry; or
- (iv) an Eskimo and other aboriginal people of Alaska; or
- (v) a descendant of an enrolled member of a currently federally-recognized tribe whose rolls have been closed by an act of Congress.

Current employees of the Bureau of Indian Affairs who are of one-quarter or more of Indian ancestry of a federally recognized tribe and who received preference prior to this change, shall continue to be preference eligibles as long as they are continuously employed in the Bureau. This "Grandfather" clause will be included in the Bureau's regulations to protect current employees' rights.

These criteria will also apply to competitive personnel actions within the Bureau for promotions, reassignments and transfers.

Under Section 18 of the Reorganization Act, tribes could vote to reject the application of it to their reservation. Nevertheless, other preference statutes, note 1, *supra*, would allow for the application of the same preference and the same definition of Indian. Thus, the above criteria would set a uniform standard throughout the Bureau; although membership standards and degrees of Indian ancestry vary.

While Section 13 provides that some Oklahoma tribes cannot organize under the Act, the preference and definition sections do apply so that Indians of Oklahoma tribes are under these provisions. However, there are now no Indian reservations within the State and the rolls of several Oklahoma tribes (Cherokee,

<sup>4</sup> While many tribes have blood quantum requirements of one-quarter degree and thus a change in the preference eligibility standard as proposed would result in little real change in the number of eligibles, a few have no minimum but obviously require some ancestry of the tribe.

Choctaw, Creek, Chickasaw and Osage)—were closed by acts of Congress<sup>1</sup> so that there are today no current membership rolls for these tribes. The provisions of the definition of Section 19 may be inapplicable to persons of such tribal ancestry except to the extent they are one-half or more Indian. In order to achieve the utmost uniformity in standards of eligibility, we propose the fifth criterion so as to include descendants of the members of these tribes.

Since this modification is dictated by statute, we believe it can be achieved through the rulemaking authority of the Commission, 5 U.S.C. § 1302. Therefore, we request that approval be given to the proposal and that it be published according to your rulemaking procedures for modification in an agency's excepted appointment authority.

Upon your approval and publication of the new authority, these provisions will become effective within the Bureau of Indian Affairs and the Department of the Interior. If there are any questions, please do not hesitate to contact us.

Sincerely yours,

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Secretary of the Interior.

[Exhibit 1, Index No. 9]

AMERICAN INDIAN POLICY REVIEW COMMISSION,  
CONGRESS OF THE UNITED STATES,  
Washington, D.C., December 23, 1975.

JOHN ECHOHAWK,  
NARF,  
Boulder, Colo.

DEAR JOHN: Here is the material on Indian preference I talked with you about a couple weeks ago. I apologize for the delay in getting them out to you.

Included are:

1. Letter to Robert Hampton of the Civil Service Commission (Draft Copy 11-20-75).
2. Memorandum—Indian Preference—from the Indian Health Service.
3. IHS memorandum of October 29, 1975 re: Impact of *Mancari & Freeman* cases and various related correspondence.

Item 1 above contains the new proposed BIA preference regulations. These are at the level of the Commissioner's Office BIA at the present time. After he approves them they will go to the Secretary of Interior for review and then over to the Civil Service Commission.

You will note that this procedure assumes the Civil Service has control of the eligibility standards in the first place (which they do not). Flowing from this it is obvious that the BIA intends to ignore the IRA exemption from Civil Service laws and further demonstrates that they are not going to ask the Secretary of Interior to establish separate standards for Indians as required by the IRA.

Additionally, on page 4 of the letter class (ii) is the descendant class. The BIA does not intend to clarify that the descendant himself or herself had to be residing on the reservation as of June 1, 1934. They fully intend at this point to open up preference to anyone who can show descendancy to a federally recognized member thus making preference meaningless as well as conflicting with the law. They take the position that case law will clarify it. Seems like a waste of time and effort for everyone and dangerous as well.

Class (iii) is the one-half blood class and they say this does not mean nonrecognized Indians—this interpretation is likewise in conflict with the law and has no meaning at all with their interpretation.

Then class (v) is also troublesome in that their explanation of it is erroneous. They are saying Oklahoma Indians can not qualify under the first class (i) and therefore, they only come under preference under class (v). This too is incorrect. Oklahoma Indians do qualify under class (i) membership in a federally recognized tribe. See their explanation at bottom of page 4 and top of page 5.

I just talked with Jim Robey a minute ago and he now says that class (v) will be changed so that any descendant of an enrolled Oklahoma Indian will be given preference since the rolls out there have not been updated since 1906. Again this opens preference up far too wide.

<sup>1</sup> Act of April 26, 1906, 35 Stat. 137; Act of June 28, 1906, 34 Stat. 539.

I will be home in Michigan for a week or so. If you want to discuss this further before I get back to Washington give me a call there. Happy Holidays.  
Yours cordially,

KARL A. FUNKE,  
Specialist, Task Force No. 9.

[Exhibit 1, Index No. 8]

NOVEMBER 20, 1975.

Mr. ROBERT HAMPTON,  
Chairman, U.S. Civil Service Commission,  
Washington, D.C.

DEAR CHAIRMAN HAMPTON: This is to request the Commission's consideration of a change in the definition of "Indian" for purposes of the Schedule A excepted appointment authority now contained in 5 CFR 213.3112(a) (7).

The Schedule A authority is conferred in order to implement a preference in employment of Indians. At present eligibility for preference in the selection for positions in the Bureau of Indian Affairs is extended to persons of one-quarter degree Indian ancestry. Numerous statutes<sup>1</sup> provide the basis for a preference for Indians in employment in the Indian Service. All except one do not define "Indian." The one statute which does establish a different definition of "Indian" than that embodied in the present excepted appointment authority. Thus it is to harmonize the excepted appointment authority with the statutory definition that we request your approval.

The quarter-degree standard is based on executive orders.<sup>2</sup> Obviously, executive orders cannot derogate from a statutory set standard. The statutory standard is established by Section 19 of the Indian Reorganization Act of June 18, 1934, *supra*, 25 U.S.C. § 479. Section 12 of the Indian Reorganization Act established an absolute preference for Indians in their selection to fill all vacancies in the Bureau. *Freeman v. Morton*, Civ. No. 327-71 (D.D.C.), filed December 21, 1972; *aff'd* 499 F.2d 494 (D.C. Cir. 1974). Furthermore, the Supreme Court has held that the Indian preference statutes, particularly § 472,<sup>3</sup> were not impliedly repealed by the 1972 Equal Employment Opportunity amendments to the 1964 Civil Rights Act, 42 U.S.C. (Supp. 11 1973) § 2000e-16(a); nor are non-Indian employees deprived of property rights in the application of preference to Indians. *Morton v. Mancari*, 417 U.S. 535 (1974). The Associate Solicitor for Indian Affairs has advised that the definition of "Indian" in Section 19 of the Indian Reorganization Act must be read in *pari materia* with Section 12. This opinion was rendered in response to several administrative appeals of persons who are members of federally-recognized tribes, but who were denied preference eligibility because they are less than a quarter-degree. In addition, another person—a member of a tribe organized under the Indian Reorganization Act but of less than a quarter-degree Indian ancestry—has filed suit claiming eligibility. *Whiting v. United States*, Civ. No. 75-3007 (D. S. Dak.).

The definition established in Section 19 is that for purposes of the Act "Indian" means persons of Indian descent:

- (1) who are members of any recognized Indian tribe now under Federal jurisdiction;
- (2) who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation;
- (3) all others of one-half or more Indian blood; and
- (4) Eskimos and other aboriginal peoples of Alaska.

The objective of the Indian Reorganization Act was to put an end to the diminution of the Indian land base and to allow tribes, which at that time were fre-

<sup>1</sup> Act of June 30, 1834, 25 U.S.C. § 45, 4 Stat. 737; Act of July 4, 1884, 25 U.S.C. § 46, 23 Stat. 97; Act of February 8, 1887, 25 U.S.C. § 348, 24 Stat. 389; Act of August 13, 1894, 25 U.S.C. § 44, 28 Stat. 313; Act of April 30, 1908, 25 U.S.C. § 47, 36 Stat. 861; and Section 12, Act of June 18, 1934, 25 U.S.C. § 472, 48 Stat. 984. Several treaties with Indian tribes also have preference provisions. *Handbook of Federal Indian Law*, 534-535 (1958 ed.).

<sup>2</sup> E.O. 6676, April 14, 1934; E.O. 7016, 3 CFR 350 (June 24, 1938); E.O. 8043, 3 CFR 449 (January 31, 1939); E.O. 8383, 3 CFR 636 (March 28, 1940).

<sup>3</sup> The Court indicated that Section 472 replaced the earlier and more narrowly drawn preference statutes. *Morton v. Mancari*, 417 U.S. at 538, n. 2; see also note 1, *supra*.

quently coopted by Indian Service agents, to reorganize into organizations which would have some measure of self-government. Thus, rather than have standards of membership established by Federal officials, viable tribal organizations established under the Act were to set standards. The difficulty has been that from a personnel administration standpoint tribal membership standards vary from tribe to tribe; and in some instances, tribes do not maintain current membership rolls. Furthermore, some tribes, the largest—the Navajo—in particular, elected not to organize under the Act and others, particularly Oklahoma tribes, could not organize under it but individuals were not exempt from the preference and definition provisions. What this has meant is that it has been in the Bureau's interest to maintain a uniform standard of preference eligibility for all Indians; but it has been at the expense of depriving some individuals of a right conferred by law.<sup>4</sup> That deprivation can no longer be upheld. The Court in *Mancari* stated that "[t]he preference, as applied, is granted to Indians not as a discrete racial group, but, rather as members of quasi-sovereign tribal entities. . . ." 417 U.S. at 554.

Thus, we request that 5 CFR 213.3112(a) (7) be modified to provide as follows:

(7) All positions in the Bureau of Indian Affairs and other positions in the Department of the Interior directly and primarily related to the providing of services to Indians when filled by the appointment of persons of Indian descent who are either:

- (i) a member of a recognized tribe under federal jurisdiction; or
- (ii) a descendant of a member of a tribe who was on June 1, 1934 residing within the boundaries of any Indian reservation; or
- (iii) a person of one-half degree or more Indian ancestry; or
- (iv) an Eskimo or a descendant of the other aboriginal peoples of Alaska;

or

- (v) an employee of one-quarter degree or more Indian ancestry of a federally-recognized tribe who was a preference eligible prior to the change in this subsection, as long as the person is continuously employed.

This would set a uniform standard throughout the Bureau; although under the first category, membership standards, as mentioned above, do vary among tribes. This same criteria will also apply to competitive personnel actions for Indian in promotions, reassignments and transfers.

Under Section 18 of the Reorganization Act, tribes could vote to reject the application of it to their reservation. Nevertheless, other preference statutes, note 1, *supra*, would allow for the application of the same preference and the same definition of Indian. Moreover, while Section 13 provides that Oklahoma tribes cannot organize under the Act, the preference and definition sections do apply so that Indians of Oklahoma tribes are under these provisions. Because in some cases Oklahoma tribes have not maintained organizations and current memberships and there are now, with several exceptions, no reservations in the State, the provisions of the definition of Section 19 may be inapplicable to persons of such tribal ancestry except to the extent they are one-half or more Indian. In order to insure that no person, such as an Oklahoma Indian, who is presently a preference eligible is deprived of continuing to receive, it,<sup>5</sup> we propose the last category in the interest of justice to such employees.

Since this modification is dictated by statute, we believe it can be achieved through the rulemaking authority of the Commission, 5 U.S.C. § 1302. Therefore, we request that approval be given to the proposal and that it be published according to your rulemaking procedures for modification in an agency's excepted appointment authority.

If there are any questions, please do not hesitate to contact us.

Sincerely yours,

\_\_\_\_\_  
Secretary of the Interior.

<sup>4</sup> While many tribes have blood quantum requirements of one-quarter degree and thus a change in the preference eligibility standard as proposed would result in little real change in the number of eligibles, a few have no minimum but obviously require some ancestry of the tribe.

<sup>5</sup> Prior to the decision in *Freeman, supra*, the question of an employee receiving preference beyond the initial hiring stage was never broached.

[Exhibit 1, Index No. 7]

SHERMAN & MORGAN, P. C.,  
ATTORNEYS AND COUNSELORS AT LAW,  
Denver, Colo., November 13, 1975.

HON. MORRIS THOMPSON,  
Commissioner of Indian Affairs,  
Bureau of Indian Affairs,  
Washington, D.C.

DEAR MR. THOMPSON: This letter is written on behalf of the National Center for Indian Preference, a non-profit corporation in Denver, Colorado, which maintains a continuing interest in the enforcement of Indian preference since the *Freeman v. Morton* decision of 1974. We are in receipt of Patrick Macrory's letter to you of September 16, 1975, and your response to him of September 22, 1975, concerning certain policy questions regarding the implementation of Indian preference within the Bureau.

We would very much like to know what the Bureau's schedule is for publishing rules and regulations for the implementation of Indian preference, and if there are proposed regulations for that implementation, we would very much appreciate receiving a copy of them.

We are most concerned with the matter Mr. Macrory raised to you in the correspondence noted above, and also with the proposed definition of Indians who shall be included within the regulations implementing Indian preference.

Would you please let us know at your earliest convenience the answers to these questions.

Very truly yours,

BRYAN MORGAN.

[Exhibit 1, Index No. 6]

U.S. DEPARTMENT OF THE INTERIOR,  
BUREAU OF INDIAN AFFAIRS,  
Washington, D.C., October 8, 1975.

Memorandum To: Holders of Federal Personnel Manual.  
From: Commissioner of Indian Affairs.  
Subject: 44 BIAM 713 Equal Employment Opportunity.

This release transmits the revised 44 BIAM 713 on the Equal Employment Opportunity program to reflect the policy of extending Indian preference to apply to all actions under this program leading to the filling of vacancies within the Bureau and to update the material.

MORRIS THOMPSON,  
Commissioner of Indian Affairs.

[From Bureau of Indian Affairs Manual—44 BIAM Addition to FPM]

CHAPTER 713. EQUAL EMPLOYMENT OPPORTUNITY 44 BIAM 713,1.1

SUBCHAPTER 1. GENERAL

.1 *Introduction.*—The main objectives of the Bureau as variously expressed in the legislative history have been to give Indians a greater participation in their own self-government; to further the Government's trust obligation toward the Indian tribes; and to reduce the effect of having non-Indians administer matters that affect tribal life. The overriding purpose was to establish machinery whereby Indian tribes would be able to assume a greater degree of self-government, both politically and economically.

One of the primary means by which self-government would be fostered and the Bureau made more responsive was to increase the participation of tribal Indians in BIA operations. In order to achieve this end, it was recognized that some kind of preference and exemption from otherwise prevailing Civil Service requirements was necessary.

Legislative history reflects that Congress was well aware that the Indian preference would result in employment disadvantage within the BIA for non-Indians. Not only was this displacement unavoidable if room were to be made for

Indians, but it was explicitly determined that gradual replacement of non-Indians within the Bureau was a desirable feature of the entire program for self-government. The extension of the preference in 1972 to all actions designed to fill vacancies was designed to bring more Indians into positions of responsibility and, in that regard, was considered to be a logical extension of the Congressional intent.

The mentioned affirmative provisions of the 1964 Civil Rights Act excluding coverage of tribal employment and of preferential treatment by a business or enterprise on or near a reservation indicate Congress's recognition of the long-standing Federal policy of providing a unique legal status to Indians in matters concerning tribal or "on or near" reservation employment. The exemptions reveal a clear congressional sentiment that an Indian preference in the narrow context of tribal or reservation-related employment did not constitute racial discrimination of the type otherwise proscribed. In extending the general anti-discrimination machinery to Federal employment in 1972, Congress in no way modified these private employment preferences built into the 1964 Act, and they are still in effect. A provision aimed at furthering Indian self-government by according an employment preference within the BIA for qualified members of the governed group can readily coexist within the general rule prohibiting employment discrimination on the basis of race. Any other conclusion can be reached only by formalistic reasoning that ignores both the history and purposes of the preference and the unique legal relationship between the Federal Government and tribal Indians.

The basic purpose and thrust of the EEO program is to provide a vehicle to assist minorities and women in upgrading their status within the Federal Sector by providing training and developmental opportunities necessary for upward mobility, and secondly to establish and maintain active, extensive efforts in recruiting, to insure that minorities and women are always in evidence among the resources. The unique employment environment within the Bureau limits substantially opportunities for non-Indians, however, there are many opportunities which will continue to develop for the members of the non-Indian community and, in these instances, extreme care must be exercised to assure benefits and considerations fully meet the conditions of this program and that equal opportunity does prevail.

It is against this background that we must design an affirmative action program. Of necessity, this program is Indian oriented and in every instance of selection for participation under the program provisions which is tantamount to selection for promotion either present or future, when qualified for target positions, Indian preference will be applicable, and applied when making selections for program participation. This program may be viewed as the vehicle or tool in furthering the Bureau's obligation to identify, develop, and train Indians for administering programs affecting Indian people. All managers are encouraged to make full use of the Career Development System as a supportive program to the Affirmative Action Program.

*2 Statement of Policy* — In the Bureau of Indian Affairs, an Indian has preference, by law, in appointment provided the candidate has established proof that he or she is Indian and meets the qualifications for the position to be filled (25 U.S.C., Section 472). This legislation directs the Secretary of the Interior "to establish standards of health, age, character, experience, knowledge, and ability for Indians who may be appointed, without regard to Civil Service laws, to the various positions maintained, now or hereafter, by the Indian Office, in the administration of functions or services affecting any Indian tribe. Such qualified Indians shall hereafter have the preference to appointment to vacancies in any such positions." Indian preference eligibles have been defined as those persons of Indian blood and being a member of a Federally recognized tribe.

In the case of *Freeman vs. Morton* the U.S. District Court issued a summary decision which reads as follows:

"It is accordingly ordered this 21st day of December 1972, that all initial hiring, promotions, lateral transfers, and reassignments in the Bureau of Indian Affairs as well as any other personnel movement therein intended to fill vacancies in that agency, however created, be declared governed by 25 U.S.C. Section 472 which requires that preference be afforded qualified Indian candidates."

The Supreme Court ruled June 17, 1974, on the *Morton vs. Mancari* case which had been pending since April 24, 1974. The Government's policy of giving preference to Indians in hiring and promotion within the Bureau of Indian Affairs was upheld.

The decision of the court was basically that (1) Congress did not intend to repeal the Indian preference, and the District Court erred in holding that it was repealed by the Equal Employment Opportunities Act of 1972, and (2) Indian preference does not constitute invidious racial discrimination in violation of the Due Process Clause of the Fifth Amendment but is reasonable and rationally designed to further Indian self-government.

Personnel actions will be in accordance with the provisions of the Court Decision in the Freeman vs. Morton case. The partial stay was vacated by the Court on April 25, 1974.

**3 Exceptions to Indian Preference.**—Non-Indians may be appointed, promoted, reassigned or laterally transferred to vacancies, however created, *only* when there are no qualified Indians available.

**4 Training.**—Employee training or any formalized self-development efforts which require a commitment or allocation of Bureau funds shall be administered on the basis of need. Experience indicates that Indian employees, due to prior lack of developmental opportunities, have greater developmental needs; therefore, it is to be assumed that major training efforts shall be directed toward the development of Indians.

Participation in training shall be to meet determined training needs and the needs of the government service, therefore, selection shall take into consideration existing need for training to improve job effectiveness, employee utilization, upward mobility, and the willingness of the employee to be available in locations where his skills and services can be best utilized.

Recognition of the Bureau's mandate to develop Indian administrators to administer programs affecting Indians, full use of the Career Development Program is encouraged. Indian preference of necessity must be applied, however, extensive competition is encouraged to assure the identification of candidates with high motivation and potential having a substantial degree of qualifications needed to fill the target positions. This effort should be based on an assessment of projected needs.

**5 Responsibility.**—The application of these policies in employment and training is the direct responsibility of every Bureau official and appointing officer. The Bureau must rely on the judgment and integrity of its officials and appointing officers, since it has neither the intention nor the capability to inquire into the filling of every vacancy with a non-Indian candidate to assure itself that the Indian preference policy has been fully observed. The overall performance of Bureau offices and activities in this regard will be measured periodically, and further study will be undertaken of any program or activity where accessions or promotions of Indian to non-Indian employees appears to be distorted.

In those instances where field officials do their own recruiting, they will make a positive effort to locate qualified Indian candidates for each vacancy. If a qualified Indian candidate cannot be located and a qualified non-Indian is available, the non-Indian may be appointed. In this event, documentation in writing to show the efforts made to identify Indian candidates, except for classroom teacher positions, must be furnished the Bureau Equal Employment Opportunity (EEO) Officer.

**6 Equal Employment Opportunity (EEO) Program.**—The Bureau's Equal Employment Opportunity (EEO) Program is designed to assure equal opportunity in employment to the maximum extent possible to minorities and women, while taking into account Federal laws and the Indian preference policy which affect Bureau employment practices. After consideration of the mandate prescribed above, equal opportunity shall be provided to all employees in actions affecting status changes and in selection for training without regard to race, color, religion, sex, or national origin.

**7 Program Objectives.**—Objectives for this program, which take into account the primary mission of the Bureau and the requirement of giving preference to Indians, are:

- (1) To provide, when qualified Indians are not available for hire, equal employment opportunity for others without regard to race, color, religion, sex, or national origin.
- (2) To foster equal opportunity for training based upon the need of employees to receive training to improve job effectiveness, to achieve full utilization of their skills, and to enhance career opportunities.
- (3) To assure equal opportunity for career advancement to all employees without regard to race, color, religion, sex, or national origin in all instances not subject to the application of Indian preference.

(4) To implement and foster a continuing development program of Indian administrators to assure reserve of resources to administer Indian programs.

**8 Organization for Equal Employment Opportunity (EEO).**

A. The Commissioner of Indian Affairs has overall responsibility for the direction and operation of the Equal Employment Opportunity (EEO) Program within the Bureau.

B. *The Equal Employment Opportunity Staff.* The Central Office Equal Employment Opportunity Officer has full delegated authority and functional responsibility from the Commissioner for administering the Equal Employment Opportunity Program. This is an independent staff located within the Office of Administration. The staff, in coordination with the Central and Areas Offices, develops plans, procedures, and regulations in carrying out the EEO program to promote equal opportunity without regard to race, color, religion, sex, or national origin in all organizational units, locations occupations, and level of responsibility. It is also responsible for monitoring the continuing application of Indian preference in initial hiring, promotions, and transfers. The staff includes a Federal Women's Coordinator who has the responsibility to assure that equal opportunity for women is an integral part of the overall EEO program.

(1) Develop, within the context of policy set by the Civil Service Commission, the Department, and in accordance with the Supreme Court's decision of June 17, 1974, the policy to be set forth by the Bureau's EEO program.

(2) Develop, within the context of guidelines of the Civil Service Commission, the Department, and in accordance with the Supreme Court's decision of June 17, 1974, the format and content of the Bureau's Affirmative Action Plan for EEO. This plan will be reviewed annually and revised if necessary.

(3) Evaluate program effectiveness with assistance of field EEO officers through onsite reviews at various Bureau jurisdictions, advising officials of improvement, if required. Wherever and whenever appropriate, the Bureau EEO Officer is delegated the authority of the Commissioner, after consultation with the Chief Personnel Officer, to direct remedial action to effect immediate administrative action and changes. This delegation extends to field EEO officers.

(4) Develop and recommend to the Commissioner the annual fiscal and manpower resources required, Bureauwide and by major organizational components, to assure effective operation and improvement of the Bureau's EEO program.

(5) Act to the extent appropriate and feasible to resolve individual and group complaints relating to operation of this program (see item 8 above).

(6) Assure the concerns of women are evidenced by a woman, designated as/and to function as Federal Women's Program Coordinator, who shall assist and advise him of the special concerns of women.

C. The Chief Personnel Officer has responsibility for providing staff assistance to the Bureau EEO Officer and is charged with the responsibility of executing those functions assigned to the Division of Personnel Management by the Affirmative Action Plan. This responsibility extends to the Area level where full-time EEO officers are appointed.

D. Area Directors are responsible for effective operation of the Bureau's Affirmative Action Plan, as set forth in this issuance, within their Areas. Officials in charge of field offices under Central Office jurisdiction are responsible for effective operation of the Bureau's Affirmative Action Plan within their jurisdictions. This responsibility includes the appointment and designation of a woman to serve as the Area Federal Women's Program Coordinator and in areas with significant Spanish-surname designate a Spanish-Speaking Coordinator. Of primary concern to these officials in meeting this responsibility shall be the appropriate allocation of resources—fiscal and manpower to assure effective program operation.

E. The head of each major field office with a servicing personnel office and the Central Office will appoint an EEO officer to serve on a full-time basis and designate a woman as the Federal Women's Program Coordinator who shall assist the Area EEO officer. The appointment of field EEO officers shall be subject to the approval of the Bureau EEO Officer. While reporting to the respective heads of offices, these officials shall concurrently report all EEO matters to the Bureau EEO Officer. All Personnel Management Specialists with EEO responsibility will function in a similar capacity when working on EEO matters. These officials shall perform within their areas of jurisdiction the same functions as those assigned to the Bureau Officer in the administration of the Bureau's Affirmative Action Plan. The field EEO officers will assist and provide guidance to EEO counselors, employees, and management during the informal stages of complaints when necessary and appropriate. Emphasis should be directed toward resolving all

issues prior to the acceptance of a formal complaint. When the complaint is accepted formally, it should be directed to the Central Office for further disposition by the Bureau EEO Officer, and should be fully documented to reflect all Area EEO officer actions and management considerations prior to submissions to the Central Office.

F. The Bureau will have a sufficient number of properly trained EEO counselors (1 for each 50 employees). These officials will establish an open and sympathetic channel through which employees may raise questions, discuss grievances, get answers, and obtain informal resolutions of problems connected with equal employment opportunity. They serve as a bridge between employees and management and are responsible for trying to resolve problems which are brought to their attention by employees. Counselors shall display initiative in identifying and resolving potential or actual cases of employee dissatisfaction in the operation of this program. Counselors are expected to remain in this capacity for a minimum of two years. Managers, supervisors, and employees should make sure that persons nominated as counselor have the time, sensitivity, and basic understanding required to perform this function prior to soliciting interest from employees for selection of counselors.

All efforts to fill vacant counselor positions should be advertised since this role does provide substantial developmental opportunities as a collateral assignment.

When acting in the role of a counselor, counselors are responsible to and report only to the EEO officer. Contacts with local management should be made only as required in attempting to resolve the issues at hand.

G. Personnel Officers will assist in studies prescribed by the Bureau's Affirmative Action Plan and will cooperate fully with the local EEO officer, the Bureau EEO Officer, and the Central Office Division of Personnel Management in providing an active equal employment opportunity program.

H. Managers and supervisory personnel at all levels are responsible for observing the principles and spirit of the EEO program. Each manager and supervisor is responsible for implementing the action items of the Affirmative Action Plan which lie within his authority. Support of the EEO program will be a major item considered when completing the annual performance rating of managers and supervisors.

I. The Chief, Personnel Systems and Information Section, or his designee, of the Field Support Services Office, is designated for report purposes as Deputy EEO Officer.

*9. Communication of Program.*—The Bureau's EEO program and the specific details of the Affirmative Action Plan will be brought to the immediate and continued attention of all employees semi-annually on an informal basis (e.g., general employee meeting). New employees, upon entry on duty, shall be appraised of the program and the plan. Supervisors, in particular, because of the key role they play in the operation of the program, shall receive refresher training annually to assure they are fully aware of program policy and the responsibilities they have been assigned in the execution of this program. Such training shall especially stress the high priority that the Commissioner has assigned to this program, and the impact of Federal laws unique to Indians and applicable to the Bureau of Indian Affairs.

*10. Processing Complaints.*—The Bureau will insure, in cooperation with the Department's Office for Equal Opportunity, the timely, competent and objective handling of complaints of alleged discrimination. Complaints will be processed under the provisions of Federal Personnel Manual, Chapter 713, except that field EEO officers shall be responsible for the proper handling of complaints and for forwarding the necessary information to the Bureau EEO Officer. In this connection:

A. All employees will be made aware of the function, identity or specific location of available EEO counselors.

B. Provision shall be made for replacement and training of EEO counselors and investigators as needed, and for a periodic review of their adequacy and competence by the Area and field EEO officers in cooperation with the Bureau EEO Officer.

C. The Bureau will maintain a roster of not less than four EEO investigators who have been fully trained in the EEO investigative process to be utilized by the Department in conducting internal EEO investigations and in other bureaus of the Department.

D. Appropriate corrective action will be taken where investigation of complaints reveals discriminatory or other inappropriate administrative practices action by managers and supervisors.

**.11 Program Evaluation.**—The Bureau EEO Officer and supportive staff shall have primary responsibility for evaluating the program, recommending modifications, and recommending resources required to assure optimum program operation. This official shall receive the full support and aid of all Bureau managers in the execution of this function.

Evaluation will involve analysis of required report data and visits to appropriate field offices in consultation with Bureau, Departmental, and Civil Service Commission officials. Program effectiveness shall be measured against the program requirements and objectives set forth in this issuance, and Affirmative Action Plans.

**.12 Program Elements.**—Program elements and applicable procedures are set forth in Subchapter 2. Supplements will be reviewed and established annually and revised as necessary to assure emphasis on areas of greatest need.

**.13 Local Implementation.**—Each Area Office, agency installation, and major independent field office reporting directly to the Central Office will prepare action plans to supplement this program. Plans should include additional items considered appropriate for immediate action by the activity concerned. This may be a memorandum supplement to either the Bureau or Area plan. This calls for a clear understanding of the equal employment opportunity situation at each office and major facility. EEO officers will assist local management in an analysis of programs at each office. The local EEO program must be based on the existing employment situation and should respond to currently identified problem areas or impediments to equal employment opportunity in all organizational units, occupations, and levels of responsibility.

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[Exhibit 1, Index No. 5]

ARNOLD & PORTER,  
Washington, D.C., September 16, 1975.

Re: Indian Preference.

Hon. MORRIS THOMPSON,  
Commissioner of Indian Affairs,  
Bureau of Indian Affairs,  
Washington, D.C.

DEAR MR. COMMISSIONER: I have just received a copy of your letter dated August 17, 1975 to all tribal chairman, setting out the proposed BIA policy for Indian preference. I am extremely disturbed about the language of this proposed policy, which seems to me to be in clear contravention of the Court Order in *Freeman v. Morton*, 499 F.2d 494 (D.C. Cir. 1974), in which I represented the plaintiffs. The statement that "an Indian has preference in initial appointment, including lateral transfer from outside the Bureau . . ." implies that no preference will be granted in the case of lateral transfers or reassignments within the Bureau. I do not see how this can be reconciled with the statement of the Court of Appeals in *Freeman*, to the effect that the statute requires preference to be given whenever there is "a vacancy to be filled, whether for initial hiring, or by or as a result of promotions, lateral transfers or reassignments in the Bureau . . ." 499 F.2d at 498.

If the proposal is implemented in its present form, I shall have no alternative but to reopen the *Freeman* litigation.

I look forward to hearing from you at your earliest opportunity.

Sincerely yours,

PATRICK F. J. MACROBY.

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[Exhibit 1, Index No. 4]

SHERMAN & MORGAN, P.C.,  
ATTORNEYS AND COUNSELORS AT LAW,  
Denver, Colo., September 9, 1975.

PATRICK F. J. MACROBY, Esq.,  
Attorneys at Law,  
Washington, D.C.

DEAR PATRICK: On Friday of last week I talked to John Echohawk of the Native American Rights Fund, and he advised me that he had received through friends a copy of a letter of August 7 from the Commissioner of the Bureau of Indian Affairs to certain tribal chairmen. I understand John Echohawk is send-

ing you this letter directly, and I hope you have received it by the time my letter arrives.

As John read the letter to me over the telephone, it seemed to be a matter of some concern to us that the lateral transfer issue so hotly litigated in the *Freeman* case is possibly fouled up again by the proposed method of implementation of Indian Preference in the Commissioner's letter.

Specifically, we are concerned that the language may indicate that only lateral transfers from outside the Bureau of Indian Affairs are to be governed by the rules of Indian Preference. This result seems too preposterous on its face and I cannot believe that language is meant to exclude the operation of Indian Preference from lateral transfers within the Bureau of Indian Affairs, but knowing what we do about the Bureau, we both thought it a safe position to try to make some comment to the Commissioner, as requested in his letter by date no later than September 15.

Since I talked with John, I have tried to locate Tillie Walker and other board members of the National Center for Indian Preference. I find none of them to be in, or expected to be in before mid-September at the earliest, and Tillie will definitely not be available before September 20.

I therefore suggest, if you deem it possible, that you consider writing a letter to the Commissioner of the Bureau of Indian Affairs asserting your interest as the continuing interest of the plaintiffs in the *Freeman* case, and requesting a specific clarification on the point raised above. If I could have reached Tillie Walker, I would have written a letter myself on behalf of the National Center for Indian Preference, but I don't really think I have standing to proceed on behalf of that organization on my own hook, and as I have detailed, there is no way I can reach any sufficient number of the board, or Tillie herself, in time to have the comment go in.

Would you give this matter some consideration, and proceed as you see fit? Hope to have a chance to see you out our way before too much longer.

Best regards,

BRYAN MORGAN.

[Exhibit 1, Index No. 8]

TABULATION: TRIBAL RESPONSE TO AUGUST 7 INQUIRY (RESPONSE TO BIA) ON INDIAN PREFERENCE

Tribe	Com- mission's proposal	Alternate	Other	Detail of other
Pueblo de San Felipe.....	X <sup>1</sup>		X	Give tribes the right to decide on preference <sup>2</sup>
Cherokee, Oklahoma.....	X			Treat 5 tribes same as all others.
Kickapoo, Oklahoma.....			X	Retain ¼ degree. <sup>3</sup>
Iowa, Oklahoma.....			X	Do. <sup>3</sup>
Wichita, Caddo, and Delaware Tribes, Oklahoma.....			X	Calls for different interpretation of sec 19-IRA.
Cheyenne-Arapaho.....			X	Member of tribe or ¼ degree.
Miami, Oklahoma.....	X			Oklahoma tribes treated as all other tribes.
Seminole, Oklahoma.....			X	Retain ¼ degree. <sup>3</sup>
Ozage.....		X		
Potawatomi, Oklahoma.....	X			
Benton Paiute Reservation.....		X		
Crow Tribe.....			X	Do.
Colville Confederated Tribes.....	X			
Ak-Chin.....	X			
Pueblo of Zuni.....		X		
Salish and Kootenai.....	X			
Spokane.....	X			
Campo.....	X			
All Indian Pueblo Council.....			X	Member of tribe or ¼ degree.
Total.....	8	3	8	

<sup>1</sup> If preference were supported they would vote for the Commission's proposal.

<sup>2</sup> Tribes wanting to retain ¼ degree, 4.

AUGUST 7, 1975.

*To All Tribal Chairmen:*

Indian preference for employment in the Bureau has ranked very high among the major policy issues facing the Bureau during the past two and one-half years. Now that the Supreme Court has upheld employment preference for Indians, a secondary question of how the determination is made as to who has Indian preference must be faced. The present criteria of "one-fourth degree of Indian blood of a Federally-recognized tribe" which was established by Executive Order, has been challenged through administrative appeal and as of April 17, 1975, by court action.

In October, 1974, I established a BIA Study Committee to give me a recommendation as to how we should proceed to more effectively advance our Indian preference policies including a thorough review of the existing policy statement. The majority of this Committee recommended that the present policy be changed to more accurately reflect the preference requirements set forth in Section 19 of the Indian Reorganization Act (IRA).

In December, 1974, I requested that the Solicitor research the question of Indian employment preference and advise me concerning the legal basis for the administration of this policy. In April the Solicitor issued his opinion which advised that the Indian Reorganization Act of 1934 contained the primary statutory basis for Indian preference, and that this Act did in fact supersede the Executive Orders, upon which the present policy is based. According to the Solicitor's research, the Bureau's Indian Preference policy, in terms of qualifications for BIA employment, must be expanded to provide "preference" to all members of tribes organized under the Indian Reorganization Act of 1934 regardless of degrees of Indian blood.

The expansion of Indian preference employment eligibility represents a significant policy change for the Bureau. The Solicitor has advised that some flexibility does exist for the extension of the "tribal membership" criteria to other Federally-recognized non-IRA tribes. Before we start the action necessary to make this policy change, I would like to have an expression from you and your Tribal Council on this matter. Based on the recommendations from the Committee I appointed to study this matter and the research and findings of the Solicitor, I am proposing that the following be adopted as the BIA policy for Indian preference in employment:

"An Indian has preference in initial appointment, including lateral transfer from outside the Bureau, reinstatement and promotion. To be eligible for preference, an individual must meet any one of the following:

- (a) a member of any recognized tribe now under Federal jurisdiction, or
- (b) a descendant of a member of a Federally-recognized tribe who was on June 1, 1934, residing within the boundaries of any Indian reservation under Federal jurisdiction (For purposes of definition, the residing of either the descendant or the antecedent members satisfies the requirements of this provision.), or
- (c) one-half or more Indian blood, or
- (d) an Eskimo or a person descended from the other aboriginal peoples of Alaska, or
- (e) a person one-fourth or more Indian blood who is a descendant of a member of the Five Civilized Tribes in Eastern Oklahoma and the Osage Tribe that have not organized under the Oklahoma Welfare Act, or
- (f) a person of one-fourth degree or more Indian blood of a Federally-recognized tribe who was eligible for "preference" under existing policy as of the effective date for this new policy.

The alternative would be to follow a very strict interpretation of the 1934 Act which would mean that only members or descendants of members of tribes organized under the IRA and other related acts would be eligible for employ-

ment preference without regard to degree of Indian blood. The following represents the *optional* approach to the proposed policy :

"An Indian has preference in initial appointment, including lateral transfer from outside the bureau, reinstatement and promotion. To be eligible for preference, an individual must meet any one of the following :

(a) a member of any recognized tribe *organized under the Indian Reorganization Act and other related acts*, now under Federal jurisdiction, or

(b) a descendant of a member of a Federally-recognized tribe *organized under the Indian Reorganization Act or other related acts* who was on June 1, 1934, residing within the boundaries of any Indian reservation under Federal jurisdiction (For purposes of definition, the residing of either the descendant or the antecedent members satisfies the requirements of this provision.), or

(c) one-half or more Indian blood, or

(d) an Eskimo or a person descended from the other aboriginal peoples of Alaska, or

(e) a person one-fourth or more Indian blood who is a descendant of a member of the Five Civilized Tribes in Eastern Oklahoma and the Osage tribe that have not organized under the Oklahoma Welfare Act, or

(f) a person of one-fourth degree or more Indian blood of a federally-recognized tribe who was eligible for "preference" under existing policy as of the effective date for this new policy.

Two things should be noted in your considerations. (1) This policy change affects BIA employment qualifications only and has no bearings on program or service eligibility. (2) This proposal contains a provision which maintains the eligibility for all persons covered under the present policy.

I would like to have your response to this proposed policy change by September 15, 1975. If possible, I would like to have a Council resolution expressing the position of the majority of the Council on this matter. I recognize that this is a short time allowance, particularly for a Council resolution. The reason for the short response time is that a case has been filed in Federal court on the very question of tribal membership in an IRA tribe and eligibility for Indian preference. It is, therefore, very important that we move as quickly as possible in determining the new policy for Indian preference and not have the courts directing the Indian employment preference.

Your cooperation and assistance in this vital policy area will be appreciated.

Sincerely yours,

MORRIS THOMPSON,  
Commissioner of Indian Affairs.

[Exhibit 1, Index No. 1]

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SOLICITOR,  
Washington, D.C., April 9, 1975.

Memorandum to: Commissioner of Indian Affairs.

From: Associate Solicitor, Indian Affairs.

Subject: Definition of "Indian" for Preference Eligibility.

By memorandum dated December 9, 1974, you requested an opinion on the legal constraints on the definition of the term "Indian" for purposes of employment preference, so as to aid in deciding certain appeals by Bureau employees claiming preference. Some of these appeals involve the issue of whether persons who are enrolled members of a federally-recognized tribe organized under the Indian Reorganization Act (IRA), 25 U.S.C. § 461, *et seq.*, are entitled to preference eligibility under section 472 by virtue of the definition of the term "Indian" under section 479, even though they do not possess one-quarter degree of Indian blood. Presently, the Bureau's regulations provide that a person must be one-quarter degree or more Indian blood in order to qualify for a preference in employment. 44 BIA M 835, S.1, issued October 30, 1972. However, the definition of "Indian" in 25 U.S.C. § 479 establishes membership in a tribe, irrespective of blood quantum, as a standard for preference eligibility.

I have concluded that preference must, as a matter of law, be afforded to all persons of Indian descent who are members of tribes organized under the Indian Reorganization Act and to all other persons not members of any federally-recog-

nized tribe who are of one-half degree Indian blood. However, the Bureau may—as a matter of policy—establish a one-quarter degree standard for members of recognized tribes not organized under the Indian Reorganization Act. My analysis follows. It will be helpful in rendering our opinion to trace the evolution of Indian preference and the quarter-degree standard. Various statutes, beginning with one in the year 1834, have established one form or another of preference. Act of June 30, 1834, 25 U.S.C. § 45, 4 Stat. 737; Act of July 4, 1834, 25 U.S.C. § 46, 23 Stat. 97; Act of February 8, 1837, 25 U.S.C. § 348, 24 Stat. 389; Act of August 18, 1804, 25 U.S.C. § 44, 28 Stat. 313; Act of April 30, 1908, 25 U.S.C. § 47, 36 Stat. 861; and Section 12 of the IRA, *supra*. See *Morton v. Mancari*, ——— U.S. ———, 42 L.W. 4933, 4935 (June 17, 1974). Several treaties also have preference provisions, *Federal Indian Law*, 534–535 (1958 ed.). These provisions of law imply, and sometimes state, that the Secretary of the Interior has the responsibility for affording preference. Compare 25 U.S.C. §§ 44, 47 and 472 with §§ 45, 46 and 348. However, even since the inception of the Federal Civil Service in the year 1883, the Bureau has been under its aegis.

Indians entering the Office of Indian Affairs were required to qualify in regular Civil Service examinations, except that certain preferences were allowed in compliance with statutes providing that Indians shall be employed whenever practicable. *Federal Indian Law*, at 533.

The Civil Service is governed by a commission through the President who implements the recommendations of the commission by executive order. See Act of January 16, 1883, 22 Stat. 403; 5 U.S.C. §§ 1300 and 3301. The essence of civil service is that of merit and competition. Thus, because preference is contrary to ordinary civil service principles, it has been afforded by virtue of an executive order promulgating civil service rules which confer certain excepted appointment authority on the Secretary of the Interior.

The Civil Service Rules established by Executive Order 200, March 20, 1903, for example, provided for a Schedule A appointment for: Indians employed in the Indian Service at large, except those employed as superintendent, teachers, manual training teachers, kindergartners, physicians, matrons, clerks, seamstresses, farmers, and industrial teachers.

#### SCHEDULE A, VI(7)

The excepted appointment authority for Indians was expanded by Executive Order 4948 of August 14, 1928, and contracted by Executive Order 5213 of October 28, 1929. However, no appointment authority to that date defined an Indian. The first Department employment manual in the year 1932 mentioned a preference for Indians in the Bureau field services; but, again, Indian was not defined. *Regulations Governing Appointments in the Field Services of the Department of the Interior*, Section 48 (January 11, 1932).

With the depression of the 1930s, federal employment was used as a means of resurrecting a healthy economy and countering massive unemployment in the private sector. The Work Projects Administration and Civilian Conservation Corp. are the most notable of these efforts. But also an Indian Civilian Conservation Corp. was created to provide jobs for Indians. See *Federal Indian Law*, *supra*, at 539. In this manner, many became employees of the Bureau of Indian Affairs through excepted appointments.

A liberalization of the excepted appointment authority was conferred in Executive Order 6676 of April 14, 1934. It established a Schedule B appointment: a non-competitive examination for Indians of one-quarter or more Indian blood. Prior to that time, it was only Indian applicants for particular positions listed in Schedule A who received an excepted appointment if they were otherwise qualified. So, some two months before enactment of the Indian Reorganization Act, the quarter-degree standard was administratively established.<sup>1</sup>

The development of personnel regulations pertaining to Indians up to the time of passage of the IRA is succinctly described in a statement circulated to interested Indians soliciting their views on implementation of the employment preference in section 472.

<sup>1</sup> An earlier version of the IRA bill, S. 8645, 73rd Cong., 2nd Sess., contained a definition of "Indian" in Section 21 in terms the same as the present Section 479 except that one-quarter degree was used rather than one-half. See 78 Cong. Rec. 11782. The quarter-degree standard was raised to one-half by House Conference Report 2049, 73rd Cong., 2nd Sess., 78 Cong. Rec. 12004.

For several years the Indian Service was permitted to appoint Indians to many types of positions without civil service examination; and for certain other types, such as teaching and clerical work, they might qualify for appointment by passing a noncompetitive examination, that is, by meeting the minimum requirements. In 1929, by Executive Order, the range of positions to which Indians could be appointed without examination was narrowed and Indians were required to qualify in competitive civil service examinations for practically all positions for which white applicants had been required to qualify in that manner. There was adopted at that time, however, a preferential clause whereby Indians could be certified in order of rating on a separate Indian register of civil service eligibles and be considered before white applicants. This arrangement failed to increase materially the number of Indians appointed to Indian Service positions since it was necessary for Indians desiring positions to wait until a regular civil service examination was announced, and during recent years, due to economic conditions, few new examinations were needed to maintain civil service lists of eligibles.

In April, 1934, this situation was remedied by an Executive Order permitting noncompetitive examinations for Indians of one-fourth or more Indian blood for all positions not then excepted for examination. Under the provisions of this Order, a noncompetitive examination can be given only when there is a specific vacancy for which the Indian to be examined is recommended by the Commissioner, subject to passing the examination. In carrying out the plan for noncompetitive examinations, all applications for employment received by the Indian Office from Indians of one-fourth or more Indian blood are carefully classified under the various types of civil service positions for which the applicants appear to be qualified. As vacancies arise, the persons listed for the kinds of work involved are considered and one or more (not over five) names are submitted to the civil service commission for noncompetitive examination.

Manual of Civil Service Requirements for Indian Service Positions (February 1935).

Of course, the underlying statutory preference provisions were expanded by Congress in enacting the IRA. See *Morton v. Mancari*, *supra*, at 4935-4936, and *Freeman v. Morton*, 499 F. 2d 494 (CA DC 1974). However, the subsequent executive orders seem not to have taken into consideration the effects of a more expanded preference and the definition of Indian.

On June 24, 1938, Executive Order 7916 (8 CFR 350) was signed which brought all positions not then in the competitive classified civil service into it. If an Indian occupied a position excepted under Schedule A or had taken a noncompetitive examination, passed and received a Schedule B appointment, he then received, by virtue of the Order, a classified competitive appointment. Executive Order 7916 also promised revision of Schedules A and B. Those schedules were revised in Executive Order 8048 of January 31, 1939, 8 CFR 449, which brought the excepted appointment previously conferred in Executive Order 6676 in Schedule B to Schedule A. Thereafter, Indians of one-quarter degree need not have taken an examination in order to obtain employment in the Bureau.

Then, on March 28, 1940, Executive Order 8383, 8 CFR 630, brought all those employees who had received excepted appointments in the Bureau of Indian Affairs into the competitive civil service, just as Executive Order 7916 had done for the general civil service.

The one-quarter degree requirement is an administrative doctrine which—absent any statute defining an Indian—would appear to be within the Commissioner's discretion to establish. But with respect to preference under section 472, the definition of Indian in the Indian Reorganization Act must be used where the tribe which the person is affiliated with comes under the Indian Reorganization Act.

With respect to tribes which voted to accept the Indian Reorganization Act and those which did not reject it and the provisions of the act are applicable to the tribe, the definition established by section 479 sets the standard for preference eligibility. Those persons of Indian descent are:

1. Members of federally-recognized tribes;
  2. Descendants of members of federally-recognized tribes who were residing within the boundaries of a reservation on June 1, 1934; and
  3. All other persons of one-half or more degree Indian ancestry, whether or not a member of a federally-recognized tribe and whether or not the degree of ancestry is attributable to more than one federally-recognized tribe.
- It is our belief that where Congress provided for the formal organizing of the tribe under a constitution approved by the Secretary of the Interior, membership criteria would as a consequence be formalized and membership would then

be a meaningful standard for defining an Indian. Defining a person as Indian entails more than identifying mere Indian ancestry. If preference is to have any meaning, some measure of "Indianness" must be the standard of eligibility. The Supreme Court in the *Mancari* decision emphatically stated that "[t]he preference, as applied, is granted to Indians not as a discrete racial group, but, rather as members of quasi-sovereign tribal entities whose lives and activities are governed by the BIA in a unique fashion. *Morton v. Mancari, supra*, Slip Opin. at 18. The mandate of Congress in enacting the Indian Reorganization Act was that tribes, rather than the Bureau of Indian Affairs, would have the power to define their members by way of a formal organization and a basic self-governing document. That inherent power must be recognized to the extent Congress intended.

In order that the present authority to confer preference on Indians may be modified to comply with the statutory definition of Indian, the present excepted appointment authority in 5 CFR § 213.8112(a) (7) would have to be revised by executive order. The procedure for obtaining an executive order is set out in 1 CFR Part 19. We would also advise you that in order to avoid any questioning of the manner in which those present employees who have competitive appointments and who are to receive preference in the selection for a position do not lose their competitive appointment that a modifying executive order also contain the authority to afford preference by not conferring an excepted appointment.

On the other hand, I believe that you possess discretion to set a quarter-blood standard for preference eligibility with respect to members of recognized tribes that voted to reject the Indian Reorganization Act. It is my opinion that rejection of the IRA meant not only rejection of the opportunity to organize a tribal government under it, but also to be defined under its terms and receive the benefits of preference.

The three-judge New Mexico District Court in the case of *Mancari v. Morton*, 359 F. Supp. 585, held that preference under section 472 extended to individuals regardless whether their tribal members had voted to accept or reject the act. 359 F.Supp. at 588.

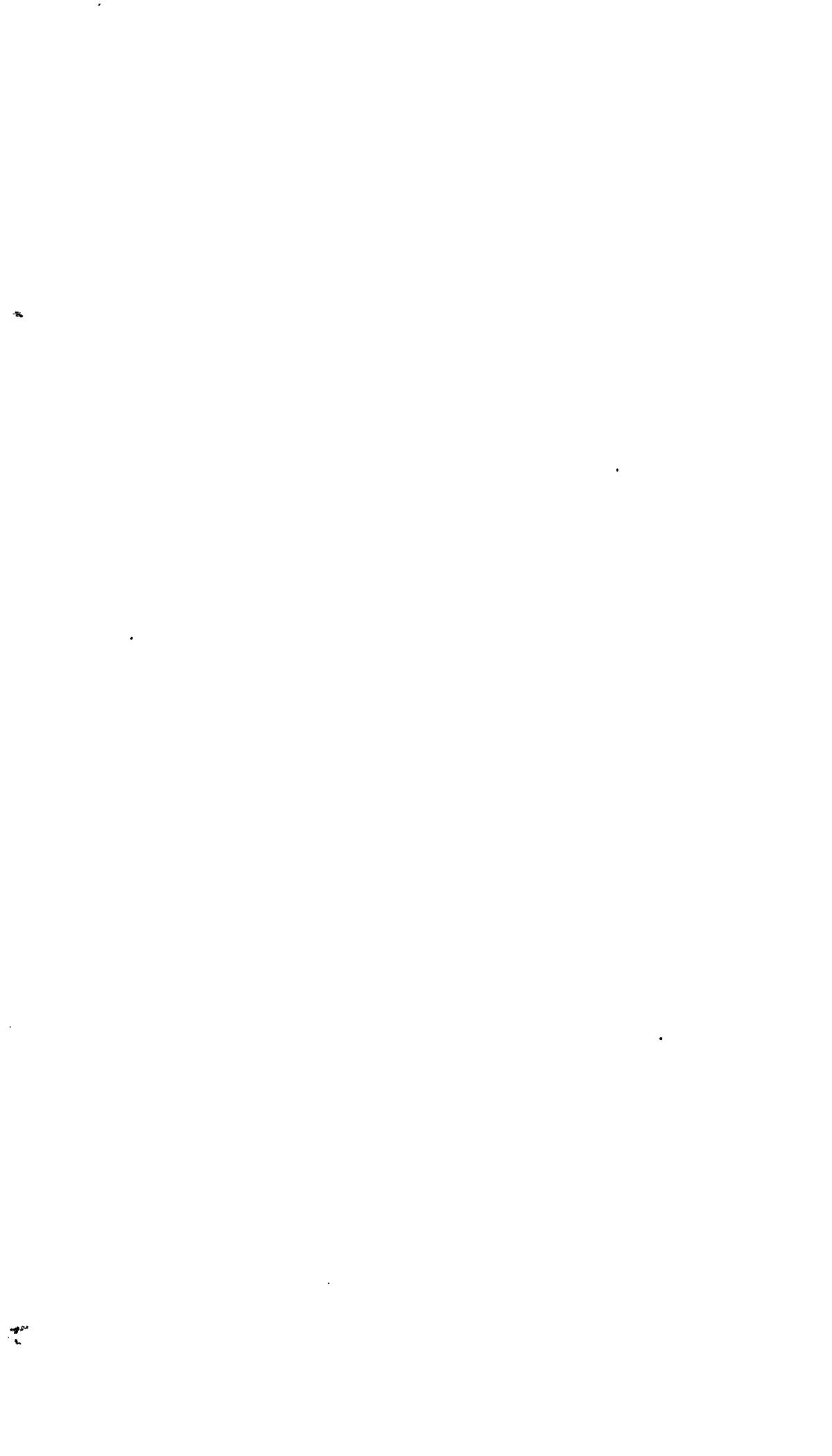
The court stated that we cannot believe that Congress intended all the Indian tribes to vote on the extension of boundaries of the Papago Reservation (*section 463a, 50 Stat. 536*), on the Secretary making rules and regulations for the operation and management of Indian forestry units (*section 466, 48 Stat. 980*), or on appropriations for vocational and trade schools (*section 471, 48 Stat. 985*), or on other provisions found in the Indian Reorganization Act. *Id.* (emphasis added).

As you know, the District Court's decision was reversed. Even apart from the validity of the decision in light of its reversal, the court's reasoning seems incorrect. The citation to section 463a in the part of the opinion just quoted is erroneous. Section 463a was not enacted until the year 1937. Act of July 28, 1937, 50 Stat. 536. To be sure, there are several provisions in Section 8 of the IRA, 48 Stat. 984, now section 493, which affect the Papago Reservation, but the main provision calls for the restoration to tribal ownership of the remaining surplus lands of a reservation which had been opened to sale—a matter upon which tribal members could well express their desire. Furthermore, the act also established the Revolving Loan Fund in Section 10, the eligibility for loans from which was originally limited to Indian chartered corporations.

Section 10 of IRA, now 25 U.S.C. § 470. But the eligibility provision has been twice amended: first by extending it to individual Indians of *not less than one-quarter degree* of tribes which had not voted to reject the act, Act of May 10, 1939, 53 Stat. 698, 25 U.S.C. § 480; and, second, by extending it to tribes and their members who had voted to reject the act or had not organized under it, Act of May 7, 1948, 62 Stat. 211, 25 U.S.C. § 482. See *Senate Interior Committee Report on H.R. 2622*, Sen. Rept. No. 1147, 80th Cong., 2d Sess. and *House Committee on Public Lands Report on H.R. 2622*, H. Rept. No. 939, 80th Cong., 2d Sess. If the benefits of the revolving loan fund were to be extended to all individuals of more than a quarter-degree Indian blood after the first amendment there would have been no need to enact the second amendment. But it is clear from the Department's legislative file on the 1948 Amendment that members of tribes that had not organized under the IRA or Oklahoma Welfare Act, Act of June 20, 1936, 49 Stat. 1967, 25 U.S.C. § 501, *et seq.*, had been interpreted by the Department to be ineligible for a loan.

I conclude, accordingly, that you possess discretion as Commissioner to establish standards for preference eligibility for this group of persons under the earlier, pro-1934 preference statutes. 25 U.S.C. §§ 44-46.

REID PEYTON CHAMBERS.

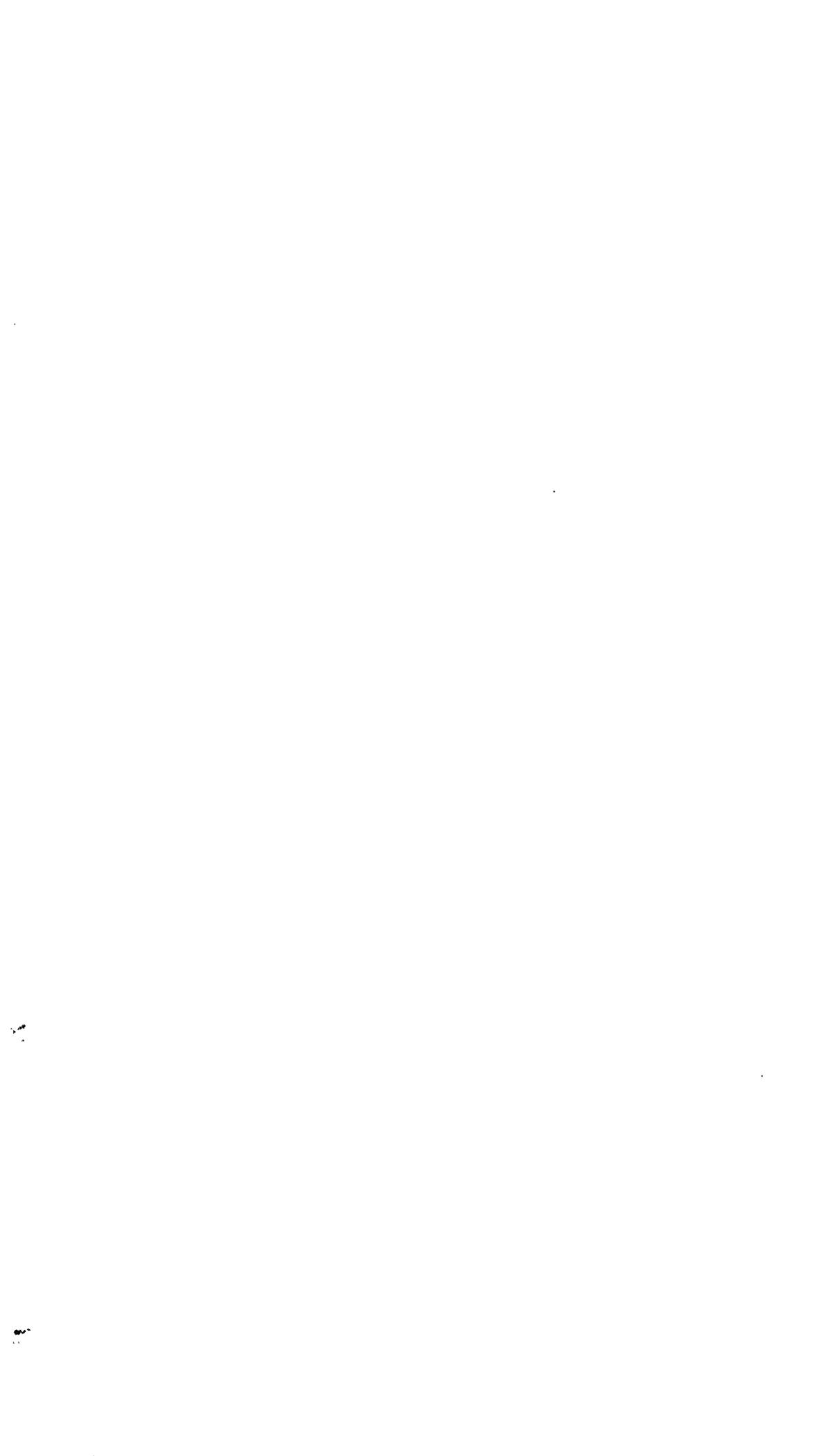


**APPENDIX II**  
**PART VI, EXHIBIT 2**

**INDIAN PREFERENCE EXHIBITS, IHS PREFERENCE FILE**

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APPENDIX II

PART VI, EXHIBIT 2

"Indian Preference Exhibits, Indian Health Service, HEW"

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[Exhibit 2, Index No. 16]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,  
HEALTH SERVICES AND MENTAL HEALTH ADMINISTRATION,  
*Oklahoma City, Okla., February 20, 1970.*

Mr. DON LOUIS TYNDALL, Sr.,  
*Muskogee, Okla.*

DEAR MR. TYNDALL: The position of Administrative Officer (Area Executive Officer) which you applied for, will not be filled as announced in our vacancy announcement No. 75-116. We announced this vacancy with the concurrence of our Indian Health Headquarters Office at the GS-15 grade level and did not expect any difficulties. The Indian Health Service subsequently was directed to reduce the grade to a GS-14 by higher classification authority. This directive has now been complied with and your application for the GS-15 position as announced, is returned to you.

The position has now been filled at the GS-14 level under Personnel Regulations and Procedures which permitted such an action.

We regret the inconvenience this may have caused you by our announcing this position at the GS-15 level. However, we appreciate your interest and willingness to be considered.

Sincerely,

WALTER F. CARTER,  
*Chief, Area Personnel Branch.*

Enclosure.

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[Exhibit 2, Index No. 15]

AMERICAN INDIAN POLICY REVIEW COMMISSION,  
CONGRESS OF THE UNITED STATES,  
*Washington, D.C., September 8, 1970.*

EMERY A. JOHNSON, M.D.,  
*Director, Indian Health Service, Health Services Administration, Department of Health, Education, and Welfare, Rockville, Md.*

DEAR DR. JOHNSON: As Director of the American Indian Policy Review Commission it has come to my attention that the Task Force on Indian Law Revision Consolidation and Codification has requested certain information concerning Indian preference from the Indian Health Service on three separate occasions. I understand the first request was made on June 17, 1976 at a hearing held at IHS by the Task Force mentioned above and the Indian Health Task Force. This request was fleshed out and further detailed in a Memorandum of July 16, 1976 to you from Peter S. Taylor. On or about July 30, 1976 we received a partial response to our request. On August 11, 1976 another letter was sent to you by Karl A. Funke, Task Force Specialist. This letter restated our request for the materials not supplied in your initial response and report to us and further detailed the nature of our request. This letter also stated that we had been informed by telephone that your supplemental response would be completed by the end of last month, August 31. Since we have not received your supplemental report to date nor received any confirmation from your office on this matter since the August 11th letter, we can only assume that our request has been ignored or that the report has been completed but not forwarded to us.

The American Indian Policy Review Commission was created pursuant to Public Law 93-580. The Commission has a limited duration of two years. Because of the short lifespan of the Commission it is imperative that the executive departments and agencies fully cooperate with the informational requests of the Commission. I have attached a copy of the legislation creating the Commission. Your attention is called to Section 3 of this statute which directs the federal agencies to furnish such information, studies and surveys as are requested of such agencies.

Pursuant to this authority I request that you provide Task Force No. 9 with the information requested in the hearing and letters discussed above no later than this Friday, September 10, 1976.

Your cooperation in this matter is appreciated.

Sincerely,

ERNEST L. STEVENS, *Director.*

[Exhibit 2, Index No. 14]

AMERICAN INDIAN POLICY REVIEW COMMISSION,  
CONGRESS OF THE UNITED STATES,  
Washington, D.C., August 11, 1976.

EMERY A. JOHNSON, M.D.  
*Director, Indian Health Service,  
Health Services Administration,  
Department of Health, Education, and Welfare,  
Rockville, Md.*

DEAR DR. JOHNSON: This is a follow up letter to the letter of July 16, 1976 to you from Peter S. Taylor, Chairman, Task Force on Indian Law Revision.

We thank you for providing your report of July 30, 1976 concerning Reported Vacancies Advertised In The Indian Health Service During Fiscal Year 1975 and 1976. This report however, responds to only part of our request of July 16, 1976. We now would like to restate and clarify our request for the remaining materials.

In item 1. on page two of the letter of July 16, 1976 we requested a "copy of the justification of the selecting official for his non-selection of the Indian Applicant." IHS Circular No. 71-1 of June 28, 1971 states in relevant part:

Statement of Nonselection: In the event a non-Indian applicant for the position is selected where qualified Indian applicants are available, a justification for such selection will be submitted by the selecting officer and approved by the appropriate Area Director and Area Associate Equal Employment Opportunity Officer before finalizing the appointment. A copy of the justification will be forwarded to the Deputy Equal Employment Opportunity Officer, Indian Health Service, Washington, D.C.

I am advised by Mr. Taylor that the Area Offices have not been complying with the requirements of this circular and that your EEO office has only 5 justifications on file. I understand that your office is now obtaining copies of the actual justifications from the Area Offices and that these will be supplied to us by the end of this month. We await receipt of the actual copies of the justification for non-selection in each instance when a non-Indian applicant was selected over an Indian applicant.

Item 2. of our letter of July 16, 1976 requested "the job title and grade level of each position GS-11 and above which has been advertised over the past two years for which an Indian has applied and in which the vacancy announcement or position advertisement was cancelled" (by Area Office). "In addition, please supply us with the reason given for cancellation of each such position." Your Report of July 30, 1976 did not provide us with the reasons for each cancellation of a vacancy announcement or position advertised. As in it is my understanding from Mr. Taylor based on his conversation with Ms. McDonald of your office that you are collecting this information and will supply it to us within 30 days. A simple statement that a position was cancelled for down-grading, etc., does not suffice to explain what happened.

Please indicate whether the cancellation of each vacancy announcement and/or position advertisement referred to above was either: (A) subsequently filled or will be filled at the same grade level; (B) subsequently filled or will be filled at a different grade level (C) subsequently filled or will be filled without advertisement, or announcement, or readvertisement, or reannouncement either at the same grade level or a different grade level. If any of the above did occur or are

going to occur please state (1) whether the original applications of the Indian applicants were or are still considered for the filling of such positions. (2) whether the Indian applicants for each of the original vacancy announcements or position advertisements were subsequently not considered for the subsequently filled position or about to be filled positions. (If so, please state the reason why such original Indian applicants were not subsequently considered for the respective positions).

For purposes of illustration, we took testimony and documentation in hearings held in Muskogee, Oklahoma that the position of Administrative Officer (Area Executive Office) (Oklahoma City Area) was advertised in Vacancy Announcement 75-116 was originally advertised at series and grade 341-15. Based on the information and documentation we were given at that hearing a number of Indians had applied for that position. Based on the information we have the position was subsequently down-graded to a G.S. 14, the vacancy announcement cancelled, the position was not readvertised or reannounced, the position was filed by a non-Indian and the applications of the original Indian applicants were returned without being considered for the position at the G.S. 14 grade.

This occurrence is not reflected in your Report of July 30, 1976 and it appears to be an instance of selection of a non-Indian applicant over Indian applicants. We hope that our request is not given an overly technical interpretation to the detriment of a frank response to the information request.

Finally, I note that you have not supplied the information requested in item 3 of Mr. Taylor's letter of July 16th. I understand that this information will also be supplied by the end of this month.

I would appreciate your office calling and confirming how long it will take to supply the remainder of this information.

Your diligent and timely response to this request is deeply appreciated.

Yours cordially,

KARL FUNK,  
Specialist, Task Force No. 9.

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[Exhibit 2, Index No. 13]

AMERICAN INDIAN POLICY REVIEW COMMISSION,  
CONGRESS OF THE UNITED STATES,  
Washington, D.C., July 16, 1976.

Memorandum to: Dr. Emery Johnson, Director, Indian Health Service.

From: Peter S. Taylor, Chairman, Task Force No. 9.

Subject: Request for information at June 17, 1976 hearing. Amendment to request to Secretary Mathews dated July 8, 1976.

At the hearings on June 17, 1976 of the Indian Health Task Force held in Rockville, I requested certain information relating to employment of Indians by I.H.S. By letter of July 8, Mr. Allan Cayous of our Indian Health Task Force reiterated those requests to Secretary Mathews.

Among other materials requested were copies of all Affirmative Action Plans from each of the Area Offices over the last two years as well as the evaluation of those plans and progress by your E.E.O. office. We have received parts B and C of the preliminary evaluation of the current Area Office affirmative action plans but have not received Part A. Would you please supply us with that?

We have also examined the most recent affirmative action plan of the Albuquerque Area Office. I have concluded that these reports do not supply us with the information we are seeking. I therefore withdraw my request for the affirmative action plans of the Area Offices.

At page 230-234 of the transcript numerous questions were asked regarding the selection or non-selection of Indians for positions GS-11 and above within I.H.S. over the past two or three years. These requests were also reiterated in Mr. Cayous' letter of July 8 to Secretary Mathews. After further review of the transcript and discussion with the staff of the Indian Health Task Force, it is clear that additional information is needed to properly reflect the staffing procedures within I.H.S.

The record reflects that under current I.H.S. practice, whenever a person eligible for Indian preference is non-selected for a position, the selecting official must write a justification for that non-selection. I understand that your E.E.O. office is presently preparing information for us which will reflect the number of positions GS-11 and above which have been advertised, the number of those

positions for which Indians applied, and the number which were in fact filled by Indians. These numbers only supply a part of the picture. I therefore request that you supply us with the following additional information:

1. In connection with the above information, please supply us with the job title and grade level of each position in which an Indian applicant was non-selected and a non-Indian was selected. Additionally, please supply us with a copy of the justification of the selecting official for his non-selection of the Indian applicant. (Please delete any information which would reveal the identification of the person non-selected.)

2. Please supply us with the job title and grade level of each position GS-11 and above which has been advertised over the past two years for which an Indian has applied and in which the vacancy announcement or position advertisement was cancelled. As with the information requested in item one above, please break this information down by Area office. In addition, please supply us with the reason given for cancellation of each such position.

3. In addition to the information above, please supply us with the job title and grade level of all non-medical positions GS-11 and above in I.H.S. which, over the past two years have been filled without advertisement, indicating which of these positions were filled by Indians, which by non-Indians, and the reason why said position vacancies were filled without advertisement. In connection with each of these positions, please indicate which were filled by members of the Commissioned Officer Corps.

I realize it will require additional time for you to supply us with the information requested in this letter. However, I believe this information is necessary to make this record complete. Since the life-span of the task forces in this Commission are fast expiring I must ask that you supply us now with the information compiled by your E.E.O. office to date. I would appreciate this follow-up information as quickly as possible. I assume the "justifications" for non-selection of Indians requested in item one could be edited and supplied within the next few days.

I would appreciate it if either you or Mr. Long would call me to advise me how long it will take to supply the remainder of the information.

Thank you very kindly for your cooperation in this matter.

PETER S. TAYLOR.

[Exhibit 2, Index No. 12]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,  
HEALTH SERVICE,  
HEALTH SERVICES ADMINISTRATION,  
INDIAN HEALTH SERVICE,  
Date : February 18, 1976.

Memorandum to: All Area and Program Directors Indian Health Service.  
From: Director, Indian Health Service.  
Subject: Responsibility and Authority of Associate Deputy DHO Officers.

It has come to my attention that some misunderstanding exists as to the responsibility and authority of the ADDEO Officers. The responsibility for implementing and directing a viable EEO Program is that of the Area and Program Directors. The ADDEO Officers' function is to provide program coordination of the EEO Program under the direction of the Area or Program Director. In order for the ADDEO Officers to fulfill their responsibility to the Area and Program Directors in line with the laws, regulations and procedures of the EEO Program, they must be allowed the freedom to act and make judgments independently within the precepts of good management and the philosophy of the Area and Program Directors.

In order for the ADDEO Officers to manage and implement the Indian Health Service EEO Program on behalf of the Area and Program Directors, the following procedures must be implemented:

1. All requests for personnel actions for all positions, Civil Service and Commissioned Corps, must be routed through the ADDEO Officer for signature before an enter-on-duty date is committed to an individual.

2. All position descriptions and vacancy announcements must be initiated by the ADEEO Officer before vacancy announcements are duplicated and distributed.

3. The ADEEO Officer is responsible for reviewing position descriptions and vacancy announcements to insure that there are not unnecessary qualifications or statements that might deter Indian applicants, women or minorities from applying.

4. No commitment can be made to applicants until the ADEEO Officer has approved the requests for "Personnel Action-Form 52".

5. ADEEO Officers must maintain a log of all personnel actions.

6. In the event of an impasse between EEO, Personnel, or the selecting official concerning a personnel action, the Area or Program Director must make the final decision.

7. If the personnel action involves selection of a non-Indian over a qualified Indian candidate a letter of justification must be sent to the Headquarters Indian Health Service Deputy EEO Officer for concurrence for resolution of the problem before a commitment can be made to the non-Indian applicant.

I request that these procedures be implemented immediately.

EMERY A. JOHNSON, M.D.,  
Assistant Surgeon General.

[Exhibit 2, Index No. 11]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,  
OFFICE OF THE SECRETARY,  
October 29, 1974.

Memorandum to: Dr. EMERY A. JOHNSON, Director, Indian Health Services.  
From: Manual B. Miller, Assistant General Counsel, GCB.  
Re: Indian Preference in Employment in the Indian Health Service.

You have asked that we advise you of the impact upon the Indian Health Service of the recent court decisions involving the Indian Preference Act, *Morton v. Mancari* and *Freeman v. Morton*.

The Supreme Court in *Mancari* held that Title VII of the Civil Rights Act of 1964 did not repeal the Indian Preference Act (25 U.S.C 472) and that the Indian Preference Act does not constitute invidious racial discrimination in violation of the Constitution.

As you are aware, DHEW officials or agencies were not parties to the *Freeman* litigation and in the strict legal sense the decision of the court is not binding on DHEW or IHS. However, the issues addressed and the resolution of the questions have a practical effect upon IHS because of its common origin with BIA, the defendant in *Freeman*.

The Court of Appeals in *Freeman* cast its decision as an answer to two questions:

Does Section 472 of Title 25 U.S.C. apply to transfers and reassignments within the Bureau of Indian Affairs which are purely lateral?

Does the section allow the granting of exceptions to the preference policy with reference to promotions as well as with respect to transfers or reassignments, for exceptional administrative or management reasons?

Stated simply, the court answered the first question in the affirmative and the second in the negative.

The questions were resolved into narrow issues because both parties had agreed that these were the issues—the broader questions having already been resolved in favor of the plaintiffs. That is, the BIA had agreed that the "Indian Preference" applied to initial appointments and promotions and that there was not a permissible exception to the preference policy in initial appointments. We assume, based on IHS Circular 71-1 that the IHS position would have been similar.

In a letter to you dated July 17, 1974, Mr. Harris Shemman, an attorney who represented intervenors in the *Freeman* case, took the position that the impact of the court's holding in *Freeman* means that as a minimum BIA and IHS must administer the Indian Preference as follows:

"A. The Bureau of Indian Affairs (BIA), Indian Health Service (IHS), and other federal programs dealing exclusively with federally-recognized Indian tribes are bound by the provisions of the Indian Preference statutes.

"B. Preferences to Indian employees must be granted by the BIA and IHS in the employment areas of promotions, initial hirings, reinstatements, re-assignments, lateral transfers, or any other personnel movement intended to fill a vacancy in the agency however created.

"C. To qualify for Indian Preference, an Indian employee or applicant must be of one quarter or more Indian blood, from a federally-recognized tribe, and meet the *minimum* qualifications for the vacancy or position sought. Preference must be granted even where the non-Indian is better qualified so long as the Indian applicant meets the *minimum* qualifications.

"D. No exceptions to Indian Preference can be made. No one, including the Commissioner of Indian Affairs or the Secretary of the Interior, can make exceptions or deviate from the Indian Preference requirements."

Although we do not agree that the holding is binding upon IHS, the holding of the court would be persuasive to a court faced with identical questions in a case where IHS is the defendant, and we can see no practical reason for not complying with the holding of the court by revising IHS policies accordingly at this time.

The primary impact upon IHS Circular 71-1 will be the changes necessary in paragraphs 3A and C to provide for preference application to all vacancies no matter how created and in paragraph 3D to preclude the impression that there are, or may be, exceptions to the preference or that the preference applies only when applicants are essentially equal. We recommend that the entire circular be rewritten and we will be pleased to assist in such an effort.

Of particular concern to you in administering the program are areas which we would like to discuss briefly. First, application of the preference does not affect Commissioned Corps positions. As long as a position is established and maintained as a Commissioned Corps position, it is our opinion that the preference does not apply and commissioned officers may be assigned and reassigned to and between positions and promoted within the Corps structure without regard to Indian Preference. If a Commissioned Corps position is converted to the Civil Service, Indian Preference will apply in filling the job.

Second, the requirement that an Indian with minimum qualifications must be selected if available does not require hiring of minimally qualified persons. The Act provides that the Secretary shall establish standards. In establishing standards the minimum acceptable standard within a profession or industry need not be accepted. This, however, does not mean that the standards may be set so as to exclude Indian applicants. More likely, this will require formalizing the criteria actually employed in setting minimum acceptable standards. However, it must be emphasized that the court's express holding that the Act does not permit exceptions to be made in any case precludes the argument that exceptions are necessary in providing medical personnel qualified to provide the high standard of care to which beneficiaries of the IHS programs are entitled.

INDIAN HEALTH SERVICE, *Oklahoma City Area.*

[Exhibit 2, Index No. 10]

OCTOBER 10, 1974.

Memorandum to: All Service Unit Directors, Office and Branch Chiefs,  
Oklahoma City Area Indian Health Service.

From: OCA/OD.

Subject: Indian Preference In Employment—IHS.

1. Recent court decisions affecting the application of Indian preference laws have raised many questions here in the Oklahoma City Area. Until such time as IHS policy changes, this Area has been directed to follow IHS Circular 71-1 on Indian preference dated June 28, 1971. A copy is attached for easy reference. Please share this information with your supervisors.

2. When this office is notified of any changes in our Indian preference policy you will also be notified. Also attached is a memorandum concerning pending action on IHS Circular 71-1.

JOHN W. DAVIS,  
*Director, Oklahoma City Area Indian Health Service.*

Enclosures

[Exhibit 2, Index No. 9]

NATIONAL INDIAN HEALTH BOARD, INC.,  
 Denver, Colo., September 12, 1974.

EMERY A. JOHNSON, M.D.,  
 Director, Indian Health Service, Department of Health, Education, and Welfare,  
 Rockville, Md.

DEAR DOCTOR JOHNSON: Recent concern for IHS implementation of (a) Indian Preference policy; and (b) enforcement efforts, has caused NIHB to establish an Employment Task Force. Efforts of the task force have intensified on Indian Preference in view of *Freeman v. Morton* and *Morton v. Mancari*. We are also aware of BIA's Task Force on Indian Preference, and the recent Indian Preference oversight hearings in Congress.

Our Employment Task Force report will not be complete until probably the next NIHB quarterly meeting, but in the meantime we are furnishing you a current NIHB analysis of the IHS preference policy (71-1). Hopefully, this analysis will provide you with our perspectives and concern for developing a policy which can be not only reasonable but consistent with the mission and goals of IHS. On the other hand, the policy should be one that is workable and will foster the law as announced in the *Freeman* case and by the Supreme Court of the U.S. in *Morton v. Mancari*.

NIHB feels the need for these activities to take place.

1. A special meeting between IHS and NIHB on the policy formulation.
2. NIHB review of the IHS policy when eventually drafted, and NIHB participation in drafting of that policy.
3. Publication of the IHS Indian Preference in the Federal Register, and subsequent inclusion in the CFR.

Tentatively, NIHB is considering a policy statement which would include the main features.

I. Background of Indian Preference.

II. Application to IHS.

III. Policy: (a) Statement; (b) Implication; (c) Responsibilities; and (d) Exceptions.

IV. Enforcement: (a) Review, monitoring; and (b) Personnel Office/Indian Preference Office.

V. Appeals: (a) Procedures; (b) Hearing; and (c) Decision.

We hope that the analysis (enclosed) will alert IHS to develop an improved Indian Preference policy. Although we are somewhat critical, it is NIHB role to advise IHS on policy matters, and thus, out of this sharing of criticisms, a better policy will result.

We will appreciate an up-date of IHS efforts in revising the Indian Preference policy.

Sincerely,

PERRY SUNDUST, Chairman,  
 National Indian Health Board, Inc.

Enclosure.

#### ANALYSIS OF IHS INDIAN PREFERENCE POLICY

In view of the lack of submittals on the progress of Indian Preference enforcement, the only method which can be used to assess the policy is to take each policy statement contained in IHS Circular 71-1 separately and draw from the implications. Each policy statement is analyzed.

(1) Policy A: When a qualified Indian is available, he will be selected for initial appointment to vacancies unless there are valid and documented reasons of unsuitability or unsatisfactory performance as a basis for rejecting him.

Although this statement reflects the intent of preference for Indians, there is a limitation made to the effect that an Indian will be selected for "initial appointment". The phrase "initial appointment" could very well be subjected to strict interpretation. As applied to IHS, the initial appointment is apparently within the "Excepted Service." From this statement it is not clear whether the policy was designed with an intent to encompass the internal mobility of Indians in IHS once the initial appointment was made. Compare this with Policy D below.

A second restriction is the phrase, "unless there are valid and documented reasons of unsuitability or unsatisfactory performance as a basis for rejecting him." As a preference policy the restriction is irrational. To reject an application of a qualified Indian is not the function of Indian Preference. Wouldn't normal Civil Service regulations on employee conduct and suitability govern anyway? There is reason to believe that this phrase adds nothing to a positive policy of Indian Preference.

(2) Policy B: The Indian Health Service will continue active recruitment efforts through all possible channels to locate qualified Indians.

Presumably, if Indians are to be hired to fulfill the Indian Preference obligations of IHS, active and aggressive recruitment will precede the actual hiring of Indians. A special recruitment effort of Indians is best judged by the statistics which show that Indians were indeed brought in at the lower levels, but recruitment efforts for GS-11 through 14 failed miserably, a clear indication of less than active efforts under IHS Indian Preference policy.

(3) Policy C: A thorough review will be made to determine whether the scope or responsibility of any vacant position may be structured to permit the appointment of a qualified Indian.

This policy statement is another reasonable mechanism through which Indians may be appointed to vacancies. But the word "appointment" is restrictive, especially where preference includes promotional movements of Indians. Thus, the inclusion of "promotions" and other personnel actions could meet the legal requirements. On the other hand, as stated, policy C may conflict with the intent of policy D below, in reference to promotions.

(4) Policy D: To enhance the achievement of the goal and objective of the Indian Health Service, persons of Indian descent will be given priority for promotions within the Indian Health Service. When a position with promotional opportunity is available, qualified Indian employees and qualified outside Indian applicants will be given priority consideration within the precepts of good management, for promotion or employment. When applicants are basically equal, priority will be extended to Indians unless there are valid and documented reasons of unsuitability or unsatisfactory performance which would justify non-selection of the Indian employee or applicant.

This statement seems to capsulize the intent of Indian Preference policy of IHS. It covers the goal of IHS, Indian priority for promotions, and preference for outside Indian candidates. But the restrictive phrase is "outside Indian candidates." Another phrase is inserted which states preference will be applied "within the precepts of good management." This was not a part of the Indian Preference law. A law is a law. If this phrase gives management an excuse not to apply Indian Preference then this is a loophole which needs to be closed. We suggest the deletion of this phrase.

Some confusion exists in the last sentence of policy D, which seems to cover a situation where there are Indian and non-Indian applicants. But Indians would be selected, "unless there are valid and documented reasons of unsuitability or unsatisfactory performance which would justify non-selection of the Indian employee or applicant." The latter phrase violates all Civil Service policies on hiring, and it seems to assume Indians may have unsuitable record. If this could be applied to non-Indians as well, it would not sound discriminatory. Following this loophole in the policy, it goes to suspect that the appointments of non-Indians, the promotion of non-Indians, the transfers, reassignments, etc., of non-Indians, has been justified because Indians were declared unsuitable or unsatisfactory in their performance. Thus, the negative implications foster bad management precepts.

Supporting the non-selection of Indians, and the selection of non-Indians is this policy:

Statement of nonselection: In the event a non-Indian applicant for the position is selected where qualified Indian applicants are available, a justification for such selection will be submitted by the selecting officer and approved by the appropriate Area Director and Area Associate Equal Employment Opportunity Office before finalizing the appointment. A copy of the justification will be forwarded to the Deputy Equal Employment Opportunity Officer, Indian Health Service, Washington, D.C.

This statement is in direct violation of the Indian Preference Law. According to *Morton v. Mancari*, the Supreme Court affirmed the preference policy. And

under *Freeman* and *Morton*, there are no exceptions. Furthermore, if management intends to circumvent the laws, it must spell out the exceptions, rather than allowing a blanket-type exception. This area is one in which it is clear that NIHB and IHS will need to discuss and review in some detail.

(5) Policy E: As a basic part of the overall policy of the Indian Health Service to increase the involvement and participation of the Indian health people in the management of their affairs, the Indian Health Service will aggressively pursue and promote career development and training programs which will give consideration to the needs of the Indian people to insure development to their maximum potential.

This statement defies all analysis. Who are the "Indian Health people"? And only "consideration" will be given to the "needs of Indian people to insure (sic) development," etc. But the methods to assure this in line with Indian Preference laws are not spelled out. "Consideration" is too vague a word for a

A PHS release, Chapter 302, PHS-2, entitled "Filling Positions With Persons Entitled to Indian Preference" indicates that IHS was instructed on August 6, 1965, to implement Indian Preference policy on hiring Indians.

The most important clause refers to the Civil Service Commission's regulations in Schedule A 213,3116(b) (8), which provides the category of positions excepted from competitive service are "Positions directly and primarily related to the providing of services to Indians when filled by the appointment of Indians who are one-fourth or more Indian blood." This statement on regulation is not included in IHS Circular 71-1 issued 6 years after PHS issued its policy. Failure to include this regulation makes 71-1 a very weak policy in terms of defining which positions are to be filled by Indians.

Accordingly, the policy is restated as follows:

**POLICY:** Preference in initial appointment to positions in programs directly and primarily related to providing services to Indians will be given to Indians and Alaskan Natives who are eligible for such preference if the individuals fully meet the qualifications requirements established for the positions.

Simply stated this means that if Indians "fully meet the qualifications requirements established for the positions" they are to be given preference in initial appointments. The word "initial" is used and would seem to restrict appointments only in such cases. Moreover, there is no definition of "initial appointment." This wording is similar to 71-1.

A very significant provision is under 302-2-40, which provides for minimum qualification requirements as follows under part A: 302-2-40 Qualification Standards.

A. Minimum qualification requirements for excepted positions are generally those stated in "Civil Service Handbook X-118" or in the latest appropriate examination announcement. If the Civil Service Commission has not yet developed qualification standards for a position or group of positions, the appointing authority should follow the procedures outlined in PHS Instruction 302-1-50B.

This paragraph speaks to which requirements are to be used for excepted positions. It states the minimum qualification requirements are those in the "Civil Service Handbook X-118."

More important is the B regulation which allows for Job Redesign. It states that:

B. When positive efforts have failed to produce a fully qualified candidate for a nonprofessional vacancy and there is an Indian Preference eligible available who is known to possess the ability to perform the duties of the position satisfactorily but who does not fully meet the established qualification standards, the appointing authority may waive the qualification standards for the position if he believes this is in the best interest of the Service.

We note that this covers a "nonprofessional vacancy" for which the appointing authority may waive the standards "if it is in the best interest of the service." One can argue that the quality of care would be lowered, but there is no showing that this is true.

As to professional positions the waiver is not authorized. Thus, "Qualification standards may not be waived, however, for any professional positions." There is no definition of what is meant by professional positions. For non-professional positions waivers "will be supported by a brief narrative justification."

From the gist of these PHS regulations "A person with Indian Preference may be given any one of the excepted appointments shown in PHS Instruction 302-

1-40," but there are two important categories of positions, non-professional and professional. In comparison, 71-1, ignores the requirements for waiving standards, and also overlooks waivers where the positions are deemed professional or non-professional. It is very apparent that the two policies need to be coordinated and brought in line with the law.

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[Exhibit 2, Index No. 8]

SEPTEMBER 9, 1974.

Mr. HARRIS D. SHERMAN,  
c/o Sherman & Sherman, P.C.,  
Denver, Colo.

DEAR MR. SHERMAN: This will acknowledge your letter of August 26, 1974 regarding the application of Indian preference laws to the employment of persons in the Indian Health Service. You request that we advise you by October 1, 1974 of the specific steps we plan to take to implement the Indian preference laws. You also suggest that we have been unresponsive to your previous written and telephonic requests.

We have, to the best of our knowledge, responded to all of your previous requests in a timely fashion. Although you note a failure to respond to several previous letters we are aware of only one, that one was dated July 17, 1974. Our reply to that one may have crossed in the mails with your letter of August 26, 1974. While you have generously provided us informational copies of your letters to Commissioner Thompson, we have not considered such copies of letters requiring a response from us.

Regarding your request that we advise you of specific steps that the Indian Health Service intends to take to implement the Indian preference requirements, we have referred this matter to the Office of the General Counsel, Department of Health, Education, and Welfare. The staff of that Office and of the Indian Health Service working together will respond to your requests as soon as possible.

Sincerely yours,

EMERY A. JOHNSON, M.D.,  
Assistant Surgeon General Director,  
Indian Health Service.

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[Exhibit 2, Index No. 7]

AUGUST 26, 1974.

Dr. EMERY A. JOHNSON,  
Director, Indian Health Service,  
Rockville, Md.

DEAR DR. JOHNSON: For the past two months, the attorneys for Indian plaintiffs in *Freeman v. Morton* have attempted to discuss the Indian preference question with you and your staff. Several letters sent to you, copies of which are attached, have gone unanswered. In addition, our telephone inquiries to your office have been ignored.

As we indicated in our letter of July 17, 1974, the preference policy of the Indian Health Service is not in conformity with the *Freeman* and *Mancari v. Morton* decisions. There is no excuse for the Indian Health Service's failure to modify its regulations to meet the requirements of 25 U.S.C. 472 as defined by the above court decisions.

We are therefore giving you and your agency notice that we shall institute legal proceedings against the Indian Health Service unless immediate action is taken by your agency. In the attached letter sent to BIA Commissioner Morris Thompson, dated August 26, 1974, we have listed what steps we consider essential to implement and enforce Indian preference requirements. We would expect to hear from your agency by no later than October 1, 1974, as to the specific steps you intend to take to meet these requirements.

Sincerely,

HARRIS D. SHERMAN.

[Exhibit 2, Index No. 6]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,  
HEALTH SERVICE ADMINISTRATION,  
INDIAN HEALTH SERVICE,  
August 28, 1974.

Memorandum to: See Below.

From: Director, Indian Health Service.

Subject: Indian Preference in Employment.

Recent court decisions on the application of Indian preference laws to employment practices in the Bureau of Indian Affairs, Department of the Interior, have resulted in significant new interpretations of the Indian preference laws. Although these interpretations were made on the basis of the specific issues before the courts, it would appear that the interpretations contained in the decisions would be equally applicable to the Indian Health Service. For this reason, I have requested the Office of the General Counsel (DHEW) to review our policy circular on Indian Preference (Policy Circular No. 71-1) and provide us guidance on what changes, if any, may be necessary. The General Counsel's office is presently conducting that review.

The purpose of this memorandum is to provide the necessary guidance to you and your staff during the period of General Counsel's office review. That guidance follows:

We, in the IHS, do not know at this time what guidance will be received from the Office of the General Counsel. Accordingly, we have no basis for making any revisions to the Indian preference policy as that policy is described in IHS Circular 71-1, a copy of which is attached. It is, therefore, requested that you and your staff follow that policy until such time as it is revised.

Should you have any questions on the application of that policy to a specific situation, please contact Mr. Robert P. Hayward, whom I have designated to be the key IHS person to assure that our policy is consistent with the law.

EMERY A. JOHNSON, M.D.,  
Assistant Surgeon General.

Enclosure.

[Exhibit 2, Index No. 5]

AUGUST 21, 1974.

HARRIS D. SHERMAN,  
Sherman and Sherman, Counselors at Law,  
Denver, Colo.

DEAR MR. SHERMAN: Your letter of July 17, 1974, has only recently come to my attention. Where the delay in its delivery occurred is not known, but it is hoped that the delay has not seriously inconvenienced you.

We, in the Indian Health Service, have followed closely the recent court proceedings and decisions on Indian preference because of their potential impact on employment practices of the Indian Health Service. These decisions have also caused us to seek the guidance of the Office of the General Counsel (OGC), Department of Health, Education and Welfare, regarding the need for any changes in the current policy on Indian preference. Although we have not yet received a response from the OGC to our request, we will, of course, follow whatever guidance they provide. Meanwhile, we plan to continue the Indian preference policy on employment which is contained in Indian Health Service Circular No. 71-1, a copy of which is attached.

Sincerely yours,

EMERY A. JOHNSON, M.D.,  
Assistant Surgeon General Director,  
Indian Health Service.

Enclosure.

[Exhibit 2, Index No. 4]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,  
HEALTH SERVICES ADMINISTRATION,  
INDIAN HEALTH SERVICE,

August 7, 1974.

Memorandum to: Mr. Manuel B. Hiller, Assistant General Counsel of Business and Administrative Law, Office of the General Counsel, HEW.

Through: Mr. Sidney Edelman, Assistant General Counsel for Public Health: Office of the General Counsel.

From: Acting Director, Indian Health Service.

Subject: Indian Preference in Employment in the Indian Health Service.

In December 1972 the United States District Court for the District of Columbia rendered a decision on the application of Indian preference statutes (25 U.S.C. 44, 45, 46, 472, 478) to employment practices in the Bureau of Indian Affairs. This decision was affirmed by the United States Court of Appeals for the District of Columbia Circuit on April 25, 1974. *Freeman v. Morton*, No. 73-1409. A copy of both of these decisions is attached at tab. A. On June 17, 1974, the United States Supreme Court rendered a decision on the question of whether the Equal Employment Opportunity Act Amendments of 1972 impliedly repealed the Indian preference laws, particularly the Indian Reorganization Act of 1934, 25 U.S.C. 472. *Morton v. Mancari*. A copy of this decision is attached at tab B. Although these decisions involved only the Bureau of Indian Affairs, Department of the Interior, there would seem to be little question that the Indian Health Service will be expected to conform to the Court's decision as the Service uses the same statutory authorities as were construed in the *Freeman* and *Mancari* decisions. This point is emphasized by a recent (8/5/74) discussion between the IHS and Mr. Harris Sherman, of Sherman and Sherman, who actively participated in both the *Mancari* and *Freeman* cases. (See attached summary of 8/5/74 telephone conversation at tab C.)

The Indian Health Service, like the Bureau of Indian Affairs (and prior to 1955 an organizational unit of the BIA), is a federal agency administering "functions or services affecting Indian tribes."

The current policy followed by IHS is contained in Indian Health Service Circular No. 71-1, issued June 28, 1971. (Copy attached at tab D.) That circular establishes a policy which attempts to strike a balance between responsibility for providing quality health care to members of Federally recognized Indian tribes and the responsibility to accord Indian preference for employment. In so doing, the policy provides certain judgmental areas which must be determined by the appointing authority.

The contention of Mr. Harris Sherman is that these judgmental areas are "loopholes" which result in the Indian Health Service policy being out of compliance with the current law.

We, therefore, request your formal opinion analyzing whether IHS Circular No. 71-1 is defensible in view of the recent court decisions on Indian preference. If you find that the policy is defensible, but ought to be altered, your suggestions for specific modifications or changes would be appreciated. We would also appreciate your suggestions as to how to proceed in view of the unveiled threat of litigation against the Service by Harris Sherman on behalf of his clients. Your early action is requested.

H. V. CHADWICK.

[Exhibit 2, Index No. 3]

August 6, 1974.

Program Formulations Officer, DFF, IHS: Telcon, August 5, 1974, with Mr. Harris Sherman, Attorney (303) 892-6022.

The writer returned Mr. Sherman's call of August 2, 1974, to Dr. Johnson.

Mr. Sherman is a member of Sherman and Sherman, P. C., the law firm for the plaintiffs in the *Morton v. Mancari* case and an intervenor in the *Freeman v. Morton* case. The firm continues to be retained by the plaintiffs and other clients for the purpose of assuring full implementation of the decisions of the courts through seeking appropriate changes in policies, regulations and employment practices at all levels of the Indian Health Service and the Bureau of Indian Affairs.

Mr. Sherman made several inquiries during our conversation which are summarized below.

1. Why did IHS not have representatives at the July 16, 1974, meeting called by Commissioner Thompson and attended by members of his staff, representatives of the DOI Solicitors Office and Civil Service Commission?

The Indian Health Service did not attend because it was not officially invited by the Commissioner to have representation present. Assurances were given that Dr. Johnson would have had representatives at a meeting of such importance had there been an invitation.

2. Why has Dr. Johnson failed to respond to requests of Mr. Sherman?

Because he had mentioned this matter to Dr. Johnson's secretary, the writer spent most of the day (8-5-74) trying to locate any communication received from Mr. Sherman. The only letter identified was one dated July 1, 1974, which was addressed to Commissioner Thompson. We did not believe an IHS answer was indicated. Mr. Sherman indicated another letter had been sent to Dr. Johnson which was dated sometime in July (he stated he could not give a specific date because the file was not on his desk). The writer assured Mr. Sherman that Dr. Johnson was responsive to all inquiries and that there was no evidence that the letter in question had ever been received by IHS.

3. What is IHS doing to revise its regulations or policies on the application of Indian preference in employment in view of the *Mancari* and *Freeman* decisions?

IHS has reviewed both of the court decisions and its current Indian preference policy. The conclusion drawn from that review is that the Office of General Counsel should review the decisions and the policy to determine what, if any, changes would be required to comply with the Court decisions. Such a request is being made.

Mr. Sherman repeatedly expressed the view that several changes would be required, particularly those relating to administrative prerogatives. The writer did not agree that any changes would be required but stated that we would follow the advice of the DHEW Office of General Counsel.

4. When will IHS have its revised regulation ready for implementation?

Assuming that revisions would be necessary, based on OGC advice, the best estimate at this time is several months.

3. Why will it take so long, since almost two years have elapsed since the *Freeman* decision?

Review of the IHS policy didn't begin in earnest until after the *Mancari* decision by the Supreme Court in June 1974. A decision has not yet been made that changes in current policies will be required. This will depend on advice of OGC. Also, we are wrestling with the problem of what constitutes "minimally qualified." Mr. Sherman expressed the view that minimally qualified was stated in Civil Service qualification standards so he did not understand why that was a problem. The writer did not respond.

6. How long will OGC review take?

Possibly several weeks.

7. Why that long?

Because of the workload existing in OGC.

8. Would a Court Order requiring policy revisions help speed the process so that a revised policy could be published in 15 days?

The writer indicated that IHS and Department would do everything possible to comply with any such Court Order but that such an order would cause precipitous actions which could well cause serious problems in maintaining quality in the Indian health delivery system. The writer suggested that such problems could be so severe that neither he nor his clients would want to assume responsibility for them. Mr. Sherman didn't feel that this concern was relevant to the implementation of revised Indian preference regulations. The writer mentioned that IHS has received comments from Indians tribes and other groups that they did not want Indian preference practices to, in any way, lower the quality of health care services.

Mr. Sherman indicated frequently during our discussion that, in his opinion, BIA was "dragging its feet" and because of this demonstrated attitude, he was in the process of preparing a pleading to the court in an effort to seek a court order requiring BIA to develop and publish regulations in 15 days. He also stated that IHS could be included in such pleadings.

Mr. Sherman stated that he was getting numerous telephone calls daily and considerable pressure from his clients to get the BIA and IHS to develop, publish and implement Indian preference regulations consistent with the Court decisions. He suggested that two months to accomplish this was beyond what his clients would accept, and Sherman agrees. He expressed a desire to hold IHS anyway he can including willingness to meet with IHS and representatives of OGC at IHS or OGC request.

He also expressed the desire to avoid confrontation in the courts but on the other hand, he made it clear that if such a course of action were indicated, he would pursue it. It is his view, the only reason that time beyond one or two months would be required to publish and implement revised regulations on Indian preference is that IHS and OGC are not giving this responsibility high enough priority. He wants a more definitive indication of the time that will be required for IHS to implement regulations consistent with the courts' decisions and to this end he will call the writer on Monday, August 12, for such information. While the conversation was generally amicable, Mr. Sherman was firm in his insistence that the personnel practices would have to be changed and that such changes would have to occur within two months or he would seek relief through the court.

ROBERT P. HAYWARD.

[Exhibit 2, Index No. 2]

SHERMAN & SHERMAN, P. C.,  
ATTORNEYS AND COUNSELORS AT LAW,  
Denver, Colo., July 17, 1974.

Re *Freeman v. Morton*; *Mancari v. Morton*.

Dr. EMERY JOHNSON,

Director, Indian Health Service, Department of Health, Education, and Welfare,  
Rockville, Md.

DEAR MR. JOHNSON: As the attorneys for Indian intervenors in *Mancari v. Morton* and Indian plaintiffs in *Freeman v. Morton*, we are inquiring as to what steps have been taken by the Indian Health Service to comply with these Court decisions.

Although neither of the above cases dealt specifically with the Indian Health Service, the statutes ruled upon by the Courts (25 U.S.C. 44, 45, 46, and 472) govern the policies and actions of IHS. Accordingly, it is our position that Indian preference can now be defined as follows:

A. The Bureau of Indian Affairs (BIA), Indian Health Service (IHS), and other federal programs dealing exclusively with federally-recognized Indian tribes are bound by the provisions of the Indian preference statutes.

B. Preferences to Indian employees must be granted by the BIA and the IHS in the employment areas of promotions, initial hirings, reinstatements, reassignments, lateral transfers, or any other personnel movement intended to fill a vacancy in the agency, however created.

C. To qualify for Indian preference, an Indian employee or applicant must be of one-quarter or more Indian blood, from a federally-recognized tribe, and meet the *minimum* qualifications for the vacancy or position sought. Preference must be granted even where the non-Indian is better qualified so long as the Indian applicant meets the minimum qualifications.

D. No exceptions to Indian preference can be made. No one, including the Commissioner of Indian Affairs or the Secretary of the Interior, can make exceptions or deviate from the Indian preference requirements.

We understand that the preference policy of IHS is *not* in conformity with these requirements. It was our hope that we could meet with you earlier this week in Washington when we discussed new preference regulations and implementation thereof with Commissioner Thompson and representatives of the Civil Service Commission. We believe that time is of the essence and that prompt compliance with these Court decisions is mandatory. Therefore, we would appreciate your cooperation in indicating what regulations and plans are being implemented to carry out the mandate of the Courts.

Sincerely,

HARRIS D. SHERMAN.

[Exhibit 2, Index No. 1]

[Indian Health Service Circular No. 71-1]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, PUBLIC HEALTH SERVICE,  
HEALTH SERVICES AND MENTAL HEALTH ADMINISTRATION, INDIAN HEALTH  
SERVICE, ROCKVILLE, MD.

Indian Preference

1. Purpose.
2. Background.
3. Policy.
4. Veterans Preference.
5. Statement of Non Selection.

1. *Purpose.*—To establish an Indian Health Service policy for granting Indians preference for employment within the Indian Health Service.

2. *Background.*—The history of granting Indian people preference for employment within the Indian Service and the Bureau of Indian Affairs as well as the Indian Health Service is quite extensive. The Act of June 30, 1834 (25 U.S.C. 45) states,

"In all cases of the appointments of interpreters or other persons employed for the benefit of the Indians, a preference shall be given to persons of Indian descent, if such can be found, who are properly qualified for the execution of the duties."

Subsequently, the Acts of May 17, 1882 and June 4, 1884, (25 U.S.C. 46) stipulate,

"Preference to Indians in employment of clerical, mechanical, and other help, Preference shall at all times, as far as practicable, be given to Indians in the employment of clerical, mechanical, and other help on reservations and about agencies."

A hundred years after the original enactment of legislation providing for Indian preference the Wheeler Howard Act of June 18, 1934 (25 U.S.C. 472) was enacted providing for:

"Standards for Indians appointed to Indian Office. The Secretary of the Interior is directed to establish standards of health, age, character, experience, knowledge, and ability for Indians who may be appointed, without regard to civil service laws, to the various positions maintained, now or hereafter, by the Indian Office, in the administration of functions or services affecting any Indian tribe. Such qualified Indians shall hereafter have the preference to appoint to vacancies in any such positions."

Subsequently, an Executive Order 8043 issued by President Roosevelt on January 30, 1939, stipulates that positions excepted from examination under Section 3 of the Civil Service Rule 3 are:

"Positions in the Bureau of Indian Affairs, Washington, D.C., and in the field, when filled by the appointment of Indians who are one-fourth or more Indian blood."

It is obvious and clear that it is the Federal Government's intent and policy to provide preference to Indian people seeking employment within the Indian program. The above legislation was enacted prior to the transfer to the Indian Health Service to the Department of Health, Education, and Welfare and, therefore, pursuant to P.L. 83 568 of August 5, 1954, the "Transfer Act," the legislation cited above is applicable to the Indian Health Service.

3. *Policy.*—It is the policy as well as the intent of the Indian Health Service to implement the various legislative enactments cited which provide for preference in the employment of Indian People within the Indian Health Service. Accordingly,

A. When a qualified Indian is available, he will be selected for initial appointment to vacancies unless there are valid and documented reasons of unsuitability or unsatisfactory performance as a basis for rejecting him.

B. The Indian Health Service will continue active recruitment efforts through all possible channels to locate qualified Indians.

C. A thorough review will be made to determine whether the scope or responsibility of any vacant position may be structured to permit the appointment of a qualified Indian.

D. To enhance the achievement of the goal and objective of the Indian Health Service, persons of Indian descent will be given priority for promotions within the Indian Health Service. When a position with promotional opportunity is available, qualified Indian employees and qualified outside Indian applicants

will be given priority consideration within the precepts of good management, for promotion or employment. When applicants are basically equal, priority will be extended to Indians unless there are valid and documented reasons of unsuitability or unsatisfactory performance which would justify non-selection of the Indian employee or applicant.

E. As a basic part of the overall policy of the Indian Health Service to increase the involvement and participation of the Indian Health people in the management of their affairs, the Indian Health Service will aggressively pursue and promote career development and training programs which will give consideration to the needs of the Indian people to insure development to their maximum potential.

4. *Veterans Preference.*—By Executive Order No. 8383 of March 28, 1940, Indians in the Office of Indian Affairs on February 1, 1939, who met certain requirements were given classified civil service status. It has been held since that this superior appointment preference of an Indian of one-fourth or more Indian ancestry takes precedence over the provisions of Section 8 of the Veterans Preference Act of 1944.

Therefore, it is the policy of the Indian Health Service regarding veterans preference that a qualified Indian who is not a veteran will have preference over a non-Indian veteran. A qualified Indian who is a veteran shall have preference over a non-veteran Indian.

5. *Statement of Nonselection.*—In the event a non-Indian applicant for the position is selected where qualified Indian applicants are available, a justification for such selection will be submitted by the selecting officer and approved by the appropriate Area Director and Area Associate Equal Employment Opportunity Officer before finalizing the appointment. A copy of the justification will be forwarded to the Deputy Equal Employment Opportunity Officer, Indian Health Service, Washington, D.C.

EMERY A. JOHNSON, M.D.,  
*Assistant Surgeon General,  
Director, Indian Health Service.*

**APPENDIX II**  
**PART VI, EXHIBIT 3**

**INDIAN PREFERENCE EXHIBITS, CONTRACTING PREFERENCE FILE**

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APPENDIX II  
PART VI, EXHIBIT 3  
Indian Preference Exhibits Contracting Preference

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[Exhibit 3, Index No. 9]

U.S. DEPARTMENT OF LABOR,  
OFFICE OF ASSISTANT SECRETARY FOR EMPLOYMENT STANDARDS,  
*Washington, D.C., June 15, 1976.*

Mr. MORRIS THOMPSON,  
*Commissioner of Indian Affairs, U.S. Department of the Interior,*  
*Washington, D.C.*

DEAR MR. THOMPSON: This is in response to your letter to former Secretary Dunlop regarding Indian preference in training and employment as delineated in the Indian Self-Determination and Education Act (P.L. 93-638), particularly as it is explained in Section 7(b). Your letter was referred to this office, and we apologize for this delay in responding to your correspondence.

As you point out in your letter, the need for a consistent Federal policy or requiring contractors to give hiring preference to Indians on or near reservations is absolutely necessary if we are to realize the full impact of Section 7(b). A coordinated Government-wide policy is not only desirable, but essential in our pursuit of equal employment opportunity for Indians.

As I am sure you are aware, within the latitudes of Executive Order 11246, as amended, mandatory preferential hiring of Indians is not permissible; although any Government contractor who has a stated public policy of offering such preferential hiring of Indians is not to be considered in violation of the Order. This aspect of the contractor's hiring policy is purely voluntary and must derive from a "stated public policy".

We are in accord with your recommendation that a coordinating group be convened to discuss the ramifications of Section 7(b) before meaningful commitments can be made. Consequently, Mr. Fred G. Clark, Assistant Secretary of Administration and Management for the Department of Labor, sent a letter to Mr. Hugh E. Witt, Administrator, Federal Procurement Policy, outlining our position on this matter. Hopefully, some positive activity will be generated as a result of this communication.

A copy of this letter is enclosed for your information.

Sincerely,

JOHN C. READ,  
*Assistant Secretary.*

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[Exhibit 3, Index No. 8]

JUNE 10, 1976.

HON. W. J. USERY,  
*Secretary of Labor, Department of Labor,*  
*Washington, D.C.*

DEAR Mr. SECRETARY: Enclosed is a copy of a letter mailed to your predecessor on January 26, 1976, in which we suggested a meeting between the Bureau and the Department of Labor to discuss Sec. 7(b) of the Indian Self-Determination and Education Assistance Act (P.L. 93-638). We have neither received a reply to that letter nor been contacted to discuss at time and place for a meeting. The need for regulations to implement Sec. 7(b), however, has not diminished.

We are prepared to take whatever action your Department feels is appropriate to complement your efforts in implementing Indian preference in contracting. In order that our efforts are complementary rather than contradictory to yours, we need a status report of the Sec. 7(b) implementation efforts undertaken to

date by your Department. If you prefer meeting on the subject rather than preparing a written status report, we are prepared to host such a meeting. Please contact Mr. Harley Frankel, Deputy Commissioner of Indian Affairs, Tel: 343-4174, to establish a time and place.

Sincerely yours,

MORRIS THOMPSON,  
*Commissioner of Indian Affairs.*

[Exhibit 3, Index No. 7]

APRIL 16, 1976.

Mr. HUGH E. WITT,  
*Administrator, Federal Procurement Policy, Executive Office Building,  
Washington, D.C.*

DEAR MR. WITT: Since the enactment of Public Law 93-638, the "Indian Self-Determination and Education Assistance Act", on January 4, 1975, a significant part of the Act, Section 7(b), has not been administered under consistent policies or centralized direction in the Executive Branch. Section 7(b) states: "Any contract, subcontract, grant, or subgrant pursuant to this Act, the Act of April 16, 1934 (48 Stat. 596), as amended, or any other Act authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians, shall require that to the greatest extent feasible—

(1) preference and opportunities for training and employment in connection with the administration of such contracts or grant shall be given to Indians; and

(2) preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77).

Because of this lack of direction, conflicting interpretations and apparent confusion, officials of several Federal Departments as well as several Indian Tribes have asked this Department for guidance. They have assumed that Department of Labor's authority under Executive Order 11246, as amended, to provide for affirmative action by Federal contractors for minorities and women, places this Department in a position to provide such guidance for Section 7(b) application.

Dealing as it does with Federal grantees as well as contractors, and with the distribution of ownership as well as employment opportunities, the scope of 7(b) clearly stretches far beyond the reach of the Executive Order program. We thus do not see the Office of Federal Contract Compliance Programs serving as the appropriate locus for this responsibility.

Just last month, Senator Abourezk, Chairman of the Subcommittee on Indian Affairs of the Senate Interior and Insular Affairs Committee, indicated in a letter to the Secretary of Labor that his Subcommittee would be holding oversight hearings this month to determine the extent of implementation of Section 7(b) by the various Federal Departments. A copy of this letter is enclosed. We understand identical letters were sent to all Federal Departments.

To clarify this situation we recommend that your office take the immediate lead in calling a meeting of representatives of the various Federal Departments having interest and concern with this issue. Such a meeting would clarify the past, current and planned directions of the Departments to implement Section 7(b). Hopefully it would also generate suggestions as to the appropriate coordinating mechanism and/or agency to direct and oversee the Federal efforts regarding this Section of the Act; we presume such an assignment would be made in the form of an Executive Order; it is clear to us, above all else, that some clear guidance must be drawn up with which all the Federal agencies can work and which, for example, defines what is meant by such words as "preference" and "to the greatest feasible extent".

We suggest representatives of the Departments of Interior; Health, Education and Welfare; Commerce; Transportation; and Labor be invited to attend this meeting.

Sincerely,

FRED G. CLARK,  
*Assistant Secretary, Administration and Management.*

FEBRUARY 10, 1976.

Hon. ELLIOT RICHARDSON,  
 Secretary of Commerce, Commerce Building,  
 Washington, D.C.

DEAR MR. SECRETARY: For the last six years, both as Indian Affairs Subcommittee Chairman and a member of the Select Committee on Small Business, I have been receiving numerous complaints and inquiries from Indian contractors, tribal organizations and interested parties concerning federal agency interpretation of the preference in government contracting given to Indian people under various federal statutes.

The complaints and inquiries have ranged from questions concerning inconsistent applications of the Indian preference in contracting by different federal agencies to differing interpretations of the same contracting preference between the Central and Area offices of the same agencies, i.e., BIA, HUD and HEW.

In response to the inequities and financial loss suffered by Indian contractors, businessmen and tribal organizations around the Nation and due to the above confusion and interpretation given to the various legislative Indian contracting preferences by federal agencies, Sec. 7(b) of P.L. 93-638 was included in the Indian Self-Determination and Education Assistance Act to assure at least a minimum acceptable interpretation of Indian contracting and employment rights.

Section 7(b) states: Any contract, subcontract, grant or subgrant pursuant to this Act, the Act of April 16, 1934 (48 Stat. 596), as amended, or any other Act authorizing federal contracts with or grants to Indian organizations or for the benefit of Indians shall require that to the greatest extent feasible—

(1) preference and opportunities for training and employment in connection with the administration of such contract or grants shall be given to Indians; and

(2) preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in Section 3 of the Indian Financing Act of 1974 (88 Stat. 77) (25 U.S.C. Sec. 1452).

Thus, in the most straightforward way possible it was Congress' intention by including Sec. 7(b) in P.L. 93-638, that *all federal agencies presently or potentially* involved in Indian contracting and procurement administration would recognize the Indian right to a preference in government employment, contracting and procurement.

The addition of these sections to P.L. 93-638 are in no way intended to supersede the provisions of Section 23 of the Act of June 25, 1910, referred to as the "Buy Indian Act", or any other law or federal regulations which provide Indian preference in contracting of federal services. The underlying purpose behind this requirement was stated by Congress in Sec. 3(b) of the Act by declaring its commitment to ". . . an orderly transition from federal domination of program for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct and administration of these programs and services".

In our view, if Section 7(b) is responsibly administered by *all* federal agencies the inconsistent interpretations between and among different agencies should cease, with Indian people given, to the greatest extent possible, a preference in government contracting.

As Chairman of the Senate Subcommittee on Indian Affairs, I hereby respectfully request that your Department acknowledge, implement and maintain both the intent and spirit of the "Self-Determination Act".

It would be appreciated if the agencies under your direction would provide the Subcommittee, by February 17, 1976, with the following information:

(1) What has your Department done since the effective date of Public Law 93-638 to review and modify your existing procurement and contracting policies, methods, procedures and techniques to adhere to Section 7(b) of Public Law 93-638?

(2) What efforts are presently underway and/or are planned in fiscal year 1976 in your Department to formulate and implement new procurement policies consistent with Public Law 93-638?

(3) What specific efforts have been and/or are in process to coordinate your Department's efforts with those of other federal Departments?

This Subcommittee will review and assess the adequacy of these efforts to determine the extent and intent of the Executive Branch to implement Section 7(b) of P.L. 93-638. This review will form a basis for this Subcommittee's subsequent oversight hearings which will be held in March, 1976.

Sincerely,

JAMES ABOUREZK,  
*Chairman, Indian Affairs Subcommittee.*

[Exhibit 3, Index No. 5]

JANUARY 26, 1976.

Hon. JOHN T. DUNLOP,  
*Secretary of Department of Labor,*  
*Washington, D.C.*

DEAR SECRETARY DUNLOP: As you know, the Indian Self-Determination and Education Assistance Act (Public Law 93-638) became effective on December 4, 1975. One very important provision of that Act calls for Indian preference in training and employment under contracts or grants which benefits Indians. The Act states, in Sec. 7(b) :

Any contract, subcontract, grant, or subgrant pursuant to this Act, the Act of April 16, 1934 (48 Stat. 596), as amended, or any other Act authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians, shall require that to the greatest extent feasible—

(1) preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and

(2) preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77).

This section addresses one of the essential components of self-determination. For self-determination to be optimally effective, tribes must have economic self-sufficiency, which requires a substantial reduction in the high unemployment rates that now prevail on most reservations. Effective implementation of Sec. 7(b) could mean thousands of new jobs for Indians in private enterprises on or near reservations. Sec. 7(b) requires that all contractors who receive Federal contracts for the benefit of Indians must give training and employment preference to Indians. While preference to Indians has been permissible in the past, this is the first time it is made a requirement for Federal contractors serving Indians. Also, it is applicable to all Federal Agencies which let contracts for the benefit of Indians and is not just limited to the BIA and IHS. Effective enforcement would mean employment of Indians on all federally funded construction projects on or near reservations, as well as on procurement and service contracts.

In the past, the lack of a consistent Federal policy of requiring contractors to give hiring preference to Indians resulted in a situation wherein contractors usually brought their own crews to project sites and hired few Indians from the local community. Given the vast amount of construction and procurement contracting being planned for reservations, effective enforcement would insure that Indians receive the many job opportunities that otherwise will likely go to non-Indians. Sec. 7(b) now provides the opportunity for the development of a Government-wide policy, set of regulations, and enforcement system which will insure the comprehensive and enforceable approach to Indian preference that has been lacking in the past.

We feel that the Office of Federal Contracts Compliance in the Department of Labor should have primary responsibility for issuing regulations and overseeing implementation of Indian preference. Sec. 7(b) ties Indian preference into Federal contracts, and the OFCC now has overall responsibility for affirmative action contract compliance within the Federal government. Giving the OFCC primary responsibility would insure that the Indian preference regulations are integrated into the general non-discrimination regulations on contract compliance to prevent conflict between the two related requirements. It would also permit the OFCC to use the enforcement network now in place for carrying out non-discrimination requirements to enforce Indian preference requirements.

Tribal involvement is essential if an enforcement program is to be effective. First, tribal constitutions and legal opinions make it clear that tribes have the

right to require Indian preference by contractors which the tribes hire or grant permits to; this tribal authority may be used to cover non-Federal contractors as well as Federal ones. Where a tribe is exercising these rights, the Federal enforcement program should be coordinated with that of the tribe. On other reservations there has been substantial confusion about Indian preference and non-discrimination. There is a need to educate tribes about their rights and the nature of the Federal enforcement program to insure smooth implementation of the Federal policy. Lastly, experience has shown that Federal Agencies rarely have the manpower to effectively monitor contract compliance regulations. In many cases the officials who will be responsible for handling Indian preference guidelines will be the same ones who have to handle all the other contract compliance efforts and who are already overworked. Therefore, tribal governments should be involved in the Federal effort to provide a supplementary resource to those of the Federal Agencies.

It is recommended that the BIA, DOI, and ONAP (HEW) set up a coordinating group to insure Indian tribes are knowledgeable about and involved in Indian preference enforcement under Sec. 7(b). This should include a program to provide basic information to tribal leaders as well as technical assistance to tribes that wish to get deeply involved in enforcement of Indian preference—under their own authority as well as that provided under Sec. 7(b).

While the Bureau is recommending that the Office of Federal Contract Compliance have primary responsibility of implementation of Sec. 7(b), the Act itself does not specify which Federal Agency should assume this responsibility. We feel that an Executive Order is probably needed if responsibility is to rest with the OFCC and if other Federal Agencies are to respond positively to regulations issued by that office. An Executive Order is now being prepared by the Bureau which will include the placing of such responsibility with the Department of Labor. In the Executive Order the BIA will reserve the authority to review the OFCC enforcement of Sec. 7(b)—(the same as the Civil Rights Commission now does for other employment discrimination laws)—and to be primarily responsible for assisting tribes to develop their own capacity of Indian preference enforcement.

We would appreciate an opportunity to meet with officials of your Department to discuss the ideas presented in this letter. During a previous meeting with Assistant Secretary DeLury the Indian Self-Determination Act and its implication for other Federal Agencies was discussed. I was assured at that time of his favorable reaction to continuing our brief dialogue. Mr. Robert Gajdys also attended that meeting and has been contacted by members of my staff for his opinion in the matter. His continued participation in discussion will be helpful.

Because of the many questions now being raised by Indian tribal leaders I am suggesting that we meet in the very near future on this matter.

Sincerely yours,

MORRIS THOMPSON,  
*Commissioner of Indian Affairs.*

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[Exhibit 3, Index No. 4]

U.S. DEPARTMENT OF LABOR,  
EMPLOYMENT STANDARDS ADMINISTRATION,  
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS,  
*Washington, D.C., September 3, 1976.*

**Mr. CARMEN E. TURNER,**  
*Acting Director of Civil Rights, Office of the Secretary, U.S. Department of Transportation, Washington, D.C.*

DEAR MR. TURNER: Your office has requested Department of Labor approval of the proposed DOT/FHWA special provision which includes special hiring goals for American Indians on all Federal and Federally aided highway construction projects performed on lands under the jurisdiction of the Navajo Nation. Certain of the remarks contained in the material submitted with the proposal lead us to mention once again that the implementation of a preferential hiring program is beyond the authority of the Department of Labor under Executive Order 11246, as amended, and its implementing regulations. We can and will approve goals which accurately reflect a high concentration of Indians in the available labor force. Also, a proposal has been published for comment in the Federal

Register (41 F.R. 26229, June 25, 1976) which would allow a Federal contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near the reservation. At this time, however, and until such time as the above mentioned proposal becomes an effective regulation, we cannot mandate or otherwise condone the preferential hiring of Indians.

Several problems exist in the current proposal which preclude our approving the plan at this time. First, in order for the Department of Labor to approve any special bid conditions we must be able to judge the supportability of the goals and timetables contained therein. You have supplied us with census data which reflects the Indian population in areas covered by the Navajo Nation, and with estimates of numbers of employed, unemployed, trainable and available Navajos. What you have not supplied, however, is the number of people (non-minority and minority) other than Indians who reside in covered areas, who are employed, unemployed, trainable and available. Without this information we are unable to determine what percentages the available Navajos comprise of the total available workforce, which is a critical factor in assessing the supportability of the projected goals. We also request that you supply an indication of the number of anticipated vacancies for each job classification and an analysis of how, on the basis of the data, the goals were developed for the proposal.

Second, there is a difficulty with the requirements in your proposal that each contractor and covered subcontractor provides the Office of Navajo Labor Relations (ONLR) with copies of the projected work forecast for the project and advise the ONLR and other sources of Indian employees of all employment and training openings that are to be filled under this special provision. Although ONLR can be a suggested referral source it is beyond the authority of the Labor Department to require a contractor or subcontractor to recruit from ONLR, to report to ONLR, or to provide a time span within which ONLR can refer potential employees.

Third, the proposal defines Indian as "American Indians and includes persons who identify themselves or are known as such by virtue of their tribal associations." This definition is too inexact for OFCCP approval. A more precise and acceptable characterization, which has been adopted by the Office of Statistics Policy at OMB, defines Indians as persons having origins in any of the original peoples of North America and who maintain cultural identification through tribal affiliation or community recognition.

Fourth, although your proposal purports to allow the requirements of the Arizona Plan to apply with respect to that portion of the employees not included in the minimum Indian workforce goals for each classification, we do not understand how the Arizona Plan, with its established goals for minority groups including Indians, could be superimposed upon a proposal which already sets forth specific goals for Indians. Therefore, we think it incumbent upon you to develop goals for all protected groups within the geographic coverage of the plan. By so doing, the special plan will be the only operative plan in the area under the jurisdiction of the Navajo Nation and at the same time it will protect the employment rights of all peoples concerned.

You may be aware that the OFCCP National Program Strategy, Fiscal Year 1976 informs the contracting agencies that they are expected to develop "Special" Bid Conditions in nonplan areas to meet the affirmative action obligations of construction contractors when certain conditions exist. Enclosed find a set of these "Special" Bid Conditions which have been approved by the Solicitor's Office, the Director of OFCCP and the Assistant Secretary of ESA. The format and content of these "Special" Bid Conditions are now being used as a model for all "Special" Bid Conditions. The blank spaces are provided for the name of the project, the name of the "Special" Bid Conditions, the geographic area of the bid conditions and the goals. The use of this bid condition format will not only promote consistency among those projects for which OFCCP approves special goals, but will also serve to put all bidding contractors on sufficient notice of their equal employment obligations.

If you have any difficulties with adopting this format, please do not hesitate to contact this office for our assistance.

Sincerely,

LAWRENCE Z. LORBER,  
Deputy Assistant Secretary, Director, OFCOP.

Enclosure.

## DEPARTMENT OF LABOR

## OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

## [41 CFR Parts 60-1 and 60-2]

## EMPLOYMENT OF AMERICAN INDIANS ON OR NEAR INDIAN RESERVATIONS

## PROPOSED RULEMAKING

Notice is hereby given that pursuant to Executive Order 11246 (30 FR 12319), as amended by Executive Order 11375 (32 FR 14303), it is proposed to amend 41 CFR Part 60-1.5 and Part 60-2.12 in order to clarify the policy of the U.S. Department of Labor under Executive Order 11246, as amended, with regard to expanding the employment opportunities of American Indians living on or near an Indian reservation in both construction and nonconstruction employment. The proposal would parallel Section 703(1) of the Civil Rights Act of 1964, as amended, and would allow construction and nonconstruction contractors and subcontractors to engage in certain preferential hiring of such Indians.

Section 703(1) of the Civil Rights Act of 1964, as amended states:

Nothing contained in this title shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

The use of the word "near" would include all that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day. This definition is consistent with that offered by the Equal Employment Opportunity Commission to the U.S. Commission on Civil Rights in an opinion letter dated July 18, 1973.

In accordance with the Federal equal employment policy contained in Section 715 of the Civil Rights Act of 1964, as amended, for consistent standards among the Federal equal employment opportunity enforcement agencies, the Department of Labor proposes to adopt the policy enunciated in Section 703(1) of the Civil Rights Act of 1964, as amended, as the applicable standard under Executive Order 11246, as amended, for contractors performing contracts on or near an Indian reservation. The obligations of a Federal contractor under the Indian Self Determination and Education Assistance Act, PL 93-638, and the regulations issued pursuant thereto, 25 CFR Parts 271-277 would not be altered by the promulgation of this regulation.

Interested persons are invited to file written data, views or arguments concerning this proposal by July 26, 1976. Written comments should be addressed to the Acting Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

## PART 60-1—OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS

1. It is proposed to amend § 60-1.5 of Chapter 60, Title 41, Code of Federal Regulations by adding a new paragraph (a) (6) to read as follows.

## § 60-1.5 Exemptions.

(a) \* \* \*

(6) *Work on or near Indian reservations.* It shall not be a violation of the equal opportunity clause for a construction or nonconstruction contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation. The use of the word "near" would include all that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day. Contractors or subcontractors extending such a preference shall not, however, discriminate among Indians on the basis of religion, sex, or tribal affiliation, and the use of such a preference shall not excuse a contractor from complying with the other requirements contained in this Chapter.

## PART 60.2—AFFIRMATIVE ACTION PROGRAMS

2. It is proposed to amend § 60-2.12 by redesignating paragraphs (j), (k), (l), and (m) as (k), (l), (m), and (n) and by adding a new (j) as follows.

§ 60-2.12 *Establishment of goals and timetables.*

\* \* \* \* \*

(j) A contractor or subcontractor extending a publicly announced preference for Indians as authorized in 41 CFR 60-1.5(a) (6) may reflect in its goals and timetables the permissive employment preference for Indians living on or near an Indian reservation.

\* \* \* \* \*

Signed at Washington, D.C., this 22nd day of June, 1976.

W. J. USERY, JR.,  
*Secretary of Labor.*

JOHN C. READ,  
*Assistant Secretary for Employment Standards.*

LAWRENCE Z. LORBER,  
*Director, Office of Federal Contract Compliance Programs.*

[FR Doc. 76-18258 Filed 6-24-76; 8:45 am]

[Exhibit 3, Index No. 3]

JANUARY 30, 1976.

Mr. MOODY R. TIDWELL,  
*Associate Solicitor, General Law, U.S. Department of Interior,*  
*Washington, D.C.*

DEAR MR. TIDWELL: Section 7(b) of Public Law 93-638 (25 U.S.C. 450(e)) provides in pertinent part as follows:

(b) Any contract, subcontract, grant, or subgrant pursuant to this Act, the Act of April 10, 1934 (48 Stat. 596), as amended, or any other Act authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians, shall require that to the greatest extent feasible—

(1) preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and

(2) preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 2 of the Indian Financing Act of 1974 (88 Stat. 77).

On November 4, 1975, the Department of Interior published regulations to implement Public Law 93-638, Section 1411-70.608(a) of which implements the employment and training preference of section 7(b) (1) of Public Law 93-638. The effect of 1411-70.608(a) is that contractors subject to the Act shall grant a preference to Indians in employment and training opportunities but are prohibited from discriminating against Indians on the basis of sex, age, and religion.

Subsection (b) of the regulations provides that after full consideration of the preference the contractor may consider non-Indians for the remaining employment opportunities but only in accordance with an equal opportunity clause.

The equal opportunity clause, a modified version of the Executive Order 11246 EEO clause, is set forth in § 1411-70.609. This section provides that after the contractor has complied with the Indian preference required by § 1411-70.608, the contractor will not discriminate on the basis of race, age, religion, or sex. The clause also requires the contractor to take affirmative action in all aspects of its employment practices with respect to those employees who are employed after the Indian preference is exhausted.

Mr. S. Bobo Dean of the Fried, Frank, Harris, Shriver and Kampelman firm in a letter to Interior's Solicitor Frizzell argued that the EEO obligations, placed on contractors by the clauses described above after compliance with the Indian employment preference, "ignore the express provision relating to Indian tribes set forth in Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e." Mr. Dean is referring to the provision in 42 U.S.C. 2000e-2(1) which permits an employer to give preferential treatment to Indians living on or near a reservation provided the employer first publicly announces such an employment practice.

Mr. Dean is also referring to the provision in 42 U.S.C. 2000e(b) (1) which excludes an Indian tribe (along with the United States, a corporation wholly owned by the Government of the United States, and certain other entities) from the definition of the term "employer." The thrust of Mr. Dean's argument is that these two provisions in Title VII establish a national policy of Indian autonomy and that the EEO obligations placed on contractors interfere with that autonomy.

You have asked for our opinion as to the applicability of nondiscrimination requirements to contracts with Indian tribes. As you are aware, we have no enforcement responsibility for Title VII. However, the question you raise does raise issues about the application of Executive Order 11246 to contracts with Indian tribes.

First, we are not persuaded by Mr. Dean's arguments. The exemption for Indian tribes and the preferential treatment allowed for Indian employees in Title VII are reflective of a general federal policy which provides special treatment for Indians under various laws. These provisions do not, in our judgment, however, create or establish a new policy which the Government generally is required to follow in the area of federal contracts. It seems clear to us that the special provisions have no application beyond Title VII itself, and do not, for example, require the Department of Labor under the Executive Order to adopt regulations paralleling the two provisions. However, the Department of Labor is considering adopting a permissive Indian preference comparable to the one contained in 42 U.S.C. 2000e-2(1). The basis for this type of regulation, however, is the congressional mandate contained in section 715 of the Civil Rights Act of 1964, as amended, which calls for the elimination of "conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the various departments, agencies and branches of the Federal government responsible for the implementation and enforcement of equal employment opportunity legislation, orders, and policies." In addition, there is a kinship between the preferential treatment accorded Indians (as employees) and the mission and objectives of the Executive Order program, and other EEO programs for maximizing Indian employment opportunities. On the other hand, employer exemptions from coverage, as in the case of 42 U.S.C. 2000e(b) (1), do not enjoy the same kind of kinship to the mission and objectives of the Executive Order program, since they might impede the attainment of employment opportunities by protected groups.

Consequently, we agree that by the principle of accommodation, the requirements of the Executive Order can be reconciled with the express preferences of section 7(b) of Public Law 93-638. Accommodation, however, should be applied only to the extent that it is necessary to eliminate the possibility of conflict between the two programs within a single Federal scheme. Therefore, Executive Order 11246 is authority for including the EEO clause to the extent the clause in § 141I-70.609 relates to race, sex, and religion. Executive Order 11141 is authority for including the age requirement under the same rationale we have mentioned above with respect to E.O. 11246. Also, the same arguments and principles would apply to the clause in § 141I-70.608 which prohibits discrimination among Indians (who are employed under the preference) on the basis of age, religion and sex.

Pursuant to Section 106 of Public Law 93-638, which section gives the Secretary of Interior the authority to waive any contracting laws and regulations which he determines are not appropriate for the purposes of the contract involved or inconsistent with the provisions of the Act, the BIA regulations implementing Public Law 93-638 have sought to waive Executive Order 11246, as amended, and its implementing regulations, except to the extent that they are specifically reinstated in the BIA regulations.

The exact wording of the BIA regulations is, in relevant part, as follows:

To the extent that the Federal Procurement Regulations and Interior Procurement Regulations, 41 CFR Chapter 1, Chapter 14, and Chapter 14-H (except 41 CFR Part 141I-1) respectively are not made specifically applicable to contracts entered into pursuant to the Act by reference in this Part 141I-70 they are hereby waived." 141I-70.003

Although 41 CFR Chapter 1 speaks mainly to complex and detailed federal procurement regulations, subpart 1-12.8 deals with equal opportunity in employment and it specifically incorporates only the Office of Federal Contract Compliance Programs (hereinafter OFCCP) equal employment opportunity regulations found at 41 CFR Chapter 60 Part 60-1, Parts 60-2, 60-20 and 60-50 of the OFCCP regulations, which deal with affirmative action programs, sex dis-

crimination guidelines and guidelines on discrimination because of religion or national origin, respectively, are not incorporated either specifically or by reference in the federal procurement regulations and therefore it appears that they have not been effectively waived by the BIA regulations.

Although we have been advised by attorneys in Interior's Solicitor's Office that your intention was completely to waive Executive Order 11246 and its implementing regulations (except for those portions of the Executive Order which you have restated in 41 CFR §§ 141-70.608 and 141-70.609), it is our opinion that the Executive Order and regulations found at 41 CFR Chapter 60 should not be waived. The legislative history of P.L. 93-638 indicates that the purpose of allowing the Secretary of Interior the waiver authority is to provide flexibility and to avoid the rigidity of certain procurement laws and regulations. Given that the Executive Order and its implementing regulations deal with equal employment opportunity and not with burdensome or inflexible procurement procedures with strong cost impacts, we believe that the Executive Order and its regulations are neither inconsistent with the provisions of the Public Law nor are they inappropriate for the purposes of most, if not all, contracts. Furthermore, the objective of the Executive Order program, which is to achieve equal employment opportunity without regard to race, color, religion, sex, national origin, or age, is equally as appropriate to federal contracts with Indian tribes as it is to any other federal contract. Under our contemplated Federal Register proposal, if adopted, any contractor or subcontractor who extends a publicly announced hiring preference for Indians living on or near a reservation or a mandatory hiring preference for Indians as required by P.L. 93-638 would be able to reflect that preference in its goals and timetables for other protected groups. Accordingly, we respectfully suggest that all portions of the Executive Order and its implementing regulations should not be waived by, and in fact should be incorporated in, the BIA regulations.

We would welcome the opportunity to discuss this matter further with you, and representatives from this office and the Office of Federal Contract Compliance Programs will be getting in touch with officials at Interior shortly to schedule these discussions.

Sincerely,

**JAMES D. HENBY,**  
*Associate Solicitor.*

[Exhibit 3, Index No. 2]

JANUARY 1, 1975.

Mr. JAMES FRAZIER,  
*Director of Civil Rights, Office of the Secretary,*  
*U.S. Department of Transportation,*  
*Washington, D.C.*

DEAR MR. FRAZIER: Your office has requested Department of Labor approval of the proposed DOT/FHWA special provision which provides for preferential employment of American Indians on all Federal and Federally-aided highway construction projects performed on lands under the jurisdiction of the Navajo Nation. As we understand the proposal, it would eliminate any concurrent requirements under Part II of the existing Arizona Bid Conditions. We have previously informed you that pending resolution of general OFCC Indian policy, we are prepared to approve special bid conditions for Indian hiring on these highway projects, but that we could not approve your proposal as it is presently written. The reasons are as follows:

First, the Department of Labor is without authority under Executive Order 11246, as amended, to mandate the preferential hiring of Indians. As presently drafted, however, the special provision requires that:

"During performance of this contract the contractor and each covered subcontractor shall provide preferential treatment to Indians. Such preferential treatment is consistent with the provisions of Title VII, Section 703(1) of the Civil Rights Act of 1964, as amended. In no case shall the preferential treatment be used to discriminate against Indians. The preferential treatment shall apply to all aspects of employment except wages, working conditions, and performance evaluations. Such aspects include but are not limited to, recruitment, hiring, training, promotion, termination, and layoffs.

Notwithstanding the foregoing, the contractor and each covered subcontractor may employ in each work classification for which minimum Indian work force

goals are established herein without providing preferential treatment of Indians, craftsmen not to exceed 10 percent of the total, or one craftsmen, whichever is greater. This exception applies to the total number of craftsmen employed in each classification during the life of the contract or subcontract." Agreement, p. 2.

Furthermore, this preference is reinforced by the special provision's referral and recruitment system which is tantamount to a mandatory Indian hiring preference because it requires a contractor to hire referrals from the Office of Navajo Labor Relations if such referrals are made within three days from the time the contractor gives notice of his intent to hire.

Second, in order for the Department of Labor to approve any special bid conditions for the Federal highway projects at issue, we must be able to judge the supportability of the goals and timetables contained therein. Goals and timetables must be based on the most accurate data obtainable that indicates the available labor force. *Rios v. Enterprise Association Steamfitters Local 638*, 501 F.2d. 622 (2d Cir. 1974) remanded to 10 FEP 796 (S.D. New York 1975). We request, therefore, that you provide us not only with supporting availability data but also with an analysis of how, on the basis of the data, the goals were developed for the proposal which you have submitted.

Third, it is unclear as to the time frames that the goals and increases in your proposal remain applicable. Under procurement law all bidders must be put on notice of specific equal employment opportunity requirements. 54 Comp. Gen. 6 (1974) ; 48 Comp. Gen. 826 (1968).

Fourth, the proposal includes, *inter alia*, the suspension of contract payments as a sanction for noncompliance based on discrimination or lack of affirmative action adequate to attain goals. It is our opinion, based upon a recent Comptroller General ruling, 52 Comp. en. 476 (1973), that although the suspension of a contractor's progress payments for violations of the equal employment opportunity clause of his contract is a sanction which is authorized by section 209(a) (5) of Executive Order 11246, as amended, it is a sanction which, in the absence of an amendment to our regulations, cannot be imposed without first providing the contractor with a hearing. 41 CFR §§ 60-1.24(c) (3) and 60-1.26.

Fifth, the agreement purports to eliminate any concurrent requirements under Part II of the Arizona Bid Conditions or any other area wide affirmative action plans imposed by or approved by OFCCP. The proposal contains preferential hiring and affirmative action requirements with regard to Indians; however, once those requirements are met, the contractor can fill the remaining job vacancies bound only by the obligation to "ensure equal employment opportunity." Agreement, p. 4. Consequently, after completing all Indian hiring obligations pursuant to the agreement, the agreement might appear to exempt the contractor from all affirmative action obligations with regard to other protected groups. The Department cannot approve an approach which might minimize or reduce affirmative action requirements toward other groups covered by the goals and timetable approach of construction industry EEO bid conditions.

Finally, you note in the proposal that the FHWA has solicited and received comments on the proposed special provisions from affected field organizations, contractor organizations and representatives of the Navajo Nation. We are most interested in reviewing those comments and request that you forward them to this office.

We will communicate with you further in order to resolve any problem areas.

Sincerely,

GEORGE F. TRAVERS,  
Acting Director.

[Exhibit 3, Index No. 1]

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SOLICITOR,  
Washington, D.C., September 30, 1975.

Memorandum To: Commissioner of Indian Affairs.

From: Associate Solicitor, Indian Affairs.

Subject: Applicability of Public Law 93-638 to Federal Agencies.

This responds to your memorandum dated July 11, 1975 requesting an opinion as to the applicability of P.L. 93-638 to Federal Agencies other than the Bureau of Indian Affairs and HFW.

We are not aware of the origin of the view that contracts under the Indian Self-Determination Act, Public Law 93-638, may be made with agencies other than BIA and HEW. We do note, however, that the view that the Act is not limited to your Bureau and HEW even turned up in the remarks of Secretary Hathaway to the National Congress of American Indians on June 25, 1975. In the course of those remarks the Secretary said: "The Self-Determination Act authorizes Federal agencies to turn over management of specific programs to the tribal government. . . . In order that there be no misunderstanding about the meaning and purposes of the Self-Determination Act, I will emphasize that tribes are free at any time and at their own behest to relinquish administration of programs back to the Bureau or to Indian Health Service or wherever. . . ."

Section 102(a) of the Indian Self-Determination Act provides:

"The Secretary of the Interior is directed, upon the request of any Indian tribe, to enter into a contract or contracts with any tribal organization of any such Indian tribe to plan, conduct, and administer programs, or portions thereof, provided for in the Act of April 16, 1934 (48 Stat. 596) [Johnson-O'Malley Act], as amended by this Act, any other program or portion thereof which the Secretary of Interior is authorized to administer for the benefit of Indians under the Act of November 2, 1921 (42 Stat. 208) [Snyder Act], and any Act subsequent thereto. . . ."

Section 103(a) of the Indian Self-Determination Act provides:

"The Secretary of Health, Education, and Welfare is directed, upon the request of any Indian tribe, to enter into a contract or contracts with any tribal organization of any such Indian tribe to carry out any or all of his functions, authorities and responsibilities under the Act of August 5, 1954 (68 Stat. 674) [which transferred Indian Health responsibilities to HEW], as amended. . . ."

It is clear from the face of the Act therefore that contracting authority under Public Law 93-638 is limited to the Secretary of the Interior and the Secretary of Health, Education, and Welfare. The Acts under which the Secretary of Interior may contract are the Johnson-O'Malley Act and the Snyder Act plus any Act subsequent thereto. The Secretary of Health, Education, and Welfare may contract with respect to his authority to provide health services to Indians.

The Committee on Interior and Insular Affairs in reporting the version of S. 1017 which became the Indian Self-Determination Act stated the purpose of S. 1017 as follows:

"S. 1017, as amended by the Committee, authorizes and directs the Secretary of the Interior and the Secretary of Health, Education and Welfare to contract with Indian tribes or tribal organizations for the operation of programs and services provided by the Bureau of Indian Affairs and the Indian Health Service under guidelines and criteria established by the bill; amends the Johnson-O'Malley Act with respect to providing more Indian control of contracts for assistance to public schools enrolling Indian students; and authorizes the Secretary of the Interior to provide assistance for construction to public schools enrolling Indian students."

H.R. Rept. No. 93-1600, 93d Cong., 2d Sess. 14 (1974)

In light of the clear language of the Act and its stated purpose by the House Interior and Insular Affairs Committee, we can come to no conclusion other than that contracts under Section 102 and Section 103 of the Indian Self-Determination Act are limited to those programs and functions which are currently performed by the Bureau of Indian Affairs and the Indian Health Services.

Whether the Fish and Wildlife Service can enter the agreement desired by the Navajo Tribe under some authority other than Public Law 93-638 is a matter on which we are, by a copy of this memorandum, requesting the Associate Solicitor, Division of Conservation and Wildlife to advise you.

REID PAYTON CHAMBERS.

**APPENDIX II**

**PART VI, EXHIBIT No. 4**

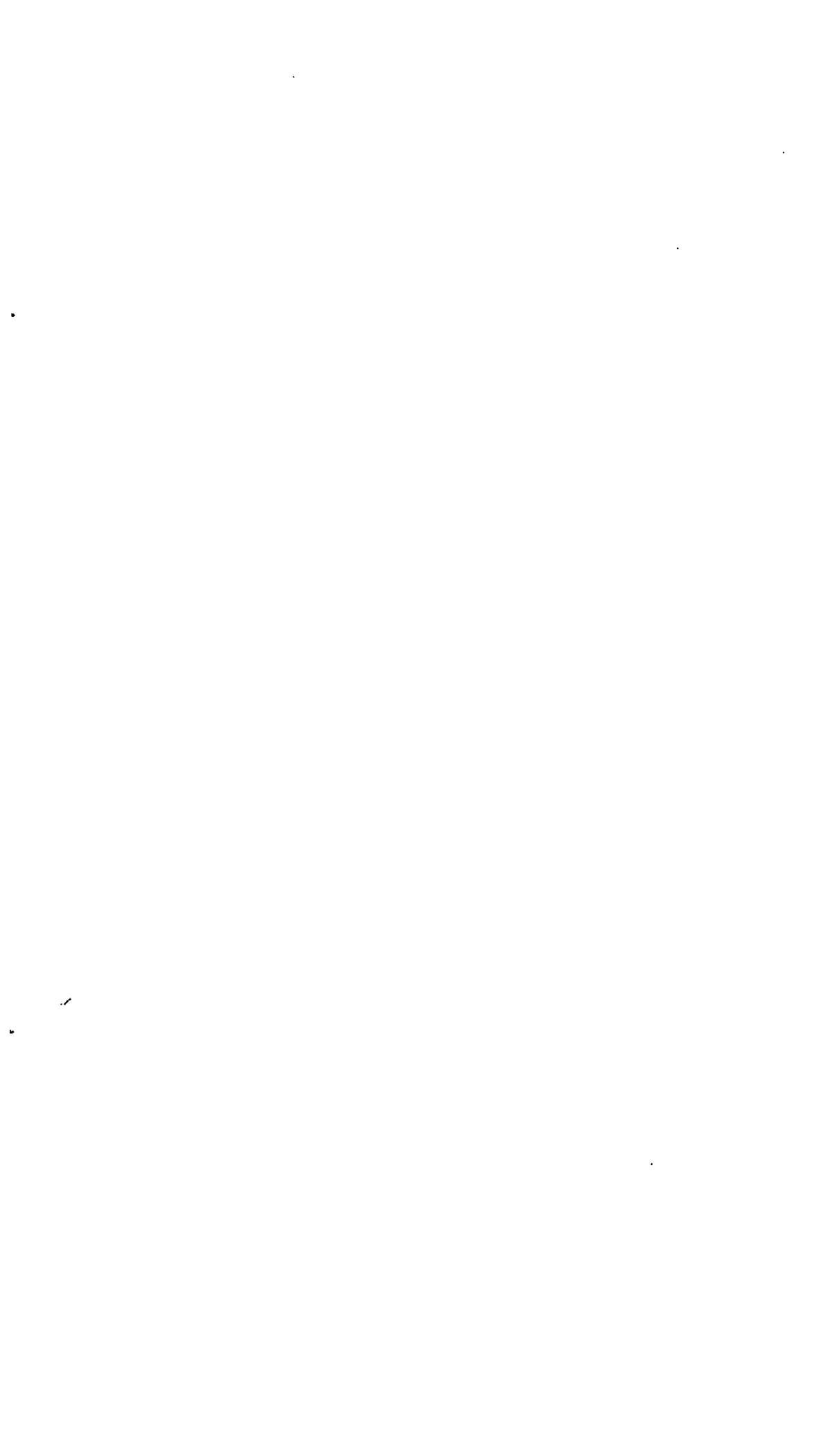
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**INDIAN PREFERENCE EXHIBITS DHEW, INDIAN HEALTH SERVICE EMPLOY-  
MENT STATISTICS, FISCAL YEAR 1975-FISCAL YEAR 1976**

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Report of vacancies advertised in the Indian Health Service during  
fiscal years 1975 and 1976 prepared by IHS (submitted September 21,  
1976).

(431)



**APPENDIX II**  
**PART VI, EXHIBIT 4**

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**Indian Preference Exhibits D HEW, Indian Health Service Employment  
Statistics FY 1975-FY 1976**

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**TASK FORCE NOTE TO EXHIBIT No. 4**

The following information was received by Task Force #9 too late for analysis or comment. The information is a follow-up report by IHS to Task Force #9 and contains information broken down by Area Office. Three different items are addressed in each section: Item Number One addresses positions GS-11 or higher which were advertised and qualified Indians were non-selected.

Item Number Two contains information relating to positions GS-11 and above which were advertised and subsequently cancelled and the position was not filled or qualified Indians were subsequently not considered or not selected in filling the position.

Item Number Three contains information positions GS-11 or above which were filled without any advertisement at all thus precluding consideration of qualified Indians in almost all instances.

[Exhibit 4, No. 1]

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE,

OFFICE OF THE SECRETARY,

Washington, D.C., September 21, 1976.

MR. PETER TAYLOR,  
*American Indian Policy Review Commission,*  
*Washington, D.C.*

DEAR MR. TAYLOR: Further reference is made to your July 16 letter and Mr. Funke's August 11 request for information on employment attritions within the Indian Health Service.

Substantial collection and compilation efforts have been required to supply the enclosed information. Although these efforts are not complete, the Indian Health Service has received sufficient data to complete a report of vacancies advertised in the agency during FY 1975 and FY 1976.

You will be hearing from me again on this matter.

Sincerely yours,

GENE R. HAISLIP,

*Deputy Assistant Secretary for Legislation (Health).*

Enclosure.

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INDIAN HEALTH SERVICE VACANCIES

The American Indian Policy Review Commission asked for a report on the number of vacancies advertised in the Indian Health Service in the last two fiscal years--grades GS-11 and above.

There were 474 vacancies advertised in the Indian Health Service during the period July-1974 to July-1976. Out of this number there were 162 promotion panels which contained the names of qualified Indian and Alaska Native applicants. There were 134 qualified Indian and Alaska Native applicants who were selected for these vacancies. (See Table I)

There were 28 promotion panels which contained the names of qualified Indian applicants. The reasons for Indians not filling these positions are: (See Table II)

1. 2 vacancies were readvertised in Headquarters.
2. There were 4 promotion panels which contained the names of qualified Indian applicants. Before selection was made for these vacancies, the Indian applicants on these promotion panels withdrew their applications.<sup>1</sup>
3. There were 5 promotion panels containing the names of qualified Indian applicants. As of 7/30/76 no selection had been made for these vacancies.<sup>2</sup>
4. There was one vacancy in Aberdeen for which the only Indian applicant was ineligible for the GS-9/11 grade. The Area Office requested a waiver of qualifications for the applicant and filled the vacancy at the GS-7 level.<sup>3</sup>
5. The remaining positions are identified in the attached report from each IHS Area Office.<sup>4</sup>

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<sup>1</sup> Each one of these vacancies is identified in the attached vacancy listing report.

<sup>2</sup> Each one of these vacancies is identified in the attached vacancy listing report.

<sup>3</sup> Each non-selection justification is identified in the attached report of vacancy listings.

TABLE I

Area	Number of GS-11 and above vacancy announcements	Number of vacancies for which Indians qualified	Number of Indians selected
Aberdeen.....	93	33	29
Alaska.....	66	13	11
Albuquerque.....	43	10	8
Billings.....	38	13	12
Navajo.....	103	25	17
Oklahoma City.....	34	18	18
Phoenix.....	27	15	13
Portland.....	20	7	5
USET.....	3	1	1
Tucson.....	23	10	10
Headquarters (Rockville).....	24	17	10
Grand total.....	474	162	134

<sup>1</sup> Of the 17 positions advertised, 1 was declined and the other was canceled. There was 1 position with no selection made. The remaining 4 positions are identified in the vacancy listing for headquarters.

TABLE II

Area	Vacancies readvertised	Indians withdrew applications	vacancies not filled	Nonselec- tions	Nonselec- tions at request of tribe	Other
Aberdeen.....			1	2		1
Alaska.....				2		
Albuquerque.....				2		
Billings.....				1		
Navajo.....			3	3	1	1
Oklahoma City.....						
Phoenix.....		2				
Portland.....		1			1	
Tucson.....						
USET.....						
Headquarters.....	2	1	1	2		1
Total.....	2	4	5	12	2	3

**ALASKA AREA IHS**

There were 66 vacancies advertised in the Alaska Area during the period July-1974 to July-1976. Out of this number there were 13 promotion panels which contained the names of qualified Indian applicants. Eleven (11) Natives were selected. *Note:* For these 13 vacancies there were 20 qualified Native applicants on the promotion panels.

The justification for non-selection of qualified Native applicants for the one vacancy is as follows:

1. *No. 76-101—Procurement Officer—GS-1102-12/13.*—Justification for non-selection was that Native applicant did not meet all requirements.
2. *No. 75-268—Contract Health Care Officer—GS-301-13/12.*—Justification for non-selection was that Native applicant did not meet all requirements.

Attached is a list of all vacancies advertised in the Alaska Area in the last two fiscal years—fiscal year 1975 to 1976.

The vacancies identified above are marked with an asterisk (\*) on the following listing.

## ALASKA IHS AREA

Vacancy No.	Position title	Series and grade	Number of qualified Indians on panel	Selected
76-135	Social worker	185-9/11	0	
76-136	Community health development officer	301-13/14	2	Native.
76-89	Area executive officer	670-14/15	1	Do.
76-101	Procurement officer	1102-12/13	1	Other. <sup>1</sup>
76-75	Employee relations specialist	210-9/11	0	
76-38	Area director	670-16	2	Native.
76-30	Civil engineer	810-11/12	0	
76-34	Community health aide officer	301-11/12	2	Do.
76-43	Training instructor—dental therapy	1712-9/11	0	
76-51	Equal opportunity officer	160-11/12	2	Do.
76-10	Social worker	180-11/12	0	
76-19	Community relations officer	301-11/12	1	Do.
76-20	Medical officers—all specialties	602-12/13/14	(?)	
76-20	Medical officer—general practice	602-11/12/13	(?)	
75-313	Public health educator	615-9/11	0	
75-330	Service unit director	670-12/13	0	
75-286	Pharmacist	660-9/11	0	
75-285	Program analysis officer	345-12/13	0	
75-302	Community health aide officer	301-11/12	3	Do.
75-259	Physician's assistant	603-9/11	0	
75-268	Contract health care officer	301-13/12	1	Other. <sup>1</sup>
75-293	M.D.'s assistant or public health nurse	-9/11	0	
75-252	Personnel staffing specialist	212-9/11	0	
76-306	Contract health specialist	301-9/11	(?)	
76-272	Medical officer	602-11/12	(?)	
76-284	Service unit director	670-12/13	(?)	
76-258	Supervisor civil engineer	810-12/13	1	Native.
76-259	Personnel staffing specialist	212-9/11	0	
76-218	Librarian medical science	1410-12/13	0	
76-224	Training instructor—dental therapy	1712-9/11	0	
76-234	Position classification specialist	221-9/11	0	
76-239	Service unit director	670-12/13	0	
76-241	Supervisory personnel staff (specialist)	212-11/12	0	
76-199	Clinical nurse midwife	610-10/11	0	
76-207	Nurse anesthetist	605-10/11	(?)	
76-210	Contract administrator	301-9/11	0	
76-211	Community relations officer	301-9/11	1	Do.
76-177	Contract specialist	301-9/11	0	
76-180	Community relations officer	301-11/12	2	Do.
76-181	Service unit director	670-12/13	0	
76-182	Instructor (community health aide program)	1700-9/11	0	
76-111	Supervisory counseling psychologist	180-11/12	0	
76-115	Contract specialist	1182-9/11	0	
76-122	Hospital administrative officer	670-12	0	
76-127	Public health nutritionist	601-11/12	0	
76-131	Contract specialist	301-9/11	1	Do.
75-197	Medical officer (contiguous)	602-13/14	0	
75-204	Medical officer (general practice)	602-11/12/13	0	
75-205	Medical officer (all specialties)	602-12/13/14	0	
75-210	General services officer	301-13/14	0	
75-216	Social worker	180-11/12	0	
75-221	Public health nutritionist	601-11/12	0	
75-175	Medical officer	602-13/14	0	
75-176	Nurse anesthetist	605-10/11	0	
75-144	Medical officer—radiology	602-13/14	0	
75-147	Employee development specialist	230-11/12	0	
75-154	Hospital administrative officer	670-11/12	0	
75-116	do.	670-11	0	
75-125	Contract health specialist	301-9/11	0	
75-133	Medical officer (general practice)	602-12/13	0	
75-131	Hospital administrative officer	670-11/12	0	
75-132	Service unit director	670-12/13	0	
75-55	Social worker	185-11/12	0	
75-35	Public health nutritionist	601-9/11	0	
75-7	Medical officer	602-11/12	0	
75-24	Position classification specialist	221 11/12	0	

<sup>1</sup> All service units.<sup>2</sup> Not filled.

ABERDEEN AREA IHS

There were 93 vacancies advertised in the Aberdeen Area during the period July-1974 to July-1976. Out of this number there were 33 promotion panels which contained the names of qualified Indian applicants. Twenty-nine (29) Indians were selected.

NOTE.—For these 33 vacancies there were 104 qualified Indian applicants on the promotion panels.

The justification for non-selection of qualified Indian applicants for the remaining four vacancies is as follows:

1. No. 74-209—*Executive Officer—GS-670-14/15.*—There were two (2) qualified Indians on the panel at the GS-14 level. Selection was made at the GS-15 level which had no qualified Indian applicants.

2. No. 75-248—*Contract Specialist—GS-1102-9/11.*—The only Indian applicant was ineligible for the GS-9/11 grade. The Area Office requested a waiver of qualifications and the Indian applicant was given the position of Contract Specialist at the GS-7 level.

3. No. 76-105—*Hospital Director—GS-670-13.*—There was one qualified Indian applicant on the panel. As of 7/13/76, no selection has been made.

4. No. 76-108—*Social Worker—GS-185-9/11/12.*—There was one qualified Indian applicant at the GS-9 level. Selection was made at the GS-12 level.

Attached is a list of all vacancies advertised in the Aberdeen Area in the last two fiscal years—fiscal year 1975 & 1976.

The vacancies identified on the preceding page are marked with an asterisk (\*) on the following listing.

ABERDEEN AREA IHS

Vacancy No.	Position title	Series and grade	Number of qualified Indians on panel	Selected
74-139	Administrative officer	GS-341-9/11	0	Canceled.
74-140	Budget officer	GS-560-11/12	0	
74-143	Education specialist	GS-1710-9/11	2	Indian.
74-151	Contract specialist	GS-1102-12	0	
74-155	Program service director	GS-301-14	5	Do.
74-159	Psychologist	GS-180-11/12	0	
74-164	Hospital director	GS-570-11/12	2	Do.
74-166	Supervisor Clinical nurse (Director of nursing)	GS-610-11	0	
74-167	Administrative officer	GS-341-9/11	5	Do.
74-175	Public health analyst	GS-685-11/12	No qualified applicants reannouncement same as 75-234.	
74-178	Health center director	GS-340-9/11	6	Do.
74-179	Public health nutritionist	GS-601-9/11	0	
74-183	Administrative officer	GS-670-9/11	4	Do.
74-191	Social worker	GS-185-12	0	
74-208	Supervisor clinical nurse	GS-610-11	0	
74-209	Executive officer	GS-670-14/15	2	Non-Indian.
74-215	Clinical psychologist	GS-180-13	No qualified applicants.	
74-221	Hospital director	GS-670-12/13	1	Indian.
74-222	Civil engineer	GS-810-9/11	0	
74-230	Education specialist	GS-1710-9/11	3	Do.
74-234	Program analyst	GS-345-11/12	Canceled (reannouncement as 75-235)	
74-251	Public health nurse	GS-615-11	No qualified applicants.	
74-253	Education specialist	GS-1710-9/11	3	Do.
74-263	Medical officer—deputy director (administration)	GS-601-15	0	
75-197	Education specialist or PH education	GS-11	No Indian applicants canceled—reannounced as 75-214.	
75-205	Hospital administrative officer	GS-670-9/11	4	Do.
75-206	Social worker	GS-185-9/11/12	No selection made.	
75-213	do	GS-185-9/11/12	do	
75-214	Public health education	GS-1725-9/11	0	
75-218	Social worker	GS 185-11/12	No selection as of July 1, 1976	
75-221	Class and wage specialist	GS-221-12	1	Do.
75-223	Employee development specialist	GS-235-12	No Indian applicants canceled—reannounced as 75-257.	
75-227	Nurse-midwife	GS-610-9/11	0	
75-238	Public health advisor	GS-685-14	5	Do.
75-246	Education specialist	GS-1710-9/11	4	Do.
75-248	Contract specialist	GS-1710-9/11	1	Do.
75-257	Employee development specialist	GS-221-12	1	Do.
75-262	Tribal projects officer	GS-301-12	0	
76-61	Contract specialist	GS-1102-12	0	
76-37	Public health nutritionist	GS-601-9/11	0	

ABERDEEN AREA IHS—Continued

Vacancy No.	Position title	Series and grade	Number of qualified Indians on panel	Selected
76-32	Public health educator	GS-1725-9/11	4	Do.
76-54	Classification and wage specialist	GS-221-12	1	Do.
76-105	Hospital director	GS-670-13	1	No selection made as of July 13, 1976.
75-9	Social worker	GS-185-9/11/12	0	Open continuous announcement.
75-12	Medical officer	GS-602-11/12/13/14	do	
76-77	Social worker	GS-185-9/11/12	do	
76-12	Medical officer	GS-602-11/12/13/14	do	
75-26	Contract specialist	GS-1102-11	0	
75-32	Psychologist	GS-180-11-12,13	0	
75-32	Social worker	GS-185-9/11	0	
75-37	Medical officer (general)	GS-602-11-12,13	No action taken	
75-39	do	GS-602-11/12/13	No applicants	
75-40	do	GS-602-11/12,13	No action taken	
75-41	do	GS-602-11/12/13	do	
75-42	do	GS-602-11/12/13	do	
75-43	do	GS-602-11-12,13	do	
75-57	Administrative officer	GS-341-7/9/11	10	Do.
75-67	Medical officer	GS-602-11/12/13	No applicants	
75-72	Public health nutritionist	GS-601-9/11	0	
75-90	Medical officer	GS-602-15	0	
75-96	Administrative officer	GS-341-7/9/11	5	Do.
75-106	Medical officer	GS-602-11,12,13	0	
75-110	Social science consultant	GS-101-13	0	
75-111	Hospital director	GS-670-12	0	No selection as of 7-12-76.
75-121	EEO specialist	GS-121-11,12,13	9	Do.

75-128	Supervisor clinical nurse	GS-610-11	0	
75-27	Medical records librarian	GS-669-11/12	0	
75-33	Executive management intern	GS-301-11/12	5	
75-35	Chief, dietitian	GS-601-7/9/10	0	Do.
75-35	Public Health Nutritionist	GS-601-9/11	0	
75-187	Medical technologist	GS-644-11/12	1	Do.
75-194	Program director	75-194	1	Do.
75-196	Administrative officer	75-196	Canceled (applicant withdrew, readvertised as 75-205).	
75-141	Tribal affairs specialist	GS-301-11/12	3	Do.
75-197	Public health educator	GS-1725-11	0	
75-155	Supervisor clinical nurse (DON)	GS-610-9/11	1	Do.
75-160	Social worker	GS-185-9/11/12	0	
75-161	Social science consultant	GS-101-13	0	
75-169	Clinical psychologist	GS-180-12	0	
75-170	Supervisor clinical nurse	GS-610-9/10/11	1	Do.
75-171	Nurse anesthetist	GS-605-9/11	0	
76-36	Construction representative	GS-809-11	0	
76-29	Health center director	GS-340-11/12	4	Do.
76-31	Class and wage specialist	GS-221-9/11	1	Do.
76-33	Consulting nurse	GS-610-12	1	Do.
76-109	Supervisor clinical nurse	GS-610-11	0	
76-86	Nurse anesthetist	GS-605-9/10/11	0	
76-150	Nurse midwife	GS-610-9/11	0	
76-149	Contract administrator	GS-1102-12/13	0	
76-103	Social worker	GS-185-9/11/12	1	Non-Indian.
76-119	Audiologist	GS-665-11/12	0	
76-47	Social worker	GS-185-12	0	
76-94	Community health representative coordinator	GS-301-11/12	6	Indian.
76-68	Nurse midwife	GS-610-9/11	No selection made.	
76-39	Clinical psychologist	GS-180-12	0	

ALBUQUERQUE AREA IHS

There were 43 vacancies advertised in the Albuquerque Area during the period July-1974 to July-1976. Out of this number there were 10 promotion panels which contained the names of qualified Indian applicants. Eight (8) Indians were selected.

NOTE.—For these 10 vacancies there were 21 qualified Indian applicants on the promotion panels.

The justification for non-selection of qualified Indian applicants for the remaining two vacancies is as follows:

1. VA-75-10—Classifier (Personnel)—GS-221-11. Nonselection was based on low performance rating of Indian applicant. HSA (Forney) was contacted for reference rather than IHS.

2. VA-75-67—Employee Development Specialist—GS-235-11. Justification for non-selection of Indian applicants does not state why Indian applicants were unsuitable.

3. Two vacancies were readvertised and Indians were selected in both instances. (VA-76-30 & VA-76-76)

Attached is a list of all vacancies advertised in the Albuquerque Area in the last two years—Fiscal Years 1975 and 1976.

The vacancies identified above are marked with an asterisk (\*) on the following listing.

ALBUQUERQUE IHS AREA

78-110-77-29

Vacancy No.	Position title	Series and grade	Number of qualified Indians on panel	Selected
VA-75-01	Budget analyst	560-11	Readvertised as VA-75-18	
VA-75-06	Computer systems analyst	334-13	0	Spanish.
VA-75-10	Classifier (personnel)	221-11	1	Other.*
VA-75-11	Service unit director	670-12/13	Readvertised as VA-75-22	
VA-75-17	Medical officer	602-13/14	No applicants	
VA-75-18	Budget analyst	560-11	1	Indian.
VA-75-22	Medical officer	602-13/14	No applicants	
VA-75-23	do	602-13/14	do	
VA-75-27	Supervising public health nurse	615-11	Readvertised as VA-75-48	
VA-75-30	Medical officer (GP)	602-13/14	No applicants	Other (CO).
VA-75-45	Public health nutritionist	601-12	Not filed; program id. canceled	
VA-75-48	Supervising public health nurse	615-11	Readvertised as VA-75-72	
VA-75-52	Training instructor	1712-11	0	
VA-75-67	Employee development specialist	235-11	3	Other.*
VA-75-72	Supervising public health nurse	615-11	0	
VA-75-75	Medical officer	602-13/14	0	
VA-75-95	Hospital administration officer	670-11/12	Readvertised as VA-76-30.1	
VA-75-96	Psychologist	180-13	0	
VA-75-100	Social worker	185-11/12	0	
VA-75-102	Hospital administration officer	670-11	1	Indian.
VA-75-113	Social worker	185-11/12	1	Do.
VA-75-115	Public health nutritionist	601-12/13	Cancelled	
VA-75-120	Financial manager	505-13/14	Readvertised as VA-76-39	
VA-76-08	Medical officer	602-13/14	0	Oriental.
VA-76-15	do	602-13	No applicants	
VA-76-18	Supervising public health nurse	615-11	0	
VA-76-30	Hospital administration officer	670-11	2	Indian.
VA-76-39	Budget accounting officer	540-13	2	Do.
VA-76-41	General services officer	301-13	Readvertised as VA-76-76.1	
VA-76-43	Supervising public health nurse	615-11	0	
VA-76-45	Supervising clinical nurse	610-11	0	
VA-76-46	Chief dietitian	630-11	0	
VA-76-56	Position classification specialist	221-11	0	
VA-76-67	Supervising public health nurse	615-11	0	
VA-76-68	Social worker	185-11/12	0	
VA-76-69	Optometrist	622-9/11	0	
VA-76-76	General services officer	301-13	3	Do.
VA-76-77	Medical officer	602-15	0	
VA-76-81	Assistant budget accounting officer	540-12	2	Do.
VA-76-130	Mechanical engineer	830-12	0	
VA-76-131	Hospital director or service unit director	670-13	5	Do.
VA-76-138	Public health nutritionist	601-9/11	0	
VA-76-155	Psychologist	180-13	0	

**BILLINGS AREA IHS**

There were 38 vacancies advertised in the Billings Area during the period July-1974 to July-1976. Out of this number there were 13 promotion panels which contained the names of qualified Indian applicants. Twelve (12) Indians were selected.

NOTE.—For these 13 vacancies there were 28 qualified Indian applicants on the promotion panels.

The justification for non-selection of a qualified Indian applicant for the remaining vacancy is as follows:

1. No. 75-62—Personnel Staffing Specialist—GS-212-11/12. Selection was made at the GS-12 level for which there were no qualified Indian applicants.

Attached is a listing of all vacancies advertised in the Billings Area in the last two fiscal years—fiscal year 1975 and fiscal year 1976.

The vacancy identified above is marked with an asterisk (\*) on the following listing.

**BILLINGS AREA IHS**

Vacancy No.	Position title	Series and grade	Number of qualified Indians on panel	Selected
74-38.....	Psychologist, social worker, psychiatric nurse.....	GS-11/12	0	
74-40.....	Health projects coordinator.....	301-11/12	4	Indian.
74-41.....	Consulting public Health nurse.....	615-12	0	
74-42.....	Public health educator.....	1725-9/11	0	
74-42.....	Community health educator.....	1725-9/11	0	
74-47.....	Community health services director.....	601-11/12	1	Do.
74-49.....	Social worker.....	185-9/11/12	0	
74-45.....	Patient care program administrator.....	601-14	0	
74-54.....	Service unit director.....	340-12/13	5	Do.
74-59.....	Social worker.....	185-11/12	0	
74-64.....	Personnel management specialist.....	201-11/12	0	
74-65.....	Psychiatric social worker.....	185-11	0	
75-4.....	Position classification specialist.....	221-11/12	0	
75-9.....	Social worker.....	182-12	0	
75-12.....	Audiologist.....	665-11	0	
75-16.....	Public health educator.....	1725-12/13	0	
75-18.....	Director of nursing.....	610-10/11	0	
75-20.....	Assistant area general services officer.....	301-12	0	
75-21.....	Administrative officer.....	341-11	1	Do.
75-27.....	Contract administrator.....	1102-11/12	3	Do.
75-28.....	Social worker.....	185-11/12	(1)	
75-34.....	Psychologist, social worker, psychiatric nurse.....	GS-11/12	0	
75-37.....	Consulting nurse.....	610 12/13	0	
75-41.....	Special assistant.....	301-12/13	1	Do.
75-42.....	Program manager.....	340-13	(1)	
75-54.....	Medical technologist.....	644-11	0	
75-60.....	Program manager.....	340-11/12	1	Do.
75-66.....	do.....	340-11/12/13	4	Do.
75-80.....	Supervisor operating accountant.....	510-9/11	2	Do.
75-82.....	Health project specialist.....	301-9/11/12	3	Do.
75-83.....	Personnel officer.....	301-12	(1)	
76-07.....	Supervisory contract specialist.....	1102-11/12	0	
76-13.....	Position classification specialist.....	221-11	0	
76-14.....	Social worker (2 positions).....	185-7/9/11	1	Other; Indian.
76-18.....	Supervisory program analyst.....	345-5/7/9/11	(1)	
76-48.....	Program manager.....	340-12/13	(1)	
76-32.....	do.....	340-12/13	1	Indian.
75-62.....	Personnel staffing specialist.....	212-11/12	1	Other.*

\* Not filled.

NAVAJO AREA IHS

There were 103 vacancies advertised in the Navajo Area during the period July 1974 to July 1976. Out of this number there were 25 promotion panels which contained the names of qualified Indian applicants. Seventeen (17) Indians were selected.

**NOTE.**—For these 25 vacancies there were 92 qualified Indian applicants on the promotion panels.

The justification for non-selection of qualified Indian applicants for the remaining 8 vacancies is as follows:

1. *No. NAO-470—Supervisory Med. Technologist—GS-644-11/12.*—Indian applicant was qualified at GS-11. Selection was made at GS-12 for which there were no qualified Indian applicants.

2. *No. NAO-941—Hospital Administrative Officer—GS-670-9/11.*—Selection was made at request of Navajo Health Board for non-Indian applicant.

3. *No. NAO-720—General Service Officer—GS-301-13.*—Indian applicant was fully qualified. Non-Indian selected was highly qualified.

4. *No. NAO-516—Supervisory Public Health Nurse—GS-615-11.*—Selection made prior to strict enforcing of Indian preference "Highly Qualified" then being selected.

5. *No. NAO-443—Hospital Director—GS-670-13.*—Filed by Commissioned Officer. Letters of non-selection being forwarded by mail.

6. The remaining 3 vacancies with qualified Indians on the promotion panels have not been filled at this time.

Attached is a list of all vacancies advertised in the Navajo Area in the last two fiscal years—Fiscal Years 1975 and 1976.

The vacancies identified above are marked with an asterisk (\*) on the following listing.

NAVAJO IHS AREA

Vacancy No.	Position title	Series and grade	Number of qualified Indians on panel	Selected
NAO-571	Clinical psychologist	180-11/12	0	
NAO-571	Medical officer (psychiatry)	602-11/12	0	
NAO-590	Educator technician (community health)	1702-11	Canceled	
NAO-605	Clinical nurse (training)	610-11	0	
NAO-613	Nurse midwife	610-9/11	0	
NAO-614	Personnel officer	201/12/13	0	
NAO-631	Community health educator	1702-11	Canceled	
NAO-654	Contract specialist	1102-11	1	Indian.
NAO-656	Medical technologist (consultant)	644-9/11	0	
NAO-657	Medical radiological technician (consultant)	647-9/11	0	
NAO-663	Medical technologist (training)	644-1/11	0	
NAO-904	Supervisory medical technologist	644-11/12	0	
NAO-917	Consulting public health nurse	615-11	0	
NAO-919	Service unit director	602-13	0	
NAO-930	Clinical nurse (training)	610-11	Canceled	
NAO-941	Hospital administrative officer	670-9/11	1	Other.*
NAO-952	Clinical nurse specialist (nurse) (midwife)	610-9/11	0	
NAO-965	Specialist (nurse midwife)	610-9/11	0	
NAO-973	Social worker	185-12	0	
NAO-976	Supervisory clinical nurse	610-11	0	
NAO-934	Hospital administrative specialist	670-5	1	Indian.
NAO-989	Ambulatory patient care deputy administrator manager	670-12	Canceled	
NAO-992	Medical officer (all specialists)	602-11/13/14	0	
NAO-995	Nurse anesthetist	605-11/12	0	
NAO-997	Supervisory public health nurse	615-11/12	0	
NAO-1002	Supervisory clinical nurse	610-11	2	Do.
NAO-460	Nurse midwife	610-11	0	
NAO-464	Health center director	601-12/13	0	
NAO-465	Administrative officer	341-9/11	Canceled	
NAO-467	Public health educator	1725-11	0	
NAO-470	S/medical technologist	644-11/12	1	Other.*
NAO-479	Hospital administrative officer	670-11	0	
NAO-483	S/public health nurse	615-11	0	

NAO-484	Community planner	020-9/11	2	Indian.
NAO-488	Physician's assistant	603-9/11	15	Do.
NAO-493	Contract specialist	1102-9/11	2	Do.
NAO-495	Public health nurse specialist	615-11	Canceled and changed to GS-5.	
NAO-503	Maternal child health consultant	602-14/15	No selection made.	
NAO-515	Public health educator	1725-9/11	0	
NAO-516	S/public health nurse	615-9/11	1	Non-Indian.
NAO-522	Medical officer (pediatrics)	602-15	0	
NAO-527	Physician's assistant	603-9/11	3	Indian.
NAO-538	Social worker	185-9/11	Canceled.	
NAO-539	S/clinical nurse	610-12	0	
NAO-540	do	610-11	No selection made.	
NAO-541	S/public health nurse	615/11/12	0	
NAO-559	S/clinical nurse	610-11	Canceled.	
NAO-563	S/clinical nurses (training)	610-11	0	
NAO-566	S/clinical nurse	610-11	0	
NAO-570	Medical officer (psychiatry)	602-13	0	
NAO-1004	Service unit director	670-12/13	No selection.	
NAO-1010	Public health nurse (family nurse practitioner)	615-9/11	0	
NAO-1011	Medical officer (administrator or hospital)	670-13	No selection.	
NAO-1012	Medical officer (administrator)	602-15	do	
NAO-1022	Clinical nurses (training)	610-11	do	
NAO-1033	S/general supply specialist	2001-11	do	
NAO-1034	Hospital administration officer	670-9/11	2	Do.
NAO-1038	Tribal affairs officer	301-13/14	6	Do.
NAO-1039	Deputy director	340-15	2	No selection.
NAO-1044	Social worker	185-12	0	
NAO-1052	Ambulatory patient care department administration manager	670-12	3	Do.
NAO-1056	Administration officer	341-11	1	Indian.
NAO-689	Medical officer (psychiatry)	602-15	0	
NAO-714	Position classification specialist	221-9/11	0	
NAO-715	Clinical nurse specialist	610-9/11	Canceled.	
NAO-717	Medical officer (psychiatry)	602-13/14	0	
NAO-720	General service officer	301-13	1	Other.*
NAO-754	Pediatric nursing practitioner	603-9/11	0	
NAO-758	Assistant CHM training program director		3	Indian.
NAO-764	Supervisory clinical nursing (director of nursing)	610-11	0	
NAO-767	Hospital administrator assistant (training)	670-7/9/11	8	Do.
NAO-774	Public health nursing director for IHS (training center)	615-11	0	

See footnote at end of table.

NAVAJO IHS AREA—Continued

Vacancy No.	Position title	Series and grade	Number of qualified Indians on panel	Selected
NAO-777	Pediatric nursing practitioner	603-11	0	
NAO-779	General supply officer	2001-12	0	
NAO-780	Physician instructor (CHM program)	602-13	0	
NAO-783	Nurse anesthetist	605-9/11	0	
NAO-785	Clinical nurse specialist	610-9/11	0	
NAO-792	Educator specialist (community health) or community health educator	1702-11	8	Indian.
NAO-794	Public health nutritionist	601-11	0	
NAO-804	Counseling psychologist	180-11	0	
NAO-817	Physician's assistant (training)	603-9/11	15	Do.
NAO-839	Inventory management specialist	2010-11	2	Do.
NAO-845	Contract health supply officer	301-12/13	1	Do.
NAO-873	Hospital administrator	670-12/13	5	Do.
NAO-878	Supply public health nurse	615-11	0	
NAO-883	Cultural anthropologist	190-11/12	0	
NAO-892	Physician's assistant	603-9/11	0	
NAO-895	Medical officer	602-11/12/13/14/15	0	
NAO-899	Consulting nurse	610-12/13	0	
NAO-1063	Supply clinical nurse	610-11	0	No selection.
NAO-1068	Hospital administration officer	670-12	1	Do. <sup>1</sup>
NAO-1079	Personnel management specialist	201-11	0	
NAO-1081	Supply clinical nurse	610-11	0	
NAO-1085	Clinical nurse specialist	610-11	0	
NAO-1088	do	610-11	0	
NAO-1091	Medical officer administrator	602-14/15	0	
NAO-1099	Public health nurse midwife consultant	615-14	0	
NAO-1102	Supervisory general engineer	801-13	0	
NAO-1103	Position classification specialist	221-11/12	0	
NAO-113	Supply public health nurse	615-12	0	
NAO-1118	Clinical nurse (training)	610-11	0	
NAO-1119	Medical records librarian	669-12	0	
NAO-1120	Medical officer (psychiatry)	602-13	0	
NAO-443	Hospital director	670-13	2	

OKLAHOMA CITY AREA IHS

There were 34 vacancies advertised in the Oklahoma City Area during the period July 1974 to July 1976. Out of this number there were 18 promotion panels which contained the names of qualified Indian applicants. Eighteen (18) Indians were selected.

Note.—For these 18 vacancies there were 40 qualified Indian applicants on the promotion panels.

Attached is a list of all vacancies advertised in the Aberdeen Area in the last two fiscal years—fiscal year 1975 and fiscal year 1976.

OKLAHOMA IHS AREA

Vacancy No.	Position title	Series and grade	Number of qualified Indians on panel	Selected
74-35.....	Service unit director.....	301-13	5	Indian,
74-55.....	Social worker (2 positions).....	185-9/11/12	3	Indian (2),
74-66.....	Administrative officer.....	341-9/11	(1)	
74-83.....	Employee management cooperation specialist.....	230-11	(2)	
74-86.....	Public health nurse.....	615-10/11	0	
74-94.....	Procurement agent (NTE 2 yr).....	1102-9/11	1	Indian.
74-101.....	Public health nutritionist.....	601-13	0	
75-4.....	Medical officer.....	602-11/12/13/14	(3)	
75-21.....	Social worker.....	185/11/12	(1)	
75-24.....	Public health nutritionist.....	601-11/12	0	
75-26.....	Hospital administration specialist (NTE 30 mo).....	670-12	0	
75-32.....	Medical records librarian.....	699-11	1	Do.
75-34.....	Social worker.....	185-9/11	(1)	
75-48.....	do.....	185-9/11	2	Do.
75-52.....	Administrative officer.....	341-11/12	(1)	
75-56.....	Supply sanitarian.....	688-13	2	Do.
75-57.....	Dietician.....	630-11/12	2	Do.
75-73.....	Supply clinical nurse (DON).....	610-11	0	
75-75.....	Psychiatric nurse specialist.....	610-9/11	0	
75-88.....	Personnel staffing specialist.....	212-11	1	Do.
75-95.....	Service unit director.....	301-13	6	Do.
75-96.....	Deputy area director.....	602-14/15	0	
75-98.....	Public health nurse.....	615-11	0	
75-103.....	Director of nurses.....	610-11	2	Do.
75-113.....	Sanitarian.....	688-9/11	2	Do.
75-116.....	Administrative officer (area executive officer).....	341-15	(1)	
76-2.....	do.....	341-11/12	5	Do.
76-8.....	Contract administrative specialist.....	1101-12	3	Do.
76-12.....	Position classification specialist.....	221-11/12	0	
76-18.....	Sanitarian.....	688-12	0	
76-21.....	do.....	688-11	1	Do.
76-27.....	do.....	688-12	0	
76-30.....	Personnel management specialist.....	201-11	1	Do.
76-31.....	Procurement agent.....	1102-11	1	Do.

- 1 No Indian applicants; readvertised.
- 2 Filled—reassignment of Indian employee.
- 3 Continuous vacancy announcement.
- 4 Announcement canceled.
- 5 Reassignment—long-term trainee, Indian.
- 6 Vacancy announcement canceled.

PHOENIX AREA IHS

There were 27 vacancies advertised in the Phoenix Area during the period July-1974 to July-1976. Out of this number there were 15 promotion panels which contained the names of qualified Indian applicants. Thirteen (13) Indians were selected.

Note.—For these 15 vacancies there were 21 qualified Indian applicants on the promotion panels.

The justification for non-selection of qualified Indian applicants for the two remaining vacancies is as follows:

1. No. PH-185—Social Worker—GS-185-11/12.—There was one qualified Indian applicant who withdrew his application.

2. No. PH-108—Hospital Administrative Officer—GS-670-11.—There was one qualified Indian applicant who withdrew his application. Person selected was a member of a non-federally recognized tribe.

Attached is a list of all vacancies advertised in the Phoenix Area in the last two fiscal years—fiscal year 1975 and 1976.

The vacancies identified above are marked with an asterisk (\*) on the following listing.

PHOENIX IHS AREA

Vacancy No.	Position title	Series and grade	Number of qualified Indians on panel	Selected
PH-185	Social worker	185-11/12	1	Other.*
PH-199	Supervisor clinical nurse	610-11	1	Indian.
PH-226	Contract specialist	1102-9/11	2	Do.
PH-55	Community health educator	1701-9/11	1	Do.
PH-188	Employee development specialist	235-9/11	1	Do.
PH-178	Physicians assistant	603-9/11	0	
PH-159	Counseling psychologist	180-12	0	CO.
PH-108	Hospital administrative officer	670-11	1	Other.*
PH-112	Psychologist	180-12/13	0	
PH-157	Hospital administrative officer	670-11	1	Indians.
PH-180	Supervisory position classification specialist	221-12	0	
PH-179	Grants management officer	1101-12	2	Do.
PH-191	Supervisory clinical nurse	610-11/12	1	Do.
PH-48	Social worker	185-9/11	2	Do.
PH-227	Position classification specialist	221-9/11	0	
PH-78	do	221-11	0	
PH-49	Employee development specialist	235-7/9/11	2	Do.
PH-10	Medical officer (gen.)	608-18	0	
PH-25	Service unit director	601-12/13	0	
PH-55	Public health education	1725-9/11	1	Do.
PH-104	Service unit director	601-12/13	2	Do.
PH-126	Hospital administrative officer	670-9/11	(1)	Do.
PH-188	Consultant public health nurse	615-12	2	Do.
PH-228	Clinical psychologist	180-12/13	-----	No selection made.
PH-251	Medical officer	602-15	0	Do.
PH-254	do	602-14	0	Do.
PH-270	Supervisory public health nurse	615-11	0	Do.

\* Reassigned.

PORTLAND AREA IHS

There were 20 vacancies advertised in the Portland Area during the period July-1974 to July -1976. Out of this number there were 7 promotional panels which contained the names of qualified Indian applicants. Five (5) Indians were selected.

NOTE.—For these 7 vacancies there were 29 qualified Indian applicants on the promotion panels.

The justification for non-selection of qualified Indian applicants for the two remaining vacancies is as follows:

1. No. PO-17—Service Unit Director—301-12/13.—There was one qualified Indian applicant. Non-Indian was selected on preference of Colville Tribe.

2. No. PO-52—Contract Specialist—GS-1102-11.—The one qualified Indian applicant withdrew his application.

Attached is a list of all vacancies advertised in the Portland Area in the last two fiscal years—fiscal year 1975 and fiscal year 1976.

The vacancies identified above are marked with an asterisk (\*) on the following listing.

PORTLAND IHS AREA—FISCAL YEARS—1975-76, GS-11 AND ABOVE

Vacancy No.	Position title	Series and grade	Number of qualified Indians on panel	Selected
PO-81	Tribal affairs officer	301-12/13/14	15	Indian.
PO-85	Clinical nurse specialist	610-11	0	
PO-90	Medical officer	602-11/12	0	
PO-92	Social worker	185-11/12	0	
PO-94	Pharmacist	660-12	0	
PO-05	Service unit director	301-12	5	Do.
PO-10	Medical officer	602-11/12	0	
PO-17	Service unit director	301-12/13	1	Other.*
PO-21	Consultant psychologist	602-12/13	0	
PO-22	Mental health professional	185-12/13	0	
PO-45	Service unit director	301-12/13	3	Indian.
PO-52	Contract specialist	1102-11	1	Other.*
PO-1	Supply management representative	2003-11	1	Indian.
PO-9	Pharmacist	660-11	0	
PO-21	Assistant area director for quality assurance	601-14	0	
PO-24	Medical officer (2)	602-11/12/13	0	
PO-28	Program analyst	345-11/12	0	
PO-31	Pharmacist	660-11	0	
PO-34	Medical officer	602-11/12/13	0	
PO-41	Assistant area director for planning and evaluation		3	Do.

TUCSON (ORD) IHS

There were 23 vacancies advertised in the Tucson Area during the period July-1974 to July-1976. Out of this number there were 10 promotion panels which contained the names of qualified Indian applicants. Ten (10) Indians were selected.

NOTE.—For these 10 vacancies there were 15 qualified Indian applicants on the promotion panels.

Attached is a list of all vacancies advertised in the Tucson Area in the last two fiscal years—fiscal year 1975 and fiscal year 1976.

TUCSON IHS AREA (ORD)

Vacancy No.	Position title	Series and grade	Number of qualified Indians on panel	Selected
TU-56	Physician's assistant	603-7/9/11		Indian.
TU-69	Computer systems analyst	334-14	0	
TU-77	Training management specialist	1701-12/13	1	Do.
TU-78	Community health educator	1701-9/11	( <sup>1</sup> )	
TU-81	Physician's assistant	603-9/11	1	Do.
TU-10	Photographer	1060-11	( <sup>1</sup> )	
TU-15	Program analyst	345-11/12	1	Do.
TU-16	Community health educator	1701-9/11	3	Do.
TU-19	Employee development specialist	235-13	1	Do.
TU-5	Physician's assistant	603-9/11	2	Do.
TU-	Psychologist	180-13	( <sup>1</sup> )	
TU-17	PHN (training)	615-11	0	
TU-18	Medical officer	602-14	0	
TU-18	Medical officer (SUD) (administrator)	602-14	0	
TU-26	Biomedical engineer	858-14	0	
TU-30	Public health nutritionist	601-9/11	( <sup>1</sup> )	
TU-31	Procurement officer	1102-12	0	
TU-36	General service officer	301-9/11	1	Do.
TU-14	Hospital administration officer	670-11/12	2	Do.
TU-42	Computer systems specialist	334-13	( <sup>2</sup> )	
TU-44	do	334-13	( <sup>2</sup> )	
TU-47	Hospital administration officer	670-11/12	( <sup>2</sup> )	
TU-	Nurse (training)	610-12	1	Do.

<sup>1</sup> Canceled.

<sup>2</sup> Pending.

USET AREA IHS

In the last two fiscal years (fiscal years 1975 and 1976), there have been only three (3) positions advertised in the USET Area—Grades GS-11 and above. The Administrative Officer vacancy was filled with an Indian.

USET IHS AREA

Vacancy No.	Position title	Series and grade	Number of qualified Indians on panel	Selected
75-58.....	Administrative officer.....	341-9/11	3	Indian.
75-115.....	Clinical engineer.....	858-11	0	East Indian.
76-15.....	Equal employment opportunity specialist.....	160-11	(1)	

<sup>1</sup> No selection has been made as of July 22, 1976.

HEADQUARTERS IHS (ROCKVILLE)

There were 24 vacancies advertised in Headquarters during the period July-1974 to July-1976. Out of this number there were 17 promotion panels which contained the names of qualified Indian applicants. Ten (10) Indians were selected.

NOTE.—For these 17 vacancies there were 27 qualified Indian applicants on the promotion panels.

Of the 17 positions advertised, one was declined and the other was cancelled. There was one position with no selection made. The remaining four vacancies are explained below:

1. No. 76-05—Program Analyst—GS-345-13.—There were two qualified Indians on the panel. The announcement was cancelled and readvertised at the GS-11 level to allow for restructuring.

2. No. 76-04—Program Analyst—GS-345-13.—There were two qualified Indians on the panel. The announcement was cancelled and readvertised at the GS-9 level to allow for restructuring.

3. No. 76-02—Program Analysts Officer—GS-345-14.—There was one Indian on the panel who, at the time of selection, could not verify his Indian preference. Selection was made on basis of best qualified.

4. PPD-75-87-C—Program Analyst—GS-345-11/12.—There were two qualified Indian applicants. One withdrew his application and the other one accepted a position elsewhere in IHS before selection was made. A female was selected for this position.

Attached is a list of all vacancies advertised in Headquarters in the last two fiscal years—fiscal year 1975 and 1976.

The vacancies identified above are marked with an asterisk (\*) on the following listing.

AREA—HEADQUARTERS IHS, FISCAL YEARS 1975 AND 1976, GS-11 AND ABOVE

Vacancy No.	Position title	Series and grade	Qualified Indians on panel	Selected
7/24/74.....	Equal opportunity specialist.....	GS-160-11	1	Indian.
7/22/74.....	Staff assistant (physician recruitment).....	GS-301-13	2	Do.
7/16/74.....	Staff assistant (legal).....	GS-301-11	1	Do.
76-21.....	Statistician.....	GS-1530-14	0	No selection has been made as of July 23, 1976. Announcement still open.
76-20.....	Supervisory consultant, PH nurse.....	GS-615-13		
76-13.....	Equal opportunity officer (temporary).....	GS-160-13	2	Indian.
76-09.....	Procurement analyst.....	GS-1102-13	0	
76-07.....	Statistician (health).....	GS-1530-13	0	No selection has been made as of July 23, 1976.
76-06.....	Safety manager.....	GS-018-12/13	2	Indian.
76-05.....	Program analyst.....	GS-345-13	*2	Position restructured to GS-11.
76-04.....	do.....	GS-345-13	*2	Position restructured to GS-9.
76-02.....	Program analysis officer.....	GS-345-14	*1	Other.*
75-6.....	Deputy director.....	GS-340-16	*2	No selection has been made as of July 22, 1976.
12/75.....	Grants management officer.....	GS-1101-14	0	Other.
11/21/75.....	P.H. dental hygienist.....	GS-684-12/13	0	Do.
9/5/75.....	Program operations coordinator.....	GS-301-13/14	3	Indian.
PPD-75-87-C.....	Program analyst.....	GS-345-11/12	*1	Other.*
6/11/75.....	do.....	GS-345-11/12	1	Indian.
7/11/75.....	Nurse consultant (hospital).....	GS-610-12	1	Do.
5/18/75.....	Staff assistant (legal).....	GS-301-11	*1	Declined.
2/5/75.....	Contract health services specialist.....	GS-1101-12/13	3	Indian.
12/17/74.....	Statistician (health).....	GS-1530-13	0	Oriental F.
10/2/74.....	Budget analyst.....	GS-560-12	*1	Cancelled.
8/20/74.....	Deputy equal opportunity officer.....	GS-160-11/12	1	Indian.

[Exhibit 4, No. 2]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,  
OFFICE OF THE SECRETARY,  
Washington, D.C., October 4, 1976.

Mr. PETER TAYLOR,  
American Indian Polioy Review Commission,  
Washington, D.C.

DEAR MR. TAYLOR: As requested, I am enclosing the final information on employment attritions within the Indian Health Service. In addition, enclosed is a copy of "Potential Medicare and Medicaid Revenues: Indian Health Service," which was requested at the hearings held by the Commission on June 17.

We hope that the information we have supplied will be helpful to the Commission.

Sincerely yours,

GENE R. HAISLIP,  
Deputy Assistant Secretary for Legislation (Health).

Enclosure.

HEADQUARTERS (ROCKVILLE)

ITEM NO. 1

There were no positions filled at GS-11 and above where an Indian was selected and a non-Indian eligible. One applicant could not verify his Indian preference at time of selection for position of No. 76-02, Program Analysis Officer, GS-345-14. (In our previous report, this position was erroneously listed as GS-345-15.)

ITEM NO. 2

There were 3 vacancies announced and then cancelled. Qualified Indian applicants were on the panels for the following 2 positions:

HSA 76-32—Program Analyst—GS-345-13.

HSA 76-33—Program Analyst—GS-345-13\*

The third position, Budget Analyst, GS-12, was restructured at the time the incumbent departed, to a GS-11. This position was advertised and cancelled before a panel was issued. There were Indian applicants. See attachment.

ITEM NO. 3

The following positions were filled without advertising:

*Position title and reason for filling vacancy without advertisement*

Tribal Affairs Assistant, GS-301-12—Filled by an Indian. Administrative reassignment from USEET.

Staff Assistant, Division of Program Operations (DPO), GS-301-12—Position and incumbent (non-Indian) moved from Division of Resource Coordination to Division of Program Operations. Internal realignment of functions.

Budget Analyst—Administrative reassignment upon incumbent's return from Liberia which is an IHS health component.

Assistant Tribal Affairs Officer, GS-301-14—Administrative reassignment from Portland Area (Indian).

Program Analysis Officer, GS-345-14—Employee placed in position as a result of reduction-in-force. (Non-Indian.)

Staff Asst. to Director, GS-301-13—Lateral reassignment of Indian employee.

\*The Div. of Resource Coordination decided to cancel these announcements and advertise the positions at a lower grade to allow for restructuring and to attract a greater number of applicants from which to choose. See Attachment.

*Position title and reason for filling vacancy without advertising*

Program Analyst, GS-345-14—Administrative reassignment from USET. (Indian).

**COMMISSIONED CORPS PERSONNEL***Position title*

Chief, Physician Recruitment and Support Branch. (Non-Indian.)  
 Program Formulations Officer (Non-Indian.)  
 Program Analysis Officer (Non-Indian.)  
 Projects Manager (Non-Indian.)  
 Director, Office of Environmental Health. (Indian.)  
 Assistant Chief, Environmental Health Services Branch. (Non-Indian.)  
 Chief, Sanitation Facilities Construction Branch. (Non-Indian.)  
 Assistant Chief, Sanitation Facilities Construction Branch. (Non-Indian.)  
 Staff Engineer, Sanitation Facilities Construction. (Non-Indian.)  
 Staff Engineer, Sanitation Facilities Construction Branch. (Non-Indian.)  
 Chief, Environmental Health Services Branch. (Non-Indian.)

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,  
 PUBLIC HEALTH SERVICE, HEALTH SERVICES ADMINISTRATION,  
 INDIAN HEALTH SERVICE,  
 May 7, 1976.

Memorandum To: Acting Deputy EEO Officer Indian Health Service.  
 From: Director, Office of Program Planning.  
 Subject: Program Analysts Positions.

This is in reply to your request to justify non-selection on two Program Analysts, GS-13, job advertisements HSA 76-52 and 76-33.

The reason for restructuring and readvertising was to attach a greater number of Indian applicants for these positions; which in turn would allow a greater number of applicants from which to choose.

JACK V. CASEBOLT.

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,  
 PUBLIC HEALTH SERVICE, HEALTH SERVICES ADMINISTRATION,  
 INDIAN HEALTH SERVICE,  
 July 12, 1976.

Memorandum to: Acting Director, EEO.  
 From: Chief, Health Services Planning Branch.  
 Subject: Selection of the Program Analyst Position PPD-75-87-C.

One candidate with Indian preference, \_\_\_\_\_ the selection panel for the program analyst position PPD-75-87-C. \_\_\_\_\_ declined the position when it was offered to him as had accepted another position as Service Unit Director at \_\_\_\_\_

W. TIMOTHY SHEA.

The announcement dated May 12, 1976 for a new position (Budget Analyst GS-11) was withdrawn upon reevaluation of the staff needs of the FMB. Because of anticipated retirements, a decision was made to recruit two GS-5 budget trainees rather than the aforementioned position.

## ABERDEEN AREA

### ITEM NO. 1

There were two positions advertised in the Aberdeen Area in which a non-Indian was selected over an Indian applicant.

1. No. 74-209—*Executive Officer*—GS-670-14/15.—There were two (2) qualified Indians on the panel at the GS-14 level. Selection was made at the GS-15 level which had no qualified Indian applicants.

2. No. 76-103—*Social Worker*—GS-185-9/11/12.—There was one qualified Indian applicant at the GS-9 level. Selection was made at the GS-12 level.

NOTE—The 2 following previously listed positions do not properly fall in Item 2 category :

75-248—Contract Specialist, GS-1102-9/11 (Indian selected).

76-105—Hospital Director, GS-870-13 (erroneously listed as GS-15; selection not made to date).

### ITEM NO. 2

The positions that were cancelled or are pending cancellation are as follows. These positions were previously listed.

74-175-AO—Public Health Analyst, GS-11/12—Cancelled for lack of qualified applicants. (Decision made to reannounce.)

76-105-Bel.—Hospital Director, GS-13—No selection made at this time. Decision to reannounce pending Tribal Council input.

75-197-RH—Education Specialist, GS-11—Cancelled—No eligibles.

75-223-AO—Employee Development Specialist, GS-12—Cancelled—Employee did not vacate position.

76-68-FY—Nurse Mid-Wife, GS-9—Continuous recruitment efforts/no applicants. Cancellation pending. May abolish and re-establish new position.

### ITEM NO. 3

3A. Eighteen (18) dental positions, GS-11 and above (all Commissioned Officers, non-Indian and shortage category positions), were filled without advertising.

3B. Eight (8) Engineers/Sanitarrians positions, GS-11 and above (all Commissioned Officers, non-Indian and shortage category positions), were filled without advertising.

3C. One Area Pharmacist position (Commissioned Officer, non-Indian was selected effective November 21, 1974) was filled without advertising.

**ALBUQUERQUE AREA**

**ITEM NO. 1**

No additional information being submitted regarding justification for non-selection of Indians. Justifications attached for VA 75-10—Classifier and VA 75-67—Employee Development Specialist.

**ITEM NO. 2**

Positions as listed on our previous report.

Supervisory Clinical Nurse, GS-610-11, NECI, AAO, Albuquerque, N. Mex.

Public Health Nutritionist, GS-601-12, NTTC, Santa Fe, New Mexico. Course discontinued—Program is now being taken over by DWTC, Tucson.

Public Health Nutritionist, GS-601-12 and GS-601-13, (2 positions) NTTC, Santa Fe, New Mexico. Program being transferred to DWTC.

**ITEM NO. 3**

Non-Medical (GS-11 and above equivalency) positions filled without advertisement, during 1975 and 1976—Commissioned Officers:

Sanitarians and sanitary engineers.....	6
Nurse .....	1
Pharmacists .....	5
Dental officers.....	12
Optometrist .....	1
	<hr/>
	19

Of these 19, 1 is an Indian.

ALASKA AREA

ITEM NO. 1

Positions (GS-11 and above) in which an Indian applicant was non-selected and a non-Indian selected.

1. *Procurement Officer, GS-1102-13.*—It was determined that the Indian preference applicant was substantially lacking in experience, training, and communications ability. Enclosed (attachment 1) is a copy of the selecting official's submission and Area approval and transmission to Headquarters.

2. *Contract Health Care Officer, GS-301-13.*—It was determined that the Indian applicant's performance in an immediately previous position revealed considerable weakness in working well with other people, promotion of harmonious work relationships with groups, and effective work with private groups in the negotiation of contracts. Enclosed (attachment 2) is the selecting officials justification and the concurrence by the Area Director. This position is an additional position in this category.

ITEM NO. 2

Positions (GS-11 and above) which have been advertised for which an Indian has applied, and the vacancy announcement or position was cancelled.

1. *Instructor (Community Health Aid Program) GS-1701-11.*—The advertising failed to attract applicants with qualifications required. The position was then reviewed, restructured, and readvertised. The second advertising provided the same results. The position was then cancelled and its responsibilities disseminated to other positions within the existing staff. No promotions to any staff members resulted therefrom. The position in question has not been subsequently filled and there is no current intent to fill it either at the same or a different grade level.

ITEM NO. 3

Non-Medical (GS-11 and above equivalency) positions filled without advertisement.

1. *Training Officer, GS-235-12.*—The position was filled by reassignment of a non-Indian employee whose position was abolished through reduction-in-force. The position abolished has not been subsequently re-established and filled and there is no intention at this time to do so.

2. *Three Sanitary Engineer positions.*—These 3 positions were filled by reassignment of PHS Commissioned Officers. All were non-Indians. These positions were filled 03 and 04 levels. Had they been filled by GS employees they would be at the GS-11 level.

3. *Five Pharmacist positions.*—These positions were filled by reassignment of PHS Commissioned Officers, at 03 and 04 levels. All were non-Indians. The GS equivalent for these positions is GS-9.

In relationship to opening of traditional Commissioned Officer positions to competition by Civil Service employees and applicants, we have been advertising more and more such positions for the past 2 years. There has been a recent decision to advertise all such positions, even in cases where the potential for filling through the Civil Service system is somewhat limited. As of this time, all our positions at the GS-9 and above level are advertised for applicants through both the Public Health Service Commissioned Corps and through the regular Civil Service employee and applicant processes.

(459)

## ATTACHMENT 1—ALASKA

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,  
PUBLIC HEALTH SERVICE,  
January 21, 1976.

Memorandum to: Joseph Long, Deputy EEO Officer, HSMHA, IHS, Parklawn Building, Room 5A-55, 5600 Fishers Lane, Rockville, Md.

From: Associate Deputy EEO Officer.

Subject: Justification for Non-Selection of Native Applicant for Promotion Certificate No. 76-101, Procurement Officer GS-1102-12.

Based on discussion and interview with Ms. Morris and Mr. Warden I concur with the information submitted. There appears to be no bias on the part of the selecting official, I therefore support the attached documentation.

ROSE JERUE.

Approved:

G. H. IVEY,  
Director, Alaska Area Native Health Service.

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 ATTACHMENT 2

JUNE 18, 1975.

ALBERT D. KAHKLEN,  
Deputy Associate, EEO Officer,  
Director, Alaska Area Native Health Service.

Selection of Non-Indian for Contract Health Care Officer Position. Based on the information presented to me on the qualifications of \_\_\_\_\_, I concur with the selection of Non-Indian for the Contract Health Care Officer position.

J. LEE, M.D.,  
Medical Director.

## BILLINGS AREA

### ITEM NO. 1

There was one position advertised in the Billings Area in which a non-Indian was selected over an Indian applicant.

*Personnel Staffing Specialist, GS-212-12.*—Justification: Position was advertised at the GS-11/12 levels. There was one Indian applicant qualified at the GS-11 level, there were no Indian applicants qualified at the GS-12 level. Area Director preferred to select at the GS-12 level for which there were no qualified Indian applicants. (See Attachment)

### ITEM NO. 2

Positions (GS-11 and above) which have been advertised for which an Indian has applied, and the vacancy announcement or position was cancelled.

1. *Social Worker, GS-185-11/12, No. PA-75-28.*—Reason for Cancellation: No Indian applicants. Readvertised as Mental Health Technician GS-186-5, growth potential to GS-9. Indian selected at the GS-5 level.

2. *Program Manager, GS-340-13, PB-75-42.*—No Indian applicants. Position was readvertised to include GS-11/12. Indian selected at the GS-11 level.

3. *Supervisory Program Analyst, GS-345-5/7/9/11, PB-76-18.*—Indian applicants were eligible at GS-5 and 7 levels, and were previous employees whose work records indicated they could not perform this job. Management decision was made that a trainee was now unacceptable in the position due to additional and heavy work load requirements. Therefore, position was readvertised at GS-11 only and has not been filled. Original Indian applicants are not being considered for the readvertisement because they were not qualified at the GS-11 level.

### ITEM NO. 3

Billings had no positions filled without advertising under the GS schedule, however we had 3 positions under Commissioned Corp filled without advertising at GS-11 equivalency.

1. District Sanitarian (Non-Indian) Grade 05.
2. Field Engineer (Non-Indian) Grade 03.
3. District Sanitarian (Non-Indian) Grade 04.

NAVAJO AREA

ITEM NO. 1

Positions, GS-11 and above, where a non-Indian was selected over an Indian applicant.

NAO-720—General Services Officer, GS-301-13: Justification attached.

NAO-941—Hospital Administrative Officer, GS-670-9/11: Health Board did not want the Indian. Later the Indian withdrew his name.

NAO-470—Supervisory Medical Technologist, GS-670-11/12: No justification given. This was in April 1974. There are no indications of any justification.

NAO-443—Hospital Director, GS-670-13 (This position not previously reported): Filled by Commissioned Officer (Corps). Indian applicant refused by Health Board.

NAO-516—Supervisory Public Health Nurse, GS-615-11 (Previous report stated that an Indian was selected. This was in error): Indian applicant—Fully qualified Selected—non-Indian—Highly qualified. Before 1975 the Navajo Areas interpretation of 71-1 was they had to be equally qualified.

ITEM NO. 2

GS-11 and above which has been advertised had Indian applicants; then cancelled.

NAO-1052—Ambulatory Patient Care Department Administrative Manager, GS-341-11/12: Justification attached.

NAO-465—Administrative Officer, GS-341-9/11 (The previous report erroneously stated that an Indian was selected): Management decision to not have an Administrative Officer.

ITEM NO. 3

Positions, GS-11 and above, that have been filled without advertising.

Program Analysis, GS-345-11: Filled by an Indian on lateral reassignment with no promotional potential.

Senior Dietitian Consultant, GS-630-12: Filled by a Commissioned Officer (Corps). Lateral transfer.

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE.

PUBLIC HEALTH SERVICE.

April 20, 1976.

Memorandum to: Mr. Lee Horner, Area Personnel Officer, NAIHS.

From: A-GIMC.

Subject: Panel No. NAO-1052, Ambulatory Patient Care Department Administrative Manager.

Subject panel is now in your office and after discussion with Mr. Perrin we are asking that this panel be closed as we do not wish to make a selection at this time.

Our reasons for not making selection at this time are due to uncertainty of positions available in fiscal year 1977 and also, we are anticipating the possibility of hiring a family practice physician, who will be the Medical Director of the Ambulatory Patient Care Department. We do not feel it would be fair to the physician who is in charge of this department for us to make a selection of a person with whom he would have to work.

Therefore, please close this panel and perhaps we may be re-advertising in the future after our Ambulatory Patient Care Department physician has had a chance to review the needs.

RALPH K. ROYER, Administrator.

**OKLAHOMA CITY AREA**

**ITEM NO. 1**

There were no positions advertised in the Oklahoma City Area in which non-Indian was selected over an Indian applicant.

**ITEM NO. 2**

The positions that were cancelled and/or subsequently reannounced are as follows:

*Vacancy Notice 75-21, Social Worker—GS-185-11/12* was cancelled and re-advertised as a social worker GS-185-9/11. This was due to classification and knowledge that an Indian candidate would not be available. It was readvertised as No. 75-34.

*Vacancy Notice 75-34* (same as above, at grade GS-9/11). Selection was not made due to Indian applicants not being available. One Indian applicant applied and was selected but later declined the offer of appointment. Readvertised as No. 75-48.

75-48 announced position as a Social Worker GS-9/11. Indian applicant appointed at the GS-9 grade. Applicant qualified only for this grade.

*Vacancy Notice 75-116, Administrative Officer (Executive Officer) GS-341-15.* This announcement was cancelled due to Indian Health Service receipt of a directive from Public Health Service that the correct classification was a GS-14. The applicants who applied were not processed as to who was qualified.

The position was filled at the GS-14 grade. Position was not announced due to Civil Service, HEW and PHS regulations which require that first consideration will be given to employees who have been downgraded without personal cause and that this action will take place before any other action is taken to fill the vacancy. (Personnel Manual References: Chap. 335)

A non-Indian was placed in this position. This individual had been downgraded from a GS-14 grade and had been serving in this position under a temporary promotion

Due to cancellation of the announcement, and the above conditions, applications under 75-116 were not processed and were returned.

It should be noted that the position listed in the previous report, *Vacancy Notice 76-2, Administrative Officer (Area Executive Officer), GS-341-11/12,* filled by an Indian, is a trainee position.

**ITEM NO. 3**

There were 77 positions filled in the Oklahoma City Area without advertising in the last two fiscal years 1975 and 1976. 76 of these positions were filled with non-Indian Commissioned Corps personnel, 1 Indian CO.

**PHOENIX AREA**

**ITEM NO. 1**

There were no positions filled in Phoenix Area where an Indian applicant was non-selected and a non-Indian was selected.

**ITEM NO. 2**

There were no cancellations of any positions at the GS-11 grade, and up, where there were qualified Indians on the panel.

**ITEM NO. 3**

Special Projects Officer, Phoenix Indian Medical Center; filled by non-Indian Commissioned Officer. Reason: Asked to be relieved as SUD at San Carlos, Arizona.

Chief, Operations and Maintenance and Special Projects Branch, Area Office; filled by non-Indian Commissioned Officer. Reason: Asked to be relieved as SUD at Roosevelt, Utah.

Chief, Area Nursing Consultant, GS-14, Area Office; filled by non-Indian Commissioned Officer. Reason: Management reorganization of Area Nursing Branch.

Employee Relations Specialist, GS-12; Area Office; filled by non-Indian civilian. Reason: Asked to be relieved as SUD at Parker, Arizona.

Supervisory Employee Development Specialist, GS-12; Area office; filled by Indian civilian. Reason: Management reorganization of EEO and Training functions.

Program Specialist, GS-12; Area office; filled by Indian civilian. Reason: Reassigned from IHS Headquarters as part of career development.

**PORTLAND AREA**

**ITEM NO. 1**

**There was one position advertised in the Portland Area in which a non-Indian was selected over an Indian applicant.**

***Service Unit Director—GS-301-13—PO-17.* The non-Indian was selected at the preference of the Colville Tribe. (See attachment)**

**ITEM NO. 2**

**There were no positions cancelled and readvertised in the Portland Area as a result of Indians applying.**

**ITEM NO. 3**

**Portland Area hired 10 dental officers at the Commissioned Corps grade of O3 during the last two fiscal years. These positions which were centrally recruited for in Indian Health Service Headquarters were filled by non-Indians.**

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TUCSON

ITEM NO. 1

There were no selections made of non-Indians, in the GS-11 and above category, where there were qualified Indians on the panel.

ITEM NO. 2

The following positions were listed as cancelled. There was no indication if qualified Indians had applied.

- TU 7S—Community Health Educator, GS-1701-9/11.
- TU 10—Photographer, GS-1060-11.
- TU 7—Psychologist, GS-180-13.
- TU 30—P. H. Nutritionist, GS-601-9/11.

ITEM NO. 3

Job title	Grade	Selection	Remarks
Photographer.....	GS-11	Non-Indian.....	Due to immediate temporary need to meet a stepped up timetable for production of the IHS physician recruitment film.
Assistant director, training center operations.	GS-14	Indian.....	Was a lateral internal IHS transfer which was compatible with the needs of the Service from the standpoint of circumstances of the position transferred to and the position transferred from.
Administrative management specialist.	GS-13	.....do.....	Individual and encumbered position were relocated from Albuquerque area office to ORD in Tucson, Ariz., to augment effectiveness by being located with other IHS activities closely related to those being carried out by the position and incumbent.
Computer specialist.....	C.O	Non-Indian.....	Due to immediate need of the STARPANC project and the availability of the talent and qualification required in the commissioned officer transferred.
Data coordinator.....	C.O	.....do.....	Was a lateral internal IHS transfer which was compatible with the needs of the Service from the standpoint of the circumstances of the position transferred to and the position transferred from.
Sanitarian consultant.....	C.O	.....do.....	Office of Environmental Health assignment.
Training consultant.....	C.O	.....do.....	Office of Environmental Health rotating assignment.
Director, nutrition and dietetics training program.	C.O	.....do.....	Due to agreement with area chiefs of the nutrition and dietetics branch because of the availability and qualifications of the individual and the scarcity of such talent for recruitment.
Chief, health skills training.....	C.O	.....do.....	Not appropriate for the report since this is a medical position.
District sanitarian.....	C.O	.....do.....	Office of Environmental Health rotating assignment.
Field engineer.....	C.O	.....do.....	Do.

**USET**

**ITEM NO. 1**

**There have been no selections of non-Indians where there have been qualified Indians on the panel.**

**ITEM NO. 2**

**No positions have been cancelled.**

**ITEM NO. 3**

**Positions were filled without advertisement through Indian Health Service procedures. These positions are located at one service unit and the Tribe did their own soliciting of applicants.**

**Director, Choctaw Health Department—C.O.-6 (filled by C.O.—Non-Indian).**

**Director, Community Health Services—C.O.-5 (filled by C.O.—Non-Indian).**

**Director, Office of Environmental Health Services—C.O.-5 (filled by C.O.—Non-Indian).**

**Director, Planning, Training & Evaluation—C.O.-3 (filled by C.O.—Indian).**

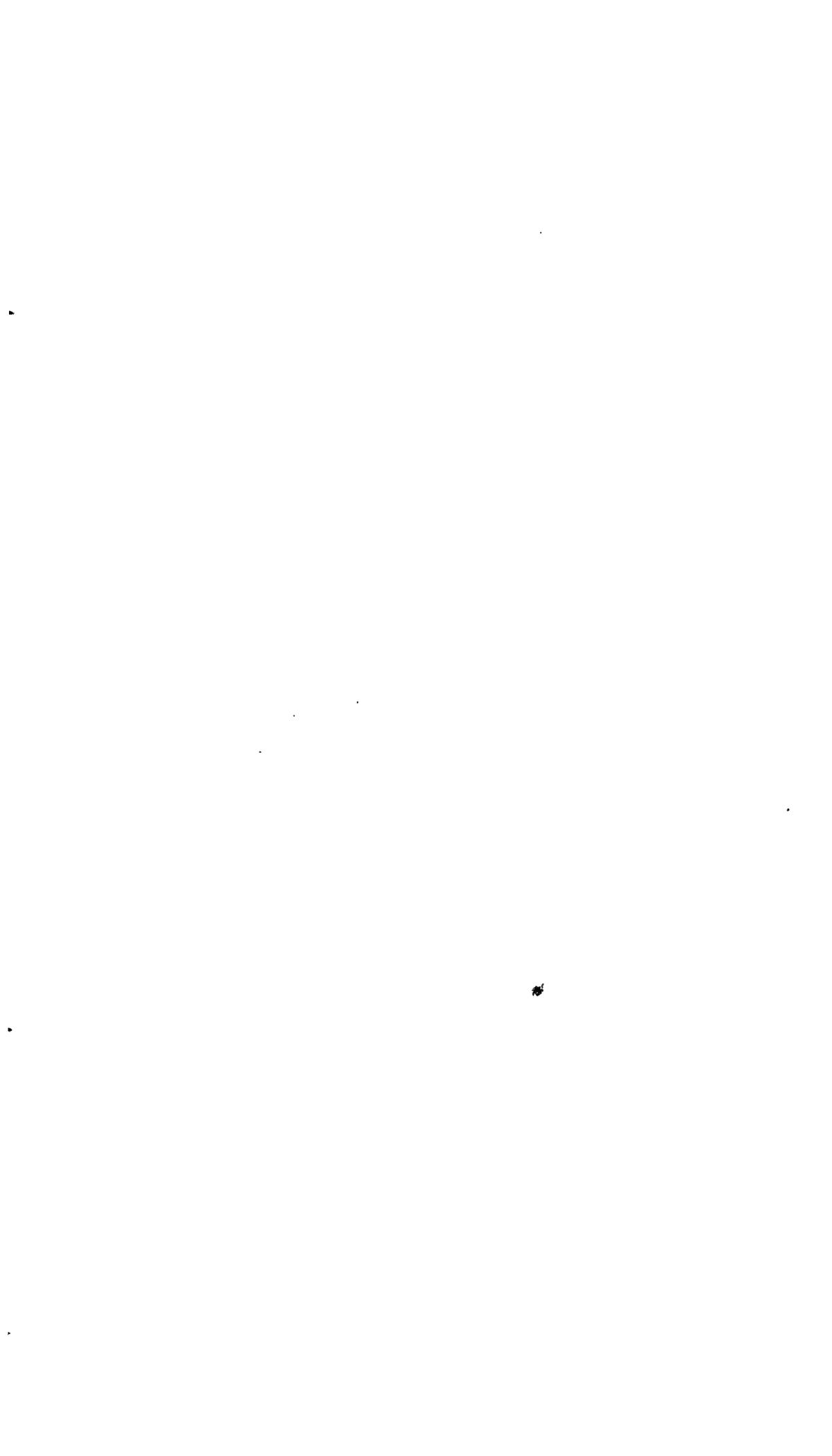


**APPENDIX II**

**PART VII. THE BUREAU OF INDIAN AFFAIRS MANUAL SYSTEM**

**Exhibits are included with the text of this part.**

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**APPENDIX II**

**PART VIII, OKLAHOMA**

**CITED ON PAGE 386 OF THE REPORT**

<b>Exhibits:</b>	<b>Page</b>
No. 1—Position Paper of the United Indian Tribes of Western Oklahoma and Kansas, presented to the Secretary of the Interior in April 1976.....	473
No. 2—Statistical Chart on Western Oklahoma Tribes.....	479
No. 3—Letter of the Assistant Secretary of the Interior, Oscar L. Chapman, to the Attorney General of the United States, dated August 17, 1942.....	484
No. 4—Memorandum from the Area Director, Anadarko Area Office of the Bureau of Indian Affairs, to the Assistant Solicitor, Division of Indian Affairs, Office of the Solicitor, United States Department of the Interior.....	486



**TASK FORCE NO. 9—APPENDIX II, PART VIII, EXHIBIT NO 1**

"The whole course of judicial decision on the nature of Indian tribal powers is marked by adherence to three fundamental principles: (1) An Indian tribe possesses, in the first instance, all the powers of any sovereign state. (2) Conquest renders the tribe subject to the legislative power of the United States and, in substance, terminates the external powers of sovereignty of the tribe, e.g. its power to enter into treaties with foreign nations, but does not by itself affect the internal sovereignty of the tribe, i.e. its powers of local self-government. (3) These powers are subject to qualification by treaties and by express legislation of Congress, but, save as thus expressly qualified, full powers of internal sovereignty are vested in the Indian tribes and in their duly constituted organs of government."

*Felix Cohen, "Handbook of Federal Indian Laws."*

**INTRODUCTION**

The impurity of definition regarding the legal character of American Indian tribal governments in western Oklahoma and the prevailing federal policy denying our tribal entities a just measure of tribal sovereignty have created a state of relative legal chaos that in general frustrates the development of effective self-government and categorically disenfranchises our tribal governments from eligibility for a number of extremely beneficial federal programs.

If the entire course of judicial decision on the nature of Indian tribal powers is marked by adherence to the principle that only treaties and the express legislation of Congress can extinguish tribal powers, the reverse has been true for the Indian tribes in Western Oklahoma. We are perennially faced with situations in which the existence of tribal powers, albeit even limited powers, is totally denied. It is generally assumed, for instance that Indian tribes in western Oklahoma are absolutely without any form of civil or criminal jurisdiction. And, it is generally assumed that no positive relationship exists between the provisions of the Indian Reorganization Act and the provisions of the Oklahoma Indian Welfare Act. After careful scrutiny, we believe these assumptions to be not entirely correct and a classic example of frequent assertion becoming de facto policy but nonetheless not strictly a matter of law. Being matters of policy and not law, we believe the Secretary of the Interior is not bound to this policy and has the present, vested authority to promulgate changes in departmental policy that in a limited sense will resolve these problems and result in tremendous benefits to the Indian tribal governments in Western Oklahoma both in terms of programs and the purification of definitions regarding tribal powers.

**POSITIONS OF THE UNITED INDIAN TRIBES OF WESTERN OKLAHOMA AND KANSAS REGARDING TRIBAL CIVIL AND CRIMINAL JURISDICTION IN WESTERN OKLAHOMA AND THE RELATIONSHIP BETWEEN THE INDIAN REORGANIZATION ACT AND THE OKLAHOMA INDIAN WELFARE ACT**

It is the position of the United Indian Tribes of Western Oklahoma and Kansas that:

I. The various Indian tribes in western Oklahoma are presently exclusively vested, where not limited by specific Congressional enactment, with civil jurisdiction over crimes and controversies between tribal members of tribally owned land or trust allotments, and, therefore, the budget for the Bureau of Indian Affairs, Anadarko Area Office, should include funds for technical assistance and direct support of the various Indian tribes in exercising these tribal powers.

II. The Oklahoma Indian Welfare Act, by its terms, repealed the section of the Indian Reorganization Act excluding Oklahoma Indian tribes from the full rights and privileges secured to an Indian tribe organized under the Indian Reorganization Act to the Oklahoma Indian Tribes. Therefore, Oklahoma Indian tribes have the benefits or limitations imposed by both the Indian Reorganization Act and the Oklahoma Indian Welfare Act. One of the sections of the Indian Reorganization Act, now codified as 25 USC § 467, authorizes the Secretary of

the Interior to proclaim a reservation area for each Indian tribe in Oklahoma and resolve the federal program eligibility problems occasioned by the unclear reservation status of Oklahoma tribes.

III. The recommendations that the Secretary of Interior proclaim new Indian reservations for the various Indian tribes in western Oklahoma is viewed by the United Indian Tribes of Western Oklahoma and Kansas singularly as a practical and timely method to resolve the federal program eligibility problem; the ultimate legal question of whether the original reservation boundaries of the various tribes were extinguished by the allotment agreements or congressional action will remain unresolved and will depend for its resolution on the indispensable in-depth analysis of the specific acts relating to each individual tribe followed by appropriate litigation.

"I. The Indian Tribes in Western Oklahoma have Civil and Criminal Jurisdiction over Tribal Lands and Trust Allotments When Tribal Members Are Involved."

The following is a succinct, chronological review of major legal enactments that directly bear upon the question of whether the exclusive internal powers of sovereignty relating to civil and criminal jurisdiction exercised or exercisable by Indian Tribal governments in western Oklahoma has been extinguished or preserved by Congress.

In general, the Indian tribes in western Oklahoma were vested with all tribal powers or attributes of inherent sovereignty prior to 1889. The Act of March 1, 1889 (25 Stat. 783), established a United States Court in the Indian Territory, which at that encompassed all of what is now the State of Oklahoma. Section 6 of this Act provided "that nothing herein contained shall be so construed as to give the court jurisdiction over controversies between persons of Indian blood only." The vested jurisdiction of Indian tribes over controversies between persons of Indian blood remained undisturbed by this Act.

The Act of May 2, 1890 (26 Stat. 81), commonly referred to as the Oklahoma Organic Act, created the new Territory of Oklahoma whose boundaries included all that portion of the United States now known as the Indian Territory except so much as is actually occupied by the Five Civilized Tribes and the Indian tribes within the Quapaw Indian Agency and except the unoccupied part of the Cherokee Outlet. All of the reservations of the western Oklahoma Indian tribes were included in Oklahoma Territory.

Section 1 of the Organic Act set forth the following proviso that denied the Oklahoma Territory authority to legislate on Indian matters and expressly reserved federal control:

"Provided, That nothing in this act shall be construed to impair any right now pertaining to any Indians or Indian tribe in said Territory under the laws, agreements, and treaties of the United States, or to impair the rights of person or property pertaining to said Indians, or to affect the authority of the Government of the United States to make any regulation or to make any law respecting said Indians, their lands, property, other rights which it would have been competent to make or enact if this act had not been passed."

Section 12 of the Act defined the jurisdiction of the district courts in Oklahoma Territory. Section 12 provided:

"That jurisdiction is hereby conferred upon the district courts in the Territory of Oklahoma over all controversies arising between members or citizens of one tribe or nation of Indians and the members or citizens of other tribes or nations in the Territory of Oklahoma, and any citizen or member of one tribe or nation who may commit any offense or crime in said Territory against the person or property of a citizen or member of another tribe or nation shall be subject to the same punishment in the Territory of Oklahoma as he would be if both parties were citizens of the United States; and any person residing in the Territory of Oklahoma, in whom there is Indian blood, shall have the right to invoke the aid of courts therein for the protection of his person or property, as though he were a citizen of the United States: *Provided*, That nothing in this act contained shall be so construed as to give jurisdiction to the courts established in said Territory in controversies arising between Indians of the same tribe, while sustaining their tribal relation."

Section 12 of the Oklahoma Organic Act expressly conferred both civil and criminal jurisdiction on the district courts of the Territory of Oklahoma in controversies or crimes involving members of different tribes. It also created an ambiguous, almost personal, option for Oklahoma territorial residents "in whom there is Indian blood" to invoke the aid of the district courts in the Territory

for production of his person or property as though a United States citizen. In granting such a right, this part of section 12 makes no reference to tribal membership as does the preceding paragraph covering intertribal crimes and controversies. This ambiguity gives rise to a question as to whether this section was drafted for the benefit of a class of non-member, emancipated Indians or persons with Indian blood who had severed their tribal relation. The final part of section 12 refers to tribal membership and expressly denies the district courts in the Oklahoma Territory jurisdiction over controversies involving members of the same tribe while sustaining their tribal relation. In summary, the Organic Act expressly granted full criminal and civil jurisdiction over intertribal (Indians of different tribes) matters to the territorial courts. It expressly exempted intratribal (Indians of the same tribe) matters from the jurisdiction of the territorial courts. The Organic Act allowed territorial residents "in whom there is Indian blood" the right to invoke the aid of the territorial courts as though a United States citizen. The Act appropriately did not expressly confer intratribal criminal jurisdiction on the territorial courts. And, it did not grant the Oklahoma Territory the authority to legislate with respect to Indian affairs. It would seem, therefore, since there is no explicit Congressional enactment conferring criminal jurisdiction on the territorial courts over intratribal conflicts that full criminal and civil tribal jurisdiction survived the Oklahoma Organic Act. And, further, since the jurisdiction conferred on the territorial courts by the Organic Act in intertribal matters was not explicitly original or exclusive, it is conceivable that the Indian tribes continued to have concurrent jurisdiction over intertribal crimes and controversies.

The Oklahoma Enabling Act of June 16, 1906 (34 Stat. 267), provided the mechanism and conditions precedent for the organization of the State of Oklahoma. Section 1 provided that the residents of the two territories could adopt a constitution and become the State of Oklahoma with the express limitation "that nothing contained in the said constitution shall be construed to limit or impair the rights of persons or property pertaining to the Indians of said Territories (so long as such rights shall remain unextinguished) or to limit or affect the authority of the Government of the United States to make any law or regulation respecting such Indians, their lands, property or other rights by treaties, agreement, law or otherwise, which it would have been competent to make if this Act had never been passed."

The disclaimer clause of the Enabling Act was contained in section 3. It provided:

"That the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title in or to any unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indians, tribe, or nation; and that until the title to any such public land shall have been extinguished by the United States the same shall be and remain subject to the jurisdiction, disposal and control of the United States."

This disclaimer clause was adopted as an irrevocable ordinance by the people of Oklahoma as Article 1 § 3 of the Oklahoma constitution. This disclaimer clause has not been amended to authorize the assumption of jurisdiction over Indian lands.

The courts of original jurisdiction of the State of Oklahoma succeeded only to the jurisdiction of the State of Oklahoma succeeded only to the jurisdiction expressly conferred on the territorial courts by the Organic Act. The Enabling Act and the Constitution of the new State contained no specific grants of jurisdiction over Indians who are members of the Indian tribes in western Oklahoma beyond that set forth in the Organic Act. It is an inescapable conclusion that these major legislative acts left undisturbed the jurisdictional scheme the Congress expressly reserved for the tribes in western Oklahoma.

18 USC § 1162, commonly known as Public Law 280 (1953), provided a statutory scheme for States to assume complete civil and criminal jurisdiction over Indians. Public Law 280 gave the consent of the United States to any State to remove the legal impediment to assuming full and complete jurisdiction over Indians by removing or amending the disclaimer clauses contained in the various State constitutions. Oklahoma was not included as one of the States in the original enactment of Public Law 280. In 1935, the Governor of Oklahoma was contacted by the Department of the Interior suggesting that the Governor might wish to arrange a consultation with the Indian tribes to discuss Public Law 280. The Governor replied that at statehood all tribal governments were merged into the State along

with full civil and criminal jurisdiction over Indians (letter attached). And that Public Law 280 would not for this reason, in any way affect the Indian citizens of Oklahoma. It is clear from the review of the seminal legislation regarding Oklahoma statehood that the conclusions contained in the Governor's letter are incorrect. Public Law 280 was amended in 1968 to provide that State jurisdiction could not be acquired pursuant to Public Law 280 without consent of the Indians affected expressed through a majority vote of the adult Indians. Since the State of Oklahoma has not availed itself of Public Law 280, it cannot now do so without consent of the Indians affected.

It is frequently stated that Indian tribal governments exercise territorial dominion only in "Indian country", and the *Tooisgah* case, *Tooisgah v. United States*, 186 F2d 93 (1950) and decisions of the Oklahoma Supreme Court, is cited often blindly or erroneously as the leading case for the propositions that the Indian reservations were extinguished, tribal government dissolved and Indian allotments are not "Indian country". There being no "Indian country", it follows from the *Tooisgah* theory that the Indian tribes have no jurisdiction.

*Tooisgah* turned on the issue of whether the Indian trust allotment upon which the homicide occurred constituted Indian country within the meaning of the federal statute then in existence defining Indian country. *Tooisgah* held that trust allotments lost their character as lands within an "Indian reservation" as a result of the Indian tribes cession of land to the United States through allotment agreements. The statute in force at the date of *Tooisgah*'s trial defined Indian country and extending federal jurisdiction utilized the phrase "within any Indian reservation under the jurisdiction of the United States government." *Tooisgah* was decided in 1950. The federal statute defining Indian country, 18 USC § 1151, after a 1948 amendment now reads in pertinent part:

... and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."

*Tooisgah* is a case that is cited for general applicability but should be limited to its facts because the law had already changed (the amendment redefining Indian country) at the date of the decision, and the tenth circuit on this subject of limiting *Tooisgah* to its facts stated:

"But, judging federal jurisdiction here under the words of the statute when the offense was committed, we are now constrained to hold that when the reservation was dissolved and tribal government broken up, the allotted lands lost their character as lands within any Indian reservation."

*Tooisgah*, in other words, held that the state rather than the federal court had jurisdiction to try Phillip *Tooisgah*. *Tooisgah*, however, passed in silence over the specific disclaimer of jurisdiction contained in the Enabling Act and the Oklahoma Constitution.

Congress in the Oklahoma Organic Act specifically reserved civil and criminal jurisdiction over tribal members for the Indian tribes in western Oklahoma; it is evident that the Indian country contained in 1151(c): assuming for a moment the worst possible interpretation of the various allotment acts, it is possible for an Indian tribe to exercise civil and criminal jurisdiction over tribal lands and trust allotments within the original boundaries even though their boundaries may have been extinguished.

*Decoteau v. District County Court*, — US —, 43 L. ed. 2d 300, 95 S Ct —, is usually cited in Indian legal circles a loser. In a sense the Sisseton-Wahpeton Sioux Tribe won and lost in this case. Prior to this lawsuit, the Sisseton-Wahpeton reservation was considered to be an "open" reservation meaning the tribe was entirely without jurisdiction somewhat like the present denial of tribal jurisdiction in western Oklahoma. As a result of this case, the Sisseton-Wahpeton Tribe has confirmed jurisdiction over trust allotments within the original reservation boundaries. The Supreme Court, at p. 305, stated:

"It is common ground here that Indian conduct occurring on the trust allotment is beyond the State's jurisdiction, being instead the proper concern of Tribal or federal authorities."

It is not supposed that the Supreme Court's decision was not a major legal setback for this Sioux tribe, but it does illustrate that the Supreme Court has recently considered this question and decided the consistent with the position on jurisdiction being propounded by the United Indian Tribes of Western Oklahoma and Kansas in this position paper.

"II. The Oklahoma Indian Welfare Act, by its terms extends the full coverage of the Indian Reorganization Act to the Indian tribes in western Oklahoma.

Thereby, allowing the Secretary of Interior to proclaim new Indian reservations in Oklahoma."

The Oklahoma Indian Welfare Act became law approximately two years after the Indian Reorganization Act. Oklahoma Indian tribes were specifically excluded from utilizing section 2 (indefinite extension of trust period), 4 (transfer or exchange of land or assets), 7 (new reservations), 16 (tribal organization under constitution), 17 (charter incorporation), 18 (referendum to accept or reject act). All other sections of the Indian Reorganization Act such as the land acquisition authority, the Indian Preference, the revolving loan fund, and the restoration of surplus land to tribal ownership were extended to Oklahoma tribes from the date of its enactment in 1934.

25 USC §473 excluded the Oklahoma Indian tribes the coverage of sections 2, 4, 7, 16, 17, 18. The 1934 exclusion in pertinent part, provides:

"That sections 2, 4, 7, 16, 17, and 18 of this Act (25 USC §§ 462, 464, 467, 476, 477, 478) shall not apply to the following-named Indian tribes, the members of such Indian tribes, together with members of other tribes affiliated with such named tribes located in the State of Oklahoma, as follows: Cheyenne, Arapaho, Apache, Comanche, Kiowa, Caddo, Delaware, Wichita, Osage, Kaw, Otoe, Tonkawa, Pawnee, Ponca, Shawnee, Ottawa, Quapaw, Seneca, Wyandotte, Iowa, Sac and Fox, Kickapoo, Pottawatomi, Cherokee, Chickasaw, Choctaw, Creek, and Seminole.)"

25 USC § 467, section 4 of the 1934 act, authorized the Secretary of the Interior to proclaim new Indian reservations on lands acquired pursuant to the Indian Reorganization Act. This section, in pertinent part, states:

"The Secretary of the Interior is hereby authorized to proclaim new Indian reservations on lands acquired pursuant to any authority conferred by this Act or to add such lands to existing reservations: Provided, That lands added to existing reservations shall be designated for the exclusive use of Indians entitled by enrollment or by tribal membership to residence at such reservations."

It should be noted that the land acquisition authority of the 1934 Act to which this power of proclaiming new Indian reservations attaches was not one of the sections the Oklahoma tribes were excluded from.

The Oklahoma Indian Welfare Act was passed in 1936 after considerable debate and dialogue between the Indian tribes, the Congress and the Department of the Interior. Senator Elmer Thomas from Oklahoma had the Oklahoma tribes excluded from the complete coverage of the 1934 Act primarily because he felt the Indian Reorganization Act organizing scheme was not broad enough to cover the many and varying circumstances of Indian life in Oklahoma. The section of the Oklahoma Indian Welfare Act covering the organization of Indian tribes is codified as 25 USC § 503. It provides:

"Any recognized tribe or band of Indians residing in Oklahoma shall have the right to organize for its common welfare and to adopt a constitution and by-laws, under such rules and regulations as the Secretary of the Interior may issue to any such organized group a charter of incorporation, which shall become operative when ratified by a majority vote of the adult members of the organization voting: Provided, That such election shall be void unless the total vote cast be at least 30 per centum of those entitled to vote. Such charter may convey to the incorporated group, in addition to any powers which may properly be vested in a body corporate under the laws of the State of Oklahoma, the right to participate in the revolving credit fund and to enjoy any other rights or privileges secured to an organized Indian tribe under the Act of June 18, 1934 (48 Stat. 984)."

The important passage of 25 USC § 503 indicating the legal scope of the incorporated tribal entity provided that such organized entity should "enjoy any other rights and privileges secured to an organized Indian tribe under the Act of June 18, 1934" (the Indian Reorganization Act.) This section of the Oklahoma Indian Welfare Act on its face extended to the Oklahoma tribes the balance of the Indian Reorganization Act rights and privileges that were denied through the exclusionary provision in the previously discussed 25 USC § 473 because § 473, as a part of an Act inconsistent with the Oklahoma Indian Welfare Act provisions, was repealed by 25 USC § 509, which states:

"The Secretary of the Interior is hereby authorized to prescribe such rules and regulations as may be necessary to carry out the provisions of this Act (25 USC §§ 501-509). All Acts or parts of Acts inconsistent herewith (25 USC §§ 501-509) are hereby repealed."

To reiterate, 25 USC §473 excluding the named Oklahoma tribes from the rights and privileges contained in sections 2, 4, 7, 16, 17, and 18 is inconsistent with the tribal organizing section of the Oklahoma Indian Welfare Act and was therefore repealed by 25 USC § 509.

The relationship between these two acts quite simply is that the Indian Reorganization Act is the base act with the Oklahoma Indian Welfare Act serving as a 1936 supplement. The original draft of the Oklahoma Indian Welfare Act in section 17 contained a proviso that supports this view of the Oklahoma Indian Welfare Act as a supplement to the Indian Reorganization Act. It provided:

"Sec. 17. The provisions of this Act are to be considered, held, and construed as supplemental to the rights, privileges, and benefits set forth and provided in the Act of June 18, 1934 (48 Stat. 984).

Also, Senator Thomas, the author of the bill, at p. 13929 of the Senate floor debates, stated:

"The Indians of my State live among the white settlers. All laws applicable to reservation Indians are not applicable to Indians living on farms, as the Indians live in Oklahoma. Because of this distinction the Committee on Indian Affairs at the last session undertook to segregate the Oklahoma Indians from the other Indians of the United States. This bill is intended to make the provisions to our Indians and make certain other provisions of law applicable to them."

The Oklahoma Indian Welfare Act as finally enacted into law in 1936 was considerably different than the original bill introduced into Congress. However, one of the sections that remained intact throughout the legislature process was the tribal organizing section, now codified as 25 USC § 503. Section 17, quoted above, was deleted; the reason is unknown, but it would appear that Section 17 was unnecessary and redundant since the tribal organizing section extended all rights and privileges of the Indian Reorganization Act to the Oklahoma tribes.

#### CONCLUSION

We believe our first two positions set forth in detail are sound, and it remains only for the Secretary of the Interior to confirm their substance and promulgate policies that will provide for implementation of their substance. On position three, the necessary research and commitment of time and resources must be made to settle the legal questions involved in determining whether the reservation boundaries survived the allotment process.

TASK FORCE #0, APPENDIX II, PART VIII - EXHIBIT NO. 2: STATISTICAL CHART ON WESTERN OKLAHOMA TRIBES

TRIBE	AGENCY	POPULATION a/		ORGANIZATION a/	TRIBAL AND ALLOTTED LAND a/	(APPROXIMATE) ORIGINAL RESERVATION ACREAGE
		TOTAL MEMBERSHIP	ON OR NEAR ORIGINAL RES.			
Absentee Shawnee	Shawnee	1,543	757	Constitution and bylaws adopted: 1938 OIWA	Acres trust: 37 Acres fee: 33 Individual Allotments: 214 tracts totaling 13,444.47 acres	Potawatomí Reservation - 588,567 acres 1/ (occupied by Absentee Shawnee and Citizen Band of Potawatomí Tribes)
Apache	Apache	1,000	500	Constitution and bylaws adopted: 1972 OIWA	Acres trust: 5,341 Acres fee: 0 Individual Allotments: 2,395 tracts totaling 240,509 acres 2/	Kiowa, Comanche and Apache Reservation 2,869,000 acres 1/ (occupied by Kiowa, Comanche and Apache Tribes)
Caddo	Adair	1,116	1,200	Constitution and bylaws adopted: 1938 OIWA; Charter adopted: 1938 OIWA	Acres trust: 2,309 Acres fee: 0 Individual Allotments: 670 tracts totaling 67,048 acres 3/	Wichita Reservation - 743,610 acres 1/ (occupied by the Caddo, Delaware, and Wichita Tribes)
Cheyenne and Arapaho	Cheyenne	6,874	5,005	Constitution and bylaws adopted: 1937 OIWA	Acres trust: 5,873 Acres fee: 4,000 Individual Allotments: 900 tracts totaling 97,000 acres	Cheyenne and Arapaho Reservation - 4,297,771 acres 4/
Citizen Band of Potawatomí	Shawnee	11,013	1,400	Constitution and bylaws adopted: 1938 OIWA	Acres trust: 1.25 Acres fee: 260 Individual Allotments: 60 tracts totaling 4,270.7 acres	Potawatomí Reservation - 588,567 acres 1/ (occupied by Citizen Band of Potawatomí and Absentee Shawnee Tribes)

T.F. #9, EXHIBIT NO. 2, PAGE 2: STATISTICAL CHART ON WESTERN OKLAHOMA TRIBES

TRIBE	AGENCY	POPULATION <u>a/</u> TOTAL MEMBERSHIP      ON OR NEAR ORIGINAL RES.		ORGANIZATION <u>a/</u>	TRIBAL AND ALLOTTED LAND <u>a/</u>	(APPROXIMATE) ORIGINAL RESERVATION ACREAGE
Comanche	Anadarko	7,000	3,500	Constitution and bylaws adopted: 1966	Acres trust: 5,341 Acres fee: 0 Individual Allotments: 2,395 tracts totaling 240,509 acres <u>2/</u>	Kiowa, Comanche and Apache Reservation 2,969,000 acres <u>1/</u> (occupied by Kiowa, Comanche and Apache Tribes)
Delaware Tribe of Western Oklahoma	Anadarko	800	500	Constitution and bylaws adopted: April 21, 1973	Acres trust: 2,309 Acres fee: 0 Individual Allotments: 42 tracts totaling 5,030 acres <u>3/</u>	Wichita Reservation - 743,610 acres <u>1/</u> (occupied by Caddo, Delaware, and Wichita Tribes)
Fort Sill Apache	Anadarko	200	80	Constitution and bylaws adopted: none	Acres trust: 0 Acres fee: 0 Individual Allotments: 36 tracts totaling 3,613 acres	
Iowa of Oklahoma	Shawnee	276	70	Constitution and bylaws adopted: 1937 OIWA; Charter adopted: 1938 OIWA	Acres trust: 12 Acres fee: 0 Individual Allotments: 43 tracts totaling 1,509 acres	Iowa Reservation - 228,418 acres <u>5/</u>
Kaw	Pawnee	250	130	Govern under BIA - approved Resolution	Acres trust: 20 Acres fee: 0 Individual Allotments: 0 tracts	Kansas or Kaw Reservation - 100,141 acres <u>6/</u>

T.F. #9, EXHIBIT NO. 2, PAGE 3: STATISTICAL CHART ON WESTERN OKLAHOMA TRIBES

TRIBE	AGENCY	POPULATION: a/ TOTAL MEMBERSHIP		ON OR NEAR ORIGINAL RES.	ORGANIZATION a/	TRIBAL AND ALLOTTED LAND a/	(APPROXIMATE) ORIGINAL RESERVATION ACREAGE
Kickapoo of Oklahoma	Shawnee	1,106	553		Constitution and bylaws adopted: 1937 OIWA; Charter adopted: 1938 OIWA	Acres trust: 17.5 Acres fee: 0 Individual Allotments: 120 tracts totaling 6,128 acres	Kickapoo Reservation - 206,466 acres 7/
Kiowa	Anadarko	7,000	3,500		Constitution and bylaws adopted: May 23, 1973	Acres trust: 5,341 Acres fee: 0 Individual Allotments: 2,395 tracts totaling 240,509 acres 2/	Kiowa, Comanche and Apache Reservation - 2,969,000 acres 1/ (occupied by Kiowa, Comanche and Apache tribes)
Osage	Muskogee Area Office	Not Available	Not Available		Principal Chief and eight member Tribal Council, Act of June 28, 1906, 34 Stat. 539, § 9.	Acres trust: 645 Individual Allotments: tracts totaling 216,994 acres	Osage Reservation - 1,470,058 acres 1/
Otoe - Missouria	Pawnee	1,425	980		Constitution and bylaws adopted: None. Governed by Business Committee	Acres trust: 1,400 Acres fee: 0 Individual Allotments: 256 tracts totaling 26,156 acres	Otoe Reservation 129,113 acres 8/
Pawnee	Pawnee	2,188	1,085		Constitution and bylaws adopted: Jan. 6, 1938 OIWA. Charter adopted: April 28, 1938	Acres trust: 680.57 Acres fee: 0 Individual Allotments: 342 tracts totaling 24,695.39 acres	Pawnee Reservation 283,026 acres 6/

T.F. #9, EXHIBIT NO. 2, PAGE 4: STATISTICAL CHART ON WESTERN OKLAHOMA TRIBES

TRIBE	AGENCY	POPULATION <sup>a/</sup>		ORGANIZATION <sup>a/</sup>	TRIBAL AND ALLOTTED LAND <sup>a/</sup>	(APPROXIMATE) ORIGINAL RESERVATION ACREAGE
		TOTAL MEMBERSHIP	ON OR NEAR ORIGINAL RES.			
Ponca	Pawnee	1,983	1,580	Constitution and bylaws adopted: Sept. 20, 1950 OIWA: Charter adopted Sept. 20, 1950, OIWA.	Acres trust: 932.46 Acres fee: 2.35 Individual Allotments: 201 tracts totaling 16,219 acres	Ponca Reservation-101, 894 acres <sup>9/</sup>
Sac & Fox of Oklahoma	Shawnee	2,020	600	Constitution and bylaws adopted: 1937 OIWA	Acres trust: 805 Acres fee: 0 Individual Allotments: 223 tracts totaling 18,406 acres	Sac & Fox Reservation - 479,668 acres <sup>10/</sup>
Tonkawa	Pawnee	90	40	Constitution and bylaws adopted: 1938 OIWA	Acres trust: 160.50 Acres fee: 0 Individual Allotments: 10 tracts totaling 320.74 acres	Tonkawa or Oakland Reservation - 90,711 acres <sup>1/</sup>
Wichita	Anadarko	819	600	Constitution and bylaws adopted: none. Governing Resolution adopted: May, 1961	Acres trust: 2,309 Acres fee: 0 Individual Allotments: 670 tracts totaling 67,048 acres <sup>3/</sup>	Wichita Reservation - 743,610 acres <sup>1/</sup> (occupied by the Caddo, Delaware, and Wichita Tribes)
<u>TOTALS</u>		47,503 (excluding Osage)	22,080 (excluding Osage)	Acres Trust: 18,234.28 (includes Osage) Acres Fee: 4,295.35 Individual Allotments (except Osage): 5,512 tracts Totaling 524,349.30 acres		13 Reservations totaling 11,689,443 acres

FOOTNOTES

- a/ Tribal Directory, Anadarko Area Office, Bureau of Indian Affairs (1975).
- 1/ Annual Report of the Commissioner of Indian Affairs 462-463 (1906).
- 2/ Tribal and allotted acreage of the Kiowa, Comanche and Apache Tribes is recorded together.
- 3/ Tribal acreage of the Caddo, Delaware, and Wichita Tribes is recorded together. Allotted acreage of the Caddo and Wichita Tribes is also recorded together; allotted acreage of the Delaware Tribe is separately recorded.
- 4/ Annual Report of the Secretary of the Interior 14 (1885)
- 5/ Annual Report of the Secretary of the Interior 28 (1890)
- 6/ Message on Surveys in the Indian Territory, Senate Ex. Docs. No. 32, 45th Cong., 2d Sess. (February 20, 1878).
- 7/ Annual Report of the Secretary of the Interior, V (1891)
- 8/ Order of the Secretary of the Interior, June 25, 1881, I Kappler 844.
- 9/ Act of March 3, 1881, 21 Stat. 422, I Kappler 191.
- 10/ Annual Report of the Secretary of the Interior, VIII (1891)

TASK FORCE NO. 9—APPENDIX II, PART VIII, EXHIBIT NO. 3

AUGUST 17, 1942.

HON. THE ATTORNEY GENERAL.

Sir: In a letter of April 28, 1941, from the Assistant Attorney General (your file WB:CAP:vng 90-2-017-60) the views of this Department were requested respecting the jurisdiction of the State and Federal courts in Oklahoma in cases involving crimes committed by and against Indians on the restricted Indian allotments in the area which was the Indian Territory and there in the area which was the Oklahoma Territory.

A mass of statutory provisions showing the changing and developing jurisdiction of courts in these areas has been found and most of the relevant provisions have been summarized or quoted in the attached memorandum. Because of the complexities of the matter this Department cannot speak with certainty with respect to the present jurisdiction but is presenting the following analysis and conclusions for your consideration.

Prior to the creation of the Oklahoma Territory and the Indian Territory by the act of May 2, 1890 (26 Stat. 81), the whole area was known as the Indian Territory. During this period the Government recognized the exclusive jurisdiction of the Indian tribes over their own members and even over nonmembers within their territories. There were a few statutes defining crimes within this Territory and providing for a United States court for the prosecution of these crimes. However, as indicated in the reference to these statutes in paragraphs 1, 2, and 3 of the attached memorandum, these statutory provisions excluded from their application crimes committed by Indians. The act of March 3, 1885 (23 Stat. 385, 18 U.S.C. sec. 548), probably did not apply to the old Indian Territory, since there were no Territorial organization, laws and courts to function under the statute (*In re Jackson*, 40 Fed. 372, C. C. Kans., 1889).

Upon organization under the act of May 2, 1890, the United States district courts in the Oklahoma Territory and the Indian Territory were given jurisdiction by sections 12 and 36, respectively, of crimes by Indians against Indians of other tribes to the same extent as if such crimes were committed by citizens. This grant of jurisdiction increased the jurisdiction which I believe these courts automatically obtained under section 548 of title 13 of the named crimes committed by Indians against Indians or others. These district courts had a dual role. As United States courts they enforced the Federal laws and as Territorial courts they enforced the Territorial laws, being at the outset the laws of Nebraska in the Oklahoma Territory and the laws of Arkansas in the Indian Territory. As United States courts enforcing Federal law they had jurisdiction over crimes committed by white persons against either Indians or other persons under section 217 of title 25 of the United States Code (*Brown v. United States*, 146 Fed. 975 (C. C. A. 8th, 1906)). As Territorial courts they could enforce section 548 of title 18 by the trial of the Indians committing the crimes named therein in the same manner as such crimes were tried when committed by other persons. As Territorial courts they could also try Indians for crimes committed against Indians not members of the tribe in the same manner as in the case of other persons.

The act of June 7, 1897 (30 Stat. 83), and subsequent statutes relating to the Indian Territory completely altered the situation in that Territory with respect to jurisdiction over Indian crimes. The 1897 act placed in the district courts jurisdiction over all crimes committed by any person in the Indian Territory, and the laws of Arkansas in force in the Territory were made to apply to all persons, regardless of race. Subsequent acts abolished the Indian courts and tribal jurisdiction and organization. These acts, therefore, removed the essential characteristic of the Indian country, which was the application of tribal laws within the area. Since the Territorial laws were made to apply to all persons in the Indian Territory, both section 548 of title 18 and section 217 of title 25 were apparently superseded. This conclusion is fortified by the act of March 3, 1901 (31 Stat. 1447), which gave citizenship to every Indian in the Indian Territory and by the last proviso in the act of May 8, 1906 (34 Stat. 182), which

provided that the Indians in the Indian Territory should not be covered by the provision subjecting all Indian allottees to the exclusive jurisdiction of the United States until the issuance of fee simple patents. No similar changes in jurisdiction were made in the Oklahoma Territory.

Upon the organization of the State of Oklahoma pursuant to the Enabling Act of June 16, 1906 (34 Stat. 267), the State courts succeeded to the jurisdiction of the Territorial courts, except as to the crimes defined by Federal law which were placed within the jurisdiction of the Federal courts. The State courts, therefore, apparently acquired jurisdiction of all Indian crimes in that part of the State which had been the Indian Territory. In that part of the State which had been Oklahoma Territory it is my opinion that the second part of section 548 of title 18 had immediate application, placing the Federal courts jurisdiction of the named crimes committed by Indians in Indian reservations in the States. This part of section 548 did not apply to the Indian Territory part of the State, since the Indian reservations therein had lost their character as Indian country.

The conclusions of this Department thus follow substantially the decision of the Supreme Court in the case of *United States v. Ramsey*, 271 U.S. 467, and the opinion of the Oklahoma Supreme Court in *Ex parte Nowabbi*, 61 P. (2d) 9139. The *Ramsey* case held that a restricted allotment on the Osage Reservation, which had been a part of the Oklahoma Territory, was Indian country within the meaning of section 217 of title 25, and that therefore the Federal court had jurisdiction of a crime committed by a white person against an Indian. Of course, any jurisdiction under section 217 of crimes exclusively involving white persons on the Indian reservations was lost by the acquisition of statehood, as in the case of other States. The *Nowabbi* case held that the State courts had jurisdiction over a crime by one Indian against another committed on a restricted allotment in the area formerly the Indian Territory.

The conclusions of the Department may be summarized as follows:

(1) In that part of Oklahoma which was the Indian Territory a restricted Indian allotment is no longer Indian country and section 217 of title 25 does not apply to give the Federal courts jurisdiction of crimes against Indians and section 548 of title 18 does not apply to give the Federal courts jurisdiction of the named crimes by Indians. Jurisdiction of all crimes by and against Indians is in the State courts.

(2) In that part of the State which was Oklahoma Territory a restricted Indian allotment continues to have the character of Indian country in the same manner as restricted allotments and reservations elsewhere in the country, with the possible exception of crimes committed by Indians against nonmember Indians, which crimes are apparently within the jurisdiction of the State courts as a result of the 1890 statute. On these allotments both section 217 of title 25 and section 548 of title 18 apply. Crimes between Indians of the same tribe which are not covered by section 548 remain subject to tribal jurisdiction.

The presentation of these local conclusions should be accompanied by some statement of the practical situation. None of the tribes in Oklahoma has exercised criminal jurisdiction in recent years and none has a court of Indian offenses established either by the tribe or under the regulations of this Department. It is therefore important that some definite criminal procedure be established for crimes not embraced by Federal or State law. In view of the complexities of jurisdiction in Oklahoma and in view of this practical problem this Department would be glad to receive your suggestions as to the substance of a bill which might be presented to Congress on the subject.

Very truly yours,

OSCAR L. CHAPMAN,  
Assistant Secretary.

ANADARKO AREA OFFICE,  
Anadarko, Okla., March 14, 1975.

MEMORANDUM

To : Assistant Solicitor, Indian Affairs.

From : Area Director.

Subject : Review of Federal-Indian relations and the inherent sovereignty of Western Oklahoma Indian Tribes, per their request, and possible amendment of Oklahoma Indian Welfare Act.

We appreciate the opportunity to submit our views on the four points stated in your memorandum of May 30, 1974, on the above subject. Due to the complexities of the issues raised by this inquiry, the statement of our views will not necessarily reflect a comprehensive and in-depth legal research effort, but such that will adequately support our position.

As a matter of policy we would certainly support any effort or action to strengthen tribal governments. Such an effort would enable the tribes to form more viable governments to more effectively carry out their tribal governmental responsibilities, which would certainly be a step in reaching the desires of the tribes in strengthening of their inherent sovereignty.

In response to Issue No 1, again we would support any strengthening of Federal-Indians relationships of the Western Oklahoma Tribes. As the major part of our problems are special as Federal services to Indians, the effect this effort would have in limiting intrusions of this Federal-Indian relationship by the State of Oklahoma would be problematical.

In order to have a better understanding of the Federal-Indian situation in Western Oklahoma, it would be worthwhile to review the history of Indian-Federal relations as it has been influenced by the efforts of the early settlers in Oklahoma Territory and Indian Territory in breaking up the reservations and the forming of the State of Oklahoma.

Prior to Statehood, the Western Oklahoma Indian Tribes enjoyed full reservation status with all the existing Federal trust services, the same as other tribes throughout the country. Efforts at breaking up reservations began in the 1880's, and, because of these pressures, Congress enacted the General Allotment Act of February 8, 1887 (24 Stat. 363). Between this and 1901, all of the reservations in Western Oklahoma were broken up and individual allotments made to members of each of the tribes.

An important distinction, sometimes overlooked, is that the General Allotment Act excepted the Indians of Indian Territory from the application of certain provisions. Section 6, the pertinent provision, reads as follows :

"That at the expiration of the trust period and when the lands have been conveyed to the Indians by patent in fee, as provided in Section 5 of this Act, then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal of the state or territory in which they may reside . . . Provided further, that until the issuance of fee simple patents all allottees to whom trust patents shall hereafter be issued shall be subject to the exclusive jurisdiction of the United States; And, provided further, that the provisions of this act shall not extend to any Indians in the Indian Territory."

The net effect being that at the end of the trust period allotments of the Five Civilized Tribes would be taken in fee simple and thereby, come under State jurisdiction, whereas the Western Oklahoma Tribes enjoyed the exclusive jurisdiction of the United States Government and still do. On June 16, 1906, Congress passed the Oklahoma Enabling Act, *Infra*, creating the State of Oklahoma. Provisions in the Enabling Act were to the effect that the State of Oklahoma would not in any manner intrude upon the Federal Government's responsibilities in its Indian relations. This restriction was also put in the State Constitution, *Infra*.

Because of the adverse pressures that were applied in breaking up the reservations in Western Oklahoma and the ensuing bad feelings engendered, there has been a continuing attitude by the people of Oklahoma that is rather negative and has prevented the tribes from fully enjoying sovereign powers normally exercised by Indian tribes in other States. This was done by subtle pressures on officials of the Bureau of Indian Affairs by towns and communities through State Congressional delegations. From Statehood until the passage of the Act of June 8, 1934 (Indian Reorganization Act) (48 Stat. 984) and the Oklahoma Indian Welfare Act (Act of June 6, 1936) (49 Stat. 1967; 25 USC 501), there was no significant change in Bureau policies concerning services and trustee responsibilities to the Western Oklahoma tribes. But, there remained the continuing efforts of making the Indian a self-reliant, full-pledged citizen through various program approaches which have had a pendulum swing of either too much or too little. Probably, the most significant results of the changes in national Indian policies in Oklahoma were the negative impact of each change of policy. If it was a policy of withdrawal or termination, it had a more severe impact in the State. These shifts in policy also provided an opportunity for vested interest groups to apply pressures locally to Bureau of Indian Affairs' officials and to Congress in Washington in preventing the full impact of Federal program funding and conversely, if the policy was withdrawal, then the effort would be for an extreme negative effect. In most instances, the rationale was that Oklahoma Tribes were not on reservations and, therefore, not eligible or that the Tribes were further advanced than reservation Indians and were like their non-Indian neighbor and did not need any special help. (Conservative metropolitan newspapers also periodically editorialized to this effect.)

Because of the unique Indian situation in Oklahoma, the Congress of the United States saw fit to pass a Special Act relating primarily to the Oklahoma Tribes (Oklahoma Indian Welfare Act, June 6, 1936, 49 Stat. 1967). The significant difference between the Indian Reorganization Act, *Supra*, and the Oklahoma Indian Welfare Act, *Supra*, was that Sections 2, 4, 7, 16, 17, and 18 of the Indian Reorganization Act were made inapplicable to Oklahoma Tribes (Exhibit 2). This was consistent with historic Bureau policy in their special dealings with Western Oklahoma Tribes. The prime purposes of the Indian Reorganization Act and the Oklahoma Indian Welfare Act were to authorize and sanction tribal governments and to encourage tribal involvement in the development of their human and natural resources. It provided the means for tribes to form federally chartered corporations. It should also be noted that up to the point of passage of the Oklahoma Indian Welfare Act, Oklahoma Tribes were very distrustful of Federal programs, smarting from the methods used in breaking up reservations and thinking that it was another governmental effort to deprive them of further landholdings or Federal trusteeship services. As a result, there was a general reluctance to take advantage of the provisions of the Oklahoma Indian Welfare Act. Out of eighteen (18) tribal groups in Western Oklahoma, nine (9) tribes did not adopt Oklahoma Indian Welfare Act constitutions and because of the authority contained in the provisions creating corporations that read "can sue or be sued in State Courts", only five (5) tribes adopted charters. With the recent advent of Federal socio-economic program development funding, again Western Oklahoma Tribes were not included in the initial program legislation which specified "Indian reservations" which was interpreted to exclude Oklahoma Indian Tribes. Only recently, have Oklahoma Tribes enjoyed participation as recipients of Federal funding for many of the programs; however, again this money has been channeled through State block grants, having to compete with local non-Indian communities and groups rather than direct funding to the Tribes, as to the reservation tribes in other parts of the country.

With this brief historic background, it would be worthwhile to review the Bureau programs and services presently in effect in relation to possible intrusions in these areas by the State.

*Administration.*—As a function, is unique to the Bureau in implementing Federal programs and trust services. However, there should be a more vigorous implementation of Bureau policy as it would relate to protection and advocacy of Indian interest, as opposed to the local self-interest groups that may want to influence Indian Affairs policy.

*Education.*—The tribes reel strongly that the Bureau of Indian Affairs has a historic obligation and responsibility to provide an adequate atmosphere for an effective, meaningful education. If Indian children are not receiving adequate

attention and fair treatment in the public schools, then the tribes feel that it is a responsibility of the Bureau officials to advocate and correct any attitude of prejudice, mistreatment, and maladministration.

The Bureau of Indian Affairs, Division of Education, provides administrative leadership, coordination, and consultative services for four boarding schools, including one junior college. The Division administers a grant program for college students and this function is gaining importance as more Indian youth prepare to attend college. The Division administers Johnson O'Malley assistance programs for Indian students in public schools in Kansas and Oklahoma. Education maintains a high priority in tribal programming throughout the Anadarko Area. The Division of Education works closely with tribal representatives and organizations, local school boards, and advisory committees which give guidance and direction to education programs.

In this area, there is a need for greater coordination and understanding between the public school and the Bureau concerning the attitude of public school teachers and officials in the education of Indian children, also in the implementation of Johnson O'Malley and Title IV programs as it involves Indian families and children. As an example of the need for coordination of this, the parents of the Indian children in the Hammon Public Schools withdrew their children from the schools because of alleged mistreatment of a child.

*Indian services.*—The Office of Indian Services consists of the Divisions of Housing, Social Services, and Tribal Operations.

The Division of Housing in the Anadarko Area provides information and technical assistance to Indian tribal governing bodies and individual tribal members regarding federal home-ownership, rental, and other public subsidized housing programs, plus the Bureau's Housing Improvement Program with referral services concerning other housing activities.

This is the area in which the State possibly had made its greatest intrusion into tribal sovereignty. The position taken by Federal agencies was to the effect that Oklahoma Tribes did not possess authority to establish housing authorities as tribes on reservations. As a result, the State of Oklahoma enacted authority for tribes to be included with other local units of government in the establishment of local housing authorities. However, it should be pointed out that the Opinion of February 15, 1974, from the Department of Housing and Urban Development, at page 11, includes the following:

"The Interior Department declared that it was a 'fundamental statement in Indian law,' 57 I.D. 147 that an Indian tribe was both a governmental entity and a public body. First, in regard to an Indian tribe as a governmental entity, the Interior Department states:

"'While an Indian tribe is a governmental entity so long as it retains its character as a tribe, even though it may not be organized in the manner provided by the Indian Reorganization Act, its character as a governmental entity is conclusively established and takes practical form when the tribe is organized under a constitution under section 16 of that act and incorporated as a federal corporation under section 17, 57 I.D. 147.'

"As has been previously stated, Oklahoma Indians were organized not under the Indian Reorganization Act but the Oklahoma Indian Welfare Act. But the Interior Department states that an Indian tribe can be a governmental entity even if not organized in the manner provided by the Indian Reorganization Act. The Oklahoma Indian Welfare Act provides Oklahoma Indians both the right to organize for their common welfare and adopt a constitution and bylaws, and to obtain a charter on incorporation from the Secretary of the Interior as is provided to other Indians under the Indian Reorganization Act.

"While Oklahoma Indian Housing Authorities are established under procedures established by state law, the Interior Department maintains that Indian tribes, themselves, as governmental entities can be considered a 'public housing agency' under the National Housing Act, and notes that a 'public housing agency does not need to be an agency or entity of a State government,' . . ."

The Division of Social Services has as its first concern to meet the basic needs of people. The program acts to provide necessary financial assistance and social services to eligible Indians when the required services and assistance are not available to them through State or local welfare agencies. It is the position of the Bureau that, insofar as possible, Indians should have the same relationship to public welfare agencies as non-Indians; that public welfare agencies should have the same responsibility for providing services and assistance to Indians as they do to non-Indians in similar circumstances.

Our position would be the same as we stated for the Office of Education, in that there has to be a continuous liaison between the Bureau personnel and the State to insure that Indian clients receive fair and equitable services from all State and local county agencies.

The Division of Tribal Operations provides services to eighteen (18) tribal groups in Western Oklahoma within the Anadarko Area, and acts as liaison between the Area Director and the tribes and between the Agency Superintendents and the tribes. It provides the following technical assistance to tribal governments: Drafting or amending constitutions, bylaws, charters; establishing membership enrollment and ordinance provisions; preparation of rolls for membership and judgment fund disposition; preparation of tribal budgets; executing tribal attorney contracts; tribal governmental operations and procedures, including elections; programming the use of tribal judgment funds, including minors' trust fund agreements; socio-economic and community development; coordinating investments of tribal funds with the tribes, the agencies, and the Investments Section of the Division of Financial Management, Albuquerque, New Mexico, and coordinating contracting between the Bureau and eligible tribes for participation in the Tribal Government Development Program.

In terms of overall technical assistance, Tribal Operations is probably the closest to the tribes in providing the kind of advice and assistance necessary for a strong and viable self-government of the Western Oklahoma Tribes. It has been said many times that the strongest principle of inherent sovereignty is the existence of tribal relations, and the vigorous exercise of tribal self-government. As we earlier stated, Oklahoma Tribes have fears historically rooted of Federal-State intrusions such as have resulted in withdrawal and termination and have not taken full advantage of the opportunity afforded by Section 8 of the Oklahoma Indian Welfare Act which was Congress' attempt to give Federal sanction to the exercise of inherent tribal sovereignty. And, of course, this leaves open the whole area of corporate municipal powers as they relate to socio-economic development programs. The only pre-emption by the Congress to the sovereignty of Oklahoma Tribes lies primarily in the area of law and order, which will be discussed later. We would welcome an opportunity to explain to the tribes the advantages of corporate charters available through Section 8 of the Oklahoma Indian Welfare Act and to offer assistance in the implementation of a tribal administrative organization that would permit the tribes a more effective participation in the development of their own programs and, thereby, return to exercising their sovereignty for it is well understood in the law, to quote "If an Indian group does not, and if it seems it cannot, exercise the powers to which it is entitled, there is a strong likelihood that its rights will be continuously whittled away . . . weak tribal governments are easy targets for legislative deprivation of what residual authority they possess".

*Tribal resources.*—The Division of Credit, Employment Assistance, Industrial Development, and Roads are Bureau programs that are rather unique to Indian clients.

The Branch of Credit received a new lease on life with the passage of the Indian Financing Act of 1974 (88 Stat. 77) which was signed into law on April 12, 1974. The Act authorizes the appropriation of an additional \$50 million to the Indian Revolving Loan Funds presently administered by the Bureau of Indian Affairs. These funds are used to make loans to Indian tribes and individuals for economic development projects and business ventures on or near Indian reservations and for educational purposes. When the full amount authorized is appropriated, the Indian Revolving Loan Fund will total approximately \$75,000,000. The Bureau of Indian Affairs will administer the programs established by the Act and only Indians who qualify for Bureau services are eligible. Prior to the passage of this Act, there has been minimal credit activity for the Western Oklahoma Tribes.

The Division of Roads is one of our services in which we have granted to the State a great deal of responsibility in the building and maintenance of Indian roads. Perhaps a better understanding and communication between this office and the tribes would result in a more effective road program for the Indians of Western Oklahoma.

*Trust responsibilities.*—The Office of Trust Responsibilities is comprised of four divisions: Land Operations, Real Estate Appraisal, Real Property Management, and Environmental Quality.

The Division of Land Operations functions as a technical arm of management in the protection, development and proper utilization of trust soil and water

resources. Agricultural technicians with conservation training lend assistance to Indian landowners and farm operators with farm planning, cropping systems, and conservation practices.

The Division of Real Estate Appraisal has the responsibility of preparing a professional, well-documented appraisal report to support every real property transaction occurring in trust and tribal land served by the Anadarko Area Office.

The Division of Real Property Management assists individual Indians and tribes in the use and management of approximately 504,913 acres of individually-owned land and 23,699 acres of tribally-owned land located in Western Oklahoma and Kansas. The Federal jurisdiction over these trust lands and the funds derived therefrom creates one of the major legal responsibilities of the Bureau in its capacity as trustee for such property.

Again, we would strongly recommend that the tribal lands and individual allotment—the remnants of the original reservations, be referred to in the Bureau of Indian Affairs regulations and official files as reservation lands, denoting the legal effect of such lands. In support of this, we quote from *Tonisooh v. U.S.* (186 Federal 2nd 93):

"A reservation is simply a part of the public domain set apart by proper authority for use and occupancy for general and limited purposes by Indians . . . The title to the allotted land was held by the United States in trust for the benefit of the Indian allottees and the United States retained exclusive jurisdiction over such lands and the allottees during the continuance of the trust period . . . It therefore seems to me that instead of the agreement of 1892 (Jerome Agreement) extinguishing the reservation, it rarely reduced the area thereof so that thereafter it embraced only the allotted lands . . . lands which form a part of an Indian reservation are not excluded from the reservation by reason of their allotment in severalty . . ."

And further, Title 18, Section 1151, defining "Indian Country":

"Indian Country, as used in this chapter means . . . (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through same . . ."

We would also suggest a stronger policy position by the Bureau in the implementation of its trusteeship responsibility in that a greater emphasis should be given to Indian landownership benefit and rights, with the same regard as a non-Indian landowner has for his land.

In response to Issue No. 2, the only practical advantage for the restoration of original reservation boundaries would be in any provision of eligibility and entitlement of Congressional Acts in providing Federal programs such as the Indian Financing Act and the geographical jurisdiction marking boundaries limiting responsibility of the tribe in providing tribal services to tribal members. In this regard, the Government should declare and recognize, in all of its regulations and documents that for any Federal purpose, any governmental projects, programs, and appropriations, former reservation boundaries would be the area served. Since most Western Oklahoma Tribes recognize and accept tribal membership as a prerequisite for all tribal benefits and services, irrespective of residence, it would not be fair to the tribes to Federally limit geographically the tribes' rights and desires to serve all of its tribal members. The acceptance by the Bureau or the Government of original reservation boundaries, as above suggested, would be a partial preemption by the Federal Government of this geographic area for strictly Indian purposes as opposed to any actions by local and State governments.

In response to Issue No. 3, which we have discussed to some extent in Issue No. 1, that portion relating to Real Property Management, we should add that although the law is clear as to the trust status of all Indian tribal and allotted trust lands, we reiterate that it would clarify and also be of positive benefit in referring to these lands as reservation lands, as the word legally implies. And further, that for Federal purposes, it would not be out of reason to refer to all the area within the former reservation boundaries as a reservation. Again, in our view, we found no language in the hearings of the Oklahoma Indian Welfare Act that changed existing sovereignty of the Western Oklahoma Tribes, as above described.

The clarification of the question, what comprised "Indian Country", was accomplished by the Acts of June 25, 1948 (62 Stat. 758) and May 24, 1949 (63 Stat. 94) which consolidated numerous conflicting and inconsistent provisions of law into a concise statement of the applicable law.

"Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian Country", as used in this chapter, means (a) all land within the limits of any Indian reservation, under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."

In our view, this Act supports our contention earlier stated, that exclusive Federal jurisdiction is applicable on all major crimes committed on Indian trust lands.

In response to Issue No. 4, we would support any effort in strengthening tribal civil and criminal jurisdiction on Indian lands in Western Oklahoma in those areas in which Congress has not pre-empted the field. In this regard, it would be important to this discussion to make the necessary distinction of the applicability of those laws that Congress initially enacted granting Federal jurisdiction. At the risk of oversimplification, we will attempt a chronology of Congressional Acts as they applied to the Indians of Oklahoma prior to Statehood and thereafter. With the initial land grants to the Five Civilized Tribes during and after the 1880's and their subsequent establishment of tribal governments, and upto May 2, 1890 (26 Stat. 88), tribal jurisdiction was supreme in Indian Territory. As to the so-called "Wild Tribes", who as a result of treaties were settled on reservations in Western Oklahoma, and were under military and tribal jurisdiction from the date of the treaties until April 10, 1888, at which time the President proclaimed by Executive Order authority for the creation of a Court of Indian Offenses, this Executive Order was later approved by Congress. The Court of Indian Offenses gone form and Federal sanction to tribal law and order jurisdiction. This arrangement was in effect until the passage of the initial Major Crimes Act of March 30, 1885 (23 Stat. 365; 18 USC 1153). All other crimes and misdemeanors remained under the jurisdiction of the military and tribal authorities. The Major Crimes Act covered all Indian reservations, except Indians of the Indian Territory who were still under exclusive tribal jurisdiction.

The next Congressional Act affecting jurisdictional authority was the General Allotment Act of February 6, 1887, *supra*. This act was amended by the Act of May 6, 1906 (34 Stat. 162) which did not change the jurisdictional aspects.

The important effect of this provision of the General Allotment Act as it applies to Western Oklahoma Tribes is that it continued exclusive Federal jurisdiction as long as the allotments remained in trust. (This provision did not apply to the Indian Tribes in Indian Territory.)

No further Congressional enactments disturbed this jurisdictional arrangement for Western Oklahoma Tribes until the creation of the Territory of Oklahoma, May 2, 1890 (26 Stat. 81), at which time Congress in the Territorial Organic Act provided as follows:

"That jurisdiction is hereby continued upon the district courts in the Territory of Oklahoma over all controversies arising between members or citizens of one tribe or nation of Indians and the members or citizens of other tribes or nations in the Territory of Oklahoma, and any citizen or member of one tribe or nation who may commit any offense or crime in said Territory against the person or property of a citizen or member of another tribe or nation shall be subject to the same punishment in the Territory of Oklahoma as he would be if both parties were citizens of the United States; and any person residing in the Territory of Oklahoma, in whom there is Indian blood, shall have the right to invoke the aid of courts therein for the protection of his person or property, as though he were a citizen of the United States; *Provided*, That nothing in this act contained shall be so construed as to give jurisdiction to the courts established in said Territory in controversies arising between Indians of the same tribe, while sustaining their tribal relations."

There seems to be some conflict between this provision and the Presidential Authority of creating the "Court of Indian Offenses which were in operation after the passage of the above act. Apparently, the Court of Indian Offenses in Western Oklahoma did litigate cases after the enactment of the Act of May 2, 1890 (26 Stat. 81) between Indians of different tribes and between Indians and non-Indians on minor offenses. The above act granted jurisdiction to the Territorial Courts in Oklahoma between Indians of different tribes and be-

tween Indians and non-Indians. Perhaps authority exists for present day Western Oklahoma tribes to create an Inter-tribal Police Force and Court of Minor Offenses under the authority used for the creation of the Court of Indian Offenses (Exhibits 8 and 9). Without this apparent conflict, it would appear that this provision granted jurisdiction to the Oklahoma Territorial Courts in controversies between Indians of different tribes and between Indians and non-Indians and would be subject to the same punishment as any other citizen with the following exceptions:

1. Exclusive Federal jurisdiction over the Major Crimes Act, supra.
2. Territorial courts would have no jurisdiction over controversies arising between Indians of the same tribe while sustaining their tribal relations, Supra.

The resulting jurisdictional status to Indians in Western Oklahoma were divided as follows:

1. Exclusive Federal jurisdiction for the specified major crimes (18 USC 1153).
2. Territorial district court jurisdiction and later State courts for all other crimes except crimes and controversies arising between tribal members of the same tribe.
3. Tribal jurisdiction would lay in those crimes and controversies between members of the same tribe. (Question: Can this be interpreted to include different tribes put on the same reservation under the same tribal government?)

The Oklahoma Territorial Organic Act (26 Stat. 81, May 2, 1890) also provided that

"Nothing in this act shall be construed to impair any right now pertaining to any Indians or Indian tribe in said Territory under the laws, agreements, and treaties of the United States, or to impair the rights of persons or property belonging to said Indians, or to affect the authority of the government of the United States to make any regulation or law respecting said Indians, their lands, property or other rights which it would have been competent to make or enact if this act had not been passed."

This did not disturb the existing jurisdictional situation existing in Western Oklahoma as explained earlier.

The next Congressional Act of any significance was the State of Oklahoma Enabling Act of June 16, 1906. (34 Stat. AL 267):

"That the inhabitants of all that part of the area of the United States now constituting the Territory of Oklahoma and the Indian Territory, as at present described, may adopt a constitution and become the State of Oklahoma, as hereinafter provided: *Provided*, That nothing contained in the said constitution shall be construed to limit or impair the rights of persons or property pertaining to the Indians of said Territories (so long as such rights shall remain unextinguished) or to limit or affect the authority of the Government of the United States to make any law or regulation respecting such Indians, their lands, property or other rights by treaties, agreement, law or otherwise, which it would have been competent to make if this Act had never been passed."

This restriction was also included in the Constitution of the State of Oklahoma effective November 16, 1907:

"The people inhabiting the State do agree and declare that they forever disclaim all rights and title in or to any unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian, tribe, nation; and that until the title to any such public land shall have been extinguished by the United States, the same shall be and remain subject to the jurisdiction, disposal, and control of the United States. Land belonging to citizens of the United States residing without the limits of the State shall never be taxed at a higher rate than the land belonging to residents thereof. No taxes shall be imposed by the State on lands or property belonging to or which may hereafter be purchased by the United States or reserved for its use."

The net effect of these provisions froze the status quo of the jurisdictional situation existing to that date, i.e., nothing was added and nothing taken away by the language in the Enabling Act and the Constitution of the State of Oklahoma, but more was restraining the State of Oklahoma from passing any laws that would limit or affect the authority of the United States Government relating to Indians, until otherwise authorized by Congress.

The Oklahoma Indian Welfare Act, supra, the next major Congressional enactment authorized the tribes in Western Oklahoma to formally organize constitutional governments under the regulations of the Secretary and to adopt a corporate charter. Such charter granted to the tribes all corporate powers under the

law of the State of Oklahoma, the right to participate in revolving loan funds and "to enjoy any other rights or privileges secured to an organized Indian tribe under the Indian Reorganization Act, supra. Although no specific reference is made in the Oklahoma Indian Welfare Act relative to the sanction or extinguishment of police powers by the tribes, the Senate version of the bill provide for the maintenance of an Indian police force. Further research would be necessary that would indicate at what time Indian police forces under the authority of the Court of Indian Offenses were abolished to these tribes and also the date that the special police officers in Western Oklahoma were taken out.

In summarizing law and order jurisdiction for Western Oklahoma, as we view it, is to the effect that these tribes not excepted under the General Allotment Act have tribal jurisdiction and authority over all controversies between members of the same tribe. State jurisdiction would lie in all crimes and controversies between Indians of different tribes and Indians and non-Indians. Exclusive Federal jurisdiction is retained for all crimes enumerated in the Major Crimes Act for crimes committed on all tribal and individual allotments. So it would appear that the tribes in Western Oklahoma would have the legal authority (sovereignty) to provide local tribal law and order services for minor offenses, i.e., drunkenness, assault and battery, i.e., police and courts.

We should also mention here that police and judges were appointed by the Bureau under the authority of the Court of Indian Offenses for the Western Oklahoma Tribes well past the 1920's and also a special police officer was provided by the Bureau of Indian Affairs up to the 1940's which does indicate a Federal concern and authority for the law and order responsibility for the Western Oklahoma Tribes. In this regard, we would suggest that without any Congressional change in jurisdictional status that it would be an improvement in the law and order situation for the Western Oklahoma Tribes to again appoint a special officer and an Indian police force which would be coordinated with the State and County law enforcement officers under the authority that was used for the Indians of this jurisdiction after Statehood. Again, because of the status and the economic and social mixing of the Western Oklahoma Tribes, we would suggest an amendment to the Oklahoma Territorial Organic Act, Supra, that would allow an inter-tribal police force and inter-tribal courts for minor offenses that arise during most inter-tribal activities. This would create no jurisdictional problem as each tribe has this right individually. It would only be authorizing the exercise of that remaining sovereignty that each individual tribe possesses to be used in an inter-tribal context. This seems to be the area of greatest need since most complaints are made by Indian people to State and county law enforcement people for offenses such as disturbing the peace, drunkenness, assault and battery, etc.

This would also complement State and county law enforcement officers who complain of not having the manpower and financing to police such inter-tribal activities. We would also suggest further review and research of the general authority of the executive arm of the Government under Sections 2 and 9 of the Act of July 9, 1832, and June 30, 1834, as there is a possibility that this existing authority may be all that is necessary in accomplishing the above recommendation. As a recommendation of lesser importance would be an Indian police force working through the County Sheriff's office with deputy commissions to assist these officers in the policing of inter-tribal activities. This could either be funded by the Bureau or by special funding from the Law Enforcement Assistance Administration.

The specific information you requested is furnished as follows :

1. Exhibit 6, Reservation Boundary Maps of the 18 tribal groups in Western Oklahoma.
2. Exhibit 3, All useable tribal and individual trust lands are under Farming and Grazing Leases in accordance with regulations.
3. Exhibit 3, To our knowledge there are no existing tribal law and order organizations although there has been much discussion on the subject.
4. At the present time the State of Oklahoma is not assessing nor are we paying any gross production taxes on lands or interest in lands acquired in trust under the Oklahoma Welfare Act. Also we are not aware of any instance in the past where the tax was paid on these titles.

In regard to what programs could be supported by gross production taxes if the legality of assessing such taxes is valid, we have made some calculations and estimates by agencies as to the amount of tax revenue. These are based

on last year's royalty collections on those tracts where an interest may be subject to gross production taxes. OSA 68, Art. 11, Sec. 1001, provides for gross production taxes of 7 percent of gross income.

	Gross income	Estimated tax revenue
Shawnee Agency.....	\$386.94	\$27.08
Pawnee Agency.....	1,067.53	74.72
Concho Agency.....	3,633.64	254.35
Anadarko Agency.....	34,235.57	2,396.48
Total.....		2,752.63

There have been no instructions or interpretations on how or when the gross production taxes are to be paid by the Secretary. In reviewing our acquisitions, it appears questionable whether it should be paid on those interests acquired under this authority. In House Report No. 2408 on S. 2047, 74th Congress, 2d Session, on the Oklahoma Indian Welfare Act, the 2nd paragraph of page 3 discusses Section 1 of the Bill and states ". . . all lands purchased are to be nontaxable so long as title remains in the United States save that provision is made for levying and collection a State gross production tax on oil and gas produced from newly acquired lands . . ." This implies to us that the intent of this Section was for those non-Indian taxable lands acquired in trust, being referred to as newly acquired lands.

The following paragraph on Section 2 of this same report provides a preference right to the Secretary to purchase restricted land offered for sale. It further states that exercise of this authority will permit continued Indian ownership of the land, rather than have it pass to white purchasers. These are two distinct sections in the Act which appear to relate to two separate actions with acquisitions that come within Section 1 subject to gross production taxes.

Section 7 of the Oklahoma Welfare Act also provides in effect that in those acquisitions made with funds appropriated under the Act of June 18, 1934 (48 Stat. 984), commonly referred to as the Indian Reorganization Act, the royalties, bonuses, or other revenues derived from mineral deposits underlying the lands shall be deposited in the Treasury of the United States and made available for acquisition of lands and for loans to Indians. In regard to this section, we are not aware of any lands acquired with loan funds appropriated in connection with these funds for either individual Indians or tribes.

"Since most of our acquisitions would fall under Section 2, being also cases where the purchaser used his own funds, the gross production taxes if levied and paid would be nominal."

In summary, we would support a strong policy position in providing a positive atmosphere and opportunity for the Western Oklahoma Tribes to take advantage of that remaining sovereignty not pre-empted by Congress.

As we have pointed out, the most obvious areas of tribal relations and tribal governmental powers that have not been used by Western Oklahoma Tribes are in the area of corporate powers of tribes and those remaining law and order authorities not pre-empted by the Major Crimes Act, and the Act of May 2, 1890, granting jurisdiction to territorial courts which was later assumed by the State Courts as the successor courts by the State of Oklahoma Enabling Act.

Without assessing blame for the status of Western Oklahoma Tribes as to their sovereign powers, we feel that Section 3 of the Oklahoma Indian Welfare Act of June 6, 1936 (49 Stat. 1907) in regard to corporate powers authorized under the charters would be sufficient to enable the tribes to organize a business-type operation to adequately take advantage of Federal programming in the development of their natural and human resources. Amendments to the Oklahoma Indian Welfare Act may be necessary for longer-term leases rather than the present 10 years limit for economic development purposes.

Our position in the area of law and order, i.e., criminal and civil jurisdiction, consistent with our discussion of this item, is as follows:

*Priority No. 1.*—Amend the Act of May 2, 1890, to allow intertribal jurisdiction as opposed to the present intra-tribal on those controversies between Western Oklahoma Tribes not pre-empted by Congress and leave State jurisdiction on controversies between non-Indian and Indian, i.e., unless the Secretary still

possesses general authority to accomplish the above without such amendment. The county and State authorities would probably welcome the Indians to police their own activities and as we pointed out earlier this would not be a contra to long-range Federal policy of making the Indians a full-fledged citizen but rather a positive effort of self-help in policing his own activities, and thereby be assured of a basic constitutional right of "equal protection of the laws" and "due process".

There still remains the question of financial ability to do what is necessary to accomplish the above. Whether the tribes want to spend their own money to create a "Court of Indian Offenses" or whether they would want Federal assistance in maintaining a court and police force. This subject would require some study by the tribes before any action can be taken.

If the tribes decide against forming their own court and police force for whatever reason, we would suggest the appointment of a special officer to help coordinate tribal self-help efforts with State and county law officers such as contracting a voluntary Indian police force that is now in existence.

Taxation, water and environmental controls are areas that the tribes may want to pursue more extensively from the standpoint of State intrusions on their sovereign powers. In this regard, we would recommend to the tribes that they obtain legal assistance in pressing for solutions to their problems where the State has made inroads especially on water rights.

We can assure you that any necessary administrative policy changes for the strengthening of tribal sovereignty will be made by this office. If present programming policy (This becomes especially important since the passage of PL 93-638, Indian Self-Determination and Education Assistance Act (88 Stat. 2204)) by the Bureau is to be effective, a strong and stable tribal government is a prerequisite and to have strong viable tribal governments is the achievement of tribal sovereignty.

We appreciate the opportunity to respond to your inquiry and would be happy to furnish any other further information or material you may need.

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*Area Director.*



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**APPENDIX III**

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**APPENDIX III**  
**CODE OF FEDERAL REGULATIONS**  
**CROSS REFERENCE TABLES**

***Introductory Statement***

Each regulation in the Code of Federal Regulations (CFR) cites the federal statutes or other legal authority which the regulation is designed to implement. This Table does the converse with regard to each statute-at-large, U.S. Code provision or executive order which specifically relates to federal/Indian law. Each statute-at-large, U.S. Code provision or executive order which is cited in the CFR as authority for a regulation specifically related to Indian affairs is listed in the column to the left of the Table. Every CFR regulation which cites that particular statute-at-large, U.S. Code provision or executive order is correspondingly listed in the column to the right of the Table:

Under each entry there is a reference to see another section entry. This is a "master card" entry for control purposes.

The bulk of federal/Indian law is compiled in Title 25 of the U.S. Code and the bulk of CFR regulations relating to Indian Affairs is contained in Title 25 CFR. Therefore, Part A of this Table relates exclusively to references from Titles other than 25 CFR. Part B of this Table relates to references contained in the remaining Title 25 of the CFR.

This Table was developed to provide a reference tool for work on the completion of the revision, consolidation and codification of Title 25 of the U.S. Code. Hopefully, it will provide a useful tool for those who are involved in working with federal/Indian law and Indian affairs. These tables are current through 1974.



## APPENDIX III

### CODE OF FEDERAL REGULATIONS

#### CROSS REFERENCE TABLES

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#### PART A

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- 5 USC 301  
Agriculture—Food Distribution  
See 7 USC 612c  
7 CFR Pt. 250
- 5 USC 301  
Dept. of Justice—Civil Rights Division and Land and  
Natural Resources Division  
See 28 USC 509, 510  
28 CFR Chpt. 1, Pt. 0
- 5 USC 301  
Mineral Resources—Geological Survey Operating Reg-  
ulations for Exploration, Development, and Produc-  
tion (Mining)  
See 25 USC 396  
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- 5 USC 301  
Money & Finances: Treasury—Fiscal Assistance to  
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See Public Law 92-512  
31 CFR Pt. 51
- 5 USC 307  
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and Appeals Procedure.  
See 43 USC 1201  
43 CFR Subtitle A  
Pt. 4 (Subpt. C)
- 5 USC 551, et seq.  
Public Lands: Interior—Regs. re Public Lands.  
Lands Disposition—Alaska Native Selections.  
See: 16 USC 668dd; 43 USC 1601; 48 USC ch. 2;  
72 Stat. 341; 77 Stat. 223; 80 Stat. 927 as amend;  
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43 CFR Pt. 2650  
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- 5 USC 551  
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laneous Selections.  
See: 24 Stat. 389 as amended; 34 Stat. 197; 36 Stat.  
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43 CFR Pt. 2650  
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- 5 USC 551 43 CFR Pt. 2650  
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- 5 USC 3302 5 CFR Pt. 213  
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- 7 USC 612 c 7 CFR Pt. 250  
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7 USC 1431b; 7 USC 1446a-1; 7 USC 1850; 22 USC  
1922; 42 USC 1755; 42 USC 1758; 42 USC 1855jjj;  
42 USC 3045f; 49 Stat. 774, Sec. 32; 50 Stat. 323;  
60 Stat. 231, 233; Sec. 6, 9, 60; 63 Stat. 1058, Sec.  
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Stat. 1792; Sec. 9; 79 Stat. 1212, Sec. 709; 82 Stat.  
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- 7 USC 1431 7 CFR Pt. 250  
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- 7 USC 1431 (note) 7 CFR Pt. 250  
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- 7 USC 1431b 7 CFR Pt. 250  
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- 7 USC 1446a-1 7 CFR Pt. 250  
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See 7 USC 612c
- 7 USC 1850 7 CFR Pt. 250  
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- 7 USC 1989 7 CFR Pt. 1800  
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7 USC 2012	7 CFR Pt. 271 Sec. 271.3
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7 USC 2013	7 CFR Pt. 271 Sec. 271.3
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7 USC 2014	7 CFR Pt. 271 Sec. 271.3
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7 USC 2015	7 CFR Pt. 271 Sec. 271.3
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7 USC 2016	7 CFR Pt. 271 Sec. 271.3
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7 USC 2017	7 CFR Pt. 271 Sec. 271.3
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7 USC 2018	7 CFR Pt. 271 Sec. 271.3
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7 USC 2020	7 CFR Pt. 271 Sec. 271.3
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7 USC 2021	7 CFR Pt. 271 Sec. 271.3
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7 USC 2022	7 CFR Pt. 271 Sec. 271.3
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7 USC 2024		7 CFR Pt. 271 Sec. 271.3
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7 USC 2036	Agriculture—Food Stamps See: 7 USC 2011	7 CFR Pt. 271 Sec. 271.3
7 USC 2037	Agriculture—Food Stamps See: 7 USC 2011	7 CFR Pt. 271 Sec. 271.3
7 USC 2038	Agriculture—Food Stamps See: 7 USC 2011	7 CFR Pt. 271 Sec. 271.3
7 USC 2039	Agriculture—Food Stamps See: 7 USC 2011	7 CFR Pt. 271 Sec. 271.3
7 USC 2040	Agriculture—Food Stamps See: 7 USC 2011	7 CFR Pt. 271 Sec. 271.3
7 USC 2041	Agriculture—Food Stamps - See: 7 USC 2011	7 CFR Pt. 271 Sec. 271.3
7 USC 2042	Agriculture—Food Stamps See: 7 USC 2011	7 CFR Pt. 271 Sec. 271.3
7 USC 2043	Agriculture—Food Stamps See: 7 USC 2011	7 CFR Pt. 271 Sec. 271.3
7 USC 2044	Agriculture—Food Stamps See: 7 USC 2011	7 CFR Pt. 271 Sec. 271.3
7 USC 2045	Agriculture—Food Stamps See: 7 USC 2011	7 CFR Pt. 271 Sec. 271.3
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- 7 USC 2049 7 CFR Pt. 271  
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- 7 USC 2052 7 CFR Pt. 271  
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- 8 USC 3 43 CFR Pt. 2530  
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- 8 USC 226a 8 CFR Pt. 289  
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 1359; 45 Stat. 401; 54 Stat. 670; 66 Stat. 173, 224,  
 234, Secs. 103, 262, 289.
- 8 USC 451 8 CFR Pt. 289  
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- 8 USC 1103 8 CFR Pt. 289  
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- 8 USC 1302 8 CFR Pt. 289  
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- 8 USC 1359 8 CFR Pt. 289  
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- 16 USC 508b 30 CFR Pt. 231  
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- 16 USC 668a 50 CFR Chapt. 1  
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 See: 35 F.R. 11633, July 21, 1970, 35 F.R. 12658, Aug. 8,  
 1970.
- 16 USC 668dd 43 CFR Pt. 2650  
Subpt. 2650  
 Public Lands: Interior—Regs. re Public Lands, Lands  
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- 16 USC 742j-1 50 CFR Chapt. 1  
(Subchapt B)—Pt. 18  
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 Wildlife—Marine Mammals—General Exceptions.  
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- 16 USC 1151 50 CFR Chpt. 2  
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- 16 USC 1152 50 CFR Chpt. 2  
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- 16 USC 1153 50 CFR Chpt. 2  
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- 16 USC 1154 50 CFR Chpt. 2  
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ceptions.
- See: 16 USC 1361
- 16 USC 1155 50 CFR Chpt. 2  
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- See: 16 USC 1361
- 16 USC 1156 50 CFR Chpt. 2  
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- See: 16 USC 1361
- 16 USC 1157 50 CFR Chpt. 2  
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- See: 16 USC 1361
- 16 USC 1158 50 CFR Chpt. 2  
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- Wildlife and Fisheries; National Marine Fisheries  
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- See: 16 USC 1361
- 16 USC 1159 50 CFR Chpt. 2  
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- See: 16 USC 1361
- 16 USC 1160 50 CFR Chpt. 2  
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- Wildlife and Fisheries; National Marine Fisheries  
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- See: 16 USC 1361

16 USC 1161

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**Wildlife and Fisheries; National Marine Fisheries Service—Marine Mammals—Regulations Governing the Taking & Importing of Marine Mammals—Exceptions.**

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16 U.S.C. 1162

50 CFR Chpt. 2  
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**Wildlife and Fisheries; National Marine Fisheries Service—Marine Mammals—Regulations Governing the Taking & Importing of Marine Mammals—Exceptions.**

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16 USC 1163

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**Wildlife and Fisheries; National Marine Fisheries Service—Marine Mammals—Regulations Governing the Taking & Importing of Marine Mammals—Exceptions.**

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16 USC 1164

50 CFR Chpt. 2  
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**Wildlife and Fisheries; National Marine Fisheries Service—Marine Mammals—Regulations Governing the Taking & Importing of Marine Mammals—Exceptions.**

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16 USC 1165

50 CFR Chpt. 2  
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**Wildlife and Fisheries; National Marine Fisheries Service—Marine Mammals—Regulations Governing the Taking & Importing of Marine Mammals—Exceptions.**

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**Wildlife and Fisheries; National Marine Fisheries Service—Marine Mammals—Regulations Governing the Taking & Importing of Marine Mammals—Exceptions.**

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16 USC 1167

50 CFR Chpt. 2  
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**Wildlife and Fisheries; National Marine Fisheries Service—Marine Mammals—Regulations Governing the Taking & Importing of Marine Mammals—Exceptions.**

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- 16 USC 1176** **50 CFR Chpt. 2**  
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- Wildlife and Fisheries; National Marine Fisheries Service—Marine Mammals—Regulations Governing the Taking & Importing of Marine Mammals—Exceptions.**  
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50 CFR Chpt. 2  
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50 CFR Chapt. 1  
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50 CFR Chapt. 1  
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50 CFR Chpt. 2  
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20 USC 241aa-241ff

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- 20 USC 887c(b) 45 CFR Pt. 187  
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- 20 USC 887c(a) (1) and (b) 45 CFR Pt. 187  
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- 20 USC 887c(a) (2) and (c) 45 CFR Pt. 187  
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- See: 20 USC 887c
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- 20 USC 1201 45 CFR Pt. 188  
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- 20 USC 1211a(a)** **45 CFR 188**  
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- 20 USC 1211a(b) 45 CFR Pt. 188  
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- See: 20 USC 1211a
- 20 USC 1211a(c) (2) 45 CFR Pt. 188  
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- Public Welfare: Office of Education—Financial Assistance for the Improvement of Educational Opportunities for Adult Indians—Applications for Financial Assistance.
- See: 20 USC 1211a
- 20 USC 1211a 45 CFR Pt. 188  
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- Public Welfare: Office of Education—Financial Assistance for the Improvement of Educational Opportunities for Adult Indians—Criteria for Assistance.
- See: 20 USC 1211a (a) (4) ; 86 Stat. 342 ; P.L. 89-750 as amended
- 20 USC 1211a(a) (4) 45 CFR Pt. 188  
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- See: 20 USC 1211a
- 20 USC 1211a 45 CFR Pt. 188  
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- Public Welfare: Office of Education—Financial Assistance for the Improvement of Educational Opportunities for Adult Indians—General Provisions.
- See: 20 USC 1232c (a) ; 20 USC 1232c (b) (2) ; 20 USC 1232c (b) (3) ; 31 USC 628 ; 86 Stat. 342 ; P.L. 89-750 as amended ; OMB Circular No. A-73 ; OMB Circular No. A-102 attachment C ; OMB Circular No. A-102 attachment G, 2, attachment C, 1.
- 20 USC 1221b 45 CFR Pt. 186  
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- 20 USC 1221h** **45 CFR 187**  
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- 20 USC 1221h** **45 CFR Pt. 188**  
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- 20 USC 1232c(a)** **45 CFR Pt. 186**  
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- 25 USC 463** **43 CFR Pt. 3820 Subpt. 3825**
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- 42 USC 2001** 42 CFR Pt. 36  
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- 43 USC 387** 30 CFR Pt. 231  
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- 43 USC 617** **43 CFR Pt. 417**  
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- 43 USC 1102** **43 CFR Pt. 2780**  
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- 43 USC 1201** **43 CFR Subtitle A**  
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- 43 USC 1201** **3 CFR Pt. 1850**  
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- 43 USC 1601** **43 CFR Pt. 2650  
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- 24 Stat. 389, Sec. 4  
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- 43 CFR Pt. 2530  
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- 36 Stat. 855, Sec. 1, 2  
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- 43 CFR Subtitle A  
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- Public Lands: Interior—Off. of Sec.—Indian Probate  
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- 36 Stat. 856  
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- 43 CFR Subtitle A  
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- 36 Stat. 859, Sec. 17
- 43 CFR Pt. 2530  
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- 38 Stat. 584, Sec. 1
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- 35 F.R. 12658 50 CFR Chapt. 1  
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### APPENDIX III

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- 5 USC 301** 2 CFR Chap. 1  
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- 5 USC 301** **25 CFR Chap. 1**  
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- 5 USC 301** **25 CFR Chap. 1**  
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- 5 USC 301** **25 CFR Chap. 1**  
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- 5 USC 301 25 CFR Chap. 1  
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- 5 USC 301 25 CFR Chap. 1  
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- 5 USC 301** **25 CFR Chap. 1**  
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- 16 USC 301** **25 CFR Chap. 1**  
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- 25 USC 2 25 CFR Chap. 1  
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- 25 USC 2 25 CFR Chap. 1  
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- 25 USC 2 25 CFR Chap. 1  
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- 25 USC 2 25 CFR Chap. 1  
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- 25 USC 2 25 CFR Chap. 1  
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- 25 USC 2 25 CFR Chap. 1  
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- 25 USC 2 25 CFR Chap. 1  
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- 25 USC 9 25 CFR Chap. 1  
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- 25 USC 9 25 CFR Chap. 1  
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- 25 USC 9 25 CFR Chap. 1  
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- 25 USC 9 25 CFR Chap. 1  
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- 25 USC 9 25 CFR Chap. 1  
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- 25 USC 9 25 CFR Chap. 1  
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- 25 USC 9 25 CFR Chap. 1  
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- 25 USC 9 25 CFR Chap. 1  
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- 25 USC 68 25 CFR Chap. 1  
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- 25 USC 331 25 CFR Chap. 1  
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- 25 USC 345 25 CFR Chap. 1  
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- 25 USC 372 25 CFR Chap. 1  
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- 25 USC 372** **25 CFR Chap. 1**  
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- 25 USC 375** **25 CFR Chap. 1**  
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- 25 USC 375d** **25 CFR Chap. 1**  
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- 25 USC 380** **25 CFR Chap. 1**  
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- 25 USC 385 25 CFR Chap. 1  
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- 25 USC 385 25 CFR Chap. 1  
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- 25 USC 385 25 CFR Chap. 1  
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- 25 USC 385 25 CFR Chap. 1  
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- 25 USC 385 25 CFR Chap. 1  
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- 25 USC 385 25 CFR Chap. 1  
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- 25 USC 385 25 CFR Chap. 1, Subchap. R., Pt. 196  
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- 25 USC 385 25 CFR Chap. 1, Subchap. R., Pt. 199  
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- 25 USC 385 25 CFR Chap. 1, Subchap. R., Pt. 200  
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- 25 USC 385 25 CFR Chap. 1, Subchap. R., Pt. 201  
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- 25 USC 385 25 CFR Chap. 1, Subchap. S., Pt. 211  
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- 25 USC 385 25 CFR Chap. 1, Subchap. S., Pt. 216  
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- 25 USC 385 25 CFR Chap. 1, Subchap. T., Pt. 221  
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- 25 USC 386 25 CFR Chap. 1, Subchap. S., Pt. 211  
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- 25 USC 393 25 CFR Chap. 1  
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- 25 USC 396 25 CFR Chap. 1  
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- 25 USC 407 25 CFR Chap. 1  
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- 25 USC 453** **25 CFR Chap. 1**  
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- 25 USC 454** **25 CFR Chap. 1**  
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- 25 USC 454** **25 CFR Chap. 1**  
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- 25 USC 455** **25 CFR Chap. 1**  
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- 25 USC 466** **25 CFR Chap. 1**  
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- 25 USC 466** **25 CFR Chap. 1**  
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- 25 USC 478a** **25 CFR Chap. 1**  
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- 25 USC 476 25 CFR Chap. 1  
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- 25 USC 775 25 CFR Chap. 1  
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- 25 USC 786 25 CFR Chap. 1  
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- 25 USC 787 25 CFR Chap. 1  
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- 25 USC 788 25 CFR Chap. 1  
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- 25 USC 875 25 CFR Chap. 1  
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- 25 USC 911 25 CFR Chap. 1  
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- 25 USC 967 25 CFR Chap. 1  
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- 25 USC 971 25 CFR Chap. 1  
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Sections 43d.1-43d.13

See: 25 USC 1012; 25 USC 1013; 25 USC 1014; 25 USC 1015; Secs. 1-5, 78 Stat. 563

25 USC 1012

25 CFR Chap. 1  
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Bureau of Indian Affairs; Enrollment; Preparation of a Roll to Serve as the Basis for the Distribution of the Judgment Funds Awarded the Snake or Palute Indians of the Former Malheur Reservation.

Sections 43d.1-43d.13

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25 USC 1013

25 CFR Chap.1  
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Sections 43d.1-43d.13

See: 25 USC 1011

25 USC 1014

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Sections 43d.1-43d.13

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25 CFR Chap. 1  
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25 USC 1031

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Sections 43b.1-43b.14

See: 25 USC 1032; 25 USC 1033; 25 USC 1034; 25 USC 1035; 25 USC 1036; 25 USC 1037; 25 USC 1038; Secs. 1-7, 78 Stat. 555.

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25 CFR Chap. 1  
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Sections 43b.1-43b.14

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Sections 43b.1-43b.14

See: 25 USC 1031

25 USC 1034

25 CFR Chap. 1  
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Sections 43b.1-43b.14

See: 25 USC 1031

25 USC 1035

25 CFR Chap. 1  
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**Bureau of Indian Affairs; Enrollment; Preparation of a Roll to Serve as the Basis for the Distribution of the Judgment Funds Awarded the Cherokee Band of Shawnee Indians.**

Sections 43b.1-43b.14

See: 25 USC 1031

25 USC 1036

25 CFR Chap. 1  
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**Bureau of Indian Affairs; Enrollment; Preparation of a Roll to Serve as the Basis for the Distribution of the Judgment Funds Awarded the Cherokee Band of Shawnee Indians.**

Sections 43b.1-43b.14

See: 25 USC 1031

25 USC 1037

25 CFR Chap. 1  
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Sections 43b.1-43b.14

See: 25 USC 1031

25 USC 1038

25 CFR Chap. 1  
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Sections 43b.1-43b.14

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- 25 USC 1051** **25 CFR Chap. 1**  
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- 25 USC 1052** **25 CFR Chap. 1**  
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- 25 USC 1053** **25 CFR Chap. 1**  
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**Sections 43c.1-43c.13**  
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- 25 USC 1054** **25 CFR Chap. 1**  
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**Sections 43c.1-43c.13**  
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- 25 USC 1055** **25 CFR Chap. 1**  
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**Sections 43c.1-43c.13**  
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- 25 USC 1248** **25 CFR Chap. 1**  
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**Sections 43g.1-43g.14**  
**See: 5 USC 301**
- 41 USC 6b** **25 CFR Chap. 1**  
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- 41 USC 6b 25 CFR Chap. 1  
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- 42 USC 2000e(b) 25 CFR Chap. 1  
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- 42 USC 2000e-2(1) 25 CFR Chap. 1  
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- 43 USC 1457 25 CFR Chap. 1  
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- 48 USC 250k 25 CFR Chap. 1  
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- 48 USC 358 25 CFR Chap. 1  
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- 48 USC 358a 25 CFR Chap. 1  
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- Sec. 15, 26 Stat. 1101  
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Sections 131.1-131.20  
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25 CFR Chap. 1  
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- Secs. 1, 2  
31 Stat. 246  
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31 Stat. 1006 as amended  
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 25 CFR Chap. 1  
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- 34 Stat. 137  
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 25 CFR Chap. 1  
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- Sec. 3, 4  
 34 Stat. 225 as amended  
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 25 CFR Chap. 1  
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- 34 Stat. 539  
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- 34 Stat. 539  
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- 34 Stat. 1015** **25 CFR Chap. 1**  
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- 34 Stat. 1018** **25 CFR Chap. 1**  
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- 34 Stat. 1018** **25 CFR Chap. 1**  
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- 34 Stat. 1024** **25 CFR Chap. 1**  
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- 34 Stat. 1026** **25 CFR Chap. 1**  
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- 34 Stat. 1034 25 CFR Chap. 1  
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- 35 Stat. 70 25 CFR Chap. 1  
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- 35 Stat. 72 25 CFR Chap. 1  
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- 35 Stat. 05 25 CFR Chap. 1  
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- 35 Stat. 07 25 CFR Chap. 1  
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- 35 Stat. 312 25 CFR Chap. 1  
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- 35 Stat. 312 25 CFR Chap. 1  
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Sections 174.1-174.49

See: 25 USC 68

35 Stat. 816

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Sections 174.1-174.49

See: 25 USC 68

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35 Stat. 444

25 CFR Chap. 1  
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Sections: 121.1-121.35

See: 5 USC 301

35 Stat. 781

25 CFR Chap. 1  
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Sections 172.1-172.38

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- Bureau of Indian Affairs; Irrigation Projects; Black-foot Irrigation Project, Montana.  
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- Secs. 1, 3  
36 Stat. 270  
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- 25 CFR Chap. 1  
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- Bureau of Indian Affairs; Irrigation Projects; Colville Irrigation Project, Washington.  
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- Secs. 1, 3  
36 Stat. 270  
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- 25 CFR Chap. 1  
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- Bureau of Indian Affairs; Irrigation Projects; Crow Irrigation Project, Montana.  
Sections 193-193.21  
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- Secs. 1, 3  
36 Stat. 270  
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- 25 CFR Chap. 1  
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- Bureau of Indian Affairs; Irrigation Projects; Flat-head Irrigation Project, Montana.  
Sections 194.1-194.23  
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- Sec. 1, 3  
36 Stat. 270  
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- 25 CFR Chap. 1  
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- Bureau of Indian Affairs; Irrigation Projects; Flat-head, Mission, and Jocko Valley Irrigation Districts, Montana.  
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36 Stat. 270  
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- 25 CFR Chap. 1  
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- Bureau of Indian Affairs; Irrigation Projects; Fort Belknap Irrigation Project, Montana.  
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- Secs. 1, 3  
36 Stat. 270  
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- 25 CFR Chap. 1  
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- 25 CFR Chap. 1  
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- Bureau of Indian Affairs; Irrigation Projects; Wapato Irrigation Project, Washington.  
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- Secs. 1, 3  
36 Stat. 270  
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- 25 CFR Chap. 1  
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- Bureau of Indian Affairs; Irrigation Projects; Wind  
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- Secs. 1, 3  
36 Stat. 270  
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- 25 CFR Chap. 1  
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- Bureau of Indian Affairs; Construction; Partial Pay-  
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- Secs. 1, 3  
36 Stat. 270  
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- 25 CFR Chap. 1  
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- Bureau of Indian Affairs; Construction; Reimburse-  
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- Secs. 1, 3  
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- 25 CFR Chap. 1  
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- Bureau of Indian Affairs; Operation and Maintenance;  
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- Secs. 1, 3  
36 Stat. 272
- 25 CFR Chap. 1  
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- Secs. 1, 3  
36 Stat. 272
- 25 CFR Chap. 1  
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- Bureau of Indian Affairs; Patents, Allotments and  
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- 36 Stat. 272  
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- 25 CFR Chap. 1  
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- 36 Stat. 272  
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- 25 CFR Chap. 1  
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- 36 Stat. 272  
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- 25 CFR Chap. 1  
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- Bureau of Indian Affairs; Irrigation Projects; Crow  
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- 25 CFR Chap. 1  
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- Bureau of Indian Affairs; Irrigation Projects; Flat-  
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- 36 Stat. 272  
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- 25 CFR Chap. 1  
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- 36 Stat. 272  
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- 25 CFR Chap. 1  
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- 36 Stat. 272  
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- 36 Stat. 272  
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- 25 CFR Chap. 1  
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- 25 CFR Chap. 1  
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- Sec. 1  
36 Stat. 855  
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- 25 CFR Chap. 1  
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- Bureau of Indian Affairs; Fiscal and Financial Affairs; Deposit of Indian Funds in Banks.  
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- Sec. 1, 2  
36 Stat. 855  
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- 25 CFR Chap. 1  
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- 36 Stat. 856  
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36 Stat. 856
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- 25 CFR Chap. 1  
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- Bureau of Indian Affairs; Leasing and Permitting; Leasing and Permitting.  
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36 Stat. 856
- 25 CFR Chap. 1  
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- Bureau of Indian Affairs; Grazing; General Grazing Regulations.  
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- Secs. 7, 8  
36 Stat. 857
- 25 CFR Chap. 1  
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- 25 CFR Chap. 1  
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- 37 Stat. 86
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39 Stat. 128
- 25 CFR Chap. 1  
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39 Stat. 128
- 25 CFR Chap. 1  
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39 Stat. 137
- 25 CFR Chap. 1  
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- Bureau of Indian Affairs; Forestry; Sale of Forest Products, Red Lake Indian Reservation, Minnesota.  
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39 Stat. 142
- 25 CFR Chap. 1  
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- Sec. 1**  
39 Stat. 519
- 25 CFR Chap. 1  
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- 39 Stat. 969**
- 25 CFR Chap. 1  
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- 39 Stat. 970**
- 25 CFR Chap. 1  
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- Bureau of Indian Affairs; Patents, Allotments & Sales;  
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- 25 CFR Chap. 1  
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- 40 Stat. 564**
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40 Stat 579
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**See: 25 USC 68**

**Sec. 18  
41 Stat. 426**

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- 41 Stat. 751 25 CFR Chap. 1  
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- Sec. 6 25 CFR Chap. 1  
 41 Stat. 753 Subchap. P., Pt. 173  
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- Sec. 12 25 CFR Chap. 1  
 41 Stat. 755 Subchap. K., Pt. 122  
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- 41 Stat. 1232 25 CFR Chap. 1  
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- Sec. 1 25 CFR Chap. 1  
 41 Stat. 1232 Subchap. N., Pt. 151  
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- Sec. 26 25 CFR Chap. 1  
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- Sec. 5 25 CFR Chap. 1  
 43 Stat. 476 Subchap. S., Pt. 215  
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- Sec. 17 25 CFR Chap. 1  
 43 Stat. 636 Subchap. L., Pt. 181  
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- 43 Stat. 641 25 CFR Chap. 1  
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- 44 Stat. 230 25 CFR Chap. 1  
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- 44 Stat. 658 25 CFR Chap. 1  
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- Sec. 6 25 CFR Chap. 1  
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 44 Stat. 650  
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- 44 Stat. 804 25 CFR Chap. 1  
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- 44 Stat. 1365 25 CFR Chap. 1  
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- 45 Stat. 210 25 CFR Chap. 1  
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- 45 Stat. 210 25 CFR Chap. 1  
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- 45 Stat. 211 25 CFR Chap. 1  
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- 45 Stat. 312 25 CFR Chap. 1  
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 45 Stat. 405 Subchap. P., Pt. 174  
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- 45 Stat. 750 25 CFR Chap. 1  
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- Sec. 7, 45 Stat. 1478 25 CFR Chap. 1  
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- Secs. 1, 2 25 CFR Chap. 1  
 45 Stat. 1478 Subchap. Q., Pt. 183  
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- 45 Stat. 1479 25 CFR Chap. 1  
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- Sec. 9 25 CFR Chap. 1  
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- 46 Stat. 1494 25 CFR Chap. 1  
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- 46 Stat. 1495 25 CFR Chap. 1  
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- 47 Stat. 564 25 CFR Chap. 1  
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- Sec. 1 25 CFR Chap. 1  
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- Sec. 7 25 CFR Chap. 1  
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- Sec. 8 25 CFR Chap. 1  
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- 47 Stat. 1417 25 CFR Chap. 1  
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- 47 Stat. 1417 25 CFR Chap. 1  
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- C. 158**  
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 25 CFR Chap. 1  
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 25 CFR Chap. 1  
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**48 Stat. 987**  
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**48 Stat. 987**  
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48 Stat. 987  
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for Mining.  
Sections 174.1-174.49  
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25 CFR Chap. 1  
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- 48 Stat. 988  
Bureau of Indian Affairs; Leasing and Permitting;  
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25 CFR Chap. 1  
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- 48 Stat. 988  
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25 CFR Chap. 1  
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- 48 Stat. 988  
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Lands for Mining.  
Sections 171.1-171.30  
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25 CFR Chap. 1  
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- 48 Stat. 988  
Bureau of Indian Affairs; Mining; Leasing of Allotted  
Lands for Mining.  
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25 CFR Chap. 1  
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- 48 Stat 988  
Bureau of Indian Affairs; Mining; Leasing of Re-  
stricted Lands of Members of Five Civilized Tribes,  
Okla. for Mining.  
Sections 174.1-174.40  
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25 CFR Chap. 1  
Subchap. P., Pt. 174
- Sec. 55  
49 Stat 781  
Bureau of Indian Affairs; Leasing and Permitting;  
Leasing and Permitting.  
Sections 131.1-131.20  
See: 5 USC 301  
25 CFR Chap. 1  
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49 Stat. 115

25 CFR Chap. 1  
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Sections 131.1-131.20

See: 5 USC 301

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Pt. 30149 Stat. 891  
as amendedIndian Arts and Crafts Board, Dept. of Interior;  
Navajo, Pueblo, and Hopi Silver and Turquoise  
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Sections 301.1-301.8

See: 25 USC 305a

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25 CFR Chap. II  
Pt. 30449 Stat. 891  
as amendedIndian Arts and Crafts Board, Dept. of Interior;  
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Mark.

Sections 304.1-304.0

See: 25 USC 305a

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25 CFR Chap. II  
Pt. 30749 Stat. 891  
as amendedIndian Arts and Crafts Board, Dept. of Interior;  
Navajo All-Wool Woven Fabrics; Use of Government  
Certificate of Genuineness.

Sections 307.1-307.13

See: 25 USC 305a

Sec. 2

25 CFR Chap. II  
Pt. 30849 Stat. 891  
as amendedIndian Arts and Crafts Board, Dept. of Interior;  
Regulations for Use of Certificates of the Indian  
Arts and Crafts Board to be attached to their Trade-  
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Production and Sale of Genuine Handicrafts.

Sections 308.1-308.4

See: 25 USC 305a

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25 CFR Chap. II  
Pt. 31049 Stat. 891  
as amendedIndian Arts and Crafts Board, Dept. of Interior;  
Use of Government Marks of Genuineness for Alaskan  
Indian and Alaskan Eskimo Hand-Made Products.

Sections 310.1-310.7

See: 25 USC 305a

Sec. 3

25 CFR Chap. II  
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49 Stat. 892

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Sections 301.1-301.8

See: 25 USC 305a

- Sec. 3** 25 CFR Chap. II  
**49 Stat. 892** Pt. 304  
 Indian Arts and Crafts Board, Dept. of Interior;  
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 Sections 304.1-304.9  
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- Sec. 3** 25 CFR Chap. II  
**49 Stat. 892** Pt. 307  
 Indian Arts and Crafts Board, Dept. of Interior;  
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 Sections 307.1-307.13  
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- Sec. 3** 25 CFR Chap. II  
**49 Stat. 892** Pt. 308  
 Indian Arts and Crafts Board, Dept. of Interior;  
 Regulations for Use of Certificates of the Indian  
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 marks by Indian Enterprises Concerned with the  
 Production and Sale of Genuine Handicrafts.  
 Sections 308.1-308.4  
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- Sec. 3** 25 CFR Chap. II  
**49 Stat. 892** Pt. 310  
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 of Government Marks of Genuineness for Alaskan  
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 Sections 310.1-310.7  
 See: 25 USC 305a
- Sec. 2** 25 CFR Chap. 1  
**49 Stat. 1089** Subchap. U., Pt. 231  
 Bureau of Indian Affairs; Electric Power System;  
 Colorado River Irrigation Project, Ariz.  
 Sections 231.1-231.54  
 See: 5 USC 301
- 49 Stat. 1185** 25 CFR Chap. 1  
Subchap. L., Pt. 131  
 Bureau of Indian Affairs; Leasing and Permitting;  
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 Sections 131.1-131.20  
 See: 5 USC 301
- Sec. 2,** 25 CFR Chap. 1  
**49 Stat. 1250** Subchap. H., Pt. 88  
 Bureau of Indian Affairs; Economic Enterprises; In-  
 dian Fishing in Alaska.  
 Sections 88.1-88.6; 88.3; 88.6  
 See: 25 USC 2
- Secs. 1, 2** 25 CFR Chap. 1  
**49 Stat. 1250** Subchap. P., Pt. 171  
 Bureau of Indian Affairs; Mining; Leasing of Tribal  
 Lands for Mining.  
 Sections 171.1-171.80  
 See: 25 USC 68

- Sec. 1  
49 Stat. 1250  
Bureau of Indian Affairs; Mining; Surface Exploration, Mining, and Reclamation of Lands.  
Sections 177.1-177.12  
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25 CFR Chap. 1  
Subchap. P., Pt. 177
- Sec. 6  
49 Stat. 1521  
as amended  
Bureau of Indian Affairs; Rights-of-Way-Roads; Roads of the Bureau of Indian Affairs.  
Sections 162.1-162.19  
See: 28 USC 101(a)  
25 CFR Chap. 1  
Subchap. O., Pt. 162
- 49 Stat. 1967  
Bureau of Indian Affairs; Probate; Estates of Indians of the Five Civilized Tribes.  
Sections 16.1 thru 16.9  
See: 5 USC 301  
25 CFR Chap. 1  
Subchap. C, Pt. 10
- Sec. 8  
49 Stat. 1967  
Bureau of Indian Affairs; Leasing and Permitting; Leasing and Permitting.  
Sections 181.1-181.20  
See: 5 USC 801  
25 CFR Chap. 1  
Subchap. L., Pt. 131
- 49 Stat. 1967  
Bureau of Indian Affairs; Mining; Surface Exploration, Mining, and Reclamation of Lands.  
Sections 177.1-177.12  
See: 5 USC 801  
25 CFR Chap. 1  
Subchap. P., Pt. 177
- Sec. 9  
49 Stat. 1968  
Bureau of Indian Affairs; Mining; Leasing of Tribal Lands for Mining.  
Sections 171.1-171.30  
See: 25 USC 68  
25 CFR Chap. 1  
Subchap. P., Pt. 171
- Sec. 9  
49 Stat. 1968  
Bureau of Indian Affairs; Mining; Leasing of Allotted Lands for Mining.  
Sections 172.1-172.33  
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25 CFR Chap. 1  
Subchap. P., Pt. 172
- Sec. 9  
49 Stat. 1968  
Bureau of Indian Affairs; Mining; Leasing of Restricted Lands of Members of Five Civilized Tribes, Okla. for Mining.  
Sections 174.1-174.49  
See: 25 USC 68  
25 CFR Chap. 1  
Subchap. P., Pt. 174

- 50 Stat. 68 25 CFR Chap. 1  
Subchap. P., Pt. 176  
**Bureau of Indian Affairs; Mining; Lead and Zinc Mining Operations and Leases, Quapaw Agency.**  
**Sections 176.0-176.25**  
**See: Sec. 26, 41 Stat 1248.**
- Sec. 3, 50 Stat. 900 25 CFR Chap. 1  
Subchap. H., Pt. 90  
**Bureau of Indian Affairs; Economic Enterprises; Reindeer in Alaska.**  
**Sections 90.1-90.3**  
**See: 48 USC 250b**
- Sec. 12, 50 Stat. 902 25 CFR Chap. 1  
Subchap. H., Pt. 90  
**Bureau of Indian Affairs; Economic Enterprises; Reindeer in Alaska.**  
**Sections 90.1-90.3**  
**See: 48 USC 250b**
- 52 Stat. 193 25 CFR Chap. 1  
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**Bureau of Indian Affairs; Irrigation Projects; Concessions, Permits and Leases on Lands Withdrawn or Acquired in Connection with Indian Irrigation Projects.**  
**Sections 203.0-203.23**  
**See: 25 USC 300**
- 52 Stat. 347 25 CFR Chap. 1  
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**Bureau of Indian Affairs; Mining; Surface Exploration, Mining, and Reclamation of Lands.**  
**Sections 177.1-177.12**  
**See: 5 USC 301**
- Sec. 4 25 CFR Chap. 1  
Subchap. P., Pt. 171  
52 Stat. 348  
**Bureau of Indian Affairs; Mining; Leasing of Tribal Lands for Mining.**  
**Sections 171.1-171.30**  
**See: 25 USC 68**
- Sec. 4 25 CFR Chap. 1  
Subchap. P., Pt. 172  
52 Stat. 348  
**Bureau of Indian Affairs; Mining; Leasing of Allotted Lands for Mining.**  
**Sections 172.1-172.33**  
**See: 25 USC 68**
- Sec. 4 25 CFR Chap. 1  
Subchap. P., Pt. 174  
52 Stat. 348  
**Bureau of Indian Affairs; Mining; Leasing of Restricted Lands of Members of Five Civilized Tribes, Okla. for Mining.**  
**Sections 174.1-174.40**  
**See: 25 USC 68**

- 52 Stat. 1084** 25 CFR Chap. 1  
Subchap. G., Pt. 74  
**Bureau of Indian Affairs; Tribal Government; Government of Indian Villages, Osage Reservation Oklahoma**  
 Sections 74.1-74.15; 74.3; 74.4; 74.5; 74.7; 74.11; 74.14.  
 See: 34 Stat. 539
- C 210** 25 CFR Chap. 1  
**53 Stat. 840** Subchap. N., Pt. 151  
**Bureau of Indian Affairs; Grazing; General Grazing Regulations.**  
 Sections 151.1-151.25  
 See: 5 USC 301
- 53 Stat 840** 25 CFR Chap. 1  
Subchap. W., Pt. 251  
**Bureau of Indian Affairs; Miscellaneous Activities; Licensed Indian Traders.**  
 Sections 251.1-251.20  
 See: 25 USC 68
- 53 Stat. 840** 25 CFR Chap. 1  
Subchap. W., Pt. 252  
**Bureau of Indian Affairs; Miscellaneous Activities; Traders on Navajo, Zuni, and Hopi Reservations.**  
 Sections 252.1-252.28  
 See: 25 USC 68
- Sec. 2** 25 CFR Chap. 1  
**53 Stat. 1128** Subchap. J., Pt. 109  
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 Sections 109.1-109.20  
 See: 25 USC 572
- Sec. 10** 25 CFR Chap. 1  
**54 Stat. 64** Subchap. F, Pt. 43  
**Bureau of Indian Affairs; Enrollment; Enrollment of Indians of the Cabazon, Augustine, and Torres-Martinez Bands of Mission Indians in California.**  
 Sections 43.1-43.12  
 See: Sec. 5, 64 Stat. 471
- 54 Stat. 422** 25 CFR Chap. 1  
Subchap. U., Pt. 231  
**Bureau of Indian Affairs; Electric Power System; Colorado River Irrigation Project, Ariz.**  
 Sections 231.1-231.54  
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- 54 Stat. 504** 25 CFR Chap. 1  
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**Bureau of Indian Affairs; Forestry; Sale of Lumber and Other Forest Products Produced by Indian Enterprises from the Forests on Indian Reservations.**  
 Sections 142.1-142.12  
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- 54 Stat. 745 25 CFR Chap. 1  
Subchap. L., Pt. 131  
**Bureau of Indian Affairs; Leasing and Permitting;**  
**Leasing and Permitting.**  
 Sections 131.1-131.20  
 See: 5 USC 301
- C 554 25 CFR Chap. 1  
 54 Stat. 745 Subchap. N., Pt. 151  
**Bureau of Indian Affairs; Grazing; General Grazing**  
**Regulations.**  
 Sections 151.1-151.25  
 See: 5 USC 301
- 54 Stat. 1057 25 CFR Chap. 1  
Subchap. L., Pt. 131  
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**Leasing and Permitting.**  
 Sections 131.1-131.20  
 See: 5 USC 301
- Sec. 15 25 CFR Chap. 1  
 60 Stat. 338 Subchap. S., Pt. 212  
**Bureau of Indian Affairs; Construction; Construction**  
**Assessments, Crow Indian Irrigation Project.**  
 Sections 212.1-212.6
- 60 Stat. 308 25 CFR Chap. 1  
Subchap. L., Pt. 131  
**Bureau of Indian Affairs; Leasing and Permitting;**  
**Leasing and Permitting.**  
 Sections 131.1-131.20  
 See: 5 USC 301
- 60 Stat. 962 25 CFR Chap. 1  
Subchap. E., Pt. 31  
**Bureau of Indian Affairs; Education; Federal Schools**  
**for Indians.**  
 Sections 31.0 thru 31.7; 31.0; 31.1; 31.3; 31.4; 31.7  
 See: 25 USC 231
- Secs. 1, 2 25 CFR Chap. 1  
 60 Stat. 962 Subchap. L., Pt. 131  
**Bureau of Indian Affairs; Leasing and Permitting;**  
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 Sections 131.1-131.20  
 See: 5 USC 301
- Sec. 9 25 CFR Chap. III  
 60 Stat. 1051 Pt. 503  
**Indian Claims Commission; General Rules of Proce-**  
**dure.**  
 See: 25 USC 70h
- 61 Stat. 731 25 CFR Chap. 1  
Subchap. C, Pt. 16  
**Bureau of Indian Affairs; Probate; Estates of Indians**  
**of the Five Civilized Tribes.**  
 Sections 16.1 thru 16.9  
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- 62 Stat. 17 25 CFR Chap. 1  
Subchap. O., Pt. 161  
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 See: 5 USC 301
- 62 Stat. 18 25 CFR Chap. 1  
Subchap. K., Pt. 123  
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 Sections: 123.1–123.7  
 See: 25 USC 331
- 62 Stat. 18 25 CFR Chap. 1  
Subchap. K., Pt. 127  
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 Bureau of Indian Affairs; Patents, Allotments & Sales; Osage  
 Lands.  
 Sections: 127.51–127.58  
 See: 5 USC 301
- 62 Stat. 236 25 CFR Chap. 1  
Subchap. K., Pt. 121  
 Bureau of Indian Affairs; Patents, Allotments & Sales;  
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 Sections: 121.1–121.35  
 See: 5 USC 301
- Sec. 7 25 CFR Chap. 1  
Subchap. U., Pt. 232  
 62 Stat. 723  
 Bureau of Indian Affairs; Electric Power System;  
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 Sections 232.1–232.27; 232.51–232.56.  
 See: 5 USC 301
- Sec. 5 25 CFR Chap. 1  
Subchap. L., Pt. 131  
 64 Stat. 46  
 Bureau of Indian Affairs; Leasing and Permitting;  
 Leasing and Permitting.  
 Sections 131.1–131.20  
 See: 5 USC 301
- Secs. 1, 2, 25 CFR Chap. 1  
Subchap. I., Pt. 92  
 64 Stat. 190  
 Bureau of Indian Affairs; Credit Activities; Revolving  
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 Sections 92.1–92.20  
 See: 5 USC 301
- Secs. 1, 2, 4, 5, 6 25 CFR Chap. 1  
Subchap. L., Pt. 131  
 64 Stat. 470  
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- Sec. 5,**  
**64 Stat. 471**
25 CFR Chap. 1  
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- Bureau of Indian Affairs; Enrollment; Enrollment of  
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 Sections 43.1-43.12  
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- Sec. 10**  
**64 Stat. 472**
25 CFR Chap. 1  
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- Bureau of Indian Affairs; Patents, Allotments & Sales;  
 Allotment of Lands on the Cabazon, and Augustine  
 Indian Reservations; Riverside County, California.  
 Sections: 126.1-126.11
- Sec. 10**  
**64 Stat. 472**
25 CFR Chap. 1  
Subchap. K., Pt. 130
- Bureau of Indian Affairs; Patents, Allotments & Sales;  
 Allotment of Lands on the Torres-Martinez Indian  
 Reservation, California.  
 Sections 130.1-130.13
- 67 Stat. 558**
25 CFR Chap. 1  
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- Bureau of Indian Affairs; Probate; Estates of In-  
 dians of the Five Civilized Tribes.  
 Sections 16.1 thru 16.9  
 See: 5 USC 301
- Sec. 5**  
**68 Stat. 980**
25 CFR Chap. 1  
Subchap. F, Pt. 44
- Bureau of Indian Affairs; Enrollment; Preparation of  
 Rolls for the Distribution of the Funds Awarded  
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 See: 25 USC 775
- 68 Stat. 1026**
25 CFR Chap. 1  
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- Bureau of Indian Affairs; Irrigation Projects; Fort  
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 Sections 197.1-197.21  
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- 69 Stat. 539**
25 CFR Chap. 1  
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- Bureau of Indian Affairs; Leasing and Permitting;  
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- Secs. 1, 2, 4, 5, 6**  
**69 Stat. 539**
25 CFR Chap. 1  
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- 69 Stat. 540** **25 CFR Chap. 1**  
**Subchap. L., Pt. 131**  
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**Sections 131.1-131.20**  
**See: 5 USC 301**
- 69 Stat. 540** **25 CFR Chap. 1**  
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- 69 Stat. 666** **25 CFR Chap. 1**  
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**Sections 16.1-16.0**  
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- 69 Stat. 666** **25 CFR Chap. 1**  
**Subchap. K., Pt. 121**  
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**petency, Sale of Certain Indian Lands, and ReIn-**  
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- Sec. 6** **25 CFR Chap. 1**  
**69 Stat. 986** **Subchap. N., Pt. 151**  
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- Sec. 1** **25 CFR Chap. 1**  
**70 Stat. 986** **Subchap. E., Pt. 34**  
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- Sec. 2, 71 Stat. 374** **25 CFR Chap. 1**  
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- 71 Stat. 471** **25 CFR Chap. 1**  
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- Sec. 5, 72 Stat. 106** **25 CFR Chap. 1  
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a Roll for the Distribution of the Judgment Awarded  
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**Sections 45.1-45.12**  
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- Sec. 4, 72 Stat. 339** **25 CFR Chap. 1  
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**Bureau of Indian Affairs; Economic Enterprises; In-  
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**Sections 88.1-88.6; 88.3; 88.6**  
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- Sec. 12** **25 CFR Chap. 1**  
**72 Stat. 619** **Subchap. V., Pt. 242**  
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**Sections 242.1-242.13**  
**See: 78 Stat. 390**
- 72 Stat. 968** **25 CFR Chap. 1  
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**Sections 131.1-131.20**  
**See: 5 USC 301**
- 73 Stat. 141** **25 CFR Chap. 1  
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**Bureau of Indian Affairs; Economic Enterprises; In-  
dian Fishing in Alaska.**  
**Sections 88.1-88.6; 88.3; 88.6**  
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- Sec. 1, 73 Stat. 221** **25 CFR Chap. 1  
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**Bureau of Indian Affairs; Enrollment; Preparation of  
a Roll for the Distribution of the Judgment Awarded  
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**Sections 49.1-49.13**  
**See: 25 USC 911**
- 73 Stat. 602** **25 CFR Chap. 1  
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**Bureau of Indian Affairs; Patents, Allotments & Sales;  
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**Sections 124.1-124.9**  
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- Sec. 7, 75 Stat. 509** **25 CFR Chap. 1  
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**Bureau of Indian Affairs; Enrollment; Preparation of  
a Membership Roll to Serve as the Basis for the Dis-  
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**Sections 50.1-50.13**  
**See: 25 USC 967**

**Sec. 1, 76 Stat. 420**

25 CFR Chap. 1  
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Bureau of Indian Affairs; Enrollment; Membership  
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Sections 43a.1-43a.12; 43a.1, 43a.3; 43a.5; 43a.11

See: 25 USC 971

**Sec. 8, 76 Stat. 776**

25 CFR Chap. 1  
Subchap. J., Pt. 110

Bureau of Indian Affairs; Fiscal and Financial Affairs;  
Distribution of Judgment Awarded the Cherokee Na-  
tion or Tribe of Indians.

Sections 110.1-110.10

See: 25 USC 998

**77 Stat. 301**

25 CFR Chap. 1  
Subchap. I, Pt. 91

Bureau of Indian Affairs; Credit Activities; Loans to  
Indians from the Revolving Loan Fund.

Sections: 91.1-91.25

See: 25 U.S.C. 70n-1

**78 Stat. 186**

25 CFR Chap. 1  
Subchap. M, Pt. 141

Bureau of Indian Affairs; Forestry; General Forest  
Regulations.

Sections 141.1-141.23

See 5 USC 301

**78 Stat. 187**

25 CFR Chap. 1  
Subchap. M, Pt. 141

Bureau of Indian Affairs; Forestry; General Forest  
Regulations.

Sections 141.1-141.23

See 5 USC 301

**78 Stat. 241**

25 CFR Chap. 1  
Subchap. O, Pt. 162

Bureau of Indian Affairs; Rights-of-Way-Roads  
Roads of the Bureau of Indian Affairs.

Sections: 162.1-162.19

See: 23 USC 101(a)

**78 Stat. 253**

25 CFR Chap. 1  
Subchap. O, Pt. 162

Bureau of Indian Affairs; Rights-of-Way-Roads  
Roads of the Bureau of Indian Affairs.

Sections 162.1-162.19

See: 23 USC 101(a)

**78 Stat. 257**

25 CFR Chap. 1  
Subchap. O, Pt. 162

Bureau of Indian Affairs; Rights-of-Way-Roads  
Roads of the Bureau of Indian Affairs.

Sections 162.1-162.19

See: 23 USC 101(a)

78 Stat. 890

25 CFR Chap. 1  
Subchap. V, Pt. 242

**Bureau of Indian Affairs; Termination of Federal-Indian Relationships; California Rancherias and Reservations—Distribution of Assets.**

Sections 242.1-242.18

See: Sec. 12, 72 Stat. 619

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78 Stat. 555

25 CFR Chap. 1  
Subchap. F, Pt. 43b

**Bureau of Indian Affairs; Enrollment; Preparation of a Roll to Serve as the Basis for the Distribution of the Judgment Funds Awarded the Cherokee Band of Shawnee Indians.**

Sections 43b.1-43b.14

See: 25 USC 1081

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78 Stat. 568

25 CFR Chap. 1  
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**Bureau of Indian Affairs; Enrollment; Preparation of a Roll to Serve as the Basis for the Distribution of the Judgment Funds Awarded the Snake or Paiute Indians of the Former Malheur Reservation.**

Sections 43d.1-43d.13

See: 25 USC 1011

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78 Stat. 639

25 CFR Chap. 1  
Subchap. F, Pt. 43c

**Bureau of Indian Affairs; Enrollment; Preparation of a Roll to Serve as the Basis for the Distribution of the Judgment Funds Awarded the Nehalem and Tillamook Bands of the Tillamook Indians.**

Sections 43c.1-43c.13

See: 25 USC 1051

81 Stat. 177

25 CFR Chap. 1  
Subchap. C, Pt. 16

**Bureau of Indian Affairs; Probate; Estates of Indians of the Five Civilized Tribes.**

Sections 16.1 thru 16.9

See: 5 USC 301

82 Stat. 663

25 CFR Chap. 1  
Subchap. W, Pt. 257

**Bureau of Indian Affairs; Miscellaneous Activities; Resale of Lands within the Badlands Air Force Gunnery Range (Pine Ridge Aerial Gunnery Range).**

Sections 257.1-257.9

See: 5 USC 801

Sec. 4, 82 Stat. 855

25 CFR Chp. 1  
Subchap. F, Pt. 43f

**Bureau of Indian Affairs; Enrollment; Preparation of Rolls to Serve as the Basis for Distribution Judgment Funds Awarded the Creek Nation of Indians in Indian Claims Commission Dockets Numbered 21 and 726.**

Sections 43f.1-43f.12

See: 5 USC 301

- 82 Stat. 850 25 CFR Chap. 1  
Subchap. F, Pt. 43f  
**Bureau of Indian Affairs; Enrollment; Preparation of Rolls to Serve as the Basis for Distribution of Judgment Funds Awarded the Creek Nation of Indians in Indian Claims Commission Dockets Numbered 21 and 276.**  
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- 84 Stat. 208 25 CFR Chap. 1  
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**Bureau of Indian Affairs; Probate; Estates of Indians of the Five Civilized Tribes.**  
 Sections 16.1 thru 16.9  
 See: 5 USC 301
- Sec. 8 25 CFR Chap. 1  
 84 Stat. 848 Subchap. J., Pt. 111  
**Bureau of Indian Affairs; Fiscal and Financial Affairs; Reimbursement of the Ute Tribe of the Uintah and Ouray Reservation, Utah.**  
 Sections: 111.1-111.8
- Sec. 8, 85 Stat. 158 25 CFR Chap. 1  
Subchap. F., Pt. 48g  
**Bureau of Indian Affairs; Enrollment; Preparation of a Roll to Serve as the Basis for the Distribution of Judgment Funds Awarded to the Pembina Band of Chippewa Indians.**  
 Sections 43g.1-43g.14  
 See: 5 USC 301
- Sec. 25, 85 Stat. 688 25 CFR Chap. 1  
Subchap. F., Pt. 43h  
**Bureau of Indian Affairs; Enrollment; Preparation of a Roll of Alaska Natives.**  
 Sections 43h.1-43h.12; 43h.1; 43h.7; 43h.8; 43h.13; 43h.14  
 See: 5 USC 301
- Sec. 25, 85 Stat. 715 25 CFR Chap. 1  
Subchap. F., Pt. 43h  
**Bureau of Indian Affairs; Enrollment; Preparation of a Roll of Alaska Natives.**  
 Sections 43h.1-43h.12; 43h.1; 43h.7; 43h.8; 43h.13; 43h.14;  
 See: 5 USC 301
- Sec. 5 (D) 85 Stat. 787 25 CFR Chap. 1  
Subchap. F., Pt. 43i  
**Bureau of Indian Affairs; Enrollment; Preparation of a Roll to Serve as the Basis for the Distribution of Judgment Funds Awarded to the North-Western Band of Shoshone Indians.**  
 Sections 43i.1-43i.18  
 See: 5 USC 301

**Sec. 7, 86 Stat. 762**

**25 CFR Chap. 1  
Subchap. F., Pt. 43j**

**Bureau of Indian Affairs; Enrollment; Preparation of  
a Roll to Serve as the Basis for the Distribution of  
Judgment Funds Awarded to the Delaware Tribe of  
Indians and the Absentee Delaware Tribe of Western  
Oklahoma.**

**Sections 43j.1-43j.13**

**See: 5 USC 301**

**86 Stat. 1295**

**25 CFR Chap. 1  
Subchap. J., Pt. 112**

**Bureau of Indian Affairs; Fiscal and Financial Affairs:  
Distribution of Judgment Funds Awarded to the  
Osage Tribe of Indians in Oklahoma.**

**Sections: 112.1-112.10**

**See: 5 USC 301**

**Sec. 5, 87 Stat. 860**

**25 CFR Chap. 1  
Subchap. F, Pt. 48e**

**Bureau of Indian Affairs; Enrollment; Preparation of  
a roll to serve as the Basis for Distribution of  
Judgment Funds Awarded to Certain Persons of Cali-  
fornia Indian Descent.**

**Sections 48e.1-48e.12**

**See: 5 USC 301**

**87 Stat. 466**

**25 CFR Chap. 1  
Subchap. G., Pt. 60**

**Bureau of Indian Affairs; Tribal Government; Use of  
Distribution of Indian Judgment Funds.**

**Sections 60.1-60.12**

**See: 5 USC 301**

**87 Stat 467**

**25 CFR Chap. 1  
Subchap. G., Pt. 60**

**Bureau of Indian Affairs; Tribal Government; Use of  
Distribution of Indian Judgment Funds**

**Sections 60.1-60.12**

**See: 5 USC 301**

**87 Stat. 468**

**25 CFR Chap. 1  
Subchap. G., Pt. 60**

**Bureau of Indian Affairs; Tribal Government; Use of  
Distribution of Indian Judgment Funds.**

**Sections 60.1-60.12**

**See: 5 USC 301**

**Sec. 7, 87 Stat. 778**

**25 CFR Chap. 1  
Subchap. F, Pt. 43k**

**Bureau of Indian Affairs; Enrollment; Revision of the  
Final Roll of the Menominee Tribe of Wisconsin.**

**Sections 43k.1-43k.17**

**Title II, Sec 218  
88 Stat. 77**

**25 CFR Chap. 1  
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**Bureau of Indian Affairs; Credit Activities; Loan  
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**Sections: 93.1-93.54**

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- Sec. 404, 88 Stat. 77** 25 CFR Chap. 1  
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**Sections 80.1-80.22**
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**Sections: 93.1-93.54**  
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- R.S. 161** 25 CFR Chap. 1  
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**Bureau of Indian Affairs; Tribal Government; Attorney Contracts with Indian Tribes.**  
**Sections 72.1-72.22; 72.24-72.26; 72.30-72.35.**  
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- R.S. 161** 25 CFR Chap. 1  
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- R.S. 441** 25 CFR Chap. 1  
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- R.S. 463 25 CFR Chap. 1  
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- R.S. 463 25 CFR Chap. 1  
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- R.S. 463 25 CFR Chap. 1  
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- §§ 72.30-72.35 25 CFR Chap. 1  
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- R.S. 463 25 CFR Chap. 1  
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- R.S. 463 25 CFR Chap. 1  
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- R.S. 463 25 CFR Chap. 1  
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25 CFR Chap. 1  
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Sections 43g.1-43g.14.

See: 5 USC 801

R.S. 463

25 CFR Chap. 1  
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**Bureau of Indian Affairs; Enrollment; Preparation of a Roll of Alaska Natives.**

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See: 5 USC 801.

R.S. 463

25 CFR Chap. 1  
Subchap. F., Pt. 43i

**Bureau of Indian Affairs: Enrollment; Preparation of a Roll to Serve as the Basis for the Distribution of Judgment Funds Awarded to the North-Western Band of Shoshone Indians.**

Sections 43i.1-43i.13.

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25 CFR Chap. 1  
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Sections 43j.1-43j.13.

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**Bureau of Indian Affairs; Enrollment; Enrollment of Indians of the Rincon, San Luiseno Band of Mission Indians in California.**

Sections 46.1-46.15; 46.4.

See: 25 USC 2.

R.S. 463

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**Bureau of Indian Affairs; Enrollment; Enrollment of Indians of the San Pasqual Band of Mission Indians in California.**

Sections 48.1-48.15; 48.4

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25 CFR Chap. 1  
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Sections 104.1-104.13

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- R.S. 463** 25 CFR Chap. 1  
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 nery Range (Pine Ridge Aerial Gunnery Range.)**  
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- R.S. 465 25 CFR Chap. 1  
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- R.S. 465 25 CFR Chap. 1  
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**Bureau of Indian Affairs; Enrollment; Preparation of a Roll to Serve as the Basis for the Distribution of Judgment Funds Awarded to the Pembina Band of Chippewa Indians.**  
 Sections 43g.1-43g.14  
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- R.S. 465 25 CFR Chap. 1  
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**Bureau of Indian Affairs; Enrollment; Preparation of a Roll of Alaska Natives.**  
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**Bureau of Indian Affairs; Enrollment; Preparation of a Roll to Serve as the Basis for the Distribution of Judgment Funds Awarded to the North-Western Band of Shoshone Indians.**  
 Sections 43i.1-43i.13  
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- R.S. 465 25 CFR Chap. 1  
Subchap. F., Pt. 43j  
**Bureau of Indian Affairs; Enrollment; Preparation of a Roll to serve as the Basis for the Distribution of Judgment Funds Awarded to the Delaware Tribe of Indians and the Absentee Delaware Tribe of Western Oklahoma.**  
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- R.S. 465 25 CFR Chap. 1  
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**Bureau of Indian Affairs; Enrollment; Enrollment of Indians of the Rincon, San Luiseno Band of Mission Indians in California.**  
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- R.S. 465 25 CFR Chap. 1  
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stricted Lands of Members of Five Civilized Tribes,  
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- R.S. 2078** 25 CFR Chap. 1  
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- R.S. 2078** 25 CFR Chap. 1  
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- R.S. 2103** 25 CFR Chap. 1  
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- R.S. 2117** 25 CFR Chap. 1  
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- R.S. 2117** 25 CFR Chap. 1  
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- R.S. 2132** 25 CFR Chap. 1  
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- R.S. 2132** 25 CFR Chap. 1  
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**Bureau of Indian Affairs; Miscellaneous Activities;  
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- R.S. 2133** 25 CFR Chap. 1  
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 See: 25 USC 68
- R.S. 2133  
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**Bureau of Indian Affairs; Miscellaneous Activities;  
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- EO 11222  
 (30 FR 6469)** 25 CFR Chap. III  
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- Pub. L. 90-76** 25 CFR Chap. 1  
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**Indian Claims Commission; Standards of Conduct.**  
 Sections 500.735-101-500.735-125.  
 See: EO 11222 (30 FR 6469)

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**APPENDIX IV**

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## APPENDIX IV

Statutes-at-Large  
Distribution Table

This Table is drawn from the Distribution Tables in the United States Code. This Table differs from the Table in the United States Code in that this Table is limited to statutes specifically affecting Indian affairs.

In preparing this Table, the Task Force relied upon Kappler's, Indian Affairs, Laws and Treaties, Volumes I-V, covering the period 1873 when the Revised Statutes were first enacted, through 1938; and upon the Kappler's update prepared by the Indian Civil Rights Task Force, Department of the Interior, which brings the original 5 volume Kappler's set current through 1970. The references for the period through the 1st Session of the 94th Congress (1975) were developed through our own collection of statutes for the post-1970 period.

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467	25 - 266 (Rep.)
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2055	Repealed
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2129	Repealed
2130	Repealed
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P.L. 182	240		357	43 - 208	
P.L. 250	328		634	25 - 56	

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P.L. 133	156		300	25 - 400 (a)	
P.L. 206	277	1	468	25 - 292a	Elim.
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P.L. 250	337		566	43 - 1176	
P.L. 265	356		614	38 - 376	Rev. T. 38
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P.L. 100	137	1	215	25 - 292a	Elim.
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P.L. 413	897	6	900	48 - 250e	Elim.
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P.L. 413	897	8	901	48 - 250g	Elim.
P.L. 413	897	9	901	48 - 250h	Elim.
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P.L. 497	187	1	312,313	25 - 561,562	Elim.
P.L. 457	187	1	315	25 - 123b	
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P.L. 714	648	2	1037	25 - 162a,163	nt.
P.L. 714	648	3	1038	25 - 162a	nt.
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P.L. 68	119	1	698	25 - 480	
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P.L. 68	119	1	700	25 - 387	Elim.
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P.L. 448	79	2	105	5 - 791a	
P.L. 449	80	-	106	25 - 462a	Elim.
P.L. 565	276	-	249	25 - 217a	Rep.
P.L. 574	285	1	254	25 - 591	
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P.L. 574	285	3	255	16 - 486a-w nt.	
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P.L. 640	395	1	419	25 - 387	
P.L. 640	395	1	427	25 - 561-562	Elim.

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P.L. 690	460	1	703	16 - 835d	
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P.L. 690	460	4	703	16 - 835g	
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P.L. 732	554	-	745	25 - 380	
P.L. 733	555	1,2	746	25 - 372a	
P.L. 744	629	-	761	5 - 76a	
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P.L. 813	781	-	1057	25 - 403a	
P.L. 817	785	1-5	1058	18 - 576-576d	Rev. T. 18
P.L. 819	787	5	1060	4 - 17	Rev. T. 4
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P.L. 848	861	1 (6)	1123	16 - 590z-4	
P.L. 848	861	1 (7)	1124	16 - 590z-5	Rep.
P.L. 848	861	1 (8)	1124	16 - 590z-6	
P.L. 848	861	1 (9)	1124	16 - 590z-7	
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P.L. 853	876	201	1138	8 - 601	Rep.
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P.L. 136	259	1	317	25 - 387	
P.L. 136	259	1	325	25 - 561-562	Elim.
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P.L. 295	474	1	765	23 - 101	Rev. T. 22
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P.L. 437	96	-	95	48 - 50e	
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P.L. 576	336	1	312	25 - 2a	
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**APPENDIX V**

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## APPENDIX V

### SUBJECT MATTER BREAKDOWN OF TITLE 25 UNITED STATES CODE

The first effort of this Task Force in the process of formulating recommendations for consolidation, revision and codification of Federal Indian law was the development of a system for classification of the various code sections appearing in Title 25 of the U.S. Code to determine overlap, redundancies or conflicts. To accomplish this, we developed a subject matter breakdown or index.

Title 25 of the U.S. Code was then reviewed from cover to cover and each section was classified to whatever subject matter area or areas it touched upon either specifically or by implication. Many code sections were found to touch upon several of the subject matter areas we had developed.

This subject matter breakdown was developed principally as a working paper for Task Force use. However, many researchers other than our Task Force members have found this index a useful supplement to the existing index to Title 25. We have, therefore, decided to publish this Subject Matter Breakdown as an additional Appendix to our Report.

The format of this index is far from perfected. For example, numerous provisions affecting the jurisdictional relationships of Federal, State and tribal governments are classified to Section XVIII, Powers of Tribes. As a final document we would have developed a separate more detailed breakdown of these jurisdictional provisions. However, the Breakdown is still a useful reference tool and we offer it for what aid it may provide. We stress that it should be used in conjunction with the index now appearing in Title 25.

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- #139 Approp. for subsistence
- #140 Diversion of approp. for employees. (Segregation of funds)
- #145 Accounts between U.S. and tribes, reimbursable approp.
- #146 Report of Indians present and receiving food
- #148 Approp. for supplies, etc.
- #151 Deposits in bank by disbursing agents
- #157 Investments of stock required by treaties
- #158 Investments of proceeds of lands
- #159 Moneys due incompetents or orphans

## I. Government Organization

## C. Duties, Responsibilities and Restrictions of Officers (Cont'd)

- #160 Custody of stocks or bonds held in trust for tribes
- #161 Deposit in treasury of trust funds
  - #161a Trust funds; rate of interest
  - #161b Interest "i.M. Proceeds of Labor"
  - #161c Transfer of surplus funds
  - #161d Disposition of accrued interest
- #162a Deposit of funds in banks
- #163 Roll of membership of Indian tribes
- #164 Restoration to tribe of unpaid per capita
- #165 Same, Notice to Cong.
- #174 Superintendence of President over tribes west of Miss. River
- #175 U.S. Attorneys to represent
- #176 Survey of Reservations
- #185 Protection of Indians desiring civilized life
- #187 Suspension of chief for trespass (based on #186 which is repealed)
- #196 Sale or other disposition of timber
- #198 Contagious and infectious diseases, quarantine
- #199, #199a Records of 5 Civil Tribes, Okla.
- #200 Report of offence or case of Indian incarcerated in agency jail
- #229 Inquiries to property by Indians
- #251 Setting up distillery
- #261 Power to appoint traders with Indians
- #262 Persons permitted to trade with Indians

## I. Government Organization

## C. Duties, Responsibilities and Restrictions of Officers (Cont'd)

- #263 Prohibitions of trade by President
- #264 Trading without license; white persons as clerks
- #271 Employment of Instructors for Indians
- #272 Superintendent of Indian schools
- #272a Same; other duties
- #273 Detail of Army officer
- #274 Employment of Indian girls and boys as assistants
- #295 Supervision of expenditure of appropriations for school purposes
- #302 Indian Reform School; rules and regs; consent of parents
- #304a Study of Indian Education; contracts; appropriations
- #305 Indian Arts and Crafts Board
- #305a Promotion of economic welfare; Powers of the Board
- #305b Rules and Regs; submission to Sec. of Interior
- #307 Vocational School
- #308 Same; property taken over by Sec. of Interior
- #309 Vocational training program; eligibility; contracts or agreements
- #309a Same; authorization of approp.
- #317 Regulations
- #328 Same; rules and regulations
- #332 Selection of allotments
- #333 Making of allotments by agents
- #334 Allotments of Indians not residing on reservations
- #337 Allotments in national forests
- #372 Ascertainment of heirs of deceased allottees, settlement of estates; sale of lands; deposit of Indian moneys

## I. Government Organization

## C. Duties, Responsibilities and Restrictions of Officers (Cont'd)

- #373 Disposed by will of allotments held under trust
- #373a Disposition of trust or restricted estate of interstate without heirs; successor tribe; sale of land
- #373b Same; restricted estate on homestead on the public domain
- #374 Attendance of witnesses
- #375a Same; jurid. of Sec. of Interior over probate and dict. of estates not exceeding \$2,500
- #375b Same; schedule of fees
- #375c Same; disbursement of sums not exceeding \$500 to heirs or legatees
- #376 Oaths in investigations
- #377 Payment or deduction of costs of determining heirs
- #378 Partition of allotment among heirs
- #379 Sale of allotted lands by heirs
- #380 Lease of inherited allotments by superintendent
- #381 Irrigation lands; regulation of use of water
- #382 Irrigation projects under Redomation Act
- #383 Estimates of cost; limitations as to
- #384 Employment of supts. of irrigation
- #385 Maintenance charges, reimbursement of coust., costs, etc.
- #386 Reimbursement of coust. charges
- #386a Adjustment of reimbusable costs, coust. charges
- #388 Claims for damages; settlement by agreement
- #389 Investigation and adjustment of irrigation charges on lands, etc.
- #393 Leases of restricted allotments (Power Supt.)
- #393a Same; lands of 5 Civil Tribes (Power of Supt.)

## I. Government Organization

## C. Duties, Responsibilities and Restrictions of Officers (Cont'd)

- #394 Leases of arid allotted lands (Power of Supt.)
- #395 Leases of allotted lands, where allottee is incapacitated
- #396 Leases of allotted lands for mining purposes
- #396 Leases of unallotted lands for mining purposes; a - g duration of leases, etc.
- #398 Leases of unallotted land for oil and gas mining purposes
- #441 Indian employees of government; entitlement to Indian benefits
- #451 Donations for Indians; use of gifts; annual report to Congress
- #472 Standards for Indians appointed to Indian Office
- #632 Character and extent of admin.; time limit; reports on use of funds (Navajo Hopi)
- #673 Report to Congress (Utes)
- #1326 Special election
- #1341 Authorization of Secretary Revision of documents

## I. Government Organization

## D. Preference in Employment

- #2a Asst. or Dep. Commissioners; appointments; powers and duties
- #25 Supt. for Five Civil Tribes
- #25a Same; application of civil service laws
- #44 (Repealed) Employment of Indians
- #45 Preference to Indians qualified for duties
- #46 Preference to Indians in employment of clerical, mechanical and other help
- #47 Employment of Indian labor and purchase of products of Indian industry
- #274 Employment of Indian girls and boys as assistants
- #318a Roads on Indian Reservations; appropriations
- #348 Patents to be held in trust; descent and partitions
- #472 Standards for Indians appointed to Indian Offices
- #633 Preference in employment; on the job training (Navajo Hcpi)

## I. Government Organization

## E. Purchase of Supplies

- #47 Employment of Indian labor and purchase of products of Indian industry
- #96 Copies of Indian Service (BIA) Contracts must be furnished to General Accounting Office
- #97 Contract bidding proposals and bids in connection with Indian Service for supplies or services must be attached to contract filed with GAO
- #98 U.S. money can't be used to purchase supplies for Indians if not authorized by law
- #99 Commissioner authorized to let bids before appropriations made
- #101 Transport costs for supplies to be payed by agency or school receiving
- #102 Same as #101 Re: Coal
- #104 Secretary of Interior can purchase supplies from Indian schools
- #148 Approp. for supplies, etc.

## I. Government Organization

## F. Contracts with tribes for performance of services

Sec.	INDIAN SELF-DETERMINATION [NEW]	Sec.	
450	Congressional statement of findings.		(a) Request by tribe for contract or grant by Secretary of the Interior for improving, etc. tribal governmental, contracting, and program planning activities.
450a	Congressional declaration of policy		(b) Grants by Secretary of Health, Education, and Welfare for development, maintenance, etc., of health facilities or services and improvement of contract capabilities implementing hospital and health facility functions.
450b	Definitions		(c) Use as matching shares for other similar Federal grant programs.
450c	Reporting and audit requirements for recipients of Federal financial assistance	450f.	Retention of Federal employee coverage, rights and benefits by employees of tribal organizations.
	(a) Maintenance of records		(a) Eligible employees; Federal employee programs subject to retention.
	(b) Access to books, documents, papers, and records for audit and examination by Comptroller General, etc.		(b) Deposit by tribal organization of employee deductions and agency contributions in appropriate funds
	(c) Availability by recipient of required reports and information to Indian people served or represented.		(c) Election for retention by employee and tribal organization before date of employment by tribal organization, transfer of employee to another tribal organization
	(d) Repayment to Treasury by recipient of unexpended or unused funds		(d) Employee
460d	Criminal activities involving grants, contracts, etc.; penalties		(e) Promulgation of implementing regulations by President
460e	Wage and labor standards and preference requirements for contracts or grants.		(f) Additional employee employment rights
460f	Contracts by Secretary of the Interior with tribal organizations.	450j	Contract or grant provisions and administration
	(a) Request by tribe for contract by Secretary to plan, conduct and administer education, etc. programs; refusal of request.		(a) Applicability of Federal contracting laws and regulations, waiver of requirements
	(b) Procedure upon refusal of request to contract.		(b) Payments, transfer of funds by Treasury for disbursement by tribal organization, accountability for interest accrued prior to disbursement
	(c) Procurement of liability insurance by tribe as prerequisite to exercise of contracting authority by Secretary; required policy provisions.		(c) Term of requested contracts, annual renegotiation
450g	Contracts by Secretary of Health, Education, and Welfare with tribal organizations		(d) Revision or amendment of provisions at request or with consent of tribal organization, effective date for retrocession of contract.
	(a) Request by tribe for contract by Secretary to implement hospital and health facility functions, authorities, and responsibilities; refusal of request		
	(b) Procedure upon refusal of request to contract		
	(c) Procurement of liability insurance by tribe as prerequisite to exercise of contracting authority by Secretary; required policy provisions		
460h.	Grants to tribal organizations or tribes.		

## I. Government Organization

## F. Contracts with tribes for performance of services

Sec.	Sec.
(e) Implementation by tribal organization with existing school buildings, hospitals, and factories and equipment and other Government owned personal property.	port to Congressional Committee [New].
(f) Performance of personal services.	456a. Same; supplemental assistance to funds provided to local educational agencies [New].
(g) Fair and uniform provision by tribal organization of services and assistance to covered Indians.	
(h) Minimum amount of contracts	
457k Rules and regulations	
(a) Authority of Secretaries of the Interior and of Health, Education, and Welfare to perform any and all acts and make necessary and proper rules and regulations.	
(b) Consultation, presentation, publication, and promulgation. Time and procedural requirements.	
(c) Revisions and amendments, procedures applicable.	
457l Report by tribe pending contract or grant; contents	
457m Reversion of contract or grant and assumption of control of program, etc.; authority, grounds, procedure, correction of violation as prerequisite to new contract or grant agreement; construction with occupational safety and health requirements	
457n Sovereign immunity and trusteeship rights unaffected.	
CONTRACTS WITH STATES	
458. Contracts for education in public schools; submission of education plan by contractor as prerequisite, criteria for approval of plan by Secretary of the Interior, participation by non Indian students [New]	
459 Same; election and functions of local committee of Indian parents in school districts having school boards composed of non-Indian majority; revocation of contracts [New]	
457. Same; reimbursement to school districts for educating non-resident students [New]	
456. School construction, acquisition, or renovation contracts [New].	
(a) Authorization, prerequisites	
(b) Eligibility requirements for assistance in Federally-affected areas; applicability to projects in determining maximum amount, allocation, of funds, etc.	
(c) Eligibility of private schools to receive funds, maximum amount	
(d) Duties of State education agencies pursuant to contracts.	
(e) Advisory consultations by Secretary with affected entities and governing bodies prior to contracts, applicability to contracts, applicability	
(f) Evaluation and report to Congress of effectiveness of construction, etc. programs, scope and content of report	
(g) Authorization of appropriations	
456a. General education contract and grant provisions and requirements, school district quality and standards of excellence [New]	
456b. Same, availability of funds to agencies, institutions, and organizations [New]	
456c. Same, promulgation, revision, etc., of implementing rules and regulations, time and procedural requirements [New]	
456d. Same, eligibility for funds of tribe or tribal organization controlling or managing private schools; re-	

## I. Government Organization

## G. Federal Property

## 1. Management Generally

- #13 Expenditure of appropriations by B.I.A.
- #15 Utility facilities, etc.
- #276 Vacant military posts or barracks for schools; detail of Army officers
- #277 Former Apache military post est. as Theodore Roosevelt Ind. School
- #291 Removal of government property at schools
- #292 Suspension or discontinuance of schools
- #293 Sale of lands purchased for day school or other Indian admin. uses
- #307 Vocational School
- #308 Same; property taken over by Sec. of Interior
- #407d Charges for special services to purchasers of timber
- #412a Exemption from taxation of lands subject to restrictions against alienation; determination of homestead
- #443a Conveyance to Indian tribes of federally owned buildings, etc.
- #451 Donations for Indians; use of gifts
- #453 Use of federal property (See #452)
- #454 Same; rules and regs.
- #496 Designation of land for Indian Reservations (Alaska)
- #497 Reservation of tracts for schools, hospitals, etc.
- #621 Portions of tribal lands to be held in trust by U.S.; remainder to become part of public domain (Pueblo & Canoncito Navajo)

**I. Government Organization****G. Federal Property****2. Sales and Surplus and Exchanges**

- #190 Sales of plants or tracts not needed for admin. or allotment purpose
- #292 Suspension or discontinuance of schools
- #293 Sale of lands purchased for day school or other Ind. Admin. uses
- #293a Conveyance of school properties to local school dist. or public agencies
- #294 Sale of certain abandoned buildings on lands belonging to Ind. tribes
- #443a Conveyance to tribes of federally owned buildings, etc.
- #622 Exchange of tribal lands; title to lands (Pueblo, Navajo; Pueblos and Canoncito Navajos)
- #624 Exchanges of lands; reservation of rights; title to lands (Pueblo)

I. Government Organization

H. Congressional Committees and Commissions

#640 Joint Congressional Committee establishment and composition vacancies; chairman

II. Claims of Indians Against the U. S.

A. Indian Claims Commission

II. Claims of Indians Against the U. S.

B. Accrued Claims Not Affected by Statutes

#475 Claims or suits of Ind. tribes against U.S.;  
rights unimpaired

#475a Same; offsets of gratuities

**III. Litigation of Rights****A. Legal Representation**

- #175 U.S. Attorneys to represent Indians
- #652 Claims against U.S. for appropriated lands; submission to Court of Claims; appeal; grounds for relief. (Calif. Indians)
- #654 Claims presented by petition; filing date, amendment; signature and verification; official letters documents, etc. furnished. (Calif. Indians)
- #1302 Constitutional Rights (Tribal courts)

### III. Litigation of Rights

#### B. Jurisdiction of Courts and Procedure

- #81 Suit to recover money regardless of amount in controversy
- #193 Proceedings against goods seized for certain violations
- #201 Penalties, how recovered
- #202 Inducing conveyances by Indians of trust interests in lands
- #233 Jurisdiction of New York state courts in civil actions
- #232 Jurisdiction of New York criminal actions
- #293a Conveyance of school properties to local school dist. or public agencies
- #314 Surveys; maps; compensation
- #345 Actions for allotments
- #346 Proceedings in actions for allotments
- #347 Limitations of actions for lands patented in severalty under treaties
- #374 Attendance of witnesses
- #375 Determination of heirs of deceased members of Five Civilized Tribes
- #375a Same; jurisd. of Sec. of Interior over probate and distribution of estates not exceeding \$2,500
- #399 Leases of unallotted mineral lands withdrawn from entry under mining laws
- #416a Same; covenant provision; Federal or State court jurisd. of violations
- #416i Same; restrictions
- #475a Same; offsets of gratuities
- #487 Spokane Indian Reservation; consolidation of land -- purchase, sale and exchange
- #505 Same(#504); amendment or revocation of charters; suits by and against associations (Okla.)

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**III. Litigation of Rights**
**B. Jurisdiction of Courts and Procedure**

- #609 Action to determine title to judgment fund; claim of Confederated Tribes of Colville Reservation; jurisdiction of Court of Claims
- #610c Mortgages or deeds of trust; law governing mortgage foreclosure or sale; U.S. as party; removal of cases; appeals (Swinomish)
- #642 Powers of Tribal Council (Hopi) 641 - 646)
- #652 Claims against U.S. for appropriated lands; submission to Court of Claims; appeal; grounds for relief (Calif Indians)
- #653 Statutes of limitation unavaliable against claims; amount of decree; set-off. (Calif. Indians)
- #654 Claims presented by petition (etc). (Calif. Indians)
- #670 Mortgage or deed of trust of lands sold; U.S. as party to all proceedings (So. Ute)
- #956 Claims against allotments -- Assignment, sale, etc. (Agua Calente)
- #954 Powers and duties of guardian (Aqua Caliente)
- #1301 Definitions (Tribal courts)
- #1302 Constitutional Rights (Tribal courts)
- #1303 Habeas Corpus (Tribal courts)
- #1311 Model Code
- #1321 Assumption by states of criminal jurisdiction
- #1322 Assumption by states of civil jurisdiction
- #1323 Retrocession of jurisdiction by State
- #1325 Abatement of actions

**III. Litigation of Rights****C. Attorneys Fees and Costs**

- #7 Fees for furnishing certified copies of records
- #178 Fees on behalf of Indian parties in contests under public land laws
- #314 Surveys; maps; compensation
- #655 Reimbursement of State of Calif. for necessary costs and expenses (Calif. Indians)
- #671 Use of funds of Ute Indian Tribe of U&O reservation, etc.
- #675 Restriction on payment of funds for agent's or attorney fees (Ute Mountain)
- #676 Use of funds of Southern Ute Tribe, etc.
- #956 Claims against allotments -- Assignment, sale, etc. (Aqua Caliente)

**III. Litigation of Rights****D. Burden of Proof**

- #4 Defective record of deeds and papers legalized
- #6 Seal; authenticated and certified documents; evidence
- #183 Marriage of white men to Indian women; evidence
- #194 Trial of right of property; burden of proof
- #346 Proceedings in actions for allotments
- #347 Limitations of actions for lands patented in severalty under treaties
- #654 Claims presented by petition (etc) (Calif. Indians)

**III. Litigation of Rights****E. Federal Enforcement Remedies**

- #81 Permits suit to recover over payment on contracts
- #193 Proceedings against goods seized for certain violations
- #201 Penalties, how recovered
- #202 Inducing conveyances by Indians of trust interests in lands
- #229 Injuries to property by Indians
- #230 Depositions by Agents touching depredations
- #251 Setting up distillery
- #293a Conveyance of school properties to local school districts or public agencies
- #314 Surveys; maps; compensation
- #399 Leases of unallotted mineral lands withdrawn from entry under mining laws

**III. Litigation of Rights**

**F. Other Federal Agencies**

**#646 Exempted Securities (Hopi) (641 - 646)**

**IV. Contracts with Tribes or Individual Indians****A. Restrictions on Contracting**

- #81 Contracts with Indian Tribes or Indians**
- #82 Payments Under Contracts**
- #82a Contracts of Certain Tribes (5 Civil) authorized**
- #84 Assignment of Contracts Restricted**
- #85 Contracts relating to Tribal Funds invalid without U. S. consent**

**IV. Contracts with Tribes or Individual Indians****B. Attorney Contracts**

- #81a Counsel for prosecution of claims, etc.
- #81b Continuation of contracts with attorneys containing limitation of time
- #82a Contracts of Certain Tribes (5 Civil) authorized
- #82 Payment in Attorney contracts
- #476 Organization of Ind. tribes; constitution and bylaws; special election
- #1331 Approval

## IV. Contracts with Tribes or Individual Indians

C. Restrictions on Contracts for Land, Minerals, Water, or Timber. (See specific headings).

1. Land -- 86

## V. Disbursement of Moneys and Supplies

## A. Payment of Annuities

- #12 Agent to negotiate commutation of annuities
- #111 Payment of Moneys and Distribution of goods
- #112 Persons Present
- #113 Mode of disbursements
- #114 Payment of annuities in coin
- #115 Payment of annuities in goods
- #116 Indians over eighteen have right to receipt of annuity
- #127 Moneys or annuities of hostile Indians
- #130 Withholding money, etc., on account of liquor
- #137 Supplies distributed on condition of labor
- #233 New York -- climax against annuities
- #283 Regs. for withholding rations for nonattendance at schools
- #285 Withholding annuities from Osage Indians for non-attendance at schools
- #606 Back pay and annuities on enrollment of new members (Yakima)

## V. Disbursement of Moneys and Supplies

## B. Per Capita Payments

- #86 Payment of Interest on Tribal Funds (Five Civilized)
- #111 Payment of moneys and distribution of goods
- #112 Persons present
- #113 Mode of disbursements
- #117 Payments per capita to Indians
- #120 Per capita payments to enrolled Choctaw and Chickasaw
- #123 Expenditures from tribal funds without approp.
- #136 Commutation of rations and other supplies, payment per capita
- #156 Deposit of funds, sale, land, etc (5 Civil)
- #398b Same; proceeds from rentals, royalties and bonuses; disposition
- #399 Leases of unallotted mineral lands withdrawn from entry under mining laws
- #606 Back pay and annuities on enrollment of new members (Yahima)
- #613 Advances or expenditures from tribal funds, etc. (Shoshone - Arapahoe)
- #671 Use of funds of Ute Indian Tribe of U & O reservation for expenditure and per capita payments, etc.
- #674 Use of funds of Ute Mountain Tribe, etc.
- #681 Per capita payment to tribal members; rules and regulations (Red Lake Chippewa) (#681 - 683)
- #684 Per capita payments to tribal members; installments; rules and regulations (Red Lake Chippewa) (#684-686)
- #687 Per capita payment to tribal members; rules and regulations (Red Lake Chippewa) (#687 - 689)
- #781 Distribution of funds; allotment equalization (Creek)

## V. Disbursement of Moneys and Supplies

## C. Distribution of Goods

- #111 Payment of Moneys and Distribution of goods
- #112 Persons present
- #113 Mode of disbursements
- #130 Withholding moneys, etc., on account of liquor
- #132 Mode of distribution of goods
- #133 Rolls of Indians entitled to supplies
- #134 Approp. for supplies
- #135 Supplies distributed so as to prevent deficiencies
- #136 Commutation of rations or supplies
- #137 Supplies distributed to able bodies males on condition of labor
- #138 Goods withheld from chiefs violating treaties
- #139 Approp. for subsistence
- #146 Report of Indians present and receiving

## V. Distribution of Moneys and Supplies

## D. Distribution of Rations

- #111 Payment of Moneys and Distribution of Goods
- #112 Persons present
- #113 Mode of disbursements
- #121 Payment of Tribal Funds to helpless Indians
- #130 Withholding money on account of liquor
- #136 Commutations of rations or supplies
- #141 Rations
- #146 Report of Indians present and receiving
- #279 Rations to mission schools
- #283 Regulations for withholding rations  
for nonattendance at schools

## V. Distribution of Moneys and Supplies

## E. Hostile Indians

- #126 Indian Depredations
- #127 Moneys or annuities of hostile Indians
- #128 Approp. not paid to Indians at war with U. S.
- #129 Moneys due Indians holding captives
- #138 Goods withheld from chiefs violating treaty stipulations
- #229 Injuries to property by Indians

## VI. Indian Funds - Federal Management

## A. Funds Subject to Federal Management

- #14 Money accruing to Indians from Veteran's Administration or other governmental agencies
- #119 Allotment of Tribal Funds to Individual Indians
- #121 Payment of share of tribal funds to helpless Indians
- #123 Expenditure from tribal funds without appropriation
- #123a Tribal funds; Use to Purchase Insurance
- #123b Tribal funds; traveling and other expenses
- #124 Expenditures from tribal funds of 5 Civil without approp.
- #125 Expenditure of moneys of Quapaw Agency tribes and individuals
- #151 Deposits in bank by disbursing agents
- #152 Proceeds of sales from lands
- #153 Approp. to carry out treaties (investment)
- #155 Disposal of misc. funds
- #155a (Now part of 155)
- #156 Deposit of funds from sales of lands and prop. (5 Civil)
- #157 Investments of Stock Required by treaties
- #158 Investment of proceeds of land
- #159 Moneys due incompetents or orphans
- #161 Deposit in Treasury of trust funds
- #161a Trust funds; rate of interest
- #161b Interest "I.M. Proceeds of Labor"
- #162a Deposit of funds in banks
- #163 Roll of membership (segregation of funds)
- #164 Restoration to tribe of unclaimed per capita

## VI. Indian Funds - Federal Management

## A. Funds Subject to Federal Management (cont'd)

- #165 Same, notice to Congress
- #190 Sale of plants or tracts not needed for admin. or allotment purposes
- #276 Vacant military posts or barracks for schools; detail of Army officers
- #283 Regs. for withholding rations for nonattendance at schools
- #314 Surveys; maps; compensation
- #319 Rights of way for telephone and telegraph lines
- #320 Acquisition of lands for reservoirs or materials
- #321 Right of way for pipe lines
- #325 Same; payment and disposition of compensation
- #348 Patents to be held in trust; descent and partition
- #372 Ascertainment of heirs of deceased allottees; settlement of estates; sale of lands; deposit of Indian moneys
- #373 Disposal by will of allotments held under tract
- #373a Disposition of trust or restricted estate of interstate without heirs; successor tribe; sale of land
- #375 Determination of heirship of deceased members of Five Civilized Tribes
- #375a Same; jurisd. of Sec. of Interior over probate and distribution of estates not exceeding \$2,500
- #375b Same; Schedule of fees
- #375c Same; disbursement of sums not exceeding \$500 to heirs or legatees
- #377 Payment or deduction of cost of determining heirs
- #380 Lease of inherited allotments by superintendent
- #390 Concessions on reservoir sites and other lands in Indian irrigation projects
- #398b Same; proceeds from rental, royalties and bonuses; disposition

## VI. Indian Funds - Federal Management

## A. Funds Subject to Federal Management (Cont'd)

- #399 Leases of unallotted mineral lands withdrawn from entry under mining laws
- #400a Lease for mining purposes of land reserved for agency or school
- #401 Leases for mining purposes of unallotted lands in law reservation
- #403 Leases of lands held in trust
- #404 Sale on petition of allottee or heirs
- #405 Sale of allotment of noncompetent Indian
- #406 Sale of timber on lands held under trust - Deductions for admin. expense; standards guiding sales
- #407 Sale of timber on unallotted lands
- #409 Sale of lands within reclamation projects
- #411 Interest on moneys from proceeds of sale
- #412 Payment of taxes from share of allottee in tribal funds (mistitled)
- #413 Fees to cover cost of work performed for Indians
- #415b Same; advance payment of rent or other consideration
- #487 Spokane Indian Reservation; consolidation of land - purchase, sale and exchange
- #507 Availability and allocation of funds; royalties from mineral deposits (Okla.)
- #611 Division of trust fund on deposit in U.S. Treasury to joint credit of both tribes (Shoshone - Arapahoe)
- #612 Establishment of trust fund for each tribe; transfer of funds; interest; crediting of revenues; receipts, and proceeds of judgments (Shoshone - Arapahoe)
- #623 Disbursement of deposits in the United Pueblos Agency
- #671 Use of funds of Ute Indian Tribe of U & O Reservation, etc.

**VI. Indian Funds - Federal Management****A. Funds Subject to Federal Management**

- #672 Division of trust funds, etc (Utes of U & O and So. Utes)
- #673 Report to Congress (Confed. Bands of Utes)
- #681 Per capita payment to tribal members; rules and regulations (Red Lake Chippewas)
- #781 Distribution of funds; allotment equalization payments (Creek)
- #954 Powers and duties of guardian, etc. (Aqua Caliente)

## VI. Indian Funds - Federal Management

## B. How Deposited

- #119 Allotment of tribal funds to individual Indians
- #121 Payment of share to helpless Indians
- #151 Deposits in banks by disbursing agents
- #152 Proceeds of sales of lands
- #155 Disposal of misc. revenues
- #156 Deposit of funds from proceeds of land, etc.  
(5 Civil)
- #159 Moneys due incompetents or orphans
- #160 Custody of stocks or bonds held in trust for tribes
- #161 Deposit in Treasury of trust funds
- #161a Trust funds; rate of interest
- #161b Interest "I.M. Proceeds of Labor"
- #161c Transfer of surplus funds
- #162a Deposit of funds in banks
- #163 Roll of membership (Segregation of funds)
- #164 Restoration to tribe of unclaimed per capita
- #165 Same; Notice to Congress
- #190 Sale of plants or tracts not needed for admin. or  
allotment purposes
- #283 Regs. for withholding rations for nonattendance  
at schools
- #293 Sale of lands purchased for day school or other  
Indian admin. uses
- #293a Conveyance of school properties to local school  
dist or public agencies
- #294 Sale of certain abandoned buildings on lands  
belonging to Indian tribes
- #304b Deposits of funds of students

## VI. Indian Funds - Federal Management

## B. How Deposited (Cont'd)

- #320 Acquisition of lands for reservoirs or materials
- #325 Same; payment and disposition of compensation
- #348 Patents to be held in trust; descent and partition
- #372 Ascertainment of heirs of deceased allottees; settlement of estates; sale of lands; deposit of Indian moneys
- #380 Lease of inherited allotments by superintendent
- #398b Same; proceeds from rentals, royalties and bonuses; disposition
- #399 Leases of unallotted mineral lands withdraws from entry under mining laws
- #400a Lease for mining purposes of land reserved for agency or school
- #409 Sale of lands within reclamation projects
- #411 Interest on moneys from proceeds of sale
- #413 Fees to cover cost of work performed for Indians
- #443 Same; disposition of cash settlements (See #442)
- #611 Division of trust fund on deposit in U.S. Treasury to joint credit of both tribes (Shoshone - Arapahoe)
- #612 Establishment of trust fund for each tribe; transfer of funds; interest crediting of revenues, receipts and proceeds of judgments. (Shoshone Arapahoe)
- #672 Division of trust funds; etc. (Confed. Bands Utes)

## VI. Indian Funds - Federal Management

## C. Interest and Charges

- #119 Allotment of tribal funds to individuals (no provision for interest)
- #121 Payment of share to helpless (no interest provision)
- #151 Deposits in bank by disbursing agents (no interest provision)
- #152 Proceeds of sales land (no interest provisions)
- #154 Proceeds of sales land
- #155 Disposal of misc. revenues (no interest provision)
- #156 Deposit of funds from sale of land, etc (5 Civil)
- #157 Investment of stock required by treaties
- #158 Investment of proceeds of lands
- #159 Moneys due incompetents or orphans
- #160 Custody of stocks or bonds held in trust for tribes
- #161 Deposit in Treasury of trust funds
- #161a Trust funds; rate of interest
- #161b Interest, "I.M. Porceeds of Labor"
- #162a Deposit of funds in banks
- #164 Restoration to tribes of unclaimed per capita
- #348 Patents to be held in trust; descent and partition
- #398b Same; proceeds from rentals royalties, and bonuses; disposition
- #411 Interest on moneys from proceeds of sale
- #612 Establishment of trust fund for each tribe; transfer of funds; interest; crediting of revenues, receipts, and proceeds of judgments (Shoshone - Arapahoe)
- #681 Per capita payment to tribal members; rules and regulations (Red Lake Chippewa)

**VI. Indian Funds - Federal Management****D. Investment by U. S.**

- #151 Deposits in bank by disbursing agents (no invest provision)
- #152 Proceeds of sales of land (no interest provision)
- #155 Disposal of misc. revenues (no invest provision)
- #156 Deposit of funds from sale land, etc. (no invest prov.)
- #157 Investments of stock required by treaties
- #158 Investment of proceeds of lands
- #160 Custody of stocks or bonds held in trust for tribes
- #161 Deposit in Treasury of trust funds
- #162a Deposit of funds in banks

## VI. Indian Funds - Federal Management

## E. Manner and Purpose of Disbursement

- #86 Use of interest of tribal funds (Five Civilized)
- #82 Restrictions on payments under contracts
- #119 Allotment of tribal funds to individual Indians
- #121 Payment of share to helpless Indians
- #122 Limitation on application of tribal funds (treaties)
- #123 Expenditure from tribal funds without specific appropriations
- #123a Tribal funds; Use to purchase insurance
- #123b Tribal funds for traveling and other expenses
- #124 Expenditures from tribal funds of 5 Civil without specific approp.
- #125 Expenditure of moneys of tribes of Quapaw Agency
- #155 Disposal of misc. revenues
- #161d Disposition of accrued interest
- #156 Deposit of funds from sale land (5 Civil)
- #159 Moneys due incompetents or orphans
- #161 Deposit in Treasury of trust funds
- #162a Deposit of funds in banks
- #163 Roll of membership (segregation of funds)
- #164 Restoration to tribes of unclaimed per capita
- #165 Same; Notice to Congress
- #283 Regs. for withholding rations for nonattendance at schools
- #304b Deposit of funds of students
- #372 Ascertainment of heirs of deceased allottees; settlement of estates; sale of lands; deposit of Indian moneys

## VI. Indian Funds - Federal Management

## E. Manner and Purpose of Disbursement (Cont'd)

- #373 Disposal by will of allotments held under trust
- #398b Same; proceeds from rentals, royalties and bonuses; disposition
- #399 Leases of unallotted mineral lands withdrawn from entry under mining laws
- #400a Lease for mining purpose of land reserved for agency or school
- #403 Leases of lands held in trust
- #405 Sale of allotment of noncompetent Indians
- #406 Sale of timber on allotments held under trust
- #407 Sale of timber on unallotted lands
- #409 Sale of lands within reclamation projects
- #409a Sale of restricted lands; reinvestment in other restricted lands
- #411 Interest on moneys from proceeds of sale
- #412 Payment of taxes from share of allottee in tribal funds
- #412a Exemption from taxation of lands subject to restrictions against alienation; determination of homestead
- #413 Fees to cover cost of work performed for Indians
- #487 Spokane Indian Reservation; consolidation of land - purchase, sale and exchange
- #507 Availability and allocation of funds; royalties from mineral deposits (Okla.)
- #613 Advances or expenditures from tribal funds; emergency and educational loans; payments to individuals of tribes; per capita payments not subject to liens or claims; exception (Shoshone - Arapahoe)
- #623 Disbursement of deposits in the United Pueblos Agency
- #681 Per capita payment to tribal members; rules and regulations (Red Lake Chippewa)
- #781 Distribution of funds; allotment equalization payments (Creek)

## VI. Indian Funds - Federal Management

## F. Claim Against Funds

- #119 Allotment of tribal funds to individual Indians
- #152 Proceeds of sales of Indian lands (charges)
- #156 Deposit of funds from sales lands, etc. (5 Civil)
- #233 New York courts - claims against communities
- #356 Allowance of undisputed claims of restricted allottees of Five Civilized Tribes
- #358 Repeal of stat. provisions relating to survey, classification, and allotments which provide for repayment out of Indian moneys
- #373a Disposition of trust or restricted estate of inter-state without heirs; successor tribe; sale of land
- #375b Same; Schedule of fees
- #377 Payment or deduction of cost of determining heirs
- #382 Irrigation projects under Reclamation Act
- #385 Maintenance charges; reimbursement of construction costs, etc.
- #386 Reimbursement of construction charges
- #386a Adjustment of reimbursable debts, construction charges
- #398 Leases of unallotted lands for oil and gas mining purposes
- #398c Same; taxes
- #401 Leases for mining purposes of unallotted lands in Kaw Reservation
- #409 Sale of lands within reclamation projects
- #410 Moneys from lease or sale of trust lands not liable for certain debts.
- #412 Payment of taxes from share of allottee in tribal funds
- #413 Fees to cover cost of work performed for Indians
- #406 Sale of timber on lands held under trust - Deductions for admin. expenses; standards guiding sales

## VI. Indian Funds - Federal Management

## F. Claim Against Funds

- #407 Sale of timber on unallotted lands
- #442 Livestock loans; cash settlements
- #475a Same; offsets of gratuities
- #501 Acquisition of agricultural and grazing lands for Indians; title to lands; tax exemption (Okla.)
- #510 Payment of gross production taxes; method (Okla.)
- #592 Withdrawal of tribal funds to reimburse U.S.; consent of Minn. Chippewa Tribe; disposition of receipts (#591 - 593)
- #611 Division of trust fund on deposit in U.S. Treasury to joint credit of both tribes (Shoshone - Arapahoe)
- #613 Advances or expenditures from tribal funds; emergency and educational loans; payments to individuals of tribes; per capita payments not subject to liens or claims; exception
- #682 Payment free of liens or claims (Red Lake Chippewa)
- #685 Payment free of liens or claims (Red Lake Chippewa)
- #688 Payment free of liens or claims (Red Lake Chippewa)
- #783 Payments to minors or persons under legal disability, etc. (Creek)

## VI. Indian Funds - Federal Management

## G. Tribal Power over Expenditure or Disbursement

- #119 Allotment of funds to individual Indians (lacks tribal consent provision)
- #121 Payment of share to helpless Indian
- #123a Tribal funds, use to purchase insurance
- #123b Tribal funds; traveling and other expenses
- #151 Deposits in bank (lacks provision)
- #152 Proceeds of land sales (Lacks provision)
- #155 Disposal of misc. revenues (lacks provision)
- #156 Deposit of funds sale of land (5 Civil) (lacks prov.)
- #159 Moneys due incompetents or orphans
- #161 Deposition Treasury of trust funds (needs prov.)
- #161a Trust funds, rate interest
- #161b Interest "I.M. Proceeds of Labor" (needs prov.)
- #162a Deposit of tribal funds -n banks (needs prov.)
- #163 Roll of membership (needs prov.)
- #398b Same; proceeds from rentals, royalties and bonuses; disposition
- #412a Exemption from taxation of lands subject to restrictions against alienation; determination of homestead
- #403a Acquisition, management and disposal of lands by  
- 2 Tulalip Tribe - Termination of Fed. trust and restrictions on alienation
- #476 Organization of Ind. tribes; constitution and bylaws; special election
- #610d Moneys or credits for tribal purposes (Swinomish)
- #610e Assignment of income (Swinomish)
- #613 Advances or expenditures from tribal funds; emergency and educational loans; payments to individuals of tribes; per capita payments not subject to liens or claims; exception (Shoshone - Arapahoe)

## VI. Indian Funds - Federal Management

## G. Tribal Power over Expenditure or Disbursement (Cont'd)

- #638 Use of Navajo Tribal funds
- #671 Use of funds of Ute Indian Tribe, etc (Ute of U & O)
- #674 Use of funds of Ute Mountain Tribe, etc.
- #676 Use of funds of So. Ute Tribe, etc.

## VI. Indian Funds - Federal Management

## K. Other Property

- #192 Sale by agents of cattle or horses not required
- #233 Fish and game licenses -- New York
- #305a Promotion of economic welfare through development of arts and crafts; Powers of Board
- #442 Livestock loans; cash settlements (See §443)
- #451 Donations for Indians; use of gifts
- #464 Transfer of restricted Indian lands or shares in assets of Indian tribes on corp; exchanges of land

## VII. Lands - Restrictions

## A. Tribal Lands

## 1. Sales

- #190 Sale of plants or tracts not needed for admin. or allotment purposes
- #280a Lands in Alaska for schools or missions
- #293a Conveyance of school properties to local school dist. or public agencies
- #294 Sale of certain abandoned buildings on lands belonging to Indian tribes
- #348 Patents to be held in trust; descent and partition
- #411 Interest on moneys from proceeds of sale
- #413 Fees to cover cost of work performed for Indians
- #414 Reservation of minerals in sale of Choctaw-Chickasaw lands
- #403a Acquisition, management and disposal of lands by  
- 2 Tulalip Tribe - Termination of Federal trust and restrictions on alienation
- #464 Transfer of restricted Indian lands on shares in assets of Indian tribes or corporation; exchange of lands
- #487 Spokane Indian Reservation; consolidation of land - purchase, sale or exchange
- #635 Disposition of lands - Lease of restricted lands; renewal (Navajo Hopi)
- #642 Powers of Tribal Council (Hopi) (641 - 646)
- #668 Sale of lands held by U.S. (So. Ute)
- #953 Lands - Determination of value of unallotted and allotted lands; exclusion of deceased allottees' allotments (Agua Caliente)

VII. Lands - Restrictions

A. Tribal Lands

2. Leases

- #3962a Leases of unallotted lands for mining purposes; duration of leases
- #396b Public auction of oil and gas leases
- #396f Lands excepted from leasing provisions
- #396g Subsurface storage of oil and gas
- #397 Leases of lands for grazing or mining
- #398 Leases of unallotted lands for oil and gas mining purposes
- #398a Leases of unallotted lands for oil and gas mining purposes within Executive Order Indian reservations
- #398e Same; applications for permits to prospect for oil and gas filed under other statutes; disposition
- #399 Leases of unallotted mineral lands withdrawn from entry under mining laws
- #400 Leases for mining purposes of reserved and unallotted lands in For Peck and Blackfeet Indian Reservations
- #400a Lease for mining purposes of land reserved for agency or school
- #401 Leases for mining purposes of unallotted lands in Kaw Reservation
- #402 Leases of surplus lands
- #402a Lease of unallotted irrigable lands for farming purposes
- #403a Lease of lands on Port Madison and Swinomish or Tulalip Indian Reservations in Washington
- #403b Lease of restricted lands in State of Washington
- #403c Same; identity of lessor; period of lease
- #413 Fees to cover cost of work performed for Indians
- #415 Leases of restricted lands for various purposes

## VII. Lands - Restrictions

## A. Tribal lands

## 2. Leases

- #415b Same; advance payment of rent or other consideration
- #415d Same; lease of restricted lands under other laws unaffected
- #416 Leases of trust or restricted lands on San Xavier and  
a - j Salt River Pima - Maricopa Indian Reservations for  
public, religious, educational, recreational,  
residential, etc.
- #608b Rights of lessee; taxation (Yakima)  
(a)
- #635 Disposition of lands - Lease of restricted lands;  
renewals (Navajo Hopi)
- #642 Powers of Tribal Council (Hopi) (641 - 646)

## VII. Lands - Restrictions

## A. Tribal Lands

## 3. Exchanges, corrections, cancellation

- #463e Exchanges of land
- #464 Transfer of restricted Indian lands or shares in assets of Indian tribes or corp; exchange of lands
- #487 Spokane Indian Reservation; consolidation of land - purchase, sale or exchange
- #574 Land consolidation
- #593 Exchanges of allotted, restricted and tribal lands for Chippewa National Forest lands
- #608 Consolidation of lands; purchase sale and exchange terms and conditions (Yakima)

## VII. Lands - Restrictions

## A. Tribal Lands

## 4. Mortgages

- #403a Acquisition, management, and disposal of lands by  
-2 Tulalip Tribe - Termination of Federal trust and  
restrictions on alienation
- #487 Spokane Indian Reservation; consolidation of land -  
purchase, sale and exchange
- #490 Same; tribal rights and privileges in connection  
with leases (488 -492)
- #491 Same; mortgaged property governed by state law  
(488 - 492)
- #610c Mortgages or deeds in trust; law governing mortgage  
foreclosure or state; U.S. as party; removal of  
cases; appeals (Swinomish)
- #642 Powers of Tribal Council (Hopi) (641 - 646)
- #670 Mortgage or deed of trust of lands sold; U.S. as  
party to all proceedings (So. Ute)

## VII. Lands - Restrictions

## A. Tribal Lands

## 5. Rights of Way

- #311 Opening highways
- #312 Right of Way for R.R., telegraph and telephone; town sites
- #313 Width of Right of Way
- #314 Surveys; maps; compensation
- #315 Time for completion of road forfeiture
- #316 Rights of several roads through canyons
- #317 Regulations
- #319 Rights of way for telephone and telegraph lines
- #320 Acquisition of lands for reservoirs or materials
- #321 Rights of way for pipe lines
- #322 Application of certain sections to Pueblo Indians
- #323 Rights of way for all purposes across any Indian land
- #325 Payment and disposition of compensation
- #326 Same; laws unaffected
- #327 Same; application for grant by department or agency
- #328 Same; rules and regs.
- #399 Leases of allotted mineral lands withdrawn from entry under mining laws
- #463 Restoration of lands to tribal ownership; protection of existing rights; Papago Reservation

## VII. Lands - Restrictions

## B. Allotments

## 1. Sales

- #352 Cancellation of trust patents within power or reservoir sites
- #372 Ascertainment of heirs of deceased allottees; settlement of estates; sales of lands; deposit of Indian moneys
- #373 Disposal by will of allotments held under tract
- #373a Disposition of trust or restricted estate of interstate without heirs; successor tribe; sale of land
- #373b Same; restricted estate or homestead on public domain
- #379 Sale of allotted land by heirs
- #391a Sale for town site; removal of restriction
- #392 Consent to or approval of alienation of allotments
- #403a Sale on partition by owners of interests in allotted  
-1 lands in the Tulalip Reservation; Termination of Federal Title, trust and restrictions
- #404 Sale on petition of allottee or heirs
- #405 Sale of allotment of incompetent Indian
- #409 Sale of lands within reclamation projects
- #409a Sale of restricted lands reinvestment in other restricted lands
- #410 Moneys from lease or sale of trust lands not liable for certain debts
- #413 Fees to cover cost of work performed for Indians
- #403a Acquisition, management and disposal of lands by  
-2 Tulalip Tribe - Termination of Federal trust and restrictions on alienation
- #464 Transfer of restricted Ind. lands or shares in assets of Ind. tribes or corp; exchange of lands
- #474 Continuation of allowances

## VII. Lands - Restrictions

## B. Allotments

## 1. Sales (Cont'd)

#608 Consolidation of lands; purchase, sale and exchange; terms and conditions (Yakima)

## VII. Lands - Restrictions

## B. Allotments

## 2. Leases

- #356 Allowance of undisputed claims of restricted allottees of Five Civilized Tribes
- #380 Lease of inherited allotments by superintendent
- #392 Consent to or approval of alienation of allotments
- #393 Leases of restricted allotments
- #393a Same; lands of 5 Civil Tribes (Power of Supt.)
- #394 Leases of arid allotted lands
- #395 Leases of allotted lands where all other is incapacitated
- #396 Leases of allotted lands for mining purposes
- #396f Lands excepted from leasing provisions
- #396g Subsurface storage of oil or gas
- #403 Leases of lands held in trust
- #403b Leases of restricted lands in State of Washington
- #403c Same; identity of lessor; period of lease
- #410 Moneys from lease or sale of trust lands not liable for certain debts
- #413 Fees to cover cost of work performed for Indians
- #415 Leases of restricted lands for various purposes
- #415a Same; lease of lands of deceased Indians for benefit of heirs or devisees
- #415b Same; advance payment of rent or other consideration
- #415d Same; lease of restricted lands under other laws unaffected
- #416 Leases of trust on restricted lands on San Xavier and Salt River Pima - Maricopa Indian Reservations for various purposes  
a - j
- #608b Rights of lessee; taxation (Yakima)  
(a)

## VII. Lands - Restrictions

## B. Allotments

## 2. Leases (Cont'd)

#635 Disposition of lands - Lease of restricted lands;  
renewals (Navajo Hopi)

## VII. Lands - Restrictions

## B. Allotments

## 3. Exchanges, corrections or cancellations

- #343 Correction of errors in allotments and Patents
- #344 Cancellation of allotment of unsuitable land
- #344a Cancellation of patent issued to Indian allottee dying without heirs
- #350 Surrender of patent, and selection of other land
- #352 Cancellation of trust patents within power or reservoir sites
- #352a Cancellation of patents in fee simple for allotments held in trust
- #352b Same; partial cancellation; issuance of new trust patents
- #409a Sale of restricted lands; reinvestment in other restricted lands
- #464 Transfer of restricted Indian lands or shares in assets or Indian tribes or corp; exchange of lands
- #574 Land consolidation
- #593 Exchanges of allotted, restricted and tribal lands for Chippewa National Forest lands
- #608 Consolidation of lands; purchase sale and exchange; terms and conditions (Yakima)

VII. Lands - Restrictions

B. Allotments

4. Mortgages

#403a Acquisition, management, and disposal of lands by  
-2 Tulalip Tribe - Termination of Federal trust and  
restrictions on alienation

#483a Mortgages and deeds of trust by individual Indian  
owners

## VII. Lands - Restrictions

## B. Allotments

## 5. Rights-of-Way

- #311 Opening highways
- #312 Right of Way for R.R., telegraph, and telephone;  
town sites
- #313 Width of Right of Way
- #314 Surveys; maps; compensation
- #315 Time for completion of road; forfeiture
- #316 Rights of several roads through canyons
- #317 Regulations
- #319 Rights of way for telephone and telegraph lines
- #320 Acquisition of lands for reservoirs or materials
- #321 Rights of way for pipe lines
- #322 Application of certain sections to Pueblo Indians
- #323 Rights of Way for all purposes across any Indian lands
- #325 Payment and disposition of compensation
- #326 Same; laws unaffected
- #327 Same; application for grant by department or agency
- #328 Same; rules and regulations
- #341 Power to grant rights of way not affected

## VII. Lands - Restrictions

## B. Allotments

## 6. Condemnation

- #341 Power to grant right of way not affected
- #357 Condemnation of lands under laws of States
- #409a Sale of restricted lands; reinvestment in other restricted lands

VII. Lands - Restrictions

B. Allotments

7. Gift

#408 Surrender of allotments by relinquishment for benefit of children

#464 Transfer of restricted Indian lands or shares in assets of Indian tribes or corp; exchange of lands

## VII. Lands - Restrictions

## B. Allotments

## 8. Devise

- #344a Cancellation of patent issued to Indian allottee dying without heirs
- #348 Patents to be held in trust; descent and partition
- #353 Sections inapplicable to certain tribes
- #371 Descent of land
- #372 Ascertainment of heirs of deceased allottees; settlement of estates; sale of lands; deposit of Indian moneys
- #372a Heirs by adoption
- #373 Disposal by will of allotments held under trust
- #375 Determination of heirship of deceased members of Five Civilized Tribes
- #392 Consent to or approval of alienation of allotment
- #396 Leases of allotted land for mining purposes
- #404 Sale on petition of allottee or heirs
- #415a Same; lease of lands of deceased Indians for benefit of heirs or devisees
- #464 Transfer of restricted Indian lands or shares in assets of Indian tribes or corp; exchange of lands
- #607 Inheritance by non-members (Yakima)
- #952 Members entitled to allotment; prohibition against further allotments (Agua Caliente)
- #953 Lands - Determination of value of unallotted and allotted lands; exclusion of deceased allottees' allotments (Agua Caliente)

## VII. Land - Restrictions

## B. Allotments

## 10. Fee Patent or Certificate of Competency

- #348 Patents to be held in trust; descent and partition
- #349 Patents in fee to allottees
- #352a Cancellation of patents in fee simple for allotments held in trust
- #352b Same; partial cancellation; issuance of new trust patents
- #372 Ascertainment of heirs of deceased allottees; settlement of estates; sale of lands; deposit of Indian moneys
- #373 Disposal by will of allotments held under trust
- #378 Partition of allotment among heirs; patents
- #379 Sale of allotted lands by heirs
- #391a Sale for town site; removal of restriction
- #403a Sale or partition by owners of interests in allotted lands in the Tulalip Reservation, termination of Federal title, trust and restrictions
- 1
- #404 Sale on petition of allottee or heirs
- #405 Sale of allotment of noncompetent Indian
- #409 Sale of lands within reclamation projects
- #483 Sale of land by individual Indians

## VII. Lands - Restrictions

## B. Allotments

## 11. Partition

- #348 Patents to be held in trust; descent and partition
- #372 Ascertainment of heirs of deceased allottees; settlement of estates; sale of lands; deposit of Indian moneys
- #373 Disposal by will of allotments held under trust
- #378 Partition of allotment among heirs, patents
- #403a Sale or partition by owners of interests in allotted  
-1 lands in the Tulalip Reservations; termination of  
Federal title, trust, restrictions
- #408 Surrender of allotments by relinquishment for benefit  
of children
- #409 Sale of lands within reclamation projects

## VII. Land - Restrictions

## B. Allotments

## 12. Making

- #185 Protection of Indian desiring civilized life
- #331 Allotments on reservations; irrigable and non-irrigable lands
- #332 Selection of allotments
- #333 Making of allotments by agents
- #334 Allotments to Indians not residing on reservations
- #335 Extension of provisions as to allotments
- #336 Allotments to Indians making settlement
- #337 Allotments in national forests
- #337a San Juan County, Utah; discontinuance of allotments
- #339 Tribes excepted from certain provisions
- #340 Extension of certain provisions
- #345 Actions for allotments
- #348 Patents to be held in trust; descent and partition
- #351 Patents with restrictions for lots in villages in Washington
- #353 Sections inapplicable to certain tribes
- #358 Repeal of statutory provisions relating to survey, classification, and allotments which provide for repayment out of Indian moneys
- #408 Surrender of allotments by relinquishment for benefit of children
- #412a Exemption from taxation of lands subject to restrictions against alienation; determination of homestead
- #461 Allotment of land on Indian reservations
- #463a Extension of Bounderies of Papago Reservation
- #465a Receipt and purchase in trust by U.S. of land for Klamath Tribe Indians

## VII. Lands - Restrictions

## B. Allotments

## 12. Making (Cont'd)

- #474 Continuation of allowances
- #668 Sale of lands held by U.S. (So. Ute)
- #951 (See Equalization)
- #952 Members entitled to allotment; prohibition against further allotments (Agua Caliente)
- #953 Lands - Determination of value of unallotted and unallotted lands; exclusion of deceased allottees allotments (Agua Caliente)
- #957 Allotments deserved full equalization (Agua Caliente)

## VII. Lands - Restrictions

## B. Allotments

## 13. Liens and Charges

- #306 Expenditures for encouragement of industry and self-support
- #306a Advances for support of old, disabled or indigent allottees; lien against and
- #352c Reimbursement of allottees or heirs for taxes paid on lands patented in fee before the end of trust
- #354 Lands not liable for debts prior to final patent
- #355 Laws applicable to lands of full-blooded members of Five Civilized Tribes
- #956 Claims against allotments - Assignment, sale, etc. (Agua Caliente)

## VII. Lands - Restrictions

## B. Allotments

## 14. Equalization

- #781 Distribution of funds; allotments equalization payments (Creek)
- #782 Payments to heirs or legatees; proof of death or heirship (Creek)
- #783 Payments to minors or persons under legal disability (Creek)
- #951 Authority to equalize allotments (Agua Caliente)
- #952 Members entitled to allotment; prohibition against further allotments (Agua Caliente)
- #953 Lands - Determination of value of unallotted and allotted lands; exclusion of deceased allottees' allotments (Agua Caliente)
- #957 Allotments deemed full equalization (Agua Caliente)

## VII. Lands - Restrictions

## C. Restrictions on Alienation generally

- #86 Encumbrances on allotments (5 Civilized)
- #177 Purchases or grants of lands from Indians
- #202 Inducing conveyances by Indians of trust interests in lands
- #233 New York - power over Indian lands
- #293a Conveyance of school property to local school dist. or public agencies
- #348 Patents to be held in trust; descent and partition
- #351 Patents with restrictions for lots in villages in Washington
- #355 Laws applicable to lands of full blooded members of Five Civilized Tribes
- #391 Continuance of restrictions on alienation in patent
- #392 Consent to or approval of alienation of allotments
- #403a Sale or partition by owners of interests in allotted lands in the Tulalip Reservation; termination of Federal title, trust, and restrictions
  - 1
- #403a Acquisition, management and disposal of lands by Tulalip Tribe - Termination of Federal Trust and restrictions on alienation
  - 2
- #405 Sale of allotment of noncompetent Indians
- #409a Sale of restricted lands; reinvestment in other restricted lands
- #412 Payment of taxes from share of allottee in tribal funds
- #412a Exemption from taxation of lands subject to restrictions against alienation, determination of homestead
- #415c Same; approval of leases
- #462 Existing periods of trust and restrictions on alienation extended.
- #463a Extension of boundaries of Papago Indian Reservation

## VII. Lands - Restrictions

## C. Restrictions on Alienation Generally (Cont'd)

- #463f Title to lands
- #465a Receipt and purchase in trust by U.S. of land for Klamath Tribe Indians
- #476 Organization of Indian Tribes; constitutions and bylaws; special elections
- #477 Incorp. of Indian tribes; charter; ratification by election
- #489 Same; title in trust to U.S. (#488 - 492)
- #608 Consolidation of lands; purchase sale and exchange; terms and conditions (Yakima)
- #608a Title to lands, interests, improvements or rights; credit of proceeds of sale to tribal funds (Yakima)
- #635 Disposition of lands - lease of restricted lands; renewals
- #958 Organization and transfer of title to legal entity (Agua Caliente)
- #1321 Assumption of criminal jurisdiction by States
- #1322 Assumption of civil jurisdiction by States
- #1466 Land and personal property titles
- #1495 Land and personal property titles

## VII. Lands - Restrictions

## D. Miscellaneous

- #4 Defective record of deeds and papers legalized
- #5 Record of deeds by Indians requiring approval
- #190 Sale of plants or tracts not needed for admin. or allotment purposes
- #233 New York - juris. over lands
- #276 Vacant military posts or barracks for schools; detail of Army officers
- #277 Former Apache military post set as Theodore Roosevelt Indian School
- #280 Patents of lands to missionary board or religious organizations
- #280a Lands in Alaska for schools or missions
- #293a Conveyance of school properties to local school district or public agencies
- #352c Reimbursement of allottees or heirs for taxes paid on lands patented in fee before end of trust
- #390 Concessions on reservoir sites, etc.
- #412a Exemption from taxation of lands subject to restrictions against alienation; determination of homestead
- #415c Same; approval of leases
- #610b Title to lands; tax exemption; prohibition of restrictions (Swinomish)
- #465 Acquisition of lands; water rights or surface rights; appropriation, etc.
- #468 Allotments or holdings outside of reservations
- #501 Acquisition of agricultural and grazing lands for Indians; title to lands; tax exemption (Okla.)
- #502 Purchase of restricted Indian lands; performance to Sec. of Interior; waiver of preference (Okla.)

## VIII. Natural Resources

## A. Mining

- #396 Leases of allotted lands for mining purposes
- #396a Leases of unallotted lands for mining purpose
- #396c Lessees of restricted lands to furnish bonds for performance
- #396d Rules and regulations governing operations
- #396e Officials authorized to approve leases
- #396g Subsurface storage of oil or gas
- #397 Leases of lands for grazing or mining
- #396f Lands excepted from leasing provisions
- #399 Leases of unallotted mineral lands withdrawn from entry under mining laws
- #400 Leases for mining purposes of reserved and unallotted lands in Fort Peck and Blackfeet Indian Reservations
- #400a Leasing for mining purposes of land reserved for agency or school; disposition of proceeds; royalty
- #401 Leases for mining purposes of unallotted lands in Kaw Reservation
- #463 Restoration of lands to tribal ownership, protection of existing rights; Papago Indian Reservation
- #463a Same; Extension of Boundaries of Papago Reservation
- #484 Conversion of exchange assignments of tribal lands on certain Sioux reservations into trust titles; trust and tax exemptions
- #485 Same; payment to assignment holders of moneys collected for use of subsurface rights
- #486 Same; regulations

## VIII. Natural Resources

## B. Oil and Gas

- #396b Public auction of oil and gas leases, requirements
- #396c Lessees of restricted lands to furnish bonds for performance
- #396d Rules and regulations governing operations; limitations on leases
- #396e Officials authorized to approve leases
- #396g Subsurface storage of oil or gas
- #396f Lands excepted from leasing provisions
- #398 Leases of unallotted lands for oil and gas mining purposes
- #398a Leases of unallotted lands for oil and gas mining -c, e purposes within Executive Order Indian reservations
- #414 Reservation of minerals in sale of Choctaw-Chichasaw lands
- #484 Conversion of exchange assignments of tribal lands on certain Sioux reservations into trust titles; trust and tax exemptions
- #485 Same; payment to assignment holders of moneys collected for use of subsurface rights
- #486 Same; regulations
- #501 Acquisition of agricultural and grazing lands for Indians; title to land; tax exemption (Okl.)

## III. Natural Resources

## C. Timber

- #196 Sale or other disposition of dead timber
- #399 Leases of unallotted mineral lands withdrawn from entry under mining laws
- #406 Sale of timber on lands held under trust - deductions for admin. expenses; standards guiding sales
- #407 Sale of timber on unallotted lands
- #407d Charges for special services to purchasers of timber
- #466 Indian forestry units; rules and regs.
- #484 Conversion of exchange assignments of tribal lands on certain Sioux reservations into trust titles; trust and tax exemptions
- #681 Per capita payment to tribal members; rules and regulations (Red Lake Chippewa)
- #684 Per capita payment to tribal members; installment; rules and regs. (Red Lake Chippewa)
- #687 Per capita payments to tribal members; rules and regs. (Red Lake Chippews)

## VIII. Natural Resources

## D. Water

- #13 Expenditure of appropriations by B.I.A.
- #381 Irrigation lands; regulation of use of water
- #416i Same; restrictions
- #463 Restoration of lands to tribal ownership; protection of existing rights; Papago Indian Reservation
- #465 Acquisition of land; water rights or surface rights; appropriation
- #484 Conversion of exchange assignments of tribal lands on certain Sioux reservations into trust titles; trust and tax exemptions
- #622 Exchange of tribal lands; title to lands (Pueblo, Navajo; Pueblos and Canoncito Navajos)
- #624 Exchanges of lands; reservation of rights; title to lands (Pueblo)
- #674 Use of funds of Ute Mountain Tribe, etc.
- #676 Use of funds of Southern Ute, etc.

## VIII. Natural Resources

## E. Generally

- #293a Conveyance of school properties to local school dist. or public agencies
- #356 Allowance of undisputed claims of restricted allottees of Five Civilized Tribes
- #398- (Leases taxes royalties, etc.)  
398a-c
- #399 Leases of unallotted mineral lands withdrawn from entry under mining laws
- #403b Lease of restricted lands in State of Washington
- #414 Reservation of minerals in sale of Choctaw-Chickasaw lands
- #415 Leases of restricted lands for various purposes
- #416 Leases of trust or restricted lands on certain reservations
- #507 Availability and allocation of funds, royalties from mineral deposits (Okla.)
- #624 Exchange of lands; reservation of rights; title to lands (Pueblo)
- #631 Basic program for conservation and development of resources; projects; appropriations (Navajo Hopi)
- #632 Character and extent of admin.; time limit; report on use of funds (Navajo Hopi)
- #635 Disposition of lands - Lease of restricted lands; renewal (Navajo Hopi)

## VIII. Natural Resources

## F. Grazing and Range Management

- #397 Leases of lands for grazing or mining
- #393 Leases of restricted allotments
- #393a Same, lands of 5 Civilized Tribes
- #390 Concessions on reservoir sites and other lands in Indian irrigation projects
- #416 Leases of trust lands of certain reservations
- #466 Indian forestry units; rules and regs.
- #631 Basic program for conservation and development of resources; projects; appropriations

VIII. Natural Resources

G. Hunting and Fishing

#1321 Assumption by State of criminal jurisdiction

#1322 Assumption by State of civil jurisdiction

**IX. Reservations****A. Establishment and Boundary Changes**

- #211 Creation of Indian reservations (See 398 a-e distinction between E.O. and treaty reservations in mineral leasing).
- #398d Same; changes in boundaries of E.O. Reservations
- #463 Extension of boundaries of Papago Indian Reservations  
a-c
- #465 Acquisition of lands, water rights or surface rights; appropriation.
- #467 New Indian reservations
- #495 Aunette Islands reserved for Metlakatitla Indians  
(Alaska)
- #496 Designation of land for Indian reservation (Alaska)
- #507 Availability and allocation of funds; royalties from mineral deposits
- #591 Reservation of Chippewa National Forest lands for Minnesota Chippewa Tribe
- #621 Portions of tribal lands to be held in trust by the U.S.; remainder to become part of the public domain (Pueblo and Canoncito Navajo)

**IX. Reservations**

**B. Survey of Boundaries**

**#176 Survey of reservations**

## IX. Reservations

## C. Restoration of Surplus Lands

- #293a Conveyance of school properties to local school districts or public agencies
- #463 Restoration of lands to tribal ownership; protection of existing rights; Papago Reservation
- #463d Restoration of lands in Almatilla Indian Res. to tribal ownership
- #574 Consolidation of lands
- #575 Restoration of lands

## IX. Reservations

## D. Land Consolidation

## 1. Sale and Exchange

- #463e Exchanges of land
- #477 Incorp. of Indian tribes; charter: ratification by election
- #484 Conversion of exchange assignments of tribal lands on certain Sioux reservations into trust titles; trust and tax exemptions
- #485 Same; payment to assignment holders of moneys collected for use of subsurface rights
- #486 Same; regulations
- #487 Spokane Indian Reservation; consolidation of lands - purchase, sale and exchange
- #501 Acquisition of agricultural and grazing land for Indians; title to land; tax exemption (Okla.)
- #574 Consolidation of lands
- #502 Purchase of restricted Indian lands; preference to Sec. of Interior; waiver of preference (Okla.)
- #608 Consolidation of lands; purchase sale and exchange terms and conditions
- #610a Sale or exchange of lands; money equalization payment (Swinomish)
- #621 Exchange of tribal lands; title to lands (Pueblo, Navajo; Pueblos and Canonicito Navajos)
- #624 Exchange of lands; reservation of rights; title to lands (Pueblo)
- #668 Sale of lands held by U.S. (So. Ute 668 - 670)
- #669 Use of sale proceeds for purchase of real property only (So. Ute)

## IX. Reservations

## D. Land Consolidation

## 3. Acquisition

- #373a Disposition of trust or restricted estate of interstate without heirs; successor tribe; sale of land
- #373b Same; restricted estate or homestead on the public domain
- #403a Acquisition, management, and disposal of lands by  
- 2 Tulalip Tribe - Termination of Fed. trust and restrictions on alienation
- #465 Acquisition of lands, water rights or surface rights; appropriation; title to lands; tax exemption
- #488 Agricultural loans to acquire land within reservations (488 - 492)
- #574 Consolidation of lands
- #610 Purchase of lands within, adjacent to, or in close proximity to boundaries of Swinomish Indian Reservation

## IX. Reservations

## F. Highways and Roads

- #318a Roads on Indian reservations; appropriation
- #398d Same; changes in boundaries of E.O. reservations
- #631 Basic program for conservation and development of resources; projects; appropriations

**IX. Reservations****G. Withdrawals**

- #390 Concessions on reservoir sites, etc.
- #463 Restoration of lands to tribal ownership; protection of existing rights; Papago Reservation

**X. Federal Contract Authority****A. Education**

- #304a Study and invest. of Ind. Ed.; contracts; report to Congress
- #309 Vocational training program; eligibility; contracts or agreements
- #452 Contracts for education, medical attention, relief and social welfare
- #453 Same; use of Fed. property

**X. Federal Contract Authority**

**B. Health**

- #309 Vocational training program; eligibility; contracts or agreements
- #452 Contracts for education, medical attention, relief and social welfare
- #453 Same; use of federal property

**X. Federal Contract Authority****C. Services**

- #452 Contracts for education, medical attention, relief and social welfare
- #453 Same; use of federal property
- #639 Additional Social Security contributions to States
- #1542 Agency cooperation; private contracts for management services and technical assistance
- #1543 Funds limitation for private contracts

X. Federal Contract Authority

D. Miscellaneous

#13 Expenditure of appropriations by B.I.A.

#15 Utility facilities, etc.

#305a Promotion of economic welfare; arts and crafts;  
powers of Board

XI. Protection of Indians

A. Trespass

1. Cattle

§179 Driving stock to feed on lands

## XI. Protection of Indians

## A. Trespass

## 2. Settling or Surveying

#178 Fees on behalf of Indian parties in contests under public land laws

#180 Settling on or surveying lands belonging to Indians by treaty

XI. Protection of Indians

A. Trespass

4. Generally

#185 Protection of Indians desiring civilized life

#187 Suspension of chief for trespass (#186 basis repealed)

## XI. Protection of Indians

### B. Individuals

#### 1. Civil Rights of Individuals

- #185 Protection of Indians desiring civilized life
- #187 Suspension of chief for trespass (#186 basis repealed)
- #200 Report of offense or case of Indian incarcerated in agency jail
- #286 Sending child to school out of State without consent
- #287 Taking child to school in another State without written consent
- #302 Indian Reform Schools; rules and regs. consent of parents
- #476 Organization of Indian tribes; constitutions and by-laws; special election
- #478 Acceptance of IRA optional
- #478a Procedure
- #503 Organization of tribes or bands; constitution; charter; right to participate in revolving credit fund (Okla.)
- #504 Cooperative associations; charter; purposes; voting rights Okla.
- #636 Adoption of Constitution by Navajo Tribe; method contents
- #953 Lands - Determination of value of unallotted land, etc (Aqua Caliente)
- #958 Organization and transfer of title to legal entity (Aqua Caliente)
- #1301 Definitions
- #1302 Constitutional Rights
- #1303 Habeas Corpus
- #1311 Model Code
- #1326 Special election

**XI. Protection of Indians**

**C. Quarantine and/or treatment of domestic Animals**

XI. Protection of Indians

D. Sale of Excess Domestic Animals

#192 Sale by agents of cattle or horses not required

#442 Livestock loans; cash settlements (See also #443)

## XI. Protection of Indians

## E. Federal Enforcement Remedies and Penalties

- #177 Purchases or grants of lands from Indian tribes  
(Penalties)
- #178 Fees on behalf of Indian parties in contests under  
public land laws
- #179 Driving stock to feed on lands
- #180 Settling on or surveying lands belonging to Indians  
by treaty
- #193 Proceedings against goods seized for certain violations
- #200 Report of offense or case of Indian incarcerated in  
agency jail
- #229 Injuries to property by Indians
- #230 Depositions by Agents touching depredations
- #251 Setting up distillery
- #286 Sending child to school out of state without consent  
(need prov)
- #287 Taking child to school in another State without  
written consent
- #345 Actions for allotments

## XI. Protection of Indians

## F. Intoxicating Liquors

- #130 Withholding of moneys etc., on account of intoxicating liquor
- #251 Setting up Distillery
- #253 Wines for sacramental purposes

## XI. Protection of Indians

## G. Indian Traders

- #261 Power to appoint traders with Indians
- #262 Persons permitted to trade with Indians
- #263 Prohibition of trade by President
- #264 Trading without license; white persons as clerks

## XI. Protection of Indians

## H. General Protection Provisions

- #174 Superintendence by Pres. of tribes west of Miss.
- #175 U.S. Attorneys to represent Indians
- #198 Contagious and infectious diseases, quarantine of individual
- #305a Promotion of economic welfare; arts and crafts; powers of Board
- #348 Patents to be held in trust; descent and partition
- #348a Same; extension of trust period for Indians of Klamath River Reservation
- #415a Same; lease of lands of deceased Indians for benefit of heirs of devisees
- #441 Indian employees of government entitlement to Indian benefits
- #954 Guardians for minor allottees etc. (Aqua Caliente)
- #1331 Approval (attorney contracts)
- #1341 Authorization of Secretary - Revision of documents, etc.

## XI. Protection of Indians

## I. Intermarriage - Spouses and Children

- #181 Rights of white man marrying Indian women
- #182 Rights of Indian women marrying white men
- #183 Marriage of white men to Indian women
- #184 Rights of children born of marriages
- #607 Inheritance by non-members

XI. Protection of Indians

J. Relocation

#631 Basic program for conservation and development of resources; projects; appropriations (Navajo Hopi)

## XII. Education

## A. Employment Standards and practices

- #66 Duties of agencies devolved upon superintendent of Indian school
- #271 Employment of instructors for Indians
- #272 Superintendent of Indian schools
- #272a Same; other duties
- #273 Detail of Army officer
- #274 Employment of Indian girls and boys as assistants
- #275 Leaves of absence to employees
- #304 South Dakota Indians; State course of study

## XII. Education

## B. Attendance

- #231 Enforcement of state laws, etc.
- #282 Regulations by Secretary of Interior to secure attendance at school
- #283 Regulations fro withholding rations for nonattendance at schools
- #285 Withholding annuities from Osage Indians for non-attendance at schools

## XII. Education

## C. Federal Aid and Appropriations

- #13 Expenditure of appropriations by Bureau of Indian Affairs
- #276 Vacant military posts or barracks for schools; detail of Army officers
- #278a No appropriations for sectarian school
- #281 Children taking lands in severalty not excluded
- #288 White children in Indian day schools
- #289 White children in Indian boarding schools
- #295 Supervision of expenditure of appropriations for school purposes
- #297 Expenditure for children with less than one-fourth Indian blood
- #302 Indian Reform School; rules and regs; consent of parents
- #309 Vocational training program; eligibility; contracts or agreements
- #309a Same; authorization of approp.
- #471 Vocational and trade schools; appropriations for tuition
- #631 Basic programs for conservation and development of resources; projects; appropriations (Navajo Hopi)
- #640a Navajo Community College; purpose
- #640b Same; grants
- #640c Same; authorization of appropriations
- #1462 Economic development; educational loans; limitation of loans to or investments in non-Indian organizations
- #1464 Maturity of loans; interest rate; interest deferral on educational loans

## XII. Education

## D. Eligibility

- #276 Vacant military posts or bracks for schools; detail of Army officers
- #281 Children taking lands in severalty not excluded
- #288 White children in Indian day schools
- #289 White children in Indian boarding schools
- #290 Transportation of pupils under 14 at gov't expense
- #293a Conveyance of school properties to local school districts or public agencies
- #297 Expenditure for children with less than one fourth Indian blood
- #309 Vocational training program; eligibility; contracts or agreements
- #1462 Economic development; educational loans; limitation of loans to or investments in non-Indian organizations

## XII. Education

## E. Tribal and Trust Funds

- #123 Expenditure from funds without appropriation
- #111 Payment of moneys and distribution of goods
- #293 Sale of lands purchased for day school or other Indian admin. uses
- #293a Conveyance of school properties to local school dist. or public agencies
- #294 Sale of certain abandoned buildings on lands belonging to Indian tribes
- #348 Patents to be held in trust descent and partition
- #400a Lease for mining purposes of land reserved for agency or school
- #613 Advances or expenditures from tribal funds, etc. (Shoshone Arapahoe)

## XII. Education

## F. Miscellaneous

- #200 Report of offense as case of Indian incarcerated
- #231 Enforcement of State laws, etc.
- #279 Rations to mission schools
- #286 Sending child to school out of State without consent
- #287 Taking child to school in another State without written consent
- #290 Transpt. of pupils under 14 at gov't expense
- #291 Removal of gov't property at schools
- #292 Suspension or discontinuance of schools
- #293 Sale of lands purchased for day school or other Indian admin. uses
- #293a Conveyance of school properties to local school dist or public agencies
- #294 Sale of certain abandoned buildings on lands belonging to Indian Tribes
- #304a Study of Indian Education; contracts; appropriations
- #452 Contracts for education, medical attention, etc.
- #453 Same, use of federal property

## XII. Education

## G. Schools

- #276 Vacant military posts or barracks for schools; detail of Army officers
- #277 Former Apache military post established as Theodore Roosevelt Indian School
- #280 Patents of lands to missionary boards of religious organizations
- #280a Lands in Alaska for schools or missions
- #292 Suspension or discontinuance of schools
- #293 Sale of lands purchased for day school or other Indian admin. uses
- #307 Est. of vocational school for children and housing and training center for adults; transfer of property; supervision
- #308 Same; property taken over by Sec. of Interior
- #400 Leases for mining purposes of reserved and unallotted lands in Fort Peck and Blackfeet Indian reservations
- #400a Lease for mining purposes of land reserved for agency or school; disposition of proceeds; royalty
- #401 Leases for mining purposes of unallotted lands in Kaw Reservation
- #415 Leases of restricted lands for various purposes
- #416i Same; (Leases); restrictions  
(e)
- #416 Leases on trust or restricted lands on specified reservations
- #497 Reservation of tracts for schools, hospitals, etc. (Alaska)
- #631 Basic program for conservation and development of resources; projects; appropriations
- #640a Navajo Community College; purpose
- #640b Same; purpose
- #640c Same; authorization of appropriations

## XIII. Health

- #13 Expenditure of appropriations by Bureau of Indian Affairs
- #198 Contagious and infectious diseases, quarantine
- #231 Enforcement of State laws, etc.
- #309 Vocational training program; eligibility contracts or agreements
- #452 Contracts for education, medical attention, etc
- #453 Same; use of federal property
- #497 Reservation of tracts for schools, hospital; etc. (Alaska)
- #631 Basic program for conservation and development of resources; projects; appropriations (Navajo Hopi)

**XIV. Social and Economic Welfare****A. Arts and Crafts**

§87a Purchase and resale of by Federal Employees

§305 Indian Arts and Crafts Board

§305a Promotion of economic welfare; Powers of the Board

§305b Rules and Regs; submission to Sec. of Interior

§305c Appropriation

**XIV. Social and Economic Welfare****B. Financial Support of Aged, etc.**

- #121 Payment of share of tribal funds to helpless Indians
- #306a Advances for support of old, disabled, or indigent allottees; lien against land
- #452 Contracts for education, medical attention, relief and social welfare
- #453 Same; use of federal property
- #639 Additional Social Security contributions to States

**XIV. Social and Economic Welfare****C. Generally**

- #13 Expenditure of appropriations by Bureau of Indian Affairs**
- #631 Basic program for conservation and development of resources; projects; appropriations (Navajo Hopi)**

XIV. Social and Economic Welfare

D. Housing

#631 Basic program for conservation and development of  
resources; projects; appropriations (Navajo Hopi)

**XV. Descent and Distribution**

**A. Federal Jurisdiction**

**1. Trust land**

- #181 Rights of white men marrying Indian women; tribal property
- #182 Rights of Indian women marrying white men; tribal property
- #183 Marriage of white men to Indian women; evidence
- #184 Rights of children born of marriages between white men and Indian women
- #373a Disposition of trust or restricted estate of interstate without heirs; successor tribe; sale of land
- #373c Sections 373a and 373b inapplicable to certain Indians
- #378 Partition of allotment among heirs; patents
- #392 Consent to or approval of alienation of allotments
- #396 Leases of allotted lands for mining purposes
- #952 Members entitled to allotments; prohibition against further allotments (Agua Caliente)
- #953 Lands - determination of value of unallotted and allotted lands; exclusion of deceased allottees' allotments (Agua Caliente)

**XV. Descent and Distribution****A. Federal Jurisdiction****2. Other trust property**

- #181 Rights of white men marrying Indian women; tribal property
- #182 Rights of Indian women marrying white men; tribal property
- #183 Marriage of white men to Indian women; evidence
- #184 Rights of children born of marriages between white men and Indian women
- #373a Disposition of trust or restricted estate of interstate without heirs; successor tribe; sale of land
- #373c Sections 373a and 373b inapplicable to certain Indians
- #375b Same; schedule of fees
- #375c Same disbursement of sums not exceeding \$500 to heirs or legatees
- #377 Payment or deduction of cost of determining heirs
- #1322 Assumption by state of civil jurisdiction

## XV. Descent and Distribution

## B. Laws Governing

- #344a Cancellation of patent issued to Indian allottee dying without heirs
- #348 Patents to be held in trust; descent and partition
- #353 Sections inapplicable to certain tribes
- #371 Descent of land
- #372 Ascertainment of heirs of deceased allottees; settlement of estates; sale of lands; deposit of Indian moneys
- #372 -1 APA inapplicable to appointment of hearing examiners for probate work
- #372a Heirs by adoption
- #373 Disposal by will of allotments held under trust
- #373b Same restricted estate or homestead or the public domain
- #373c Sections 373a and 373b inapplicable to certain Indians
- #374 Attendance of witnesses
- #375 Determination of heirship of deceased members of Five Civilized Tribes
- #375a Same jurisd. of Sec. of Interior over probate and dist. of estates not exceeding \$2,500

## XV. Descent and Distribution

## B. Laws Governing

- #375d Disposition of estates of interstates - 5 Civilized Tribes
- #376 Oaths in investigation
- #379 Sale of allotted land by heirs
- #380 Lease of inherited allotments by superintendent
- #415a Same; lease of lands of deceased Indians for benefit of heirs or devisees
- #464 Transfer of restricted Ind. lands or shares in assets of Indian tribes or corp; exchanges of land
- #607 Inheritance by non-members (Yakima)
- #782 Payment to heirs or legatees; proof of death and heirship (Creek)
- #955 Tax exemption (Agua Caliente)

**XVI. Irrigation****A. Regulation of Water**

- #381 Irrigation lands; regulation of use of water
- #382 Irrigation projects under Reclamation Act
- #389a Same; declaring lands to be temporarily nonirrigable
- #389b Elimination to permanently nonirrigable lands
- #389d Same, rules and regulations

**XVI. Irrigation****B. Construction and Maintenance Charges**

- #306 Expenditures for encouragement of industry and self-support; repayment
- #382 Irrigation projects under Reclamation Acts
- #385 Maintenance charges, reimbursement of construction costs, apportionment of costs
- #386 Reimbursement of construction charges
- #386a Adjustment of reimbursable debts; construction charges
- #387 Basis of apportionment, liens (no longer on books)
- #389 Investigation and adjustment of irrigation charges on lands within projects within reservations
- #389a Same; declaring lands to be temporarily non-irrigable
- #389c Same; cancellation of charges
- #389d Same; rules and regs.
- #389e Same; reports to Congress
- #390 Concessions on reservoir sites, etc.
- #409 Sale of lands within reclamation projects
- #613 Advances or expenditure from tribal funds etc.  
(Shoshone and Arapahoe)

XVI. Irrigation

C. Determination of Irrigability

- #389a Same; declaring lands to be temporarily non-irrigable
- #389b Elimination to permanently nonirrigable land
- #389d Same; rules and regulations
- #394 Leases of arid allotted lands

**XVI. Irrigation**

**D. Damages and Claims**

**#368 Claims for damages; settlement by agreement**

XVI. Irrigation

E. Allotment of irrigable lands

#331 Allotments on Reservation; irrigable and nonirrigable  
lands

**XVI. Irrigation****F. New Projects**

- #13 Expenditure of appropriations by B.I.A.
- #383 Estimates of cost; limitations as to
- #384 Employment of Superintendents of irrigation
- #631 Basis program for conservation and development of resources; projects; appropriations (Navajo Hopi)

**XVI. Irrigation****G. Lands withdrawn fro Porjects**

- #390** Concessions on reservoir sites and other lands in Indian projects
- #463** Restoration of lands to tribal ownership; protection of existing rights; Papago Indian Reservation
- #574** Restoration of lands

## XVII. Ceded Indian Lands

- #152 Proceeds of sales of Indian lands
- #154 Proceeds of sales of lands not subject to certain deductions
- #158 Investment of proceeds of lands
- #344 Cancellation of allotment of unsuitable land
- #411 Interest on moneys from proceeds of sale
- #574 Consolidation of lands
- #575 Restoration of lands
- #621 Portions of tribal lands to be held in trust by the U.S.; remainder to become part of the public domain (Pueblo & Canoncito Navajo)

## XVIII. Powers of Tribes

## A. Political Organization

- #464 Transfer of restricted Indian lands or shares in assets of Indian tribes or corporation; exchange of lands
- #473a Same; application to Alaska
- #476 Organization of Indian tribes; constitution and by-laws; special election
- #478 Acceptance of IRA optional
- #478a Procedure
- #478b Laws, treaties and rights unaffected by passage of sections 461 to 479
- #503 Organization of tribes or bands; constitution; charter; right to participate in revolving credit fund. (Okla.)
- #636 Adoption of Constitution by Navajo Tribe; method; contents
- #1301 Definitions (Tribe; self-government; courts)

## XVIII. Powers of Tribes

## B. Business Corporations

- #464 Transfer of restricted Indian lands or shares in assets of Indian tribes or corporation; exchange of lands
- #469 Indian corp; approp. for organizing
- #473a Same; application to Alaska
- #477 Incorp. of Indian tribes; charter; ratification by election
- #478 Acceptance of IRA optional
- #478a Procedure
- #503 Organization of tribes or bands; constitution; charter right to participate in revolving credit fund (Okla.)
- #504 Cooperative associations; charter; purposes; voting rights (Okla.)
- #505 Same; amendment or revocation of charter; suits by and against associations (Okla.)
- #506 Loans to individuals and groups; appropriations (Okla.)
- #635 Disposition of lands - lease of restricted lands; renewals (Navajo - Hopi)
- #642 Powers of Tribal Council (Hopi) (641 - 646)
- #958 Organization and transfer of title to legal entity (Aqua Caliente)

**XVIII. Powers of Tribe****C. Immunity from Suit**

- #490 Same; tribal rights and privileges in connection with loans
- #505 Same (504); amendment or revocation of charters; suits by and against associations (Okla.)
- #1301 Definitions
- #1302 Constitutional Rights

XVIII. Powers of Tribe

D. Power to file Suit

#642 Powers of tribal council (Hopi) (641 - 646)

**XVIII. Powers of Tribes**

**E. Issue Debt Paper**

**#642 Powers of Tribal Council (Hopi) (641 - 646)**

**#644 Bonds as valid and binding obligations**

## XVIII. Powers of Tribes

## F. Veto Power Over Executive Action

- #140 Diversion of approp. for employees and supplies  
(need prov.)
- #190 Sale of plants or tracts not needed for admin. or  
allotment purposes (needs prov.)
- #191 Sale by agents of cattle or horses not required  
(needs prov.)
- #261 Power to appoint traders with Indians (Needs prov.)
- #262 Persons permitted to trade with Indians (needs prov)
- #263 Prohibition of trade by President
- #264 Trading without license; white persons as clerks  
(needs prov.)
- #280 Patents of lands to missionary boards of religious  
organizations (needs prov.)
- #311 Opening highways (needs prov.)
- #312 Rights of Way for R.R., telegraph and telephone;  
town sites
- #319 Right of Way for telephone and telegraph lines  
(needs prov.)
- #320 Acquisition of lands for reservoirs or materials
- #323 Rights of way for all purposes across any Indian land  
(needs prov.)
- #324 Same consent of certain tribes; consent of Individual  
Indians (needs expansion beyond IRA tribes)
- #331 Allotments on reservations; irrigable and nonirrigable  
lands
- #390 Concessions on reservoir sites, etc.
- #396a Leases of unallotted lands for mining purposes duration  
of leases
- #396b Public auction of oil and gas leases.
- #398 Leases of unallotted lands for oil and gas mining  
purposes
- #398b Same; proceeds from rentals, royalties, and bonuses;  
disposition

## XVIII. Powers of Tribes

## F. Veto Power Over Executive Action (Cont'd)

- #476 Organization of Indian tribes; constitution and by-laws; special election
- #574 Consolidation of lands
- #592 . Withdrawal of tribal funds to reimburse U.S.; consent of Minn. Chippewa Tribe; disposition of receipts
- #593 Exchanges of allotted, restricted and tribal lands for Chippewa National Forest lands

## XVIII. Power of Tribes

## G. Veto power of Secretary over Tribes

- #415c Samep approval of leases
- #608 Consolidation of lands; purchases, sale and exchange; terms and conditons (Yakima)
- #613 Advances or expenditures from tribal funds, etc. (Shoshone and Arapahoe)
- #643 Councils power subject to approval of Sec. (Hopi) (641 - 646)
- #953 Lands, Determination of value of unallotted and allotted lands, etc. (Agua Caliente)

**XVIII. Powers of Tribes****H. Contracting for Services**

- #416g Same; contract for water, sewerage, law enforcement,  
or other public services**
- #416h Same; zoning building and sanitary regulations**
- #476 Organization of Indian tribes; constitution bylaws  
special election**

## XVIII. Powers of Tribes

## I. Land Consolidation

- #464 Transfer of restricted Indian lands or shares in assets of Indian tribes or corporation; exchange of lands
- #477 Incorp. of Indian tribes; charter; ratification by election
- #484 Conversion of exchange assignments of tribal lands on certain Sioux reservations into trust titles; trust and tax exemption
- #485 Same; payment to assignment holders of moneys collected for use of subsurface rights
- #486 Same; regulations
- #487 Spokane Indian reservation; consolidation of land - purchase, sale and exchange
- #488 Agricultural loans to acquire land within reservations (#488 - 492)
- #669 Use of sale proceeds for purchase of real property only (So. Ute 668 - 670)

## XVIII. Powers of Tribes

## K. State Jurisdiction

- #231 Enforcement of States laws - health and education
- #232 Jurisdiction of New York - crim. actions
- #233 Jurisdiction of New York - civil actions
- #304 South Dakota Indians; State course of study
- #319 Rights of way for telephone and telegraph lines
- #321 Rights of way for pipe lines
- #349 Patents in fee to allottees
- #375 Determination of heirship of deceased members of Five Civilized Tribes
- #375a Same; jurisd. of Sec. of Interior over probate and distribution of estates not exceeding \$2,500
- #398 Leases of unallotted lands for oil and gas mining purposes
- #398c Same; taxes
- #399 Leases of unallotted mineral lands withdrawn from entry under mining laws
- #401 Leases for mining purposes of unallotted lands in Kaw Reservation
- #403a Sale or partition by owners of interests in allotted lands in the Tulalip Reservation; termination of Federal title, trust, and restrictions  
-1
- #403a Acquisition, management and disposal of lands by Tulalip Tribe - Termination of Federal trust and restrictions on alienation  
-2
- #412 Payment of taxes from share of allottee in tribal lands
- #416a Same; covenant provision; Federal or State court jurisdiction of violations
- #416b Same; notification of lease provisions; outline of major provisions; etc.
- #416i Same; restrictions (lease tax)
- #483a Mortgages and deeds of trust by individual Indian owners
- #487 Spokane Indian Reservation; consolidation of lands - purchase, sale and exchange

## XVIII. Powers of Tribes

## K. State Jurisdiction (Cont'd)

- #491 Same; mortgaged property governed by State law (#488 - 492)
- #501 Acquisition of agricultural and grazing lands for Indians; title to lands; tax exemption (Okla.)
- #504 Cooperative associations; charter; purposes; voting rights (Okla.)
- #505 Same; amendment or revocation of charter; suits by and against associations (Okla.)
- #510 Payment of gross production taxes; method (Okla.)
- #608 Consolidation of lands; purchase sale, and exchange; terms and conditions (Yakima)
- #610c Mortgages or deeds of trust; law governing mortgages foreclosure or sale; U.S. as party; removal of cases; appeals
- #635 Disposition of lands - lease of restricted lands; renewals (Navajo - Hopi)
- #642 Powers of Tribal Council (Hopi) (641 - 646)
- #670 Mortgage or deed of trust of lands sold; U.S. as party to all proceedings (So. Ute)
- #954 Guardians for minor allottees, etc (Agua Caliente)
- #958 Organization and transfer of title to legal entity Agua Caliente)
- #1321 Assumption by state of criminal jurisdiction; consent of U.S.; force and effect of criminal laws
- #1322 Assumption by State of Civil jurisdiction - consent of U.S.; force and effect of civil laws
- #1323 Retrocession of jurisdiction by State
- #1324 Amendment of State Constitutions, etc.
- #1325 Abatement of actions
- #1326 Special election

## XVIII. Powers of Tribes

## L. Membership

- #601 Membership roll preparation; persons entitled to enrollment (Yakima)
- #602 Application to Tribal Council on exclusion from roll; minors and incompetent persons (Yakima)
- #603 Correction of membership roll (Yakima)
- #604 Loss of membership and removal from roll (Yakima)
- #605 Expulsion of members; review by Secretary (Yakima)
- #606 Back pay and annuities on enrollment of new members (Yakima)

## XVIII. Powers of Tribes

## M. Rights of Individuals

- #185 Protection of Indians desiring civilized life
- #200 Report of offense or case of Indian incarcerated in agency jail
- #415a Same; lease of lands of deceased Indians for benefit of heirs or devisees
- #441 Indian Employees of Government; entitlement to Indian Benefits
- #476 Organization of Indian tribes; constitution and by-laws; special election
- #477 Incorp. of Indian tribes; charter; ratification by election
- #478 Acceptance IRA Optional
- #478a Procedure
- #503 Organization of tribes or bands; constitution; charter; right to participate in revolving credit fund (Okla.)
- #636 Adoption of Constitution by Navajo Tribe; method; contents
- #1302 Constitutional Rights
- #1303 Habeas Corpus
- #1311 Model Code
- #1326 Special election

## XVIII. Powers of Tribes

## N. Law and Order

- #13 Expenditure of appropriations by B.I.A.
- #185 Protection of Indians desiring civilized life
- #200 Report of offenses or cases of Indian incarcerated in agency jail
- #229 Injury to property by Indians
- #230 Depositions by agents touching depositions
- #233 Jurisdiction of New York - civil actions
- #232 Jurisdiction of New York - crim. action
- #302 Indian Reform Schools; rules and regs. consent of parents
- #1301 Definitions
- #1302 Constitutional Rights
- #1303 Habeas, corpus
- #1321 Assumption by state of criminal jurisdiction
- #1322 Assumption by state of civil jurisdiction

## XVIII. Power of Tribes

## O. Tax

- #319 Rights of way for telephone and telegraph lines  
(See #312 need prov.)
- #321 Rights of way for pipe lines
- #349 Patents in fee to allottees
- #398 Leases of unallotted lands for oil and gas mining  
purposes
- #398c same; taxes
- #399 (See also State Jurisd.)
- #4161i (See also State Jurisd.)
- #492 Same; interest rates and taxes (#488 - 492)
- #510 Payment of gross production taxes; method (Okla)
- #608 Consolidation of lands; purchase sale and exchange;  
terms and conditions (Yakima)
- #610b Title to lands; tax exemption; prohibition of  
restrictions
- #645 Same; exemption from taxation (Hopi) (641 - 646)
- #674 Use of funds of Ute Mountain Tribe, etc.
- #676 Use of funds of Southern Ute, etc.
- #683 Payments not "other income and resources" (Red Lake Chippewa)
- #686 Payments non "other income and resources" (Red Lake Chippewa)
- #955 Tax exemption (Agua Caliente)
- #1321 Assumption by state of Criminal jurisdiction
- #1322 Assumption by state of civil jurisdiction

## XVIII. Powers of Tribes

## P. Leasing, Affirmative Powers

- #397 Leases of lands for grazing or mining
- #396a Leases of unallotted lands for mining purposes; duration of leases
- #396b Public auction of oil and gas leases; requirements
- #398 Leases of unallotted lands for oil and gas mining purposes
- #402 Leases of surplus lands
- #402a Lease of unallotted irrigable lands for farming purposes
- #403a Lease of lands on Port Madison and Smohomish or Tulalip Indian Reservations in Washington
- #403b Lease of restricted lands in State of Washington
- #403c Same identity of lessor; period of lease
- #415 Leases of restricted lands for various purposes
- #416 Leases of trust on restricted lands on certain reservations for various purposes
- #477 Incorp. of Indian tribes; charter; ratification by election
- #642 Powers of Tribal Council (Hopi) (641 - 646)

## XVIII. Powers of Tribes

## Q. Sale and Management of Property

- #403a Acquisition, disposal and management of lands - Tulalip  
- R (See also Lands, Restriction against alienation Nat'l resources)
- #443a Conveyance to tribes of federally owned buildings
- #477 Incorp. of Ind. tribes; charter; ratification by election
- #487 Spokane Indian Reservation; consolidation of lands -  
purchase, sale and exchange
- #610c Mortgages or deeds on trust; law governing mortgage  
foreclosure or sale; U.S. as party; removal of cases;  
appeals (Swinomish)
- #610d Moneys or credits for tribal purposes (Swinomish)
- #610e Assignment of income (Swinomish)
- #635 Disposition of lands - Lease of restricted lands; renewals  
(Navajo Hopi)
- #642 Powers of Tribal Council (Hopi) (641 - 646)
- #953 Lands - determination of value of unallotted and  
allotted lands; exclusion of deceased allottees' allot-  
ments (Aqua Caliente)

**XVIII. Powers of Tribes**

- Q. Sale and Management of Property  
(Agua Caliente)**

## XVIII. Powers of Tribes

## R. Definition of Indian and Tribes

- #297 Expenditure for children with less than one-fourth Indian blood
- #465b Same; debt of Klamath Tribe
- #473 Application of sections
- #473a Same; application to Alaska
- #479 Definitions (Indian and tribes)
- #480 Indians eligible for loans
- #482 Revolving fund; loans; regulations
- #504 Cooperative associations; charter; purposes; voting rights. (Okla.)
- #601 Membership roll; preparation; persons entitled to enrollment (Yakima tribes)
- #602 Application to tribal council on exclusion from roll; minors and incompetent persons
- #651 Definitions (Calif Indians)
- #1301 Definitions (Civil Rights Act)
- #1452 Definitions (Econ. Develop. Act)

## XVIII. Powers of Tribes

## S. Federal Budget

- #476 Organization of Tribes; constitutions and bylaws;  
special elections
- #638 Participation by Tribal Councils; recommendations  
(Navajo - Hopi)

**XVIII. Powers of Tribes**

**T. Direction of Federal Employees**

**#48 Right of Tribes to direct employment of persons engaged  
for them**

## XIX. Economic Development

## A. Loans and Credits

- #145 Accounts between U.S. and tribes, reimbursable approp.
- #305a Promotion of economic welfare; arts and crafts; powers of Board
- #306 Expenditure for encouragement of industry and self-support; repayment
- #306a Advances for support of old, disabled, or indigent allottees; lien against land
- #358 Repeal of stat. provisions relating to survey, classification and allotments which provide for repayment out of Indian moneys
- #382 Irrigation projects under Reclamation Acts
- #385 Maintenance charges; reimbursements of construction cost, etc.
- #386 Reimbursement of construction costs
- #386a Adjustment of reimburseable debts; construction charges
- #390 Concessions on reservoir sites, etc.
- #442 Livestock loans; cash settlements (See also \$443)
- #470 Same; revolving fund; approp. for loans
- #470a Interest charges covered into revolving fund
- #473a Same; application to Alaska
- #480 Indians eligible for loans
- #482 Revolving fund; loans; regulations
- #488 Agricultural loans to acquire land within reservations (\$488 - 492)
- #490 Same; tribal rights and privileges in connection with loans
- #492 Same; interest rates and taxes (\$488 - 492)
- #503 Organization of tribes or bands; constitution; charter; right to participate in revolving credit fund (Okla.)
- #504 Cooperative associations; charter; purposes; voting rights (Okla.)

## XIX. Economic Development

## A. Loans and Credits

- #506 Loans to individuals and groups; appropriation (Okla.)
- #507 Availability and allocation of funds; royalties from mineral deposits (Okla)
- #631 Basic program for conservation and development of resources; projects; appropriations (Navajo Hopi)
- #634 Loans to tribes on individual members; loan fund (Navajo Hopi)
- #642 Powers of Tribal Council (Hopi) (641 - 646)
- #671. Use of funds of Ute Indian Tribe of U & O reservation, etc.
- #674 Use of funds of Ute Mountain Tribe, etc.
- #676 Use of funds of Southern Ute Tribe, etc.
  
- #1451 - 1453 Indian Finance Act of 1974
- #1461 - 1469 Indian Revolving Loan Fund
- #1481 - 1498 Loan Guaranty and Insurance
- #1511 - 1512 Interest Subsidies and Administrative Expenses
- #1521 - 1524 Indian Business Grants
- #1541 - 1543 Miscellaneous Provisions

**XIX. Economic Development****B. Job and Technical Training**

- #13 Expenditure of appropriations by Bureau of Indian Affairs**
- #471 Vocational and trade schools; approp. for tuition**
- #631 Basic programs for conservation and development of resources; projects; appropriations (Navajo Hopi)**
- #633 Preference in employment; on the job training (Navajo Hopi)**

**XIX. Economic Development****C. Tribal Control**

- #638 Participation by Tribal Councils; recommendations (Navajo - Hopi)
- #641 Congressional findings and declaration of purpose (Hopi Industrial Park)
- #642 Powers of tribal council (Hopi)
- #643 Council's power subject to approval by Secretary (Hopi)
- #644 Bonds as valid and binding obligations (Hopi)
- #645 Same; exemption from taxation (Hopi)
- #646 Exempted Securities (Hopi)
- #671 Use of funds of Ute Indian Tribe of U & O reservation, etc.
- #674 Use of funds of Ute Mountain Tribe, etc.
- #676 Use of funds of Southern Ute, etc.
- #1451 Congressional declaration of purpose

**XX. Isolated Geographic Areas****A. Oklahoma**

- #501 Acquisition of agricultural and grazing land for Indians; title to land; tax exemption
- #502 Purchase of restricted Indian lands; preference to Secretary of Interior; waiver of preference
- #503 Organization of tribes or bands; constitution; charter; right to participate in revolving credit fund
- #504 Cooperative associations; charter; purposes; voting rights
- #505 Same; amendment or revocation of charters; suits by and against associations
- #506 Loans to individuals and groups; appropriation
- #507 Availability and allocation of funds; royalties from mineral deposits
- #508 Application of provisions to Osage County
- #509 Rules and Regulations; repeals
- #510 Payment of gross production taxes; method

**XX. Isolated Geographic Areas****B. Alaska**

- #280a Lands in Alaska for schools or missions
- #473a Same; application to Alaska (IRA)
- #495 Annette Islands reserved for Metlakathla Indians
- #496 Designation of land for Indian reservation
- #497 Reservation of tracts for schools, hospitals, etc.

## XXI. Judgment Funds

- #118 Payments in satisfaction of judgments - made under direction of Interior
- #123 Expenditure from Tribal funds without specific appropriations (Not specifically judgment fund but appears applicable)
- #571 Membership roll; preparation (Shoshone)
- #572 Payments to individuals; expenditure of payments (Shoshone)
- #573 Purchase of lands; loan funds; productive enterprises (Shoshone)
- #576 Purchase of lands; reimbursement of expenditures (Shoshone & Arapaho)
- #577 Liability of judgement funds for debts (Shoshone)
- #581 Disposition of Funds (Shoshone and Shoshone-Bannock)
- #582 Shoshone - Bannock Tribes of Fort Hall Reservation; credit of funds (Shoshone - Bannock)
- #583 Northwest Band of Shoshone Indians; credit of funds (Northwest Bands of Shoshone)
- #584 Apportionment of remaining funds; Shoshone - Bannock Tribes of Ft. Hall reservation and Shoshone Tribe of Wind River Reservation (Shoshone and Shoshone-Bannock)
- #585 Membership rolls; preparation; eligibility for enrollment; application; finality of determination (Shoshone, Shoshone-Bannock, NW Bands of Shoshone)
- #586 Northwest Band of Shoshone Indians; payment to enrollees, heirs or legatees; trust fo minors and persons under legal disability
- #587 Shoshone-Bannock Tribes of Ft. Hall Reservation; payment to enrollees; heirs or legatees; trust for minors and persons under legal disability
- #588 Shoshone Tribe of Wind River Reservation, distribution of Funds
- #589 Tax exemption
- #590 Rules and Regulations
- #590a Shoshone-Bannock Tribes of Ft. Hall Reservation; credit of funds
- #590b Same; disposition of funds

## XXI. Judgment Funds

- #590c Same; tax exemption; trust for minors and persons under legal disability
- #594 Distribution of judgement funds; Mississippi bands, Pillager and Lake Winnibigosbish bands
- #594a Rules and regulations
- #609 Action to determine title to judgement fund; claim of Confederated Tribes of Colville Reservation; jurisdiction of Court of Claims
- #609a Tax exemption
- #609b Disposition of Judgement Fund; deductions, advances, expenditures, investments, or reinvestments authorized
- #609b -1 Tax exemption; trusts and other procedures for protection of minors and persons under legal disability
- #647 Disposition of judgement funds; deductions; advances, expenditures, investments or reinvestment for authorized purposes (Hualapai Tribe)
- #648 Tax exemption (Hualapai Tribes)
  
- #649 Rules and Regulations (Hualapai Tribes)
- #651 Definitions (Ind. of Calif.)
- #652 Claims against U.S. for appropriated lands; submission to Court of Claims; appeal; appeal; grounds for relief (Calif. Ind.)
- #653 Statute of limitations unavailable against claims; amount of decree; set off (Calif. Ind.)
- #654 Claims presented by petition; filing date; amendment; signature and verification; official letters, documents, etc. furnished (Calif Ind.)
- #655 Reimbursement of State of Calif. for necessary costs and expenses (Calif Ind)
- #656 Judgement amount deposited in Treasury to credit of Indians; interest rate; use of fund (Calif. Ind.)
- #657 Revision of roll of Indians (Calif. Ind.)
- #658 Distribution of \$150 from fund to each enrolled Indian (Calif. Ind.)
- #659 Distribution of judgement fund; preparation of Indian roll; applications for inclusion (Calif Ind.)

## XXI. Judgement Funds

- #660 Equal share distribution of 1964 appropriation (Calif Ind.)
- #661 Equal share distribution of undistributed balance of 1945 appropriation; credit to judgement account (Calif. Ind.)
- #662 Heirs of deceased enrollees; tax exemption (Calif. Ind.)
- #663 Rules and regulations; filing deadline (Calif. Ind.)
- #671 Use of funds of Ute Indian Tribe of U & O Reservation, etc.
- #672 Division of trust funds; ratification of resolution; crediting of shares; etc.
- #673 Report to Congress
- #674 Use of funds of the Ute Mountain Tribe, etc. for expenditure and per capita payments
- #675 Restriction on use of funds for payment of agent's or attorneys fees
- #676 Use of funds of So. Ute Tribe, etc., for expenditure and per capita payments
- #676a Distribution of judgment fund (Confed. Band Utes)
- #676b Distribution of judgment fund; deductions; availability for certain uses
- #676b Tax exemption  
-1
- #690 Distribution of judgement fund, tax exemption; per capita payment (Red Lake Chippewa)
- #771 Enrollment of descendants; determination of eligibility (Various Oregon Tribes)
- #772 Per capita payments to tribal members; tax exemption (Various Oregon Tribes)
- #773 Payments to enrollees, next of heir or legatees; minors and persons under legal disability; guardians; other appropriate action; payments not subject to debts; time limits (Various Oregon Tribes)
- #774 Costs (Various Oregon Tribes)
- #775 Rules and regulations (Various Oregon Tribes)
- #781 Distribution of funds; allotment equalization payments (Creek)

## XXI. Judgement Funds

- #786 Credit of unclaimed and unpaid share of funds (Creek)
- #787 Advances of expenditure from tribal funds (Creek)
- #788 Federal trust upon escheat of estates of members dying interstate without heirs (Creek)
- #788a Disposition of judgment fund; preparation of roll (Creek)
- #788b Distribution of funds; tax exemption; equal shares (Creek)
- #788c Heirs of deceased enrollees (Creek)
- #788d Rules and Regulations (Creek)
- #788e Disposition of funds, preparation of rolls, etc. (Creek)
- #788f Distribution of funds; tax exemption; equal shares (Creek)
- #788g Heirs of deceased enrollees
- #788h Rules and Regulations (Creek)
- #781 Distribution of funds; allotment equalization payments (Creek)
- #782 Payment to heirs or legatees; proof of death or heirship (Creek)
- #783 Payments to minors or persons under legal disability (Creek)
- #784 Appropriations
- #785 Rules and Regulations (Creek)
- #871 Membership roll; preparation; eligibility, etc. (Otoe)
- #872 Per capita distribution to tribal members (Otoe)
- #873 Per capita payments to enrollees, next of kin, etc. (Otoe)
- #874 Costs (Otoe)
- #875 Rules and Regulations (Otoe)
- #876 Advances or expenditures from tribal funds, tax exemptions (Otoe)
- #881 Pottowatomic Indians; disposition of judgment funds

## XXI. Judgment Funds

- #881a Same; trusts and other procedures, etc. (Pottowatomic)
- #882 Sac & Fox Tribes: disposition of judgment and fund, etc.
- #882a Same; tax exemption
- #883 Osage tribe: disposition of judgment fund, allotments
- #883a Same; payment for allotments; living original allottees (Osage)
- #833b Same; per capita shares, etc. (Osage)
- #833c Same; income tax exemption (Osage)
- #883d Same; rules and regulations (Osage)
- #911 Membership roll; preparation; eligibility for enrollment; application for enrollment; protests; finality of determination (Quapaw)
- #912 Per capita payments to enrollees, heirs or legatees; tax exemption (Quapaw)
- #913 Payments to enrollees, next of kin or legatees; minors and persons under legal disability; parent or guardian (Quapaw)
- #914 Costs (Quapaw)
- #961 Membership roll; preparation; eligibility for enrollment; protests; finality of determination (Omaha)
- #962 Membership roll; enrollment of children born after Sept. 14, 1961 (Omaha)
- #963 Per capita distributions to tribal members; attorneys fees and expenses; advances or expenditures from tribal funds; tax exemption (Omaha)
- #964 Payments to enrollees, next of kin or legatees; protection of minors and persons under legal disability (Omaha)
- #965 Payments not subject to liens debts, or claims; exception (Omaha)
- #966 Costs (Omaha)
- #967 Rules and regulations (Omaha)
- #967a Per capita payments to enrolled tribal members; use of balance of funds (Omaha)

## XXI. Judgement Funds

- #967b Payments to minors and persons under legal disability shares under certain amount to revert to tribe (Omaha)
- #967c Tax exemption (Omaha)
- #967d Rules and regulations (Omaha)
- #991 Per capita payments to tribal members; closure of rolls; appropriations; accrued interest; deductions (Cherokee Nation)
- #992 Payments to adults, heirs or legatees; shares under certain amounts to revert to tribe; protection of minors and persons under legal disability (Cherokee Nation)
- #993 Claims; time for filing; bar of unfiled claims; reversion to tribe; use of reverted funds (Cherokee Nation)
- #994 Tax exemption (Cherokee Nation)
- #995 Payments not subject to liens debts or claims; exception (Cherokee Nation)
- #996 Payments not "other income and resources" (Cherokee Nation)
- #997 Costs (Cherokee Nation)
- #998 Rules and Regulations (Cherokee Nation)
- #1011 Membership roll; preparation; etc. (Snake or Paiute)
- #1012 Authorization to Withdraw, prorate and distribute lands (Snake or Paiute)
- #1013 Distribution; persons entitled, etc (Snake or Paiute)
- #1014 Costs (Snake or Paiute)
- #1015 Rules and Regulations (Snake or Paiute)
- #1031 Disposition of funds (Shawnee)
- #1032 Absentee and Eastern Bands; authorization for use of funds by tribal governing bodies; etc. (Shawnee)
- #1033 Cherokee Band; preparation of roll; etc. (Shawnee)
- #1034 Cherokee Band; per capita distribution (Shawnee)
- #1035 Manner of payment; etc. (Shawnee)
- #1036 Taxes (Shawnee)

**XXI. Judgment Funds****#1037 Costs (Shawnee)****#1038 Rules and Regulations (Shawnee)****#1401 (General****- 1407****# Funds**

XXII. Termination Acts (Not listed).

**XXIII. Services to and Entitlements of Indians Regardless of  
Federal Recognition**

**B. Education**

**#276 Vacant military posts or barracks for schools; detail  
of army officers**

## XXIV. Treaties

- #12 Agent to negotiate commutation of annuities
- #152 Proceeds of sales or of Indian lands
- #153 Approp. to carry out treaties
- #71 End of treaty making
- #72 Abrogation of treaties of hostile tribes
- #122 Limitations on application of tribal funds
- #138 Goods withheld for treaty violation
- #157 Investments in stock
- #158 Investment of proceeds of funds
- #160 Custody of stocks and bonds
- #161a Deposit in Treasury of trust funds  
-d
- #177 Purchase or grants of land from Indians
- #180 Settling on or surveying lands belonging to Indians
- #276 Vacant military posts or barracks for schools; detail of Army officers
- #277 Former Apache military post est. as Theodore Roosevelt Indian School
- #279 Rations to Mission schools
- #311 Opening highways
- #312 Rights of way for R.R., telegraph and telephone; town cites
- #314 Surveys; maps; compensation
- #319 R of W for telephone or telegraph lines
- #320 Rights of way for pipe lines
- #331 Allotments or reservations; irrigable and nonirrigable lands
- #345 Actions for allotments
- #391 Continuance of restrictions or alienation in patent
- #392 Consent to or approval of allotments by Sec. of Interior

## XXIV. Treaties

- #399 Leases of unallotted mineral lands withdrawn from entry under mining laws
- #409 Sale of lands within reclamation projects
- #406 Sale of timber on lands held in trust - Deductions for admin. expenses; standards guiding sales
- #475a Same; offsets of gratuities
- #378b Laws, treaties and rights unaffected by passage of sections 461 to 479
- #611 Division of trust funds on deposit in U.S. Treasury to joint credit of both tribes (Shoshone and Arapahoe)
- #631 Basic program for conservation and development of resources; projects; appropriations (Navajo Hopi)
- #652 Claims against U.S. for appropriated lands; submission to court of claims; appeal; grounds for relief (Calif. Indians)
- #1321 Assumption by State of criminal jurisdiction
- #1322 Assumption by State of civil jurisdiction

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Statutes at Large      Noted in 25 USC

- #611    Historical Note Act 82758 72 Stat 935 Wind River Ind.  
         Reservation Mineral Rights
- Act 81553 67 Stat 592 Wind River Ind. Reservation  
         Compensation for lands of Riverton Reclamation Project
- #1323   Retrocession of jurisdiction by State - Executive  
         Order 11435

**XXIV. Miscellaneous****A. Affirmative Relief Provisions**

#293a (Reversion of Property)

#315 ( " " )

#399 ( " " )

#443a ( " " )

#1331 (Approval of Attorney Contracts)

#1496 ( " " " )

## XXIV. Miscellaneous

## B. Appropriations, authorizations and expenditures

- #13 Expenditure of appropriations by B.I.A. (Snyder Act)
- #13a Same; carryover of unobligated and unexpended appropriations. (Snyder Act amendment)
- #56 Quarters, fuel and light for employees
- #57 Heat and light for employees' quarters
- #59 Transfer of funds for payment of employees; details for other service
- #60 Compensation prescribed to be in full
- #61 Estimates for personal services in Indian Office
- #66 Duties of agency devolved on Supt. of of Indian school (provision for extra pay)
- #82 Payments under contracts; aiding in making prohibited contracts
- #82a Contracts for payment of money permitted certain tribes; payment for legal services
- #86 Encumbrances on lands allotted to applicants for enrollment in Five Civil Tribes; use of interest on tribal funds.
- #96 Copies of contracts furnished to G.A.O. before payment
- #97 Proposals or bids for contracts to be preserved
- #98 Purchase of supplies without authority
- #99 Contracts for supplies in advance of appropriations
- #101 Payment for wagon transportation
- #102 Payment of costs for furnishing coal for Indian Service

## XXIV. Miscellaneous (cont.)

## B. Appropriations, authorizations and expenditures

- #104 Purchase of articles manufactured at schools
- #111 Payment of moneys and distribution of goods
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- #115 Payment of annuities in goods
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- #117 Payments per capita to individual Indians
- #118 Payments in satisfaction of judgments
- #119 Allotment of tribal funds to individual Indians
- #120 Per capita payments to enrolled members of Choctaw and Chickasaw Tribes
- #121 Payment of share of tribal funds to helpless Indians
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- #123 Expenditure from tribal funds without specific appropriations
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- #124 Expenditures from tribal funds of Five Civil Tribes without specific appropriations.
- #125 Expenditure of moneys of tribes of Quapaw Agency
- #127 Moneys or annuities of hostile Indians
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- #130           Withholding of moneys or goods on account  
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- #131           Advances to disbursing officers.
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- #139           Appropriations for subsistence
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- #148           Appropriations for supplies; transfer to  
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DEPOSIT, CARE AND INVESTMENT OF INDIAN MONEYS (See  
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- #153           Appropriations to carry out treaties
- #155           Disposal of miscellaneous revenues from  
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## XXIV. Miscellaneous (cont.)

## B. Appropriations, authorizations and expenditures

- #276 Vacant military posts, etc., for schools; detail of Army officer (limitation of expenditure of moneys for education)
- #278 No appropriation for sectarian school
- #281 Children taking lands in severalty not excluded.
- #288 White children in Indian day schools
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- #297 Expenditure for children with less than 1/4 blood
- #304a Study and investigation of Indian education in U.S. and Alaska; contracts; report to Congress; appropriations
- #305c Appropriation (authorization for expenditure of funds to support Indian Arts & Crafts Board)
- #306 Expenditures for encouragement of industry and self-support; repayment
- #306a Advances for support of old, disabled, or indigent allottees; lien against land.
- #309 Vocational training program; eligibility; contracts or agreements
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## XXIV. Miscellaneous (cont.)

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- #352c            Reimbursement of allottees or heirs for taxes paid on lands patented in fee before end of trust.
- #383            Estimates of cost; limitations as to (Irrigation projects)
- #388            Claims for damages; settlement by agreement (Irrigation projects)
- #400a           Lease for mining purposes of land reserved for agency or school; disposition of proceeds; royalty (monies obtained to credit of Indians may only be spent for educational purposes and only after appropriation by Congress).
- #463b           Extension of boundaries of Papago reservation; purchase; limitations
- #463g           Use of funds appropriated under Sec. 465
- #465            Acquisition of lands, water rights or surface rights; appropriation; title to lands; tax exemption
- #469            Indian corporations; appropriations for organizing
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- #470a           Interest charges covered into revolving loan fund
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## XXIV. Miscellaneous (cont.)

## B. Appropriations, authorizations and expenditures

- #506 Loans to individuals and groups; appropriation
- #507 Availability and allocation of funds; royalties from mineral deposits
- #631 Basic program for conservation and development of resources; projects; appropriations
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- #639 Additional Social Security contributions to States (Sec. of Treasury)
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- #1312 Authorization of Appropriations (Model Code)
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- #1401 Funds appropriated in satisfaction of judgments of Indian Claims Commission or Court of Claims; use and distribution (Judgment Fund Act)
- #1461 Administration as single Indian Revolving Loan Fund sums from diverse sources; availability of fund for loans to Indians and for administrative expenses (Indian Finance Act)
- (SEE Generally - Indian Finance Act  
25 U.S.C. 1451 - 1543)
- #1523 Authorization of appropriations
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- #450 - 458 (SEE Generally - Indian Self-Determination Act - 25 U.S.C. 450 - 458)

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## C. Rolls of Indians

## General Provisions

- #133               Rolls of Indians entitled to supplies.
- #163               Roll of membership of tribes.

## Specific Tribes - Judgment Fund Acts, Termination Acts.

- #571, 585       Shoshone
- #601 - 605       Yakima
- #594            Mississippi Bands; Pillager and Lake  
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- #657, 659       California
- #781, 788a, 788e   Creek
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- #952            Agua Caliente
- #991            Cherokee
- #1011           Paiute
- #565a           Klamath

## XXIV. Miscellaneous

## E. Repeals and Omissions

## Duties, responsibilities, etc. of federal employees

- #21, 22 Repealed 9/6/66. Related to Board of Indian Commissioners.
- #23, 24 Omitted. Related to Board of Ind. Commissioners
- #26 Repealed 9/6/66. Appointment of Ind. Agents
- #27 Omitted. Related to Indian Agents.
- #28 - 31. Repealed. 9/6/66. Term of office of Ind. Agents.
- #34 - 35. Repealed 9/6/66. Administration of Oaths and acknowledgement of Deeds.
- #37 Repealed 9/6/66. Keeping of books by Ind. Agents.
- #38 Repealed 12/16/30. Visits to Washington by Agnts.
- #39 Repealed 9/6/66. Compensation for extra service by Indian Agents.
- #42 Repealed 9/6/66. Interpreters.
- #49 Repealed 6/30/32. Qualifications of farmers.
- #50 Repealed 8/19/64. Holding of two offices.
- #51 Repealed 6/6/72. Additional security from persons with disbursement power.
- #52 Repealed 6/6/72. Bonds from disbursing officers.
- #52a Repealed 6/6/72. Special bonds for per capita payments.
- #54, 55 Repealed 6/6/66. Traveling expenses and expenses of clerks on special duty
- #58 Partial repeal. Act of 2/26/29 cited in text was repealed by Act of 9/6/66.
- #67 Repealed 9/6/66. Supt. of school at Cherokee to act as Agent.

## XXIV. Miscellaneous (cont.)

## E. Repeals and Omissions.

## Contracts

- #83 Repealed 6/25/48. Moved to 18 USC 438. Prohibited payments under contracts.
- #87 Repealed 6/25/48. Moved to 18 USC 437. Interest of agents in contracts.

## Purchase of Supplies

- #91, 92 Omitted. Now covered in 41 USC 5 (Public contracts). Deals with Procurement.
- #93 Repealed 10/10/40. Now covered in 41 USC 5, 6a, 6b. Related to purchase of Indian supplies.
- #94 Repealed. 12/16/30. Now in 41 USC 5. Related to purchase of supplies for irrigation projects.
- #95 Repealed 3/27/39. Referred to bids under advertisement for goods and supplies under contract.
- #100 Repealed 10/31/51. Related to transportation of Indian goods and supplies under contract.
- #103 Repealed 12/16/30. Related to maintenance of warehouses for goods in Indian service.

## Rations, etc.

- #141 Omitted.
- #142 Repealed 5/29/28. Reports to Congress on tribal financial matters.
- #143 Repealed 8/30/54. Report to Congress on fiscal affairs of tribes.
- #144 Repealed 5/29/28. Report to Congress on moneys appropriated for encouragement of industry.

## XXIV. Miscellaneous (cont.)

## E. Repeals and Omissions

## Deposit of Indian Money

- #162 Repealed 6/24/38. Deposit and investment of funds.
- #155a Omitted. Now incorporated in #155. Miscellaneous revenues from Indian reservations.

## Sedition

- #177 - 173. Repealed 5/21/34. Carrying of sedition messages.

## Trespass

- #186 Repealed 5/21/34. Related to trespassing on Indian lands.
- #219 - 226. Repealed 5/21/34. Entering Indian country without a passport. (See Crimes)

## Federal Property Management

- #188, 189. Repealed 10/31/51. Related to sale of federal property. Now covered in 40 USC 483, 484. (See historical note under Sec. 190.) Sales and surplus now appears in 5 USC, Chpt. 11C. See also 40 USC 485 re proceeds from transfer, sale, etc.
- #191 Repealed 10/31/51. Related to sale or transfer of Government property. See above notes. Now covered in 40 USC 483 - 485.
- #195 Repealed 8/15/53. Related to sale of cattle purchased by Government to Non-Indians.

## XXIV. Miscellaneous (cont.)

## E. Repeals and Omissions

## Timber

#197 Repealed 6/27/1902. Dead timber in Minn.

## Crimes

#212 - 215 Repealed 6/25/48. Arson and assault. Now covered in 18 USC 1153.

#216 Repealed 7/12/60. Hunting by non-Indians. Now covered in 18 USC 1165.

#217 - 218. Repealed 6/25/48. General and Major Crimes Acts and provisions for jurisdiction in Kansas. Now covered in 18 USC 1152, 1153 and 18 USC 3243.

#219 - 226. Repealed 5/21/34. Entering Indian country without a passport.

#227,228 Repealed 6/25/48. Related to reparations for injuries to Indian property.

## Liquor

#241 - 250 Repealed 6/25/48. Intoxicating liquor. Moved to Title 18 USC. See historical note.

#252 Repealed 6/25/48. Search and seizure and setting up of distillery. Now covered in 18 USC 3113.

#254 Repealed 6/25/48. Inapplicability of liquor laws to lands outside reservations. Now covered in 18 USC 1154, 1156.

## XXIV. Miscellaneous (cont.)

## E. Repeals and Omissions

## Contracts

#265, 266 Repealed 8/15/53. Restrictions on purchases or sales to Indians.

## Education

#284 Omitted. Regs of Sec. to compel school attendance.

#292a Omitted. Discontinuing of boarding school.

#296 Repealed 3/2/29. Per capita limitation on expenditures for school purposes.

#298 Omitted. Census of Indians and report of numbers of school children.

#299 - 301 Annual reports to Congress. Repealed 5/29/28.

#303 Omitted. Educational loans to worthy youths.

## Arts and Crafts

#305 C-1, Repealed 4/24/61. Limitation on per diem paid to members of Board.

#305d, 305e Repealed 6/25/48. Related to trademarks. Now covered in 18 USC 1158, 1159.

## XXIV. Miscellaneous (cont.)

## E. Repeals and Omissions

## Railroad Rights-of-Way

#318b Repealed 8/27/58. Related to planning and design of railroad rights-of-way by the Bureau of Public Roads.

## Allotments and Survey

#338 Repealed 5/29/28. Reports to Congress on cost of survey and allotment work.

## Irrigation

#387 Omitted. Apportionment of costs of irrigation districts.

## Timber

407a - 407c Omitted. Authority to modify contracts of sale of timber expired by virtue of a statutory amendment. See historical note.

## Indian Health Service

#444 - 449 Repealed 8/5/54. Now covered in 42 USC Chpt. 22.

## Contracts with States

#455 Repealed 6/29/60. Reports to Congress on contracts with states.

#456 Omitted. Contracting provisions of #452 - 455 not applicable to Oklahoma

## XXIV. Miscellaneous (cont.)

## E. Repeals and Omissions

## Allotment and Trust

#462a Omitted as executed. Reimposition of trust on Crow reservation.

## Tribal Operations

#481 Omitted. Allowance for travel and expense for tribal organizing work.

## Leases - Yakima Tribe

#608b Repealed 8/31/64. Repealed provision of existing law which provided that nothing in statute shall effect tax status of lands.

## Indian Depredations

#126 Omitted. Payment of Claims for Indian depredations

## XXIV. Miscellaneous

## F. Miscellaneous

## Depredations and Hostile Indians

#126	Indian depredations
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#229	Injury to property by Indians
#230	Depositions
#138	Goods withheld for treaty violation.

## Records of Five Civilized Tribes

#199	Access to records of Five Civil Tribes
#199a	Custody of records - Okla. Hist. Society

## Statutes at Large noted in 25 U.S.C.

#611	Historical note sets forth 72 Stat. 935 relating to Wind River Indian Reservation Mineral Rights
#1323	Retrocession of jurisdiction by State - Executive Order 11435

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APPENDIX VI

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AMERICAN INDIAN POLICY REVIEW COMMISSION  
 CONGRESS OF THE UNITED STATES

HOUSE OFFICE BUILDING ANNEX No. 2  
 2D AND D STREETS, SW  
 WASHINGTON, D.C. 20515  
 PHONE: 202-225-1284

January 28, 1976

(Letter sent to all Chairman of federally recognized Indian tribes and all attorneys listed by B.I.A. as representing Indian tribes).

The Task Force on Law Revision, Codification, and Consolidation is currently reviewing all of the existing federal Indian law (particularly Title 25 U.S.C.). The purpose of this review is to: (1) identify obsolete laws; (2) identify inconsistent laws; (3) identify duplicative laws; (4) determine groups of statutes which can be consolidated by a uniform or model statute; (5) identify which statutes are unclear and need clarification and/or amendments; (6) identify statutes and regulations which are frustrating Indian self-determination and sovereignty and therefore require amendments.

Although the members of the Task Force are able to identify many statutes and regulations which will require attention, it is a certainty that we are unaware of many statutes or regulations which are presently frustrating the plans and objectives of the various tribes.

We feel that the tribes and their tribal attorneys are in the best position to be able to identify which statutes and regulations are causing problems for the tribes. We are therefore asking you to assist us in doing an effective job for the benefit of your tribe and all tribes.

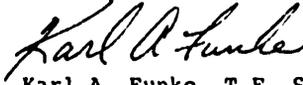
We ask that you provide us with any information concerning any statutes, or regulations which have frustrated the plans, goals, or programs of your tribe or the tribe you represent. Please be as specific as possible in identifying the troublesome statutes or regulations and give a brief description of how the statute or regulation has blocked or hindered the tribe in their endeavors.

Please take the time to respond to this very important request. The advancement and preservation of tribal sovereignty and self-determination depends on each of us being concerned enough to do all that we can.

Time is very important. We would appreciate an early response from you. Enclosed is a self-addressed envelope which you can use to return your comments to us.

Thank you.

Yours cordially,



Karl A. Funke, T.F. Specialist  
Task Force on Law Revision  
Consolidation and Codification

Peter S. Taylor, Chairman  
Yvonne Knight, Member  
Browning Pipestem, Member

Enclosure

REC'D FEB 16 1976

**AK-CHIN INDIAN COMMUNITY**

Route 1, Box 12 - Maricopa, Arizona 85239 - Phone 506-2379, 568-2362



February 10, 1976

Karl K. Funke, T.F. Specialist  
Task Force on Law Revision  
Consolidation and Codification

Dear Mr. Funke:

In reference to your letter of January 28, 1976, you are requesting something that is very important and at the same time it would take some time with me and my Attorney to really nail down.

There are several complications especially for a small reservation such as Ak-Chin in relation to, lets say, HUD or EDA regulations.

One, sometimes we don't have the matching funds for certain programs - to top it off, we also don't have the staff to handle the complicated paper work and would have to rely on others to do it for us, this takes time. Several years ago, our request for Community Action Program funding was turned down due to small population base (Ak-Chin Population: 334 enrolled members) but the Community Council requested to our next door neighbors, the Gila River Indian Community, to go under their program which they approved and that is the only way Ak-Chin has been operating a Headstart Program ever since 1965.

Of course, a lot of our own money is involved in this particular Program.

I could go on and on, however, Ak-Chin at present is not too in bad a shape but might be in about 8 to 10 years, the future is not certain.

Enclosed is a clipping from the Phoenix Gazette of a story on Ak-Chin entitled "From Mud Huts to Prosperity".

*Wilbert J. Carlyle*  
Wilbert J. Carlyle, Chairman  
Ak-Chin Indian Community Council

NOTE: I am also known as  
"Buddy" Carlyle

REC'D FEB 13 1976

**Benton Paiute Reservation**

U tu Uta Gwaitsu Paiute Tribe  
106 South Main Street, Room # 7  
P. O. Box 1525  
Bishop, California 93514  
(714) 873-7448

February 11, 1976

Mr. Peter S. Taylor, Chairman  
American Indian Policy Review Commission  
U. S. House of Representatives Annex #2  
Room #13  
Washington, D. C. 20515

Dear Sir:

The Benton Paiute Reservation was set aside by Presidential Executive Order in 1915. I was later found by a Paiute of the Benton, California area in 1971. The Bureau of Indian Affairs did not acknowledge its existence until the Executive Order proved it. Therefore, we are in the very first phase of establishing and organizing the Reservation.

One of the problems we are running into is the Indian Reorganization Act of 1934. Under sections 5 and 7, the Secretary of the Interior is authorized to purchase land for Indian People. In Title 25 USC, section 465, it states that ". . . For the acquisition of such lands, interests in lands, water rights, and surface rights, and for expenses incident to such acquisition, there is authorized to be appropriated, out of any funds in the Treasury, not otherwise appropriated, a sum not to exceed \$2,000,000.00 in any one fiscal year. . ."

According to this statement, funds for the purpose of purchasing Indian land should always be on hand. If not, then, the Secretary of the Interior is not fulfilling the intent of this law for the Indian Reservations that have to come under its procedures. We are one these reservations.

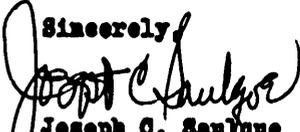
The other problem looks to be the Indian Self-determination and Educational Assistance Act, P. L. 93-638, which is causing a problem with the Tribal Government Development Program. Since the program is coming under P. L. 93-638, it will lower the amount of funds available to Indian Reservations.

Mr. Peter S. Taylor  
February 11, 1976  
Page 2

These are two (2) problems that we are not faced with. I know that you need the problems that we are having now, however, if we are faced with other problems in the very near future, we will send them on to you. I hope that this small in-put will be beneficial to your task.

Thank you for the opportunity to put in our in-put.

Sincerely,

  
Joseph C. Saulgo  
Tribal Chairman

JCS:pw

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REC'D MAR 2 1976

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 ZIP CODE 74868  
 405-382-0814

27 February 1976

Mr. Karl A. Funke  
 American Indian Policy Review Commission  
 U. S. House of Representatives Annex #2  
 Room 13  
 Washington, D. C. 20515

Principal Chief Edwin Tanyan of the Seminole Nation of Oklahoma has referred to me your letter of 28 January 1976.

The Seminole Nation is specifically concerned with four legal matters:

1. Most of the laws affecting the Five Civilized Tribes (of which the Seminole Nation is one) are not codified in Title 25, or anywhere else in the United States Code. This works a real hardship in determining what the Federal law is in regard to our people and our Nation.
2. The Act of 28 April 1904 (33 Stat. 573) has been interpreted by the Oklahoma Supreme Court (Colbert v. Fulton, 157 Pac. 1151) to divest Tribal Courts of the Five Civilized Tribes of all jurisdiction. This, in conjunction with the provisions of Section 28, Act of 28 June 1898 (30 Stat. 495), have stripped the Five Civilized Tribes of the right to have any judiciary. This is a tremendous handicap, as there is no tribunal to have jurisdiction over tribal laws or ordinances. The Muskogee Area Office of the BIA has held that the provisions of 25 USCA 1322 (c) do not apply so as to give us access to the State Courts for the enforcement of tribal law.
3. By the provisions of Section 2, Act of 14 June 1918 (40 Stat. 606), allotments of the Five Civilized Tribes are subject to partition in the State Courts. This has led to the loss of thousands of acres of Indian land, especially where a non-Indian buys a fractional interest in inherited land, and then forces the sale of the balance through partition.

Mr. Karl A. Funke  
27 February 1976  
Page two

4. The most glaring single law crippling the tribal government is section 28 of the Act of 28 April 1906 (34 Stat. 137) which provides that the General Council of the Seminole Nation (and the legislatures of all the Five Civilized Tribes) shall have no authority to meet more than 30 days a year, and most important, that "no act, ordinance, or resolution (except resolutions of adjournment) of the tribal council or legislature of any of said tribes or nations shall be of any validity until approved by the President of the United States". This gives the United States Government (basically the BIA) virtual veto power over every single act of the tribal government, and effectively prevents true sovereignty.

We therefore strongly urge the following steps:

1. All Indian laws should be codified, so that the determination of Indian law applicable to a given tribe or nation becomes simple and convenient.
2. New legislation should be introduced and passed by Congress authorizing the establishment of tribal Courts for the Five Civilized Tribes.
3. The Act of 14 June 1918 should be amended to limit or prevent the forced sale of inherited Indian land by non-Indian fractional owners.
4. Section 28 of the Act of 28 April 1906 should be amended to eliminate any U. S. veto or required approval of acts, ordinances or resolutions of the legislative bodies of the Five Civilized Tribes, and the 30 day ceiling on council meetings should be removed.

Please let me know if you need any further information, or if you have any questions.



WILLIAM C. WANTLAND  
Attorney General,  
Seminole Nation of Oklahoma

WCW:ls

cc: Chief Edwin Tanyan  
Tribal Planner Kelly Haney

LAW OFFICES OF  
**CATE, LYNAUGH, FITZGERALD & HUSS**

Jerome J. Cate  
 Thomas J. Lynaugh  
 William P. Fitzgerald  
 George W. Huss

REC'D MAR 1 1976

SUITE 228  
 HEDDEN EMPIRE BLDG.  
 256 NORTH 29TH STREET  
 BILLINGS, MONTANA 59101

February 23, 1976

American Indian Policy Review Commission  
 Congress of the United States  
 House Office Building Annex No. 2  
 2D and D Streets, SW.  
 Washington, D.C. 20515

ATTENTION: KARL A. FUNKE

Dear Mr. Funke:

Although this letter is by no means exhaustive, I have tried to outline some of the problems with statutes contained in Title 25 that we have encountered in our representation of individual Indian clients and the Crow Tribe of Indians. Initially, in the representation of individual Indian clients, we have run into many problems with bringing an action in federal court. We have found that the jurisdictional statutes are not by any means as broad as they could or should be in order that the federal court would be the forum with which to hear critical Indian law questions. As I am sure you are aware, the state courts oftentimes provide a less than effective remedy for the airing of critical Indian law problems, especially those involving jurisdiction or the disposition of fee patented land and regulation thereof when that land is located within the boundaries of an Indian Reservation.

Principally, Title 25 Section 345 ought to be clarified to indicate what types of cases can be brought relating to allotments as there are a variety and a number of cases relating to allotments but not directly to title that ought to be aired in federal rather than state court. Also involved in this jurisdictional problem are Sections 346, and Title 28 U.S.C. 1353.

Another obstacle for individuals is the interpretation given to 25 U.S.C. 175 which has interpreted the United States Attorney's duty to bring individual suits as a discretionary rather than mandatory duty. I think the wording of this ought to be examined because in many instances individual

Mr. Karl A. Funke  
Page 2  
February 23, 1976

Indians are not in a position to hire private counsel to litigate these issues. Relating to our representation of the Crow Tribe, I would point to Title 25 Section 396 which is basically the Indian Mining Act. Section F of that statute is obsolete in that the Crow Tribe is now included under the Indian Mineral Act of 1938 by virtue of an Act of September 16, 1959 (73 Stat. 565). Therefore Section 396 F should be deleted to be consistent with the 1959 Act. Section 398 of the same title provides problems to Indian Tribes such as the Crow who are considering an orderly and systematic method of mineral development in that that section implies that all minerals can be taxed by the State. There are a number of inconsistencies in Section 398 and subparagraphs that seem to exempt certain types of land but not all tribal land from state tax on minerals. These sections should be looked at and examined carefully and reconsidered, I believe, in light of massive economic development on Indian reservations where taxation is certainly a source of income in a source of negotiations with coal companies.

Section 415 of the same title presents problems in its confusing language with regard to what kind of an environmental impact statement or technical assessment is necessary under this section. Also it is not clear whether this section applies directly to mining leases which I think is very important. Furthermore, since the provisions of the National Environmental Policy Act have been deemed to apply to Indian lands this section should be considered in that light.

As I indicated above, these thoughts are just a few of the many I am sure come up during the course of working with individual Indians and Indian Tribes. However, I do hope that they form a basis on which some revision can be done. Thank you.

Sincerely yours,

CATE, LYNAUGH, FITZGERALD & HUSS



Thomas J. Lybaugh

TJL:srs

REC'D FEB 09 1976

*Covelo Indian Community Council*

Post Office Box 448

Covelo California 95428

Telephone (707) 983-4352

February 5, 1976

Mr. Karl A. Funke, T.F. Specialist  
Task Force on Law Revision  
Consolidation and Codification  
American Indian Policy Review Commission  
House Office Building Annex No. 2  
2D and D Streets, SW  
Washington, D.C. 20515

Dear Mr. Funke:

Reference is made to your letter dated January 28, 1976, regarding laws that have been frustrating and detrimental to the Tribe.

While there are many laws in Title 25, U.S. Code of Federal Regulations that are obsolete, the most frustrating thing that we have experienced is the interpretation of these laws by the Solicitors Office. It would seem that their interpretations are inevitable to the disadvantage of the Indians.

Specifically the law in California that causes the most trouble is P.L. 280. We now have a case in the Ninth Circuit Court, Russ, et. al., vs. Wilkins, et. al., which may clarify some of the issues, however the language of the law is not clear and allows many interpretations, depending on whether you are looking at it from the states point of view or the Indians.

We know that efforts are being made to repeal this law and whole heartedly support those efforts.

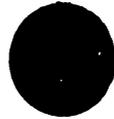
Thank you for the opportunity to offer comments on this subject and if we may be of further assistance please feel free to contact the Tribal Office.

Very truly yours,

*Joseph A. Russ*  
Joseph A. Russ, President  
Covelo Indian Community Council

*Selmon McCombs*  
*Her Chief*

*Edward F. Mous*  
*Executive Director*



*Creek Nation*  
*Office of the Principal Chief*  
*Claude A. Cox*

**REC'D MAR 12 1976**

March 8, 1976

Karl A. Funke, T.F. Specialist  
 Task Force on Law Revision Consolidation and Codification  
 American Indian Policy Review Commission  
 Congress of the United States  
 House Office Building Annex No. 2  
 2nd and D Streets, S.W.  
 Washington, D. C. 20515

Dear Sir:

**SUBJECT: Review of Existing Federal Indian Laws**

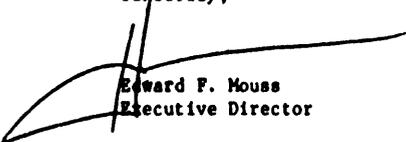
Enclosed for your review is an act to provide for the final disposition of the affairs of the five Civilized Tribes in the Indian Territory and for other purposes, P. L. No. 129.

A brief analysis of this particular law will give you insight as to the particular operational conditions of which the tribal government of the Five Tribes operate under. Other particular acts have been passed as late as 1947 and 1954 in regard to individuals in heirship situations.

It is my feeling that these particular heirship laws should be reviewed, reviewed in light of returning this particular jurisdiction to the federal court rather than the state court.

If you have any further questions, please call.

Sincerely,

  
 Edward F. Mous  
 Executive Director

EM:sb

Enclosure

cc: Principal Chief  
 Office of Community Development & Tribal Affairs

*William L. Garrison*

*Attorneys at Law*

112 NORTH CENTRAL AVENUE, SUITE 300

Phoenix, Arizona 85004

TELEPHONE 257-0101

REC'D APR 27 1976

April 22, 1976.

Karl A. Funke, T.F. Specialist  
Task Force on Law Revision  
Consolidation and Codification  
American Indian Policy Review Commission  
Congress of the United States  
House Office Building Annex No. 2  
Washington, D.C. 20515

Dear Mr. Funke:

I am presently in receipt of your letter to the law firm of Cook and Simons of Phoenix, Arizona dated February 2, 1976. I received this material mid-April 1976.

I suppose the law firm referred your letter to me since I developed the Constitutional arguments in the case of David Boni vs. United States, which Constitutional arguments subsequently or ultimately carried the day.

I submit for your committee's review and for your information, not only a copy of the Trial Court opinion which ruled 18 U.S.C. § 1153 to be unconstitutional as a denial of equal protection of law, and consequently denial of due process of law, but also the opinion of Ninth Circuit Court of Appeals wherein the Appellate Court upheld the decision of the Trial Court and dismissed the appeal of the United States Government.

I think a most important issue in that opinion is the rather lengthy footnote at the end of the Appellate Court's opinion wherein the Court agrees with Judge Murphy of the Trial Court, that the pertinent statute herein involved was unconstitutional.

I have always felt that the Boni case has not received the attention within the Indian community that it so justly deserves. For reasons unknown to myself, other cases of lesser magnitude have received attention throughout the Indian community, however

*William L. Farrison*

*Attorneys at Law*  
112 NORTH CENTRAL AVENUE, SUITE 300  
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TELEPHONE 257-0101

-2-

the case of David Boni continues to go unnoticed. I realize that we attorneys here in the state of Arizona are considered to be out in the boondocks or the sticks, however from time to time we do have original thoughts and launch innovative attacks on behalf of our Indian people whom we represent.

In closing, let me say there is a great need for codification and standardization of the statutes as applied to the Indian people and I hope that the attempts of your committee to do such codification and standardization meets with great success.

Sincerely yours,

  
William L. Farrison  
Attorney at Law

WLF/cg  
Encl.

*Fettinger & Bloom*

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Area Code 806  
437-4430

April 30, 1976

Mr. Carl A. Funke, TF Specialist  
Task Force on Law Revision  
Consolidation and Codification  
American Indian Policy Review Commission  
Congress of the United States  
House Office Building Annex #2  
2D and D Streets SW  
Washington, DC 20515

Dear Mr. Funke:

In response to your letter of February 2, 1976 concerning possible changes in Indian Law, I would submit the following recommendations:

1. 25 USC Section 477 should be amended to make clear that the charter acquired under this section may be amended subject to approval of the Secretary of the Interior. The statute specifically provides that no charter may be revoked except by an Act of Congress, it contains no provision as to amendment. The Tribe has, as a matter of fact, amended their original charter and this was approved by the Secretary of the Interior. However, the Tribe is presently involved in a law suit in which the propriety of amending this charter has been challenged.

2. 18 USC 1161 concerning application of liquor laws to Indian Country provides that certain acts or transactions concerning alcoholic beverages are permissible provided they are in conformity with the laws of the state in which such act or transaction occurs. This language is extremely ambiguous as to exactly how much influence state laws have within Indian Country. The Mescalero Apache Tribe is presently involved in a law suit concerning the Tribe's refusal to obtain a state liquor license. Because of the State's quota system, the tribe could only obtain such a license from a present holder within certain well-defined boundaries. The price of such a license would be in excess of \$75,000. This statute should be amended to specifically state that state standards are to be adhered to as to hours of opening and closing and sale of alcoholic beverages to minors but that state licensing requirements need not be complied with and that enforcement of all standards is the responsibility of the tribal and federal governments.

3. The McCarran Amendment providing for state jurisdiction to adjudicate federal water rights has caused no end of trouble to the Indian tribes. Now that the Supreme Court has decided in the Mary Akin case that state courts do have jurisdiction to adjudicate Indian rights, the tribes are at the mercy of the state courts. Legislation should be passed allowing adjudication of Indian water rights only in federal court.

4. The Freedom of Information Act should be amended as proposed by Senator Domenici in Senate Bill #2652 to provide that the United States has a trust responsibility to keep information concerning Indian resources confidential.

5. Federal legislation should be enacted specifically limiting the extent of state authority to tax property and activities occurring within an Indian Reservation whether performed by non-Indians or Indians. The Mescalero Apache Tribe is presently involved in a conflict with the State of New Mexico over whether a gross receipts tax may be imposed upon non-Indian contractors performing work within the boundaries of the Mescalero Apache Reservation. The tribe maintains that it alone has taxing authority over these activities. Federal legislation should specifically provide for such exclusive taxing authority.

6. Federal funding is needed to provide funds for the training of tribal court judges, court clerks, police and other administrative personnel. As tribal governments exercise increasing authority over activities occurring within their reservation boundaries, they must increase the number of trained personnel to carry out this responsibility. This can only be accomplished with federal funding.

7. The Indian Civil Rights Act should be clarified. Most federal district courts applying the Act have held it provided for a waiver of Indian sovereign immunity. This goes directly contrary to the general rule that such immunity can only be waived where it is clearly the Congressional intent to do so. Congress should make clear that such immunity is not waived by the Indian Civil Rights Act and should provide non-Indians only limited benefits under the Act.

8. Several recent cases have declared 18 USC 1153 to be unconstitutional in part as applied to Indians who commit a crime on another Indian. The effect is to leave the United States Attorney without an effective statute for enforcement purposes. One possible remedy for this is a pending revision of the federal penal code, but this will take years to enact. We would suggest an approach suggested by William C. Smitherman, United States Attorney, that 18 USC 1153 be repealed in its entirety, and that 18 USC 1152 be amended as follows:

Except as otherwise expressly provided by law, general laws of the United States as to the definition and punishment of offenses committed in any place within the (sole and exclusive) SPECIAL MARITIME AND TERRITORIAL jurisdiction of the United States, except the District of Columbia, shall extend to the Indian Country.

This section shall not extend to (offenses committed by one Indian against the personal property of another Indian nor to) any Indian committing any offense in the Indian Country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively.

NOTE: Matter in parenthesis is to be deleted. Capitalized matter has been added.

9. The relationship between 25 USC 476 and 477 should be clarified. It seems to be customary under 25 USC 477 for corporate charters to contain a limited waiver of sovereign immunity as to actions arising from activities of the Charter Entity. It should be made clear that when the tribal governing body under 25 USC 476 enters into business agreements itself or creates a subentity to do so that there is no waiver of sovereign immunity.

10. As presently written, funds available from the Bureau of Outdoor Recreation must be applied for through the State of New Mexico. There should be a provision whereby tribal entities are treated as governmental entities to whom grants can be directly made.

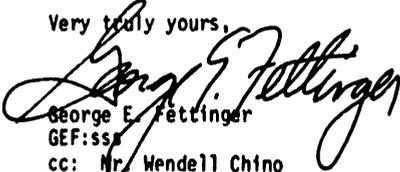
11. 28 USC 1362 should specifically state that Indian Tribes may bring an action in the Federal Court system for any reason. The anomalous situation seems to exist whereby, if a tribe persuades the U.S. Attorney to bring suit on its behalf, there is automatic federal court jurisdiction under 28 USC 1345. However, if the tribe chooses to use its own attorney it must show that there is a federal question involved. This should be resolved by allowing an Indian tribe to sue in Federal Court for any reason.

12. Guidelines should be spelled out for leases of Indian lands for various purposes to non-Indians, such as sub-divisions, industrial developments, etc. What would be the extent of state law and jurisdiction over a substantial number of non-Indians residing within Indian reservations? A U.S. District Court in New Mexico in the case of *Norvell vs Sangre de Cristo* held that virtually all state laws will be applicable to such a development project. This result goes contrary to virtually all Indian Law on the subject. This matter should be clarified by legislation.

13. The regulations of the Department of Interior should be modified to permit Indian Tribal governments to authorize expenditure of funds held for Indian minors, for the necessary expenses of the minor. We are presently creating a "time-bomb" for Indian minors. For example a minor born in 1968 could anticipate having something in excess of \$11,000.00 in per capita distributions credited to him prior to the time he reaches his 18th birthday. If this were amortized at 5-1/2% per annum the total would be in excess of \$18,000.00. The local Tribal Government should be permitted to use a portion of this amount for the care and maintenance of the minor, during minority. All Tribal governing units in this area certainly appear to have adequate competence to set reasonable standards for such distribution.

I hope the matters we have listed will be given thoughtful consideration. If I can be of further assistance please contact me.

Very truly yours,



George E. Fetting  
GEF:ss

cc: Mr. Wendell Chino  
Mr. Richard A. Wardlaw  
Mr. Fred Heckman  
Mr. Fred Peso  
Mr. Samson Miller

*Fettinger & Bloom*

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REC'D. III 22 1976

July 19, 1976

Mr. Carl A. Funke, TF Specialist  
 Task Force on Law Revision  
 Consolidation and Codification  
 American Indian Policy Review Commission  
 Congress of the United States  
 House Office Building Annex #2  
 2D and D Streets SW  
 Washington, D.C. 20515

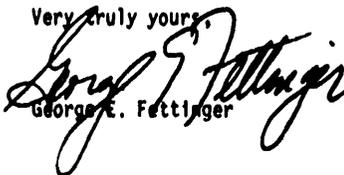
Dear Mr. Funke:

In response to your letter of February 2, 1976 concerning possible changes in Indian Law, I would submit the following supplemental information and recommendations:

1. Under present circumstances the United States Forest Service requires a cash deposit for stumpage, plus a cash deposit against damage. Presently the B.I.A. is requiring a cash deposit for stumpage, but is accepting a bond to insure against damage. It appears to the Mescalero Apache Tribe that the cash deposit is much more satisfactory since it is very difficult to collect from a bonding company, even when you have an "air tight case". As you know bonding companies are notorious for "hanging onto their dollars" as long as possible. Further, there appears to be the necessity for a larger damage deposit, or bond, in most timber contracts. This opinion is based on our own experience here at Mescalero.

Thank you for your consideration in this matter.

Very truly yours,



George E. Fettinger

GEF:maw

cc: Wendell Chino  
 Samson Miller  
 Fred Peso  
 Richard A. Wardlaw

REC'D FEB 23 1976

JOHN E GORSUCH  
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February 18, 1976

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EDWARD INATAN  
CHERYL OUTENBRIDGE  
RAMON P. COLVERT  
SPECIAL COUNSELMr. Karl A. Funke, T.F. Specialist  
Task Force on Law Revision  
Consolidation and Codification  
American Indian Policy Review Commission  
Congress of the United States  
House Office Building Annex No. 2  
2d and D Streets, SW.  
Washington, D. C. 20515

Dear Mr. Funke:

We have received your letter of February 2, 1976, requesting comment and suggestions regarding items of statutory or regulatory procedure which are causing problems to Indian tribes. We respond only in our capacity as tribal attorneys for the Colorado River Indian Tribes headquartered near Parker, Arizona and our comments are directed toward the problems as we see them of those tribes, whether or not they may be applicable to others.

First, let me make the preliminary comment that there has been much testimony before committees of the Congress by Indians or their representatives regarding needed action. Obviously you have more ready reference to those materials than do we.

In an effort to be of general assistance, we have identified four areas which we think to be of particular concern. The first and certainly one of the most important has to do with the relationship between tribal government and state government. Of particular concern in this overall area are the problems generated by what is commonly referred to merely as P.L. 280. In aid of tribal sovereignty, in our opinion this statute and all others bearing any relationship to it should be totally repealed and this should be done in a manner which makes clear that the Congress withdraws all authorization for state control or control by any of the state agencies or subdivisions, of civil and criminal matters or authority.

February 18, 1976

We also believe there is a substantial problem in the application to Indian activities on tribal lands of the provisions of the Environmental Protection Act. Indians as well as all others should be and we believe are concerned with the maintenance of the environment within the appropriate limits of their territorial jurisdiction. We believe that the Environmental Protection Act should be amended in such a way as to make it clear that neither Federal nor state authority extends to activities on Indian reservations and that the control of such activities from an environmental or other standpoint rests with the appropriate tribal authorities. This, of course, should be on a tribe-by-tribe basis.

In our opinion the Indian Civil Rights Act needs careful reconsideration and appropriate amendment. The clarification and modification should be aimed, of course, at the protection of tribal sovereignty. At the present time, as you are well aware, there is multiple litigation undertaken to determine the meaning and applications of that Act and involving the conflict in many areas of the Act with the sovereign rights and control of Indian tribes. The tribes have their own ancestral ways of dealing with matters within their own reservations and their right to continue those ways was long recognized by the courts but is now beclouded often by the Indian Civil Rights Act.

Another matter, perhaps of less pressing nature, has to do with the existing necessity of securing Secretarial approval of the leasing and development projects, on a case-by-case basis, of given Indian tribes. Indian self-determination should be the controlling factor here. It has been our experience that normally Secretarial action is in accordance with Indian desires. Nevertheless there are occasions where there is Departmental interference with those activities and, in many if not all instances excessive delay because of the necessity of Departmental action. Some reduction of the occasions when Federal approval is required would be advantageous. Let us make this point clear, however: The duty of the Secretary and the Bureau of Indian Affairs to advise and assist Indian tribes in matters relating to leasing and development (such, for example, as general economic and business advice, survey assistance, appraisals, determination of general economic rates of return in view of local and national conditions, etc.) should continue and be mandatorially required when requested by the appropriate tribal entities.

We realize that these comments are of general character, but we cannot well be more specific without reviewing and commenting, section by section, on all of 25 U.S.C. and 25 C.F.R., which obviously is not

REC'D FEB 23 1976

*Law Office*

## HOUGER, GARVEY &amp; SCHUBERT

A PROFESSIONAL SERVICES CORPORATION  
30<sup>th</sup> FLOOR THE BANK OF CALIFORNIA CENTER  
SEATTLE WASHINGTON 98104

(206) 464-3909

February 20, 1976

JOHN R ALLISON  
STANLEY H BARER  
M JOHN BUNDY\*  
MICHAEL D GARVEY  
JOHN K ROERSTER\*  
L WILLIAM HOUGER  
STEPHEN B JOHNSON\*  
JAMES R OFFUTT\*\*  
E CHARLES ROUTH\*  
KENNETH L SCHUBERT, JR  
JOHN M STEEL\*  
DONALD P SWISHER\*\*Washington State Bar Only  
\*\*Washington D.C. Bar OnlyTELEX 32-1037  
CABLE LEX-SEATTLE  
—  
8<sup>th</sup> FLOOR  
109 NINETEENTH STREET N.W.  
WASHINGTON, D.C. 20036  
(202) 786 6801Please reply to **Seattle** officeTask Force on Law Revision  
Codification and Consolidation  
American Indian Policy Review Commission  
Congress of the United States  
House Office Building Annex No. 2  
Second and D Streets, S. W.  
Washington, D. C. 20515

Dear Sirs:

We represent the Quileute Indian Tribe and are writing in response to your letter dated February 2, 1976, regarding statutes or regulations which have frustrated the plans, goals or programs of the Quileute Indian Tribe. While a comprehensive review is beyond the financial capabilities of the tribe, we wish to identify four particularly troublesome problem areas:

1. Indian Civil Rights Act, 25 USC 1301 et. seq.

25 USC 1302 does not define or clarify those circumstances under which an Indian tribe is "exercising powers of self-government." The Quileute Tribe is presently involved in litigation with a former lessee whose lease was cancelled "by mutual consent." The lessee claims that an individual member of the Tribal Council misrepresented the purpose and effects of the cancellation and that the tribe, once the lease had been terminated, exercised its powers of self-government to exclude the lessee from the leased premises. The tribe's motion to dismiss the case was denied by the Western District of Washington Federal Court on the basis that the lessee's complaint sufficiently alleged a violation of the Act.

It seems clear that the courts are failing to distinguish between (a) a tribe's governmental role and a tribe's property

Task Force on Law Revision  
Page 2  
February 20, 1976

ownership role; and (b) actions by the tribal governing body and personal actions by an individual member of the governing body. Although the tribe may ultimately prevail in this case, statutory clarification would avoid this type of problem in the future.

2. Indian Traders, 25 USC 261 et seq.

Warren Trading Post v. Arizona Tax Commission, 380 U.S. 685 (1965) attributes importance to the Indian traders licensing authority of the Bureau in preventing state law impositions of additional duties on Indian traders. Two problems have been encountered. First, the Bureau has the "sole power and authority" to appoint traders. Although the tribe has demanded that the Bureau issue licenses for traders on the Quileute Reservation, the Bureau has dragged its heels for almost two years in issuing the licenses. Second, the exclusivity of regulation granted to the Bureau may preclude inconsistent tribal regulation as well.

In short, this statute is outmoded and ineffective and may jeopardize tribal sovereignty. It should be replaced with a statute authorizing the tribes to regulate Indian traders, with a provision that such regulation precludes state regulation of such traders.

3. Leasing, 25 USC 415 and 25 CFR 131

These provisions vest power and discretion over leasing of trust property in the Secretary. Past leases have been unfair to the tribe, both as to term of lease, rent and enforcement authority. Appraisals by the Bureau have tended to be low, and the tribe is then locked into long-term leases with small return to the tribe. Lease violations must be dealt with pursuant to a cumbersome administrative proceeding. We would strongly prefer a system encouraging direct negotiations between the tribe and the lessee, use of independent appraisers, resolution of disputes by use of arbitration, breaches of leases heard by the tribal court, and benefits of leases running directly to the tribe.

4. Publi: Law 83.280

The problems which have been created by this statute with regard to law enforcement and overreaching by state taxing

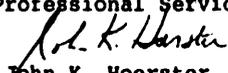
Task Force on Law Revision  
Page 3  
February 20, 1976

authorities are many and have been stated elsewhere in depth. The Quileute tribal members were unaware of the effects which this law would have, and as a result have incurred great expense in seeking to preserve tribal sovereignty. Because of the past confusion, it is only fair that tribes should be given an opportunity to decide, based on their experience with PL 280, whether or not they wish to remain subject to any state jurisdiction.

These comments are general in nature. We would be happy to amplify upon them at your request. Thank you very much.

Very truly yours,

HOUGER, GARVEY & SCHUBERT  
A Professional Services Corporation

  
By John K. Hoerster

JKH:cd

cc: Quileute Tribal Council

Sequim, Washington  
March 2, 1976

REC'D MAR 8 1976

American Indian Policy Review Commission  
U. S. House of Representatives Annex #2  
Room #13  
Washington, D. C. 20515

Mr. Karl A. Funke:

We the Jamestown-Clallam Tribe are a Public Domain Tribe. After the Treaties between the U. S. Government and Tribes of Washington were signed our Chief had the foresight to see that his people needed to relocate in order to survive. They pooled their monies and bought a section of land which they named Jamestown in honor of their Chief.

The Bureau at one time held two acres in Trust for the Jamestown people. On the two acres was a water well, day school and a cottage for the teacher. The land was eventually declared surplus by the Bureau but was already at the G. S. A. level before our people learned of it. Our Council worked hard to acquire the land but at that time Indians could not borrow money from banks so we lost the land.

I would say our biggest problem is recognition at the Federal level. Our Petition for Federal Recognition is now in the hands of the Secretary and hopefully will rule on it in the near future.

Sincerely,



Harriette Adams  
Chairperson  
Jamestown-Clallam Tribe



**LAS VEGAS PAIUTE TRIBAL COUNCIL**

1321 N. Ken Street - Las Vegas, Nevada 89106

Telephone (702) 386-3926

REC'D APR 19 1976

April 16, 1976

Karl A. Funke, T.F. Specialist  
Task Force on Law Revision  
Consolidation and Codification

Dear Mr. Funke

In response to your letter of January 28, 1976 in regards to Indian law which you request any information concerning any statutes or regulations.

The Las Vegas Paiute Tribal Council is without Judicial, Prevention and Enforcement Services and the State of Nevada, the County of Clark and City of Las Vegas have no Civil or Criminal Jurisdiction on the Las Vegas Indian Colony but we have adopted the appropriate provision of 25CFR, Law and Order code, and have since requested the Bureau of Indian Affairs to provide services for the enforcement of some, until such a time a Tribal law & order code is developed and approved.

We are now in the development stages of a tribal law & order code.

Thank you

Angela Sanchez, Sec.  
Las Vegas Paiute Tribal Council  
1321 Ken St.  
Las Vegas, Nv. 89106

as

UNIVERSITY OF WASHINGTON  
SEATTLE, WASHINGTON 98105

*Graduate School of Business Administration and  
School of Business Administration  
Department of Business, Government, and Society*

REC'D MAR 15 1976

March 1, 1976

Karl A. Funke  
Task Force on Law Revision, Consolidation  
and Codification  
American Indian Policy Review Commission  
U.S. House of Representatives Annex No. 2  
Washington, D.C. 20515

Dear Mr. Funke, and Members of the Commission:

At the request of Gerald Charles, Chairman of the Lower Elwha Tribal Community, I am responding to your circular letter in my capacity as consultant in legal and development matters.

It is difficult to approach the task of selectively criticizing Title 25 without frustration. The entire Title reflects a consistent historical policy of unconstitutional, discretionary supervision of what are properly tribal affairs. There is no candid way to separate the good from the bad. The whole depends upon all of its parts.

We might begin with 25 U.S.C. 2. The Commissioner has "the management of all Indian affairs." The Articles of Confederation used that language ("manage the affairs"). The Constitution however only empowers the general government to "regulate Commerce... with the Indian tribes." In fact, when §2 was first enacted in 1832, Congress did not pretend to do anything more than just that--regulate commerce. Since then, intervention in tribes' internal affairs has become generally accepted practice, and the Commissioner has been transformed from a trade commissioner to a colonial governor. To avoid any implication of a greater power in the Bureau than it should properly have, we recommend that §2 be repealed in its entirety.

The Snyder Act, §13, is fully sufficient to authorize the proper, supportive rather than repressive functions of the Bureau. We also recommend that the sixth, seventh and eighth clauses of that Section be deleted (employees, liquor and motor vehicles), and be replaced by the following provision, "For the subsidy of tribal governmental and proprietary functions and activities."

Section 70a, relating to the Indian Claims Commission, should provide for the payment of interest on all claims. Assuming that the awards made so far by the Indian Claims Commission are an accurate measure of the 19th-century value of the acreage ceded by tribes to the United States, the

present value of that acreage is on the order of \$8 billion or more than twice the present value of all the appropriations ever made for Indian affairs.

Sections 71-72 should be repealed, and replaced with a provision that reads, "All treaties and executive agreements formerly made with Indian tribes respecting their territory and government shall be acknowledged as irrevocable compacts, and no power of self-government not expressly delegated to the United States by compact shall be deemed to have been delegated or relinquished by any tribe."

This is the basis upon which all future tribe-federal relationships must be based. The power of the Congress to abrogate any part of a treaty or terminate tribal governments makes tribes by far the weakest and least secure of all American units of government, devalues their property, and disaffects their members.

Sections 81 to 85 should be repealed. It is a source of authority for Bureau supervision of tribal economies, and imposes a discriminatory cost on reservation transactions, and decreases the value of reservation resources.

We suggest as an alternative the following: "No contract, sale, or other agreement touching property located within the exterior boundaries of any Indian reservation shall be enforceable in any court of the United States unless made and executed in accordance with the laws of the tribe having jurisdiction of that reservation."

As a companion measure, Sections 1738-1739 of Title 28 should be amended to include "tribes" within the list of governmental units to which the Full Faith and Credit and Privileges and Immunities Clauses of the Constitution apply, to establish complete authority for the laws and judgments of tribal councils and courts.

Any legitimate concern for the propriety of federal employees' activities, reflected in Section 81-85, 87, and 88 can be fully met by preserving only Section 88, and adding the following to Title 18, "No employee of the United States who shall knowingly threaten, bribe, conspire with or otherwise influence or attempt to influence any elective or appointive officer or employee of any Indian tribe to act or omit in any matter within such tribal officer or employee's governmental duties." We further recommend that this be made a felony, comparable to other federal corruption measures.

To eliminate any suggestion of a supervisory fiscal power in the Bureau, Sections 111 to 148 should be repealed, and replaced with the following, "All moneys and goods agreed by the United States to be paid an Indian tribe, or awarded to that tribe as a judgment against the United States, shall upon the appropriation thereof by Congress be disbursed to the tribe directly, without supervision or control; and all proceeds of tribal lands or other property, accrued or to be accrued hereafter, shall be available to be withdrawn by the tribes respectively without limitation of time, amount, or use." (This also replaces Sections 1401-1406.)

Sections 151-162 are harmless after enacted of the foregoing measure. Bureau channelling of funds merely increases the delays and costs associated with using them. We are convinced that the Bureau has no superior business expertise, compared to contemporary tribal leadership, and there is therefore no legitimate reason for continuing supervisory powers. Business acumen is not a prerequisite of self-government for anyone else in the United States. The Bureau and Treasury have moreover seriously mismanaged investments in the past, and our experience has demonstrated that they mismanage financial decisions today.

As a companion measure, we recommend the following: "All appropriations for the rendering of technical assistance to tribes shall be allocated among the several tribes in inverse proportion to their per capita income or per capita tribal balance-sheet assets, whichever is greater, and disbursed to the several tribes directly, without supervision or control, such funds to be disposed of by the tribes through contracts for services with public or private agencies as each of them shall find most beneficial."

This has the object of converting the Bureau into a consulting agency, rather like the Agriculture Department; its available funding will depend in large part upon its providing the kinds and quality of services tribes will be willing to pay for. It of course necessitates a repeal of Title I of the Indian Self-Determination Act, which makes the tribes the sub-contractors, rather than the Bureau.

As a further, and most desirable companion measure, we suggest that Section 191(a) of Title 13 be amended: "In all of the foregoing, Indian tribes shall be separately enumerated, and shall be deemed units of local government." This is rendered necessary because the Bureau of the Census does not now provide such data, which is absolutely essential for the evaluation of future policy. Preserving the present dependence on the Bureau of Indian Affairs for census data invites self-serving distortion.

Repeal of Section 62 renders Section 63 technically unnecessary, but we feel that the power of the Bureau to regulate rolls has been overextended in past practice and needs clarification. We therefore suggest that Section 63 be modified to read as follows: "Tribal membership shall be determined, for all federal and tribal purposes, by the criteria established by the respective constitutions and laws of the several tribes; except that Congress may, in authorizing appropriations for the benefit of Indians, specify a different standard for individual eligibility, unless such appropriations are required by the terms of any judgment, or treaty or other compact or contract between the tribe and the United States."

If the United States really ever meant what is implied as the idealistic purpose of Section 174, we suggest that that Section would better read: "The United States shall guarantee to every tribe within its jurisdiction a peaceable and secure government according to its agreements and tradition, and shall protect them against the encroachments of every other government." In connection with this, Section 175 should be made more explicit to avoid the effect of Siniscal v. U.S. and Lyngstad v. Roy, holding that it is not mandatory, but confers a sort of prosecutorial discretion on the U.S. Attorney.

Many tribes are unable to retain full-time professional counsel for want of funds. The most serious problems arise in connection with non-fee-generating cases, in which the tribe cannot attract counsel on promise of a contingency fee. We therefore recommend modification of Section 175 as follows: "At the request of any Indian tribe, the United States attorney shall represent it in the prosecution of any non-fee-generating complaint, or any defense, provided the tribe has no retainer of general counsel at the time; and this shall be mandatory upon the United States attorney and enforceable by writ."

Section 177 may be inconsistent with the leasing or sale of lands to individuals by tribes for development purposes. It was obviously originally intended to protect the United States' preemption in western lands, and thereby to secure its land revenue from private interference. Today, the concept is still useful as a hedge against any pretense that the conveyance of tribal land to anyone or any agency conveys with it any right of jurisdiction (as contrasted to use). For example, the United States leased Crow Tribe acreage under a vague statute that is being construed as impairing the jurisdiction of the Tribe, which only intended to lease the use of it. Similarly, a tribe might want to sell tribal lands to developers, and make these lands freely transferable, so long as the ultimate domain remains in the tribe. Would anyone suggest that a sale of Idaho land to a Montanan makes that piece of land a part of Montana? Similarly, there is absolutely no danger in the sale of tribal land to non-Indians if there is no change in its political status: it remains free of all State laws and subject to the exclusive control of the tribe under its commercial and police regulations.

We therefore recommend that Section 177 be replaced with the following: "The sale, lease, mortgage or other disposition of lands and minerals within the exterior boundaries of a reservation shall be governed entirely by the laws of the tribe, and shall not be deemed limited by the fact of its status as tribal, allotted or fee land; however, no conveyance by a tribe or any person of land or minerals within the exterior boundaries of a reservation shall be construed as a grant or delegation of any of the rights or powers of jurisdiction over it, unless by express compact or agreement between the tribe and the United States. Any surrender of jurisdiction by a tribe to the United States or any State shall be deemed revocable by the tribe unless by express terms the contrary is provided.

This necessitates also that Section 180 be repealed. Instead, we suggest that Section 179 be amended to provide for a penalty of up to \$10,000 for each instance of knowing trespass of any kind on reservation lands, not posted or otherwise designated for public access, and that the United States attorney shall prosecute such trespassers at the request of the tribe, without discretion.

Section 202 is also inconsistent with our proposed new 177. In point of fact, the most frequent offenders (within the strict terms of 202) have been agents of the United States, as particularly in the acquisition of reservation lands for dams, highways and national parks/recreation areas. Perhaps the best revision of this section would be to add to the very end of its first sentence, "contrary to the law of the tribe having jurisdiction of the property."

Sections 181 to 184 should be repealed. Like adoption, the effect of marriage on ownership should be strictly within the domestic police powers of each tribe. Similarly, Section 185, which authorizes the Superintendent to support tribal members against their tribe, and 187, which is a relic of a best-forgotten era of appointed headmen and "benign" direct rule of reservations by the Bureau. Section 231 should be repealed. Tribes are usually capable of providing their own public health and safety standards; if not, let them contract with the States.

Section 190 should be repealed, and replaced with a section giving tribes a right of first refusal to acquire at cost abandoned federal property (real and personal) within the exterior boundaries of a reservation or adjacent to it. Sections 192 and 196 appear to have fallen into disuse; there is nonetheless no good reason to maintain on the books any such provisions authorizing discretionary confiscation of tribal property.

Section 200 violates the necessary independence of tribal legal systems from federal interference (this being one of the objects of our proposed penalties for federal employees tampering with tribal government). Especially in the case of the remaining Courts of Indian Offenses (i.e., those still operating under 25 CFR 11), tales of interference by Special Officers are boundless. A legal system, to be just in the eyes of its constituents, must be free of politics and responsive only to the guidelines established by their own representatives. It also must be powerful enough to enforce its judgments and to give complete and uniform remedies. Tribal courts on the contrary experience fragmentary jurisdiction, incomplete powers, lack of cooperation from non-tribal officers, and the fact of frequent outside influence.

The Courts of Indian Offenses operate under no specific authority from Congress; the Bureau relies upon Sections 2, 9 and 13 for general authority. It is recommended that Section 200 be repealed, and in its place the following be enacted: "Subject only to the laws of the United States, the laws, both civil and criminal, within the exterior boundaries of a reservation and applicable to all persons and property located therein shall be the laws of the respective Indian tribe. No judgment of a State court shall be enforceable against property located within the exterior boundaries of a reservation unless such court shall have applied the substantive law of the respective tribe."

"No State process shall be served or executed within the exterior boundaries of a reservation; provided, that it shall be within the power of the tribe to provide by law or agreement for extradition, long-arm service of process, and mutual enforcement of judgments. Any State officer or employee who shall cross the exterior boundaries of a reservation with the purpose of violating or evading this section shall, upon conviction be punished by a fine not exceeding \$1000."

We strongly recommend that it be established by statute, or executive order, that the value of any tribal court judgments refused to be enforced or honored by the courts of a State be automatically deducted from that State's federal financial assistance for the following fiscal year, and the resulting credit

assigned to the tribe. This is only fair, as a substitute for Sections 229-230, authorizing deductions from tribal funds for "depredations" against States!

We also strongly endorse the unmaking of Public Law 280 in the form proposed to the last session of Congress, i.e., authority for each tribe affected by Public Law 280 to restore to itself as much or as little subject-matter jurisdiction as it chooses. This is required by the principle of government by consent, and as a practical matter by the evident chilling effect of fragmentary jurisdiction on tribal development.

A necessary companion measure would be amendment of the Major Crimes Act and Assimilative Crimes Act to restore a measure of the police powers arrogated by the United States. We urge that Section 13, of Title 18 be amended by the addition of the following words, "Provided, that this shall not be applicable within the exterior boundaries of any Indian reservation." See *Acunia v. U.S.*, 404 F.2d 140 (C.A. Ariz. 1968). Section 13 effectively nullifies all tribal criminal law. It is impossible to enforce two inconsistent penal codes among the same people without the most unjust results. Moreover, with 13 on the books, tribes cannot legalize or decriminalize any activity, even in the furtherance of the most enlightened contemporary policy, because the State's laws will continue to be enforced against that activity. (If S.1 passes, 13 will be replaced by a Section 1863, which is worse still; it authorizes the United States to prosecute under tribal laws even if the tribe itself declines to prosecute.)

We believe that the Major Crimes Act is expendable. No substantial benefits have been gained because of low prosecution rates, and the sovereignty of tribes has been substantially limited. Either Section 1153 of Title 18 should be entirely repealed or, at worst, amended by the addition of the following words at the beginning of that section, "At the request of a duly authorized tribal officer, ... " Major Crimes jurisdiction should be a backup for serious law and order problems, not a policy that tribes are incompetent to handle them. For the same reasons, and consistent with our recommendation for replacement of Section 200, we suggest that the word "Indian" throughout Section 1153 be replaced with "person." There is more reason for tribes to need assistance in dealing with serious crimes of outsiders, than crimes of their own membership.

To restore to tribes unrestrained authority to decriminalize or otherwise regulate alcoholic beverages, consistent with their self-government, Sections 251 of Title 25, and 1154-1156 of Title 18, should be amended by the addition at the beginning of each of the words, "Where not inconsistent with the laws of the tribe, ... "

Sections 261-264 are archaic and inconsistent with tribal self-government. Although *Rockbridge v. Lincoln*, 449 F.2d 567 (C.A. Ariz. 1971) indicates that some guidelines for eligibility of traders must be consistently applied, there is no longer any reason why these should not be fixed by the tribes themselves, in accordance with their individual needs and conditions. Federal licensing continues to be haphazard and of no real protective value, and

merely discourages tribes from adopting much more comprehensive business codes. We would repeal 261-264 and for complete clarification replace them with the following: "Nothing in this Title shall be construed to impair or limit the power of tribes to charter corporations and to establish conditions for the admission of non-tribal corporations to do business within their exterior boundaries. No State shall discriminate against any corporation because it is incorporated under the laws of a tribe." The necessity of obtaining State charters today is unfortunate. It impairs the ability of tribes to regulate companies doing business principally on the reservation, and prevents tribes from establishing a legal environment more conducive to business than may exist in the surrounding states. A progressive corporation law is always a first step in attracting investment.

Sections 271-304, establishing and regulating federal Indian schools, should be repealed in entirety. All funds currently expended on these schools should be allocated directly among the tribes, with option to establish their own schools, or to contract with State public education systems for space in State schools or tribally-staffed satellite schools. Nothing appears to be more jealously regarded as a purely domestic tribal matter than the education of children. In truth, nothing so completely determines the future of tribes as socio-political units. Title II of the Indian Self-Determination Act should be modified consistent with this policy of channelling all education funds through the tribes. In particular, it should provide clear authority for tribal school boards, to be constituted as the respective tribes direct, with authority extending but not limited to the management of, or contracting for the management of public schools. All Johnson-O'Malley and Impact funds should be disbursed directly to tribal school boards, for use in tribal schools or educational programs or disposition by contract to State schools.

It is our feeling that none of the provisions for "economic welfare" contained in Sections 305-309 substantially improve reservation economies, nor are they evidently harmful. They should be considered along with the Indian Financing Act, Sections 1451-1543, another marginally beneficial program. A well-managed business must react quickly to economic opportunities. The red tape of IFA funding is so time-consuming at present that the profitable opportunities are frequently lost, or else the tribe finds alternative financing as a stop-gap while waiting for IFA funds, and bears the extra interest and the risk that IFA will not come through at all. This tribe has had that experience.

We suggest that the best foundations of reservation economic growth are: (a) secure and unsupervised tribal government; (b) progressive tribal commercial laws covering incorporation, property, contract and tort; and (c) courts of ordinary territorial jurisdiction. Without these, investments on reservations are too insecure. They are not competitive with off-reservation opportunities.

Nevertheless, a source of cheap development capital would prove useful. IFA is so arbitrary, underfunded and slow to respond, that its 2% or 3% discount over commercial loans is almost completely cancelled out. We have heard a suggestion for an Indian Development Bank, the purpose of which would be to spread risk and provide relatively low-interest capital

to tribes. In principle we support this, qualified by the suggestion that such a Bank will work best if the salaries of the Directors are fixed at a percentage of the repayment rate, so that they have an incentive to give priority to the most promising opportunities for investment. The Bank would receive its initial funding from the United States, and function as a federal corporation.

Apropos of economic development, the provision of adequate "infrastructure"-- transportation and communications systems--on reservations is an important incentive to business. Tribes will want every opportunity to improve their highways. The choice of locations will determine future industrial geography, and is therefore an essential component of reservation planning. Therefore placing the power of road-building in the Bureau impairs the ability of tribes to plan for future development. Sections 311-318 should be repealed. No right-of-way should be acquirable by the United States on reservations except for national highways. All local access should be planned by the tribes themselves, where and when they determine it will have the most desirable impact. For this purpose, our recommended channelling of all Indian appropriations directly to the tribes will obviate the need for statutes to replace 311-318. Bureau road funds should be available for tribal use according to tribal priorities.

These arguments apply with equal force to Sections 319-328, regarding other kinds of rights-of-way. It is completely inconsistent with tribal self-government and development planning to give the Bureau power to crisscross the reservation with unwanted power lines, pipelines, etc., which solely benefit off-reservation businesses and population. In this tribe's experience these rights-of-way were uncritically granted and the compensation fixed by the Bureau was less than a tenth of the value taken. If outside businesses and utilities have legitimate needs for rights-of-way, there is nothing to prevent them from what they would do on State lands: negotiate with the local government for a sale of the easement at a free-market price. The way the law now reads, it is cheaper to get an easement on tribal land than State land, but more expensive to develop tribal land. Hence the characteristic reservation topography: lots of through-roads and railroads, telephone lines etc., but very few servicing the reservation itself.

We hope that the essential error of the General Allotment Act has long since been appreciated by Congress. As a whole, the allotment policy has deprived tribes of complete jurisdiction and the power to comprehensively plan the use of a substantial part of their territories. Individual property rights can be created by tribal laws, if tribal members want them. The Lower Elwha Tribal Community, for example, assigns the use of surface indefinitely, reserving a power of reassignment and regulation for public purposes. Such a procedure guarantees members as much security as they could possibly have under State laws, which also subject owners to condemnation and land-use regulations.

The most pernicious consequences result from Sections 349 and 357. The first implies that the States obtain jurisdiction over lands patented in fee. The result is the "checkboarded" reservation within which effective law enforcement and land-use planning are impossible. Section 357 authorizes the States

to condemn allotments. Nothing could be more in conflict with tribal self-government. It gives the States, for all practical purposes, power to annex reservations.

We recommend that all of Chapter 9 and Section 483, Title 25, be repealed, except Section 352(c), and replaced with the following: "Subject only to the United States, the ultimate domain and jurisdiction of all lands within the exterior boundaries of reservations reside in the respective tribes, but no vested rights in the use and enjoyment of reservation lands shall be taken without just compensation. For the purposes of this Title, the taking of fee and allotted interests in reservation lands for comprehensive planning purposes shall be deemed takings for a public purpose." See Section 461 and Arenas v. U.S., 60 F.Supp. 411 (D.C. Cal. 1945).

Pursuant to this section, tribes would be guaranteed authority to repurchase patentees' and allottees' interests, without the risk of problems with the "public purpose" limitation of Section 1302(5) of the present law. This would protect patentees and allottees within a process of unmaking the fragmentational effect of allotment. Obviously, the repeal and substitution eliminates further allotment and the issuance of fee patents.

As an indispensable companion measure, all of Chapter 10 and Section 464 of Title 25 should be repealed. The evils of fragmentary heirship are also, we trust, well documented already. Moreover, the descent and distribution of property is a matter of great social significance more properly within the absolute control of the tribes themselves. Chapter 10 was "civilization" legislation. Its purpose was to protect "civilized" allottees from supposedly barbaric tribal customs regarding property. Today, the red tape and arbitrary results attendant upon Chapter 10 do more to frustrate economic growth than to encourage it. Certainly, State law should never be controlling (e.g., 464).

We recommend that Chapter 10 not be replaced, but that descent and distribution of all property be left by implication to the respective tribes to provide for by law. Consistent with our proposed substitute for Chapter 9, above, tribes would have clear authority to consolidate fragmented allotments, compensating the heirs, or else to establish rules for inheritance that will eventually result in relative consolidation (like a public right of first refusal, a procedure used with great success in Germany, which also has an heirship problem).

We would amend Section 381 to limit the Secretary's rulemaking powers to irrigation projects maintained and operated at federal expense. All other water rights should be subject to tribal planning.

We urge that all of Chapter 12 and Section 466 be repealed. An economy can easily become over-regulated: the costs of the regulatory institution and its effect of raising the costs of transactions among business may exceed the benefits of control. Many industrial sectors of the American economy are regulated, but no other case exists of a totally regulated region or locality. Why are tribes subject to regulation beyond what is deemed

necessary for the rest of the American economy? The restrictions in Chapter 12 were imposed at a time when it was supposed that Indians were substantially less informed about business than others, and therefore far more likely to exercise poor judgment. Can anyone genuinely argue, on the basis of the 1970 Census that this inequality continues to exist? To be sure, Indian education is still measurably poorer, but so is all minority group education, and so is the education of a substantial portion of the rural white population. No one is suggesting that all rural communities, barrios and inner cities be subjected to extraordinary land-use restrictions for these reasons.

Beside, where has the Bureau of Indian Affairs demonstrated that its key supervisory employees substantially exceed their tribal clients in educational attainment and business experience. Economics, business management and business experience are not even required for employment in these key positions, and informal studies conducted recently for this purpose indicate that few key Bureau employees have such training, or comparable experience outside the Bureau. Unless the Bureau is a considerably expert body, its supervision of tribal economies can do nothing but increase costs and delays, frustrate development, and weaken tribal governments.

Restrictions in Chapter 12 are either arbitrary or discretionary. Both are bad. Arbitrary restraints (e.g., terms of years on leases) prevent tribes and their citizens from taking advantage of the best possible terms offered by investors and developers. Frequently the mutual convenience of the parties dictates changes of great value to both, but the rigidity of the leasing law forbids them. Discretionary limitations effectively turn over all business management to the Bureau's local officers. When they have the power to initiate, and the tribe to approve or veto, a lease or sale, the tribe often finds that it has a choice of the Bureau's proposed lease or contract on the one hand, or no development at all on the other. When the tribe initiates and the Bureau approves, the Bureau can reject any plan for any reason, without judicial review. Cf. Twin Cities Chippewa Tribal Council v. Minnesota Chippewa Tribe, 370 F.2d 529 (C.A. Minn. 1967), and N.I.V.C. v. Bruce, 485 F.2d 97 (10th Cir. 1973), cert. den. 417 U.S. 920 (1974), with Toonippah v. Hicel, 397 U.S. 598 (1970).

These problems also color our understanding of Section 443(a), which on its face purports to meet our recommendation that federal property used for Indian affairs, if placed on surplus, be automatically transferred to tribes. Section 443(a) is not only discretionary in the grant of property ("The Secretary... is authorized"), but provides for discretionary revocation of the grant if the Secretary believes the property is not being "properly utilized." A broader discretion than this cannot be imagined.

I have already indicated our misgivings about Title I of the Indian Self-Determination Act, arising principally from the Act's failure to authorize or require transfers of real, policy-making powers to tribes automatically upon their request. Surely, Sections 452-454 should be repealed for the identical reasons. If contracts are to be made with the States to provide human services to tribes, the tribes themselves should determine the nature

and quality of those services, and have the opportunity to resort to law to maintain them (as a contractor, not a third-party beneficiary).

It was my understanding that Title I effectively did nothing more than extend the sense of Sections 452-454 to include tribes as contractors. But 452-454 was designed to fill vacuums in services, not to augment local self-government. The States gain no sovereignty by these contracts; neither do tribes under Title I. Once again, we conclude that funds for human services should be channelled directly to tribes, they choosing either to deliver services themselves or contract to public or private agencies State or federal.

We heartily endorse the spirit of the Collier land consolidation policy, represented by Sections 465 and 467. We believe, however, that that section unduly restricts tribal planning authority, which is essential to maximizing the economic impact of consolidations, since the choice of lands is discretionary with the Secretary. The experience of the Elwhas, whose entire reservation was established pursuant to 465 and 467, has been dismal with regard to Bureau control of land choice. Limited by time (under the annual appropriation framework of 465) and lacking any apparent economic rationality, the Bureau purchased scattered swampy acreage, all subject to frequent flooding, without any water rights or rights-of-way, not developable for any purpose without flood control and drainage; and spent up to five times the then-current market price for about half of it. It will take nearly a half million dollars today (applied for by the tribe) to make usable the lands purchased by the Bureau for \$55,000 in 1937.

The Elwhas are also peculiarly affected by the lack of a defined reservation boundary. This provides problems under Section 1495 (of the I.F.A.) and generally disposes the Bureau in our area to reject consolidation plans. Tribes should be authorized to set consolidation goals which, once filed and (we suggest) approved by Congress, will both authorize and limit all future expansion. We also recommend that land consolidation funds be disbursed directly to tribes for terms of at least five years, to provide time for bargaining and thus keep land prices from responding too radically to the influx of funds.

Sections 465, 467 and 468 should be replaced with the following: "There is hereby authorized to be appropriated a sum not to exceed \$2,000,000 in any one fiscal year, for the consolidation of reservation lands, these appropriations to be made in the names of and for the use of particular tribes, to whom they shall be disbursed directly. Funds disbursed to a tribe may be utilized in its discretion for the purchase of any rights to real property within (a) the exterior reservation boundaries described by its constitution, or, alternatively, (b) a consolidation area approved by Congress in the making of the appropriation. Funds not expended at the end of five years shall be returned to the Treasury, in addition to one-half of all interest earned on the unexpended balance from the time the funds were disbursed."

Section 469 should be amended to require the Secretary to disburse these funds in the form of grants of not less than \$10,000 nor more than \$50,000 on a first-come-first-serve basis to tribes proposing either to hold constitutional conventions or to draft commercial laws. There are no public funding sources directly applicable to the latter object (but compare Section 1311 funding criminal law development), and the control of funds by the Secretary for the former is too discretionary.

The core of the Indian Reorganization Act, Sections 476-477, has its merits and shortcomings. There is nothing objectionable to recognizing tribal governments and clothing them with federal corporate status. A general danger lurks behind these provisions, however, and that is that I.R.A. tribes will be regarded as instrumentalities of, or creatures of the United States rather than original sovereigns. See, e.g., Iron Crow v. Oglalla Sioux Tribe, 129 F.Supp. 15 (D.C.S.D. 1955), and Oglalla Sioux Tribe v. Barta, 146 F.Supp. 917 (D.C.S.D. 1956), intimating as much; also Warren Trading Post v. Arizona Tax Commission, 380 U.S. 685 (1965); Crain v. First Nat. Bank, 324 F.2d 532 (C.A.Ore. 1963), upholding the Constitutionality of termination on that ground; and Sierra Club v. Morton, No. 74-1389, C.A.D.C. June 16, 1976, applying N.E.P.A. to tribes on that ground. The intimation (discussed in Crain and Morton) that Congress can Constitutionally destroy or limit what it created is devastating to tribal political liberty.

A more specific danger of Section 476 in particular is the Secretary's power to veto proposed tribal constitutions. If the tribe is sovereign at all, it can formulate its own government. That is, after all, the most essential form of the exercise of self-government, and is what Constitutional democracy holds to be the foundation of all legitimate authority. Of course, a tribe might overstep the Constitution or specific terms of its compact with the United States, but we consider it absolutely beyond dispute that such controversies should be heard determined by the Supreme Court in common with every other case of local overbreadth of power, not by some administrative agency. The rights at stake--political and personal liberty and consensual government--are too precious to be accorded any less protection. See the Chippewa Tribe case, supra, for the non-reviewability of disapproval of tribal constitutions.

The most insidious impact of this veto power is that it has been used to breed even greater powers. Approval of most tribal constitutions, including the Elwhas', was conditioned upon the insertion of clauses recognizing in the Commissioner a power of vetoing most or all tribal legislation. There is no statutory authority for this. In fact, the author of Section 476, Commissioner Collier, promised Congress that this would not be done! See Hearings, U.S. Senate, Readjustment of Indian Affairs, 73rd Congress, 2nd Session 106-107 (1934).

We therefore recommend that Section 476 be amended to read as follows:  
 "(a) Any Indian tribe, or tribes, shall as a function of their original sovereignty have the right to organize for its common welfare, and may adopt an appropriate constitution embodying any or all powers of self-government not expressly delegated previously to the United States, which shall become effective when ratified by a majority vote of the adult members

of the tribe or tribes, as the case may be, at a special election authorized and called by the Commission for Tribal Elections under such rules as it may prescribe. Amendments to a constitution, previously adopted, shall become effective when ratified according to the terms of the constitution, except that any vote required in the course of the process of amendment shall be at a special election authorized and called by the Commission for Tribal Elections as aforesaid. (b) The President shall appoint five persons to serve as the Commission for Tribal Election, who shall be members but not elective officers of tribes, and shall each serve a term of five years. Expenses of the Commission shall be reimbursed by the United States. No Commissioner shall be removed by the President without the consent of Congress."

As for Section 477, we believe that its only useful functions would be fully provided by our recommended new section, first paragraph, page 7, supra.

Although we would save Section 478(b), we support the repeal of Section 479, believing that it is a question for the Supreme Court alone whether any tribe retains undelegated powers and is therefore still a political body with political rights.

At last we come to the Indian Civil Rights Act. We agree in principle that tribes should afford no fewer personal liberties to their members than the States. If anything, we believe that tribes can guarantee greater liberty to their members than the States, because they are smaller, more homogeneous, and have firmer social networks, hence a lack of much need for coercive authority or informal institutions. But we do object to anything that limits tribes without reasonable purpose or tribal consent, such as Section 1302(7) limiting sentences, as if tribes cannot be trusted to fairly apportion heavier penalties. State magistrates and justices, far less legally trained than most members of the National Indian Tribal Judges Association, are far more powerful.

Fortunately, the courts have found a necessity of exhaustion of tribal remedies in the Act. We trust that the courts will also give tribal judgments on constitutionality the same presumption of correctness that State supreme court judgments are ordinarily accorded, and similarly regard tribal council action as presumed reasonable unless in conflict with "fundamental interests." The problem here, however, as I understand it, lies with the application of the Act by the courts rather than the Act itself.

The greatest evil of the Act has been the heavy burden on the fiscal resources of tribes defending constitutional challenges. Tribal members, who have recourse to legal services, are subsidized by the United States to bring suits against their tribes, but the tribes have to defend themselves at their own cost. In our experience many frivolous claims have resulted in out-of-court settlements because the tribal defendant was unable to afford to resist. Our recommended revision of Section 175, supra, would mitigate this problem.

Notwithstanding the foregoing discussion and recommendations, it is our firm belief, after reviewing the history of federal Indian policy, that no secure solution can come from anything less than a Constitutional amendment. Until

the Congress itself is restrained from periodic alteration of its policy, tribal government will remain unstable and the future for tribes uncertain. Who will invest serious effort, or substantial capital, in a state that can be snuffed at the whim of changing parties in national politics? The Supreme Court has moreover declined, since McClanahan v. Arizona Tax Commission, to state any general principles regarding tribal political status, declaring such principles of "mere theoretical importance!" Nothing could be more misguided. But the Court has made it necessary to clarify tribes' status in the express words of the Constitution.

We urgently desire the Commission to recommend to Congress the following, in the form of an amendment to the Constitution of the United States:

"(A) All powers of self-government not expressly delegated to the United States by the Indian tribes, previously or for the future, nor prohibited by them by this Constitution, are reserved to the tribes respectively.

"(B) Except as provided otherwise by this Amendment, tribes shall be deemed "States" for all purposes under this Constitution.

"(C) Tribes shall have power to fix criteria for membership notwithstanding the second clause of the second section of the Fourteenth Amendment.

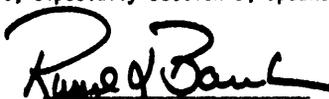
"(D) For purposes of representation in Congress, there shall be two assemblies separate and apart from the provisions of Article I of this Constitution: the Senate Tribal Caucus and the House Tribal Caucus. The first shall consist of one Delegate from each tribe, and the second shall be apportioned according to the relative membership of the tribes, no tribe to have fewer than one Delegate and no tribe with fewer than 5000 members to have more than one Delegate. Delegates shall serve terms of two years. From year to year or at such shorter intervals as each Caucus shall establish by rules, each Caucus shall send Senators and Representatives to Congress. The Senate Tribal Caucus shall choose two Senators and the House Tribal Caucus shall choose five Representatives, who shall serve and act in every way as all other members of Congress. Delegates' expenses, including travel and franking, and the expenses of the respective Caucuses, shall be paid by the United States."

We anticipate that this proposed amendment, especially Section D, speaks for itself.

Respectfully submitted,

endorsed:

  
Chairman, Lower Elwha Tribal Community

  
Russell Lawrence Barsh

REC'D FEB 11 1976

**MANCHESTER BAND OF POMO-INDIANS**

ERNEST H. PINOLA ~~-Chairman~~ SPOKESMAN

1161 HEARN AVENUE

SANTA ROSA, CALIFORNIA 95401

FEBRUARY 8, 1976

DEAR MR. FUNKE:

FIRST LET ME STATE, THAT I AM NO LONGER CHAIRMAN OF THE MANCHESTER-POINT ARENA BAND OF POMO INDIANS. I AM NOW SPOKEMAN AND REPRESENT 38 MEMBERS OF THIS BAND THAT LIVE OFF THE RESERVATION. ALSO I AM ACTIVE IN TRIBAL AFFAIRS.

I WAS VERY INTERESTED IN THE LETTER I RECEIVE FROM YOU, CONCERNING THE STATUTES, REGULATION AND BY-LAWS WHICH GOVERN INDIAN TRIBES.

WE, THE MANCHESTER-POINT ARENA BAND OF POMO INDIANS HAVE HAD A LOT TROUBLE CONCERNING DISCRIMINATION OF NON-INDIANS ON THE RESERVATION. IN FACT WE HAD A LAW SUITE AGAINST THE TRIBE CONCERNING THIS PARTICULAR PHRASE. DISCRIMINATING AGAINST NON-INDIANS LIVING ON RESERVATION. THIS LAW SUITE IS STILL PENDING IN THE SUPERIOR COURT IN SAN FRANCISCO, CA.,.

ENCLOSED YOU WILL FIND A COPY OF OUR ORDINANCE FOR THE MANCHESTER BAND "LOSS OF MEMBERSHIP". SECTION-6, SECTION-5 "REINSTATEMENT". THESE TWO SECTIONS HAVE GIVEN US THE MOST TROUBLE, AND HAS CAUSE A LOT OF HARD FEELINGS WITH IN THE BAND.

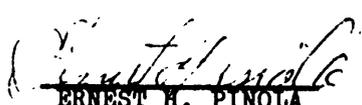
SECTION - 5 REINSTATEMENT HAS BEEN INFORCED FOR A FEW, WHILE OTHERS SAY THEY DON'T HAVE TO BE REINSTATED AND HAVE NEVER BEEN. THE B.I.A. AGREES THAT THEY DON'T HAVE TO BE REINSTATED CAUSE OUR BY-LAWS ARE OLD AND OUT DATED. IT IS TRUE WE NEED CHANGES: WE'VE MADE UP AN RESOLUTION AND ARE NOW WAITING FOR APPROVAL FROM WASHINGTON DC, THIS RESOLUTION IS ENCLOSED.

I'VE WRITTEN TO 20 DIFFERENT PEOPLE CONCERNING OUR ORDINANCE SECTION 5 & SECTION 6: AND HAVE RECEIVED NO ANSWER. I WANTED THEIR INTERPERTATION, AND HELP TO GUIDE ME TO INFORCE OUR BY-LAWS.

CAN THE CIVIL RIGHTS LAW OF 1968 BE INFORCED ON AN INDIAN RESERVATION?

I WOULD APPRECIATE IT, IF YOU WOULD GIVE ME AN ANSWER AS SOON AS POSSIBLE INREGARDS TO THIS IMPORTANT MATTER, TO MY TRIBE AND MYSELF.

VERY TRULY YOURS,

  
ERNEST H. PINOLA

REC'D FEB 19 1976

Telephone (303) 297-1755

*Law Offices of**Maynes & Anesi**Frank E. Maynes  
Frank J. Anesi  
James E. Anesi**125 West Tenth - Jervis Building  
Larango, Colorado 81301*

February 16, 1976

Mr. Karl A. Funke  
 American Indian Policy  
 Review Commission  
 House Office Building Annex No. 2  
 2d and D Streets, SW  
 Washington D.C. 20515

Dear Mr. Funke:

We received your inquiry of February 2, 1976 regarding the task force on revision, codification, and consolidation in terms of Indian law.

Major problem areas for the Southern Ute Indian Tribe are interaction of the tribe with federal, state and local government. More specifically, one of the great problem areas has emerged from the 1968 Indian Civil Rights Act which has created a system of justice imposed on the tribe without supplying corresponding training and institutions to effectuate the Act's requirements. There is a question as to tribal court jurisdiction over non-Indians for misdemeanor crimes committed in Indian country. There is also a problem as to civil jurisdiction for non-Indians. For example, the Southern Ute Tribal Housing authority has several units in which non-Indians live. There is no procedure to deal with non-Indians who do not pay their rent. It is easy to say "the Tribal Court has jurisdiction in both civil and criminal matters," but development of Tribal codes and administration of justice - civil and criminal - is costly and difficult as a practical matter.

Another area which deserves your attention is the interaction of the Tribe with state and local government. Cooperation with these governmental units without giving up Indian sovereignty is almost impossible, and therefore many valuable benefits which are offered on a local level are unavailable to the Tribe. Game management is a good example of this. An area of future concern is that of energy development on Indian lands. Presently the Southern Ute Indians have extensive coal reserves on their reservation. There must be some provision to protect Indian

Mr. Karl A. Funke  
Page 2  
February 16, 1976

mineral rights while maximizing the opportunity for tribal development through federal-tribal cooperation.

Finally, the greatest stumbling block to Indian development is not the law itself but rather the machinery to carry out these laws. Bureaucracy at any level is frustrating, but the Indian tribes have no protection from the mindless and usually tardy machinations of government. Such charges can be leveled not only against the Bureau of Indian Affairs, but all of the United States Departments and agencies which deal with Indians. It has been our experience that the local B.I.A. people have a better understanding of the problems and should be given more authority to deal with day to day problems and a wider discretion to allow tribes to make decisions in concert with the local B.I.A. officials.

Very truly yours,



FRANK E. MAYNES

FEM:nch

cc: Mr. Leonard C. Burch, Chairman  
Southern Ute Indian Tribe



SENECA-CAYUGA TRIBE  
OF OKLAHOMA  
1421 1/2 E. STEVENSONS BLVD.  
MIAMI, OKLA. 74354



February 17, 1976

Karl A. Funke  
T.F. Specialist  
Task Force on Law Revision  
Consolidation and Codification  
American Indian Policy Review Commission  
Congress of the United States  
House Office Building Annex No. 2  
2d and D Streets, SW  
Washington, D.C. 20515

RE: Letter of January 28, 1976

Dear Sir:

There are special problems\* here that do not apply anywhere else.

- \*1. Many laws that are designed especially for Indians have been effectively drafted to eliminate Oklahoma Indians from participating.
2. The Federal and State tax laws have proven to be a problem no one seems to know the answer to.
3. Lack of accountability of BIA, IHS and Federal Solicitor to the Indian people.

As for being specific about particular statutes regarding plans and development, the Department of Agriculture seems to be able to thwart almost any idea by their delaying tactics and red tape requirements.

In our particular situation we are associated with an Inter-Tribal Council, a situation that does not always work to our advantage. There are many times that vital information, requests, ect., get bottlenecked when trying to work with such an organization.

Regards,

*Sid Whitecrow*  
Sidney Whitecrow  
Business Manager  
Seneca-Cayuga Tribe of Oklahoma

SW/rt

LAW OFFICES  
MARVIN J. SONOSKY  
2030 M STREET, N.W.  
WASHINGTON, D.C. 20036  
202 338 7780

February 23, 1976

Mr. Karl A. Funke  
American Indian Policy Review Commission  
House Office Building Annex No. 2  
2d and D Streets, S.W.  
Washington, D.C. 20515

Re: Task Force on Law Revision,  
Codification, and Consolidation

Dear Mr. Funke:

I appreciate your letter of February 2, 1976 and I only wish that I were in a position to drop my current commitments and obligations and devote my time to providing you with the specifics you request in the last paragraph of the opening page of your letter.

I do wish to bring to your attention those regulations of the Department of the Interior that do not distinguish between Indian land and public land of the United States. In particular, I have in mind the regulations in 30 CFR relating to the management and control of Indian oil and gas and to the collections of the receipts from Indian oil and gas.

The obligation of the Secretary of the Interior is to get as much out of the trust oil and gas for Indians and Indian tribes as would an informed oil and gas owner. This the Secretary does not do. The Bureau of Indian Affairs does not have any independent oil or gas or mineral advice. The Bureau of Indian Affairs must depend on the Geological Survey, the Secretary's "technical adviser". There is reason to believe that the Secretary's "technical adviser" is fairly well influenced by the industry viewpoint. This is reflected in the regulations. The avowed chief interest of the Geological Survey is conservation, not economics. The oil and gas regulations are not designed to obtain the most for trust oil and gas, or to strike the best bargain with industry for trust oil and gas.

Mr. Karl A. Funke  
Page Two  
February 23, 1976

REC'D FEB 24 1976

The other feature concerns the terms and conditions of oil and gas leases. These are fairly well patterned after the public land leases where the policy of the United States has been to practically give away the oil and gas. The leases covering Indian oil and gas lands should be modified to conform closely to what is the practice among informed private lessors and lessees.

Indian tribes are not furnished with clear statements of their income. They have no clear idea of who is paying royalties on time and who is not, or of how much money is delinquent. With private lessors, the oil companies issue each month a statement showing the total amount of production, the taxes, if any, the net value of the production and the interest of the lessor in dollars. There is absolutely no reason why comparable information could not be furnished to every Indian and tribal lessor. There have been instances where the companies have withheld payment for substantial periods of time. The Geological Survey has been heavily criticized but nothing is done. My own view is that the collection of receipts from minerals should be lifted out from the Geological Survey and turned back to the Bureau of Indian Affairs. The regulations should be modified to put the burden on the lessees so as to obligate them to make payments monthly, accompanied by monthly reports on a lease by lease basis precisely as is done with private lessors.

I should like nothing better than to do the research that would establish a clear set of regulations, a proposed form of lease and new collection procedures. Unfortunately, my commitments do not permit me to do this. If I can be of assistance in terms of advice and suggestions, then I am willing to help.

Kind personal regards,

Sincerely,



Marvin J. Sosnosky

MJS/g



## *Yavapai-Prescott Tribe*

P.O. BOX *348* • PRESCOTT, ARIZONA 86301 • TELEPHONE (602) 445-8790

March 18, 1976

REC'D MAR 22 1976

Karl A. Funke, T.F. Specialist  
 Task Force on Law Revision, Consolidation  
 and Codification  
 U. S. House of Representatives Annex #2  
 Room #13  
 Washington, D. C. 20515

Dear Mr. Funke:

Reference is made to your letter of 1/28/76 requesting that we identify those statutes; regulations, etc. which have frustrated us in our various endeavors.

There are only two of us in our tribal office managing the affairs of our Tribe, and I simply do not have the time to answer all these requests in detail from all the various task forces. I know how important all these matters are, but I just don't have the time. Would you therefore contact the task force headed by Wilbur Atcitty whose questionnaire was quite comprehensive and may have included a response you could use. His representative was here this afternoon and helped document our answers to the questionnaire.

Thank you.

Sincerely,

*Patricia McGee*  
 Patricia McGee,  
 President.

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