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UNITED STATES COMMISSION ON CIVIL RIGHTS

Washington, D. C. 20425

January 15, 1974

Honorable Bradley H. Patterson, Jr.
The White House
Washington, D. C.

Dear Brad:

Please find enclosed twenty-five copies of the Civil Rights Digest, Fall, 1973. Your article begins on page 51. If you wish additional copies please contact Marvin Wall, our Director of Information and Publications at 254-6600.

Sincerely,

Bud Blakey

WILLIAM A. BLAKEY
Director of Congressional
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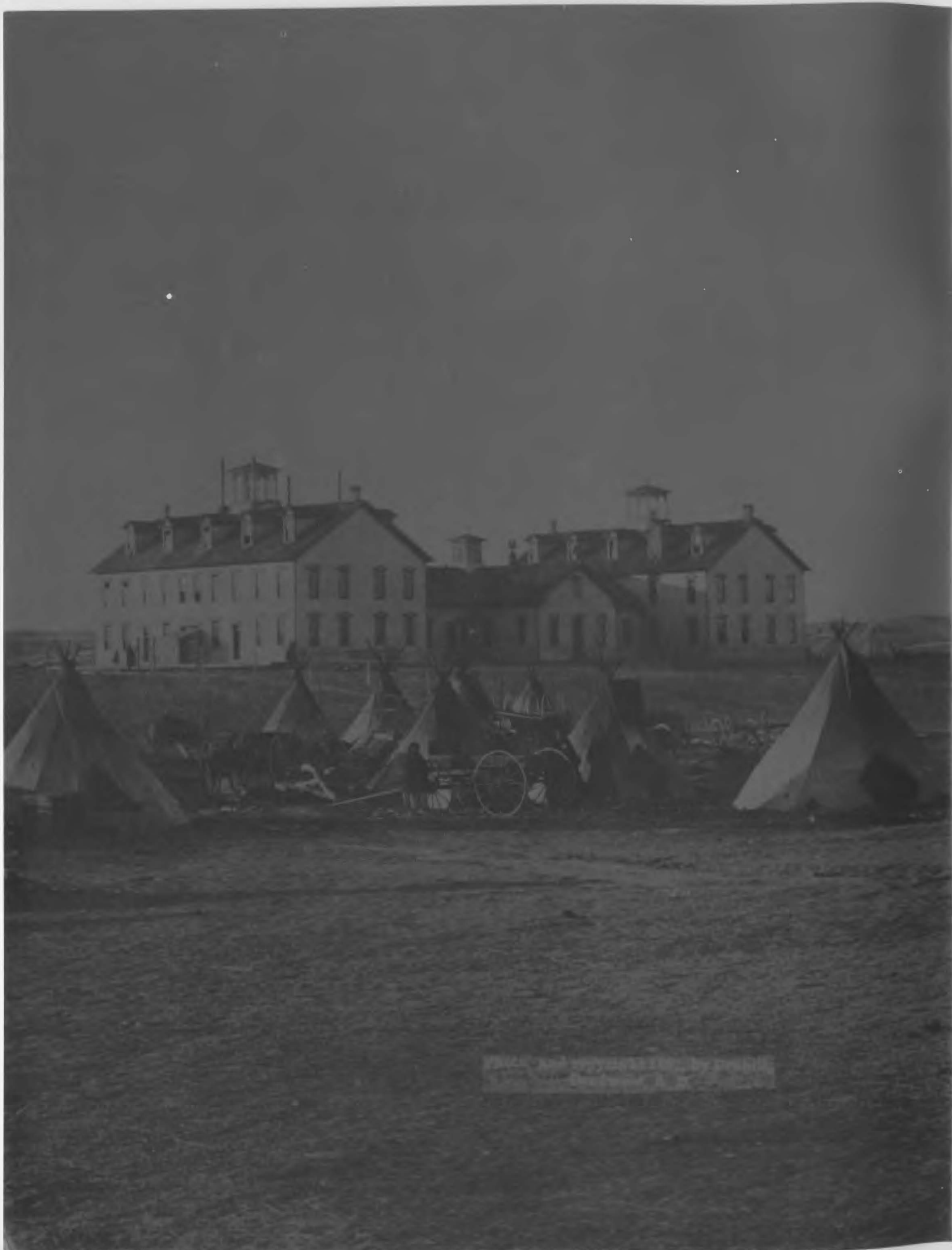
CIVIL RIGHTS DIGEST

A Quarterly of the U. S. Commission on Civil Rights / FALL 1973



Del Harrod





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Fall, 1973

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- Investigate complaints alleging denial of the right to vote by reason of race, color, religion, sex, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to the denial of equal protection of laws because of race, color, religion, sex, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information concerning denials of equal protection of the laws because of race, color, religion, sex, or national origin; and
- Submit reports, findings, and recommendations to the President and the Congress.

Photos: 2, 3, 7, and 11—Crowell; 14, 15, 47, 48, front and back inside cover—Library of Congress; 16, 23, and 24—Bureau of Indian Affairs; 29 and 32—Bureau of Reclamation; 34, 37, and 38—*Milwaukee Journal*.

The *Civil Rights Digest* is published quarterly by the U.S. Commission on Civil Rights as part of its clearinghouse responsibilities. Funds for printing the *Digest* were approved by the Director of Bureau of the Budget on January 29, 1963. Correspondence related to the *Digest* should be addressed to Editor, *Civil Rights Digest*, U.S. Commission on Civil Rights, Washington, D.C. 20425.

The articles in the *Digest* do not necessarily represent Commission policy but are offered to stimulate ideas and interest on various current issues concerning civil rights.



Life on the Largest Reservation

NAVAJOS FACE HARD CHOICES ABOUT THEIR FUTURE

By Suzanne Crowell

Jessie Holiday lives on the Navajo Reservation with her children at a family camp ten miles in from the main road through Monument Valley, near the Arizona-Utah border. The Valley is a desert of red sand and spectacular red sandstone formations.

To the visitor, the landscape is beautiful but seems virtually devoid of life-sustaining water or vegetation. Most of the area is without electricity or telephones. Yet thousands of Navajos live there—herding sheep and collecting welfare.

Mrs. Holiday makes water baskets for sale. The baskets, water-proofed with pitch, yielded a few hundred years ago to pottery and more recently to the store-bought pail. Mrs. Holiday's mother strings inexpensive beads for a pittance. Neither mother nor daughter do the sophisticated craft work in jewelry and rug-weaving for which Navajos are justly famous—for one thing, the materials are too expensive.

Jessie Holiday, her mother, and her sister each maintain a household for their children. In summer, their houses are structures about 25 feet across, with walls made of brush and poles stacked against a wooden frame. The

poles are an inch or two apart and afford meager protection from sand, wind, or rain. There is no floor. Each woman cooks lamb stew and "fry bread" in huge pots over an open fire. It is a sort of poverty with which most Americans are totally unfamiliar.

The men are gone. They live elsewhere, beset by unemployment and alcoholism.

The women and their children own a few sheep which feed on clumps of weeds several feet apart. The Navajo tribal administration has been forced to regulate grazing, and their stock limitations are an indication of the land's dryness. Each sheep unit—

one ewe and a lamb or a ram—must have 23 acres of pasture.

In the winter, the women move their families indoors to their hogans—circular log houses which are traditionally Navajo. Most Navajos maintain a hogan for ceremonial purposes, even when they move into a house or trailer. The modern ones look like round log cabins, or may even be poured concrete. Jessie Holiday's is covered completely with mud, however—a more functional arrangement for living through the cold winters. It is heated by a wood-burning stove in the center which is vented through the roof.

The health problems created by



such an environment are enormous. The Navajo infant death rate is twice that of the United States as a whole. The incidence of tuberculosis, rheumatic fever, and hepatitis skyrockets above that in the general American population. Gastroenteritis and dysentery occur 27 times more often among Navajos than among other Americans.

Much of the gap is due to woefully insufficient funds and facilities. Navajos have only slightly more than half as many doctors and hospital beds available to them as do people in the rest of the country. They need safe water supply systems and waste disposal facilities, new housing and housing rehabilitation.

There is one modern dwelling for every three people in the U.S. population and one for every 20 Navajos. To close that gap would require 20,000 new units. Of the existing homes with standard plumbing, 74 percent need repair and renovation.

Irene Valarde

Irene Valarde lives with her husband and small son at her parents' home in Window Rock, on the edge of the reservation. Their house is a small wooden rectangle on the main road. They were relocated from across the street when the tribe erected a civic center and fairgrounds. The new house has a bathroom, but there is something wrong with the pipes, so her father has converted it to a small workshop where he makes silver and turquoise jewelry. Her mother is a weaver, and both parents work for an hourly wage at the Navajo Arts and Crafts Guild, a tribal enterprise.

Irene Valarde's husband is an

Apache, and they used to live near her husband's homeland in New Mexico. They encountered problems there, and he couldn't find a job. They have a trailer they plan to bring back to the Navajo Reservation eventually. But the prospects for employment in Window Rock do not look good either—and to make matters worse, he broke a leg recently in a rodeo ride.

Mrs. Valarde's younger brother is a polio victim, now about 14. He could not walk until a few years ago, when he became the first patient of Sister Marijane Ryan at St. Michael's mission. Sister Marijane came from Boston to care for another nun who was ill and more or less backed into working with handicapped children. She convinced Mrs. Valarde's parents to consent to an operation for their son and afterward taught him to walk. She worked with him daily under the watchful eye of a medicine man who sat silently on a hill behind the house. When the boy began to walk, the medicine man arrived with his crippled grandson in tow. Navajos find nothing incompatible between the white man's medicine and their own, but they have seen too many ineffective white helpers to trust one without proof.

Since then, Sister Marijane has had no trouble finding children who need help. She is now director of a school for the mentally and physically handicapped, operated by a Navajo-run non-profit corporation on a budget of State and Federal funds. (The children receive no religious instruction. Sister Marijane explained tolerantly: "It's not one of my priorities.")

One hundred five children at-

tend the school and 70 participate in an outreach program. Two young Navajo women certified in special education now teach at the school as a result of Sister Marijane's efforts to interest Navajo education majors in the field.

The lesson to be learned from the school's story is that it takes only a little money and some technical expertise to get something started if there is a will to do it. The Indian Health Service has been on the reservation for decades. Yet the school—begun by a nun trained as a nurse who arrived almost accidentally—represents the first successful effort to deal with the problems of handicapped children on the reservation. It also is a source of much-needed employment.

Irene Valarde works at the school as a secretary, which makes her one of the lucky ones in her generation. Another brother committed suicide, leaving his wife and children. Her brothers especially are caught between two worlds. The breakup of traditional family life caused by the relocation necessary to find a job may still leave the women at home with their children, but the men must meet the white world head-on. Alcohol is the major escape for many.

Mrs. Valarde's grandmother still lives out on the reservation with a daughter and herds livestock for an income, supplemented by welfare. She lives a traditional life and speaks only Navajo, as do her children. Mrs. Valarde believes there is something to be said for that. As she points out, "It is bad to give up the old religion, since no matter what happens, you will always be an Indian."

Window Rock is the capital of the Navajo Nation. Named for the "Rock with the Hole in It," the town has grown considerably in the last decade. It now boasts a small shopping center, housing developments, one traffic light, and a population of almost 1,000. Mrs. Valarde's grandmother finds it confusing and crowded and doesn't like to go there.

The town was founded in the 1930s at the suggestion of John Collier, Commissioner of Indian Affairs under President Roosevelt, who admired the site. The tribal administration and Tribal Council buildings, constructed of red sandstone, nestle under Window Rock itself.

As set up under the Indian Reorganization Act of 1934, the Navajo tribal administration functions in many ways as a sovereign body. The chairman, vice-chair-

man, and 74 Council members are elected every four years. The Council's powers stem from reserved sovereign rights—rights not taken away by Congress. These rights mainly include control over certain civil and minor criminal offenses and joint control with the BIA over reservation land and resources. The Council does not control elementary or secondary education or health facilities—both of which are the BIA's responsibility.

Above Window Rock is the new town of Navajo, home of one of the largest sawmills in the United States. The Navajo Forest Products Industries is a tribally-owned enterprise representing an \$11 million investment and employing 500 people. Scores of new homes surround the plant. Another such enterprise, Navajo Agriculture Products Industries, will begin operation when the long-awaited

Navajo Irrigation Project is completed.

Old Ways and New

The oldest tribal enterprise, headquartered at Fort Defiance, is the Navajo Tribal Utility Authority (NTUA). It is the sole source of electricity for the reservation and operates water and sewage facilities at several locations. Its assets total over \$30 million and it employs 600 people in a project deemed "unfeasible" by private power companies.

There is a frontier spirit of hustle surrounding NTUA. "This is a profit-oriented operation," explained assistant manager James S. "Mo" Christiansen. "We appreciate the environment, archeology, the culture, the religion. But we have to keep up with the Jones. No use crying over spilled milk."

"Our job is to provide employment, a profit for the tribe, and to

NAVAJO HISTORY

In 1500, Navajos shared the Southwest with four other major groups: the Pueblos, Apaches, Pimas, and Yumas. They differed in custom and physical appearance and were often rivals for the same land, but they all shortly shared a common foe. The Spaniards made their first appearance in the early 1500s, and conducted major explorations beginning in 1539. In 1593 formal colonization began.

The Pueblos, who had built cities and irrigation systems, suffered most under Spanish rule. They revolted in 1680 and gained 12 years of freedom, but were reconquered in 1693. By the end of the century, Pueblo villages had been reduced from 66 to 19, and their population was cut in half.

In 1821 New Mexico became part of the new Mexican nation—but not for long. The 1848 Treaty of Guadalupe-Hidalgo transferred the area to the United States, and the Anglos began arriving in force.

The Navajos fought back—so successfully that by 1863 the United States felt compelled to defeat them once and for all. U.S. Army Col. Kit Carson led the successful campaign, based on a scorched earth policy. He concentrated on wiping out the Navajo homes and crops instead of engaging in battle. By the next year 2,400 Navajos were rounded up and marched to Fort Sumner to be held captive. Eventually, 8,000 Navajos were so imprisoned.

By 1868 more than 2,000 had died in captivity from hunger and disease, and the Government decided the plan was a failure. The Navajos were allowed to return to their homeland. They reconstructed a life based on sheep and cattle, but another calamity awaited them. By the 1930s their land was so seriously overgrazed that much of their livestock had to be slaughtered.

Despite adversity, the Navajos prevailed. From the 10,000 alive in 1860, their number has grown to 125,000. Originally no larger than many other tribes, they now represent one-eighth of the entire American Indian population.

electrify the reservation. If the Navajo ever leaves here, the last thing he's going to do is turn out the lights."

It is in that spirit that Christiansen ticks off the accomplishments of NTUA: thousands of miles of wire for transmission and distribution of electricity; water supply and sewage systems for Window Rock, Fort Defiance, Chinle, Shiprock, and Tuba City; water and sewage for Navajo Community College, another tribal-owned facility; 50-year contracts with private mining companies and manufacturers; electricity for hospitals and schools formerly run on generators; gas lines, deep wells, and the first pension plan for tribal employees—all since 1958.

Christiansen's father was a Danish trader and his mother was Navajo. He grew up around nearby Gallup and the several trading posts operated by his family. As a result, he is equally at home in both white and Navajo society.

A more typical Navajo background is that of another NTUA employee, Raymond Graymountain.

Graymountain grew up around Fort Defiance, where he attended an all-Indian public school. He learned to be a welder at Haskell Institute, a technical school for Indians operated by the BIA. Drafted into the Army, he became a fuel oil supply man in Vietnam. When he came home, still in his early 20s, he went to work for NTUA. He lives in the community of Saw Mill with his wife and two small children.

Graymountain spent his childhood summers living with his grandmother, who maintained a

traditional Navajo home in the wooded highlands up behind Saw Mill.

"My grandmother taught me the Navajo religion and how to do things—how to be in the woods and tend sheep. She even had to teach me how to speak Navajo, because my Navajo was not very good. She said I would always be well off if I learned to speak Navajo as well as English."

The structure of white civilization bothers Graymountain. He believes it makes a person too helpless, too dependent on others.

"The one raised by his grandparents the old way will be better off than the one who goes to school only," he said. "He can walk all day and not be tired, and stay awake for ten days without sleep. He can build his own house, make his own bread, and grow his own food. He will know the woods and the animals, and can pray all day and not be tired."

Religion is not really the right word to describe the Navajo system of beliefs. Theirs is a world view which permeates everything they do and respects everything on earth. No animal is killed unless its slaughter is essential to one's survival, and even then the spirits may be disturbed.

"The Navajo thinks that life is something to be grateful for. We pray to everything—the moon, the stars, the trees, the hills," Graymountain explained. "God gave us everything—not politicians."

Since the earth is God-given, it is not man's to divide. Three-quarters of the Navajo reservation is arid or semiarid land. Most whites would regard it as the bitter dregs of a lost war, but Graymountain does not.

"I think the Navajo or any re-

servation is the only place left that's free in America. There are no lines that say 'this is yours' or 'you can't go here.' Our forefathers always told us not to live too close to anyone.

"Look at the Navajo and the Hopi [currently engaged in a land dispute over the division of land allotted for their joint use]. Who drew the lines? Draw lines and people get greedy—make up too many rules and they will do the wrong thing."

Graymountain could not be more clearly caught between two cultures. He plans to build a log house near the place his grandmother lived so his family can go there in the summer. Yet on his 8 to 4 job he is intimately involved in the spread of electricity throughout the reservation, which cannot help but speed the disappearance of the old ways he still admires.

Jobs and Education

One thing is clear after even a short visit to the huge reservation—the choices facing the Navajos are involuntary ones. The old economy of sheepherding, subsistence agriculture, and craft work cannot sustain the population it has spawned. New sources of income are imperative to the survival of the tribe, but the methods of gaining that income could destroy Navajo culture as it now exists. White education and the white work ethic could easily bury traditional skills and beliefs. The encroachment of white values already has disrupted many families not as fortunate as Raymond Graymountain's.

Unemployment on the reservation is enormous. The tribal administration estimates that 60 per-



cent of the labor force is out of work. In addition, many are underemployed at sheepherding and handicrafts. The tribe estimates that one sheep unit brings in only \$10 a year. Of all livestock owners, only 20 percent own more than 100 sheep units and thus have an earning potential of more than \$1,000 a year from sheepherding.

Few large employers exist on or near the reservation. Most Navajos work for the tribal administration, a tribal enterprise, the Bureau of Indian Affairs, or for one of a handful of private companies. The Fairchild Semiconductor Division at Shiprock is the largest non-Federal employer of Indians in the United States. Its payroll of 950 is 98 percent Indian.

Jobs are an economic necessity, but the introduction of an Anglo economy can be wrenching. Navajos who lived off the land never had to account to a boss. The penalty for laziness or whatever was melted out by nature, not by man. The Navajo who works for an hourly wage and gets fired for absenteeism may be the victim of a work ethic he or she doesn't understand. Traditionally one worked hard when it was necessary and relaxed when it wasn't. Or as Raymond Graymountain said "The white man works very hard 50 weeks a year so he can go fishing the other two. The Navajo goes fishing whenever he wants."

Many Navajos, unable to cope, congregate in the border towns off the reservation. The largest of these is Gallup, which sits beside the Atchison, Topeka, & Santa Fe Railway, 30 miles from Window Rock and 136 miles northwest of Albuquerque. Almost 100 years after its founding in 1879 during

a coal boom, Gallup is past its prime. Bars and pawnshops line the main streets. By census count, Gallup lost 310 people between 1960 and 1970 and now numbers 13,779.

Yet traces of its boomtown days remain. New motels dot the outskirts and the stores still do a pretty good business. Travelers from the South and North pass through Gallup on their way to California on the interstate highway. Most important, the expanding population on the surrounding Indian reservations comes to Gallup to buy its groceries.

Indians are now the basis for the Gallup economy. The Indian trade accounts for three-quarters of the town's business. Tourists who stop to buy Indian jewelry and attend the Intertribal Ceremonial Days account for much of the rest. The Navajo Reservation, a half-hour away, is virtually devoid of modern stores or supermarkets, despite the fact that it occupies an area the size of West Virginia.

Gallup has a privately run Indian Center which is attempting to deal with the problems of the town's Indian population, as well as with problems on the Navajo reservation. Last summer, 23 Indian students participated in a program the center cosponsored with the Southwest Indian Development Foundation. They set up four task groups on health, education, coal gasification plants, and community awareness.

The health group organized community support for a hospital on the reservation at Chinle. The gasification group gathered signatures opposing new gasification plants proposed for the Four Corners area, afraid of their effect on

the environment and the water supply. The community awareness group did more general work alerting people to their rights.

Shirley Martin works with the education group. A Navajo brought up on the reservation, she graduated last spring from Tohatchi High School, a part of the McKinley County school system in New Mexico, and is attending college this fall.

Miss Martin got interested in problems at her own school because so much of what she saw happen there seemed unjust. She says students were suspended without sufficient reason and often the wrong ones were punished because no one cared enough to find out the truth behind an incident. She and some other students began an Indian Club, but it was disallowed. The school said there was no faculty advisor, which Miss Martin denies. The students finally drew up a list of complaints from the entire school population and submitted them to the principal.

Realizing they could not change the school alone, the young people decided to organize their parents. They held sessions at chapter houses (similar to town meetings), and the parents decided to conduct their own investigation. They presented their findings to the county school board and recommended that the principal be fired. They asked for bilingual and bicultural education and equal treatment for Indian students.

The parents and young people were at least partly successful. The principal transferred to another job, and for many in the community it was the first time they had organized anything and

confronted public officials. But hard long-term problems remain. Many students fail to finish high school because it seems irrelevant. Shirley's own brother dropped out, "turned off", although he is now enrolled in a high school equivalency program.

The problem of education on the reservation is a knotty one. Several school systems operate there. The counties maintain public schools with the help of special Federal funds. The BIA operates boarding schools for those too far from public school. Missions often have their own schools. All face two major problems: a lack of money and the clash of cultures.

The treaty of 1868 stated that the Federal Government would provide schools with one teacher for every 30 children. According to the Navajo tribal administration, the first substantial effort to fulfill that treaty did not come until 1950. Expenditures since then have increased from under \$5 million to over \$40 million, but still only one percent of the teachers of Navajo children are Navajos themselves. One-half of all Navajos over 25 cannot read or write English, and one-third cannot even speak it.

Horror stories still circulate about BIA boarding schools. Last year three young boys ran away from one school and tried to go home. They were caught in a snowstorm and found a week later. The legs of all three were so severely frostbitten they required amputation.

A boarding school visitor reported discovering the children lined up one morning naked in the hallway. They were getting their clothes back, taken from them the night before to prevent them from

running away from school.

Despite such incidents, many Navajo parents are grateful to have their children in school for the winter. At least they are warm and well-fed.

The original BIA concept seems to have been to use the schools as agents of "civilization." Many schools were located a day's travel or more away from the reservation to isolate the children completely from their own community. That policy has changed, although such schools still exist. Most of the older boarding schools on the reservation are small and ill-equipped, but their ongoing consolidation into larger new complexes will create as many problems as it solves. Removing children from their homes at the age of six to an alien environment is traumatic enough without thrusting the children into huge educational parks physically similar to a modern factory.

The boarding school at Crystal is an older, small one with a good reputation. Its facilities are outmoded except for a brand new prefab kindergarten. Bunk beds in the dormitory are three feet apart, and the only play area available is the great outdoors. The teachers live on the grounds in buildings provided by the BIA. A new system for teaching English, developed specifically for Navajo children, is being introduced, and Navajo aides have been hired. But the culture shock for teacher and child alike is still great.

A teacher at Crystal who came there from the South noted that many schools did not have goldfish bowls, because keeping fish in captivity offended Navajo beliefs. She was careful to keep children away from a house nearby where

a man committed suicide because the place contained, in a sense, bad spirits. When another teacher took his class to a museum, the mummy cases were covered over so the children would not witness such a violation of the dead.

Subtler differences—the non-competitiveness and apparent passivity of Navajo children, by white standards—present more problems. Can non-Indians really evaluate the progress of a Navajo child? How should that progress be defined in the first place? Since the only children at boarding schools come from remote areas, how can their parents have an input into their education, assuming that a mechanism for input existed?

Shouldn't the schools be controlled by Navajos anyway? And what is the purpose of Indian education—to produce jobholders, to study Western literature? These are questions the Navajos should and can answer. Yet the questions are so rarely asked them.

Making Choices

To acquire some knowledge of the "Indian problem" is to realize how little one knows. Although the problems have been created by whites, the solutions (although not the money for them) must come from the Navajos in order to be viable. It is rare in history that a people is confronted so starkly by its future. Separate from getting the Government to fulfill its treaty obligations, Navajos must accept or reject strip mines, gasification plants, factories, and new towns—all of which could have profound effects on both their pocketbooks and their way of life. Some kind of trade-off between the two is inevitable.

THE CONSTITUTIONAL STATUS OF AMERICAN INDIANS

THE COMPLEX POSITION OF INDIANS UNDER LAW

By Michael Smith

Recent actions of Indian activists in Washington, D.C., and Wounded Knee, S.D., have drawn widespread attention to the plight of Native Americans. Unfortunately, this attention often has been accompanied by an insensitivity to the uniqueness of Indian tribes when compared with other minority groups. Although Indians face the same problems of discrimination encountered by blacks and Chicanos, Native Americans are threatened by a wide range of additional problems—such as shrinkage of land and water rights, interference with hunting and fishing rights, and threats to tribal sovereignty. All are critical to the distinct cultural identity of American Indians.

An understanding of the unique legal status of American Indians is essential to appreciating the myriad of problems faced by the more than 300 tribes in the United States. Indian law is a complex field based upon numerous treaties, statutes, regulations, and court decisions. The legal and political status of Indian tribes, the relationship of Indians to their tribes, to the States, and to the United States Government have long been controversial issues.

Tribes have traditionally been viewed by Federal courts as dependent or "tributary" nations possessing limited sovereignty and requiring federal protection. Historically, Congress has viewed tribes both as sover-

eign political entities and as anachronisms which must be eventually extinguished.

The result has been two directly conflicting Federal policies—separation and assimilation. The first is designed to protect Indians from the dominant society and to leave tribes with a degree of self-government. The second is calculated to bring Indians within the "mainstream of American life" by terminating the special Federal trust relationship, programs, and services.

Termination reached its zenith during the Eisenhower Administration but fell into disfavor in the 1960s. The current administration has taken a strong stand against termination. In his July 13, 1970 message on Indian affairs, President Nixon stated:

Because termination is morally and legally unacceptable, because it produces bad practical results and because the mere threat of termination tends to discourage greater self-sufficiency among Indian groups, I am asking the Congress to pass a new concurrent resolution which would expressly renounce, repudiate, and repeal the termination policy as expressed by the House Concurrent Resolution 108 of the 83rd Congress.

This resolution would explicitly affirm the integrity and right to continued existence of all Indian tribes and Alaskan Native governments, recognizing that cultural pluralism is a source of national strength. It would assure these groups that the

Michael Smith, formerly assistant general counsel to the U.S. Commission on Civil Rights, is now legal counsel to the University of California at Berkeley.



United States Government would continue to carry out its treaty and trusteeship obligations to them as long as the groups themselves believed that such a policy was necessary or desirable. [It would] affirm for the Executive Branch . . . that the historic relationship between the Federal Government and the Indian communities cannot be abridged without the consent of the Indians.

Sources of Federal Power

The historic relationship to which the President referred has a complex background. The Federal Government has exercised complete power over Indians for almost 200 years. This power stems from three sources.

First, the Constitution grants to the President and to Congress what have been construed as broad powers over Indian affairs. These powers are implied or expressed in the Constitution's treaty-making, war-making, and commerce clauses.

Second, the Federal courts have applied a theory of "guardianship" and "wardship" to the Federal Government's jurisdiction over Indian affairs. Finally, Federal authority is inherent in the Federal Government's responsibility for the land occupied by Indian tribes.

In 1832, Chief Justice John Marshall recognized in *Worcester v. Georgia* that the aforementioned constitutional powers "comprehend all that is required for the regulation of our intercourse with the Indians."

The treaty power was traditionally the basis for dealings with Indian tribes from colonial times until 1871, when recognition of Indian tribes as sovereign nations was withdrawn by the Indian Appropriation Act. Treaties made before 1871 were not nullified but remain part of the law of the land, unless expressly superseded by Congress.

In carrying out its treaty obligations, the Federal Government's trusteeship "should be judged by the most exacting fiduciary standards," according to the Supreme Court. As part of the law of the land, treaties cannot be annulled, in their effect or operation, by State governments.

Tribal Sovereignty

In considering the constitutional status of American Indians, a distinction must be drawn between tribal entities and individual citizens. The legal status of Indian tribes has fluctuated throughout the Nation's history in the eyes of the Federal Government. The numerous treaties made with Indian tribes recognized

them as governments capable of maintaining diplomatic relations, waging war, and being responsible for treaty violations committed by tribal members.

Tribal sovereignty was formally recognized first by Chief Justice Marshall, again in *Worcester v. Georgia*: The Constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations, and consequently, admits their rank among those powers who are capable of making treaties.

That position, which characterized the Federal Judiciary's basic policy toward Indian tribes throughout the 19th century, should be contrasted with later judicial attitudes reflected in a 1901 decision in which the court concluded that "the word 'nation' as applied to the uncivilized Indians was little more than a compliment."

Today, the concept of tribal sovereignty is often proclaimed and widely misunderstood. It can be discussed meaningfully only in specific terms. Clearly, tribal governments are not on the same legal footing as independent nations. On the other hand, they are widely recognized as political units with governmental powers which exceed, in some respects, those of the States.

The contemporary meaning of tribal sovereignty was defined in a recent Federal court decision. The court stated:

It would seem clear that the Constitution, as construed by the Supreme Court, acknowledges the paramount authority of the United States with regard to Indian tribes but recognizes the existence of Indian tribes as quasi-sovereign entities possessing all the inherent rights of sovereignty except where restrictions have been placed thereon by the United States, itself.

In 1940 Felix Cohen, a noted authority on Indian law, summed up the meaning of tribal sovereignty. He said:

The whole course of judicial decision on the nature of Indian tribal powers is marked by adherence to three fundamental principles:

(1) The 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 it-

self, affect the internal sovereignty of the tribe, i.e., its power of local self-government.

(3) These powers are subject to qualification by treaties and by express legislation by 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.

Powers of Tribal Self-Government

Indian tribes are recognized in Federal law as distinct political communities with basic domestic and municipal functions. These include the power to operate under a form of government of the tribe's choosing, to define conditions of tribal membership, to regulate domestic relations of members, to prescribe rules of inheritance, to levy taxes, to regulate property within the jurisdiction of the tribe, to control the conduct of members by tribal legislation, to administer justice, and to provide for the punishment of offenses committed on the reservation.

The powers of self-government are commonly exercised according to tribal constitutions and law and order codes. Normally, self-government includes the right of a tribe to define the authority and duties of its officials, the manner of their appointment or election, the manner of their removal, and the rules they are to observe.

Those rights are subject to Congressional change, as are all functions of tribal sovereignty. For example, Federal law has removed from some Oklahoma tribes the power to choose their own officials and has given the power to appoint same to the President and the Secretary of the Interior.

Along with the power to make laws and regulations for the administration of justice, tribes also have the authority to maintain law enforcement departments and courts. Some smaller tribes maintain very informal courts based on traditional customs, or have no courts at all. Larger tribes, such as the Navajo, maintain complex law and order systems with well-equipped police departments, modern tribal codes, and a hierarchy of trial and appellate courts overseen by a tribal supreme court.

Generally, Indian courts have jurisdiction over matters involving tribal affairs, over civil suits brought by Indians or non-Indians against tribal members arising out of matters occurring on the reservation, and over the prosecution of violations of the tribal criminal code.

Federal and State courts have no jurisdiction over matters involving violations of tribal ordinances. With

regard to cases within their jurisdiction, tribal courts are the courts of last resort. Their decisions cannot be appealed to State or Federal courts.

Congress has placed several important limitations on tribal jurisdiction. Under the 1968 Civil Rights Act, tribes may not exercise jurisdiction over criminal offenses punishable by more than a \$500 fine or 6 months in jail. Federal courts have jurisdiction to try and punish such major offenses as murder, manslaughter, and rape pursuant to the Major Crimes Act.

In certain instances, Congress has extended State laws to Indian reservations. States which have assumed responsibility for the administration of justice on Indian land are referred to as "Public Law 280 States."

Domestic Relations

Indian tribes exercise wide power over the domestic relations of tribal members. Tribes normally conduct marriages and grant divorces which are generally recognized by State and Federal courts. Tribes also have complete and exclusive authority to define and punish offenses against the marriage relationship—although, as with other civil matters, Congress may make State law applicable.

Taxation

The power of taxation is essential to governmental functions. In *Buster v. Wright*, it was held that the Creek Nation had the power to impose a license fee upon all persons, Indian and non-Indian, who traded within the borders of that Nation. Tribal authority to levy a tax on all property within the reservation was upheld in *Morris v. Hitchcock*. Indian tribes are currently recognized by the United States as "units of local government" for the purpose of receiving Federal funds under the Revenue Sharing Act of 1972.

As a general matter then, Indian tribes are recognized by Federal law as governmental units exercising a wide variety of governmental functions, limited only by the assertion of congressional plenary power over Indian affairs. The wide spectrum of Federal administrative powers currently exercised over Indian affairs will not be discussed in this article.

Legal Status of Indian Individuals

By virtue of the Indian Citizenship Act of June 2, 1924 all Indians born in the United States are citizens of the United States. Although various Federal statutes granted many Indians citizenship prior to 1924, it had been held that the 14th amendment did not confer citizenship on Indians.

As United States citizens, Indians are also citizens of the State in which they reside. State and Federal citizenship and tribal membership are not incompatible. Indians are citizens of three separate political entities.

As citizens of the Nation they are subject to the laws of the Federal Government, no matter where they may be located. As citizens of the tribal government, they are subject to tribal laws when they are on the reservation and within its jurisdiction (except, as noted above, in Public Law 280 States). They are subject to State law while off the reservation.

The Bill of Rights on the Reservation

In their relationship with their tribes, Indians are normally protected by a wide variety of criminal due process, civil rights, and civil liberties protections contained in tribal constitutions and the tribal law-and-order code. By their own weight the Bill of Rights and the 14th amendment to the United States Constitution do not impose limitations on tribal action, and thus do not confer protections on tribal members.



In the case of *Talton v. Mayes*, for example, the Supreme Court refused to apply the fifth amendment to invalidate a tribal law that established a five-man grand jury. In another case the court stated that "the right to be represented by counsel is protected by the sixth and 14th amendments. These amendments, however, protect . . . this right only as against action by the United States, in the case of the . . . sixth amendment . . . and as against action by the States in the case of the 14th amendment. Indian tribes are not States within the meaning of the 14th amendment."

In a similar decision it was held that a tribal Indian cannot claim protection against illegal search and seizure by tribal officials.

In 1954, a religious freedom suit against the Jemez Pueblo Tribal Council and governor by Pueblo members charged that the plaintiffs had been subjected to indignities, threats, and reprisals solely because of their Protestant faith, and that the tribal council had refused to permit them to bury their dead in the community cemetery and to build a church on tribal land.

The court acknowledged that the alleged acts represented a serious invasion of religious freedom, but concluded that they were not taken "under color of any statute, ordinance, regulation, custom, or usage of any State or territory" and thus no cause of action arose either under the Federal Constitution or under Federal civil rights acts.

The 1968 Indian Bill of Rights

These cases illustrate what the Constitutional Rights Subcommittee of the Senate Committee on the Judiciary viewed as a "continued denial of constitutional guarantees" to American Indians. In 1961 that subcommittee instituted a lengthy investigation of the legal status of American Indians and the problems they encounter when asserting their constitutional rights in their relations with State, Federal, and tribal governments.

The investigation was largely engineered by Senator Sam Ervin of North Carolina, Chairman of the Subcommittee. It culminated in the passage of Title II of the Civil Rights Act of 1968, which constituted a bill of rights for American Indians. Title II provides that Indian tribes exercising powers of self-government shall be subject to many of the same limitations and restraints which are imposed on Federal, State, and local governments by the United States Constitution.

Two major exceptions are that the Indian Bill of Rights provides the right to counsel before tribal courts only at the defendant's own expense, and, al-



though religious freedom is protected, the act does not contain a prohibition against the establishment of religion by a tribal government.

Rights and Privileges of State Citizenship

While off their reservations, Indians are subject to the same laws, both Federal and State, as other citizens. When brought before State or Federal courts, they are entitled to the same constitutional protections as other defendants. As a general matter, Indians are also entitled to the same Federal and State benefits, programs, and services as other State and Federal citizens.

From time to time, however, States have attempted to deny Indians participation in State programs on the grounds that their entitlement to special Federal programs makes them ineligible. A law of the State of California, for example, declared that a local public school board could exclude Indian children if the United States Government maintained a school for Indians within the school district. The California Supreme Court ruled that the law violated the State and Federal Constitutions.

One justification incorrectly used by States for excluding Indians from participation in State programs and State services has been that Indians do not pay taxes. In fact, local, State, and Federal taxes commonly paid by all citizens, including sales taxes, are paid by Indians. Indians pay State taxes on all non-trust prop-

erty. They must pay all fees and taxes for the enjoyment of State privileges, such as driving on State highways, and all other taxes which reach the entire population.

However, the restricted status of Indian land renders it immune from State and local taxation. With certain exceptions, income derived from the land is also nontaxable.

Wardship

There has also been confusion regarding the status of American Indians stemming from the common notion that Indians are "wards" of the Federal Government. The Federal Government is a trustee of Indian property, not the guardian of individual Indians. In this sense, the term "ward" is inaccurate.

Indians are subject to a wide variety of Federal limitations on the distribution of property and assets and income derived from property in Federal trust. Land held in trust for an Indian tribe or for an Indian individual may not be sold without prior approval of the Secretary of the Interior or his representative (the Bureau of Indian Affairs). Related restrictions limit the capacity of Indians to contract with a private attorney and limit the heirship of trust property.

Many Americans erroneously believe that as wards of the Federal Government Indians must remain on reservations and that they receive gratuitous payments from the Federal Government. Indians do not in fact receive payments merely because they are Indians. According to the Bureau of Indian Affairs:

Payments may be made to Indian tribes or individuals for losses which resulted from treaty violations . . . individuals may also receive government checks for income from their land and resources, but only because the assets are held in trust by the Secretary of the Interior and payment for the use of the Indian resources has been collected by the Federal Government.

Like other citizens, Indians may hold Federal, State, and local office. They are subject to the draft, may sue and be sued in State courts, may enter into contracts, and may own and dispose of property (other than that held in trust).

The large number of Federal and State laws and provisions which, in the past, denied Indians political rights and public benefits have either been legislatively repealed, ruled invalid by the judicial branch, or remain unenforced and unenforceable.



THE BUREAU OF INDIAN AFFAIRS

THE BIA IS KEY TO THE FEDERAL-INDIAN RELATIONSHIP

By Laura Waterman Wittstock

The opportunity presented to the earliest European arrivals in America was unique in human experience. Gold, forests, harbors, and—above all—unbelievably vast stretches of land were everywhere. The seeds of foreign power were quickly transplanted in the fertile bed—but with a roughness and crudity revealing the tenuous link between “civilization” and the settlers themselves.

None except the most introspective paid more than passing attention to the myriad cultures of their New World. They could never have known at that moment of mutual discovery that the most powerful nation to emerge from colonization—the United States—would have its history subtly but inextricably defined by its disregard for the native peoples of the North American continent.

Such ambivalence, continuing

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to the present, has come to be the peculiar hallmark of the “Federal-Indian” relationship.

From the Crown to the Constitution

Relations with the Indians established before the Revolution set the stage for the Federal-Indian relationship.

In their war with the French, the English won the alliance of the Hodenosaunee as their equals. Following their victory in 1759, they made agreements with the powerful Six Nations that had a profound and long-lasting effect on U.S. Indian policy. A Justice Department memorandum citing New York Colonial Documents describes one such pact which delineated one of the first “reservations”:

In 1768, acting under a commission of the British Crown, Sir William Johnson entered into a treaty with the Six Nations by the terms of which the boundaries of the Iroquois Confederacy were defined and located, and the territory of these

nations definitely set apart from the lands of the Colony of New York.

Before the war, the British appointed geographic “Indian Departments” and local commissioners to regulate relations with the tribes. During the hostilities the English Board of Trade appointed a superintendent and agents for the northern and southern Indian Department. In 1763, with victory assured, the British declared the tribes to be secure in the possession of their lands and prohibited white settlers west of the Appalachians—an edict they even tried to enforce.

However, England’s rule in America soon ended. In the same year the colonies declared their independence, the Continental Congress also declared its jurisdiction over Indian affairs. The 9th Article of Confederation adopted in 1781 gave Congress “the sole and exclusive right . . . of managing all affairs with the Indians.”

In 1787, the Northwest Ord-

nance further stated:

The utmost good faith shall always be observed towards the Indians; their land and property shall never be taken from them without their consent; and in their property, rights, and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded on justice and humanity shall from time to time be made, for preventing wrongs done to them, and for preserving peace and Friendship with them.

Thus the way was paved for a Federal policy. Leaving the matter to the States, the founding fathers suspected, would unleash further conflicting land claims and bring war upon their individual provinces. The attitude of the new government was settled in the Constitution, Article 1, Section 8: "Congress shall have the power . . . to regulate commerce with foreign nations, and among the several states, and with the Indian tribes." The Federal Government reserved the right to make all treaties, investing that power in the President with the advice and consent of two-thirds of the Senate.

Treaties and Tribal Sovereignty

The representatives of Europe had come armed with documents proclaiming the land reserved—a notion derived from European law which meant that land was transferable from one owner to another, and that untitled land was free for the taking.

However, some in Europe held that the occupation of land implied title, and advocated acquiring land by treaty. Such treaties required three elements: (1) that

both parties to the treaties be sovereign nations; (2) that the tribe have transferable title; and (3) that acquisition of Indian land be controlled by the government alone and not its colonies.

Treaties predating the Constitution involved agreements to end hostilities and exchange prisoners, and provide for mutual assistance, in addition to land transfers. The first treaty, with the Delawares in 1778, was discussed by Chief Justice Marshall in 1832:

The language of equality in which it is drawn, evinces the temper with which the negotiation was undertaken, and the opinion which then prevailed in the United States . . . 'to guaranty to the aforesaid nation of Delawares, and their heirs, all their territorial rights, in the fullest and most ample manner, as it hath been bounded by former treaties, as long as the said Delaware nation shall abide by, and hold fast the chain of friendship now entered into.' The parties further agree that other tribes, friendly to the interest of the United States, may be invited to form a state whereof the Delaware nation shall be the heads, and have a representation in Congress. This treaty, in its language and in its provisions, is formed as near as may be on the model of treaties between the crowned heads of Europe.

Six years later in 1784, the Continental Congress asserted that all the land in its midst was conquered territory. The Delawares never got their State. The language of the treaty that year with the Hodenosaunee was most significant and set a precedent for

delivery of Federal services and programs benefiting Indians:

The commissioners of the United States, in pursuance of the humane and liberal views of Congress, upon this treaty's being signed will direct goods to be distributed among the different tribes for their use and comfort.

There were many reasons why the United States entered into treaties with the tribes later on, but the most frequent was a singleminded pursuit of more land. Beneficence and greed combined to prevent the United States from achieving any semblance of single purpose in its policy.

While the white man's regard for tribal sovereignty bent with the political winds, among the Indians no such ambivalence prevailed. Despite Federal laws disregarding tribal sovereignty, the tribes held themselves together as damaged but struggling political entities. In 1821, Seneca Chief Red Jacket admonished the Governor of New York: "The greatest source of all our grievances is that the white men are among us."

The Indians' belief in the validity and force of the treaties, even to the present time, and the solvency of tribal government attest to their faith in themselves. Testifying before the House Subcommittee on Indian Affairs in 1968 relative to the proposed Indian Civil Rights Act, the Governor of the Pueblo of Zuni stated:

Through Spanish rule and up to now, the Pueblo Indians have kept together, are still together. A lot of our custom-laws handed down are still being used. Our two-court systems mete out justice in the fullest

sense and outside courts can look to these and learn something We take pride in the fact that our tribal government has endured all these centuries and we firmly believe that if we did not in our own way and in our governments indicate these to the individuals, we would long ago have disbanded as tribes, and sought a better way somewhere else.

The Government's recognition of tribal sovereignty came under severe attack in the early 1800s, when a major change in the Federal-Indian relationship occurred. Andrew Jackson, elected President in 1828, advocated free public schools, more rights for women, better working conditions in factories, and the abolition of slavery. He was, however, considerably less concerned about the rights of Indians.

Jackson's Solution

There is something self-protective in human nature that does not permit unpleasant historical evidence, however obvious, to surface undistorted. Thus Henry Knox, Secretary of War, could assert in 1792:

The Indians have constantly had their jealousies and hatred excited by the attempts to obtain their lands. I hope in God that all such designs are suspended for a long period. We may therefore now speak to them with the confidence of men conscious of the fairest motives towards their happiness and interest in all respects.

A little perseverance in such a system will teach the Indians to love and reverence the power which protects and cherishes them. The reproach which our

country has sustained will be obliterated and the protection of the helpless, ignorant Indians, while they demean themselves peaceably, will adorn the character of the United States.

While far from being an egalitarian viewpoint, Knox's statement compares favorably the sentiments Andrew Jackson expressed in 1817:

I have long viewed treaties with the Indians as absurdity not to be reconciled to the principles of our Government. The Indians are subjects of the United States, inhabiting its territory and acknowledging its sovereignty; then is it not absurd for the sovereign to negotiate by treaty with the subject?

Jackson's view of the Republic may seem grandiose for the times, but as President of the United States, he was most effective in carrying out his philosophy. It resulted in the devastating decimation of the Eastern tribes, and by implication, all tribes.

His bill, the Indian Removal Act, passed May 28, 1830 by a narrow margin. The vote count could hardly have mattered to the tribes scheduled for removal to the far West.

Working hand in glove with the State of Georgia, which had passed its own law declaring State jurisdiction over certain Cherokee lands and pronouncing Cherokee laws and customs null and void, Jackson moved briskly. Georgia Governor George C. Gilmer trumpeted:

Treaties were expedients by which ignorant, intractable, and savage people were induced without bloodshed to yield up what civilized peoples had a

right to possess by virtue of that command of the Creator delivered to man upon his formation—be fruitful, multiply and replenish the earth, and subdue it.

In contrast, the Supreme Court asked: "By entering into (treaties) have we not admitted the power of this people to bind themselves, and to impose obligations on us?" But not even the Court could deter the course of this Constitutional breach.

By 1870 the Supreme Court gave in and decided that the constitutional power of Congress over Indian affairs could not be limited by treaties. They were not contracts but public laws that could be amended at the will of Congress, the Court said, adding: "Presumably such power will be exercised only . . . if consistent with perfect good faith towards the Indians." On March 3, 1871, Congress ended the discussion:

Hereafter no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty.

A Brief BIA History

The post of Superintendent of Indian Affairs was first established within the War Department in 1789. The first official Commissioner of Indian Affairs was named under an act of July 9, 1832. He was given a broad mandate for managing Federal-Indian relations—less a consul than an enforcer-bureaucrat. In 1849 the Bureau of Indian Affairs was transferred to the Department of the Interior, where the Commissioner was to manage "all Indian

affairs and . . . all matters arising out of Indian relations."

The constitutional basis—the regulation of commerce with the Indian tribes—remained, as did the terms of aid in exchange for land described in the treaties. However, the new administrative agency charged as trustee for the Indians—the Department of the Interior—was at the same time involved in settling land claims and determining the uses of public lands, placing the Department in a conflict of interest from which Indians have not been rescued to this day.

Perhaps the most glaring historic example of the conflict involved the administration of the General Allotment Act passed in 1887. The act purported to "civilize" the Indians by dividing the 140 million acres they owned and awarding them individual plots of land to inspire "the enjoyment and pride of individual ownership." Title to the land would remain with the Government for 25 years or more at the discretion of the President. At the end of that time, if an Indian were judged "competent," he would be given the land to use as he saw fit and would also acquire full citizenship. Surplus lands remaining would be subject to purchase (and resale) by the United States.

The real intent of the law became quickly apparent. In 1890 alone some 17.4 million "surplus" acres were purchased by the government under the act and opened to non-Indian settlers. By 1935, 90 million more acres had passed out of the collective or individual control of Indians—including some of their best grazing, farming, and forest lands. The General

Allotment Act turned into a general dispossession notice from Uncle Sam.

Meanwhile, prior to 1921 no specific law authorized BIA expenditures for BIA programs. The Snyder Act, passed that year, became the permanent authorization for programs and the delivery of services "for the benefit, care, and assistance of the Indians throughout the United States" for:

General support and civilization, including education.

Relief of distress and conservation of health.

Industrial assistance and advancement and general administration of Indian property.

Extension, improvement, operation, and maintenance of existing Indian irrigation systems and for development of water supplies.

Enlargement, extension, improvement, and repair of the buildings and grounds of existing plants and projects.

Employment of inspectors, supervisors, superintendents, clerks, field matrons, farmers, physicians, Indian police, Indian judges, and other employees.

Suppression of traffic in intoxicating liquor and deleterious drugs.

Purchase of horse-drawn and motor-propelled passenger-carrying vehicles for official use.

General and incidental expenses in connection with the administration of Indian affairs.

The language of the act still provides one of the best summaries of BIA activities to be found.

A New Deal for Indians

In 1933 John Collier was appointed BIA Commissioner by

President Franklin D. Roosevelt. Assessing the disastrous effects of the Allotment Act, Collier observed: "For the Indians, the situation is necessarily one of frustration, of impotent discontent. They are forced [by the act] into the status of landlord class, yet it is impossible for them to control their own estates . . ."

To correct the problem, the New Deal passed the Indian Reorganization Act in 1934 which ended land allotments and established tribally-chartered administrations with a community electorate.

While the act ended the odious allotments, it often became the vehicle by which existing tribal governments were broken up into peevish councils, with no systems of checks and balances to see that the councils' work was carried out in the best interests of all tribal members. Marvin Franklin, Assistant to the Secretary of the Interior for Indian Affairs, commented before a House committee:

In those instances where the tribal organization must carry out the legislative function, the judicial function, and the executive function . . . they need to have an updating and an opportunity to update their governing body, in order that it serve the reservation with the checks and balances that you and I are accustomed to.

While the right to vote was introduced simultaneously with reorganization, it has been pointed out by many Indians that a refusal to vote often signified rejection of the question or candidate or of the tribal system itself. Thus, although 192 out of 263 tribes adopted reorganization, the

number of votes tallied in favor of Reorganization Act-styled governments was misleading.

The Johnson-O'Malley Act

Another significant piece of legislation was passed during the New Deal—the Johnson-O'Malley Act of 1934. It provided that contracts be made with the States (and later, as amended, with institutions) for educational, medical, agricultural, and social services to the tribes.

The administration of Johnson-O'Malley by the BIA has been erratic, at best—especially with regard to educational funds. Such funds were allotted to the States to assist school districts in educating Indian children attending public schools. (Originally the act provided for children of one-quarter Indian ancestry whose parents lived on or near a reservation. Later, funds were restricted to federally-recognized Indian children living on reservations.)

Federal regulations governing the allocation of funds under the act were and are ambivalent. There is no uniformity among the States on fund use. Strict accountability is nonexistent.

Recent Congressional testimony illustrates some of the problems. The speakers include Representative Victor Veysey, Representative Julia Butler Hansen, and James E. Hawkins, the BIA's Director of Education Programs.

Mr. Veysey: I am disturbed by what I think I see here with regard to the Johnson-O'Malley program, again for this year. I have been struck with the inequity in that program and the deficiency of the program in dealing with the needs of In-

dian education, and particularly the strange ways the funds seem to be distributed with respect to the several States. . . .

It is solely the regulations that bring about the discriminatory treatment, it seems to me, of some classes of Indian children.

Mrs. Hansen: Why is this true, Mr. Hawkins?

Mr. Hawkins: I think it harks back, madam Chairman, to the fact that the Johnson-O'Malley regulations were drafted—the ones we are operating on at the present time—were drafted at a time in the early fifties when termination fever was at its height.

Mrs. Hansen: Well, it isn't any more.

Mr. Hawkins: No, it isn't. We are in the process of modifying those regulations but . . . we find that many tribal groups are very much against any change in the regulations if they see a diminution of the Johnson-O'Malley funds coming into their school district.

Mrs. Hansen: You could increase the fund.

Mr. Hawkins: I can't increase the funds.

Mrs. Hansen: You could request an increase in the funds.

Mr. Hawkins: That is a possibility. . . .

Mr. Veysey: The Senate report underscored a lot of these problems. Alaska received \$690 per pupil; Oklahoma \$37 per pupil, according to these figures; Arizona \$236 per pupil.

It just doesn't seem there is any visible way of really explaining these differences.

Mr. Hawkins: Yes sir, I think there is. Whether it is reasonable or not, there is an explanation. The explanation is that some of these States got out and hustled in the early years.

Mr. Veysey: Yes they did, and I will tell you, they hustled you. When I went on tour, working on the Indian Education Act years ago, we found that it appeared to us that many schools—say in Arizona, New Mexico and maybe other places, were definitely not abiding by the regulations in that they were using this Indian money not for the education of Indian children, but for the general support of the school system. That is and has been all along, I think, a violation of the law.

It remains to be seen if the new regulations mentioned by Mr. Hawkins will rectify the situation.

The Fair Deal—Termination

As if by long-standing cyclical plan, the late 1940s ushered in what has since come to be known as the termination period, similar in many ways to the late 1800s. Congress sought to rid the Federal government of its trust responsibility, and Dillon Myer became BIA Commissioner, after serving as director of the Japanese-American detention camps during World War II. In the hands of the terminationists the BIA soon developed into a vehicle of destruction.

Johnson-O'Malley funds were restricted to federally recognized Indians residing on reservations.

Legislation was passed specifically terminating the trust relationship with certain tribes and giving criminal and civil jurisdiction over Indians to several States without Indian consent. The policy ended with the Oklahoma Ponca termination of 1962, but as yet no tribe has been invited back. (A bill to restore recognition to the Menominees is pending in Congress. An article on Menominee restoration appears elsewhere in this issue of the *Digest*.)

While the current administration has repudiated termination, the BIA still reflects the official view that only "federally-recognized" tribes may enjoy the benefits of its programs and services. Since it was previous Federal policy that brought the tribes to their present scattered circumstances, and BIA programs that have relocated thousands of Indians to ineligible off-reservation communities, the BIA's position contains more than a touch of irony.

The BIA Reorganizes

Last May, the Secretary of the Interior issued Order 2954, which announced a "realignment" of the BIA's central office into four program offices and two administrative offices. That step is intended to combine functions where possible, decrease personnel, and transfer many, if not most, operational activities to the 11 area offices.

One of the extraordinary things about the plan is that it was proposed in the absence of a legally appointed Commissioner. There had been no BIA Commissioner or Deputy Commissioner in office since January 1973. The *de facto* head of the BIA was for some time a person who held the staff position of "Assistant to

the Secretary of the Interior for Indian Affairs." He went forth with the realignment, according to the latest directive (dated August 17, 1973), without benefit of portfolio or Senate approval. (Staff appointments are not, like the BIA Commissioner, subject to confirmation by the Senate.)

However well-intentioned the most recent realignment might be, it has been heavily criticized.

As Indian water rights attorney George Crossland observed:

It is my belief that officials who are responsible for implementing policy should not be allowed to set the policy by which they operate. It is quite clear that the mixing of roles provides the implementer with the opportunity to set a policy which would accommodate his operational needs. Such a policy may not be in the best interests of the tribes.

The Land, The People

The BIA today lists 481 federally-recognized tribal entities—205 organized under the Indian Reorganization Act, the Oklahoma Welfare Act, or the Alaska Native Act (the Oglala Sioux and Seminole are among these); 51 officially approved organizations outside of specific Federal statutory authority (the Navajo and the Yakima are in this group); and 225 traditional organizations having recognition without formal federal approval of their organizational structure (several Pueblos and the Iroquois Confederacy are in this group).

The eligibility requirements for services are not entirely clear.

Persons of Indian descent who meet the membership criteria of

federally recognized tribes are assured of consideration for services provided by the Bureau of Indian Affairs because of their status as Indians.

Membership does not, on the other hand, insure entitlement which may be dependent upon the specific language of the statute upon which a specific program is based.

The services for which eligibility must be established include education, social services, road programs, credit, housing assistance, health services (medical care), nontaxable land allotment or assignments, law and order, technical assistance in all areas of the Bureau's expertise, and preference with regard to employment in the Bureau of Indian Affairs and the Indian Health Service.

The trust lands for which the Federal Government is responsible, according to the BIA, total 50.4 million acres—39.7 million acres tribally held and 10.7 million acres individually held. The BIA estimates the total on-reservation serviceable group at 533,700 (the Nation's total Indian population has been estimated at over one million).

For these responsibilities, the BIA has estimated that it needs \$544.7 million for fiscal year 1974. The actual amount appropriated by the House and Senate this summer included \$3.5 million to pay for Federal costs during the occupation of Wounded Knee last spring.

What the BIA Does

Education makes up one-third of the BIA budget. Most of the money—two-thirds—is spent on the 60,000 Indian children in BIA

boarding and day schools. Boarding schools are the chief instrument alienating Indian children from their heritage. They also cost twice as much as day schools—and the BIA is phasing them out.

More than \$20 million outside the education budget is allotted to school construction. In addition, other BIA budget items pay for vocational education and work experience.

Smaller parts of the education budget are spent on general school support and supplemental services for public schools enrolling Indian children through the Johnson-O'Malley Act (\$24.5 million). Still smaller amounts pay for some 13,500 college scholarships, Navajo Community College, and Indian contract schools enrolling 2,000 students.

Social services and housing assistance (including some of the work experience programs mentioned above) total only a little over one-fourth of the funds allocated. The bulk of the money goes for welfare assistance programs.

Again this year the BIA as-

serted its intention to allow tribes more voice in determining the nature and location of job training and employment assistance. This is a continuing concern of the tribes, since employment assistance is still listed in the budget under the termination heading of "Relocation and Adult Vocational Training."

Road construction is rapidly becoming a major portion of the BIA budget. This year, almost \$60 million could be spent if funds are not frozen. That would grade and surface about 700 miles of road. The social impact of new reservation roads on school systems (roads make day school possible), employment, and industry is tremendous. Almost 70 percent of the labor force used is Indian and the BIA predicts this will lead to tribes bidding to take over maintenance and construction projects.

Credit funds listed under resources management are one-fifth of the total budget. Only \$17 million is allocated for industrial and agricultural assistance and \$2 million for actual revolving fund

loan financing, in contrast to an estimated need of \$1 billion. (Various other bills are pending in Congress to aid financing and business development).

Other areas long underfunded in the resources management program are real property management and the protection of trust lands. The administration is scrutinizing various solutions, including future legislation to allow technical assistance from other Federal agencies to manage and protect resources along tribally-initiated plans.

The BIA assists in rebuilding or building houses at the rate of several hundred per year through housing assistance programs. Measured against the overall need for some 50,000 such projects on federally-recognized reservations alone, this rate of progress is wholly inadequate. The revolving loan fund estimates for individual housing loans are about \$200 million. The BIA is looking for a solution through accelerated programs dependent on increased HUD funding, more Indian housing authorities, and a workable, comprehensive approach to the hardships created by inflationary pressures.

Health services are no longer administered by the BIA. Moved to HEW in 1955 in line with termination policy, the Indian Health Service represents the largest wholesale transfer of a traditionally BIA function to another Federal agency. How far the Federal commitment extends to non-reservation Indians, State reservations, and urban Indians (other than those now being served in Oklahoma and California) remains an annual question.



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The Indian Health Service budgets are considered by Interior subcommittees in Congress and not by the HEW subcommittees—a relic of the trust-treaty relationship. In addition to providing for medical needs, the Indian Health Service has entered into a variety of experimental programs in community development, local employment, advanced communications technology, and other specialized programs, notably in Alaska and California.

Funding through BIA for law enforcement is only \$8 million, a figure nearly matched by tribal and Omnibus Crime Control Act resources. The total is spread thinly over 87 tribes. In general, the needs of crime prevention are often more directly answered by the Indian Health Service and other agencies that fund community health centers and alcoholism programs.

A vital but undeveloped program is forest and range land management, where the entire amount allocated goes to BIA personnel. Program development is stymied by insufficient credit and capital investment. The BIA budget for tribal development funds is also admittedly too small.

Some 82 tribal entities will receive funds this year toward administering their own affairs. These are mostly small tribes, averaging 1,000 members each, for which a budget increase could strengthen self-government dramatically.

Indian Preference

"Indian preference" in the Bureau of Indian Affairs and the Indian Health Service is not a program *per se* but a way, based on

law, of giving Indians preference in hiring and promotion. From the outset, Indian preference has been enveloped in controversy, with Indians claiming inadequate enforcement and whites alleging discrimination.

Originally, the BIA preferred Indians in hiring, but not in promotion or reassignment. However, a court order directed the agency to utilize Indian preference at every stage of employment.

More recently, whites have initiated suit based on the presumption that Indian preference violates a 1972 amendment to the Equal Employment Opportunity Act. Last August, U.S. Supreme Court Justice Thurgood Marshall stayed implementation of a district court decision which upheld their position.

BIA preference is crucial to Indian self-determination because it is the only practical mechanism by which Indians can gain entrance

into the bureaucracy which runs their affairs.

What's Wrong

Indian criticism of the BIA centers on several points. First, BIA preference has not resulted in sufficient numbers of Indians in high positions. The BIA payroll in Arizona, for example, is 81.2 percent Indian in grades 1 through 5, but only 7.3 percent white. In contrast, whites comprise 70 percent of the people in grades 11 through 15, while Indians comprise only 23.6 percent. At a hearing held by the U.S. Commission on Civil Rights in Phoenix, Ariz., Veronica Murdock, Vice Chairman of the Colorado River Tribe, testified that BIA positions are recognized by tribal members to be "dead-end" jobs for Indians.

The absence of Indians at policy making levels within the BIA may partially account for another criticism of the agency—insensitivity toward Indians and their

problems. Such criticism is particularly acute in regard to education. At the same hearing, Lavonne Three Stars, a counselor at Phoenix Indian High School, stated that, "historically, the BIA . . . has . . . negated everything Indian. . . . 'Cut your hair, it's bad. Don't eat your Indian food, it's bad. Don't practice your Indian religion, it's bad.'"

"The Bureau also now says 'this is no longer true. We don't do this. We agree the Indian culture is good.' But the negation is still there, only more subtle, but just as destructive."

A third criticism concerns BIA funding of Indian programs. In fiscal year 1973, the BIA appropriation was \$544,455,378. In fiscal 1974, the agency requested an increase of only \$293,622. This figure includes an extra \$20 million for the Alaskan Native (Claims) Fund.

The \$20 million added for the Claims Fund was exchanged for a decrease of \$6.5 million in education and welfare services and \$12 million in construction funds. These decreases are occurring just as the Census Bureau announces that the median income for Indian families in 1969 was only 61 percent of the median family income for the U.S. as a whole, and in a period of sharply rising inflation.

The conflict of interest situation within the Department of the Interior concerning the administration of natural resources has been described. The BIA's inability or unwillingness to protect Indian interests ranks high on the list of Indian complaints. (The Trust Counsel Authority Bill sponsored by the administration and others would vastly improve this situation by placing protection of

Indian resources in a separate agency).

The BIA's refusal to serve Indians not living on Federal reservations is another source of friction between Indians and the agency. In many cases, Indians are forced to choose between a life of poverty and welfare on the reservation, and relocation to a distant city with which they are ill-equipped to cope. Services provided Indians by the BIA are mandated by treaty obligations, and Indians contend the agency has no right to cut them off just because an Indian leaves the reservation.

Finally, the BIA fails to address

OTHER FEDERAL AGENCIES

The BIA is not the only Federal agency which spends money on Indians. The House Interior and Related Agencies Subcommittee, which reviews the BIA budget, released the following information in an investigative report entitled, "Federal Funding of Indian Programs":

Agriculture	\$23.3
Commerce	31.0
Defense	29.4
Econ. Opp.	56.0
HEW	225.5
HUD	34.8
Interior	22.2
(exclusive of BIA)	
Labor	6.2
SBA	19.8
VA	8.5
Total	486.7
+BIA	544.5
Total	\$1,031.2

(For fiscal 1973, in millions of dollars by department or agency.)

itself to Indians except through elected tribal councils. These councils, set up under the Indian Reorganization Act, fail to mirror traditional tribal patterns of authority. In the past they have often attracted only those Indians willing to accommodate themselves to BIA wishes. Even now, they frequently lack accountability. As noted above, some Indians still refuse to vote to elect such councils because they are alien to traditional government. Other channels of communication between Indians and the BIA must be opened if the BIA is to have the flexibility it needs to serve all Indians.

Clyde Warrior probably spoke for many Indians when he said:

"The federal government came into our communities and by force carried most of our children away to distant boarding schools. My father and many of my generation lived their childhoods in an almost prison-like atmosphere. Many returned unable even to speak their own languages. Some returned to become drunks. Most of them had become white haters or that most pathetic of all modern Indians—Indian haters. . . ."

"As you can imagine, we have little faith in such kinds of Federal programs devised for our betterment . . . We must be free in the most literal sense of the word—not sold or coerced into accepting programs for our own good, not of our own making or choice."

" . . . I do not mean the fictional responsibility and democracy of passive consumers of programs; programs which emanate from and whose responsibility for success rests in the hands of outsiders—be they Federal administrators or local white elitist groups."



Federal Legislation Affecting American Indians

By Laura Wittstock

August 7, 1789 Dept. of War established with responsibility for "such other matters . . . as the President of the United States shall assign to the said department . . . relative to Indian Affairs."

***July 22, 1790** Intercourse Act. Passed as an attempt to meet treaty obligations by licensing traders, requiring a public treaty to sell Indian land, and providing criminal procedures for non-Indians committing crimes against Indians in Indian territory.

April 18, 1796 Established government trading houses. In 1822 the last superintendent of Indian trade became the first BIA head.

***May 19, 1796** First law concerning punishment of tribal Indians living in peace with U.S. for crimes committed on non-Indian lands.

***March 30, 1802** Permanent Trade and Intercourse Act. Incorporated the first four temporary acts and restricted liquor consumption among tribes.

March 3, 1817 Federal courts given jurisdiction over Indians and non-Indians in Indian territory, specifically excluding crimes committed by one Indian against another.

March 3, 1819 Appropriations for "civilization" of Indians, empowering the President to employ "persons of good moral character" to effect "improvement in the habits and conditions" of Indians.

May 28, 1830 Indian Removal Act. Allowed "voluntary" exchange of eastern lands for land west of the Mississippi River guaranteed for use by tribes as long as the tribes desired.

July 9, 1832 Established Commissioner of Indian Affairs under the Secretary of War.

June 30, 1834 Department of Indian Affairs organized to control the system of agents, restore tribal rights, and encourage Indian role in administration and in directing tribal employees.

June 30, 1834 Indian Trade and Intercourse Act. Redefined boundaries of Indian lands, reduced through cessions; ended passport requirements for non-Indian Americans; summarized previous criminal and trader laws; proclaimed that crimes of Indians against Indians on Indian land were not within the federal jurisdiction.

March 3, 1849 Established Dept. of Interior and

placed the Commissioner of Indian Affairs in it.

March 27, 1854 Extended tribal jurisdiction over crimes committed by Indians against Indians on Indian lands.

March 3, 1871 Reduced the ability of tribes to appoint legal counsel by requiring Interior Dept approval.

March 3, 1871 Ended treaty-making by declaring that Indian nations and tribes within U.S. territory will not be recognized as independent. (Note: There was no public debate on this provision—the language was added as a rider to the House bill in payment for Senate-requested funds).

March 3, 1883 First general statute on Indian monies: released pasturage, timber, mining, "proceeds of labor" funds through Treasury, to be used by tribes with the approval of Interior.

March 3, 1885 Extended Federal court jurisdiction over Indian lands to seven major crimes.

February 8, 1887 General Allotment Act. Provided for division of Indian lands to individual Indians under a 25-year trust arrangement; remaining unallotted lands would be sold to U.S. for use of tribes, subject to congressional appropriations for Indian education and other "civilizing" actions; set water policy for allotments. The policy required great restraint and control by Interior, the lack of which was one factor in ending the allotment period begun around 1800 and formalized in this act.

February 28, 1891 Allowed leasing of allotted land with the Secretary of Interior's approval.

March 3, 1891 Depredations claims for damages sustained by acts of Indian individuals or bands of tribes living at peace with the U.S. sent to the Claims Courts and settled. (This act raised the question of what constitutes a tribe or a band, and led to solutions to present land claims and other matters).

July 13, 1892 Authorized Interior to enforce attendance at Indian Service schools by refusing rations and funds to parents of children.

August 15, 1894 Required Interior to hire Indians in the Indian Service as practicable.

March 3, 1901 Allowed Interior to grant rights of way over Indian lands, and made allotted lands

subject to State condemnation.

March 2, 1907 Allowed Interior to distribute pro rata shares of tribal funds to individuals (part of a move to break up the tribes).

May 25, 1918 Limited appropriations, other than those involving treaty provisions to Indians (who were defined by blood quantum and citizenship of parents). Set the stage for final pro rata distribution of tribal funds.

November 2, 1921 Snyder Act. Permanent authority for funds available to Indians. Law was ignored for some time, and later cited in debates over the scope of U.S. services for Indians. In 1972 it was cited in a BIA report on the basis for federal services to State reservations, and to urban and off-reservation Indians.

June 2, 1924 U.S. citizenship conferred on all Indians.

March 3, 1927 Congress asserted final approval in land withdrawals, boundaries, and the use of gas and oil resources funds. Ordered tribal councils consulted on the use of funds.

February 29, 1929 As part of a continuing reform of the Indian Service, State health and education inspectors were allowed on reservations, prodded by reports of deplorable conditions.

April 16, 1934 The Johnson-O'Malley Act: U.S. contracted with the States for services to tribes. Included were educational, medical, agricultural, and social services.

May 21, 1934 Removed obsolete sanctions against certain civil liberties involving sedition acts concerning correspondence with foreign nations, and others; outlawed discrimination in public transportation.

June 18, 1934 Indian Reorganization Act. Provided for an end to allotments, partial restoration of the land base, tribal elections and governments, and incorporation and credit for tribal organizations.

June 19, 1934 Emergency Appropriation Acts. Set up an Indian Civilian Conservation Corps, one of several Depression acts which affected Indian citizens.

June 24, 1938 Repealed laws which dispersed tribal funds by distributing them to individuals.

August 13, 1946 Indian Claims Commission established to hear and settle remaining Indian land claims. (The act has been extended through 1977).

August 1, 1953 House Concurrent Resolution 108. Set forth the sense of the 83rd Congress, that all

tribes and Indian individuals should be "freed" from the Federal system in California, Florida, New York, and Texas, and "terminated" several tribes: Flathead of Montana, Klamath of Oregon, Menominee of Wisconsin, Potawatamie of Kansas and Nebraska, and Turtle Mountain Chippewa of North Dakota.

August 15, 1953 Public Law 280. Conferred State jurisdiction over criminal offenses and civil actions committed or arising on most reservations in California, Minnesota, Nebraska, Oregon, and Wisconsin. Passed without Indian consent, the law was used to justify a variety of state and local taxes on Indian property and activities. With the law's passage, federal Indian services were abolished in some areas.

June 17, 1954 Menominee tribe terminated. Other tribes terminated included: Klamath Western Oregon, Alabama Coushatta, Utah Utes, Utah Paiutes (all in 1954); Oklahoma Wyandottes, Peoria, Oklahoma Ottawa (1956); South Carolina Catawba (1959); and Nebraska Ponca (1962).

July 1, 1955 Federal responsibility for Indian health shifted from BIA to HEW, although yearly appropriations continue to be reviewed by the subcommittee responsible for the Interior Department.

April 11, 1968 Indian Civil Rights Act: Intended to provide the same civil rights guarantees as the Civil Rights Act of 1963, and more basically, the Bill of Rights. Also authorized a model code of justice for Indian offenses on Indian reservations, and conferred jurisdiction over criminal and civil actions to states only with the consent of the tribe* (States, however, continue to press for jurisdiction in all aspects of Indian activity, notably taxation and water use).

December 18, 1971 Alaska Native Land Claim Settlement Act. The largest settlement of a land dispute since the 1800s, when most legislation affecting Indians was in the area of appropriations and treaties.

June 23, 1972 Indian Education Act (Title IV of the Higher Education Act). Authorized expanded ESEA and impact aid programs to assure that the portions of these funds affecting Indians be administered with community control or in Indian-controlled schools.

* Sec. 403 repealed that portion of PL 280 which allowed states jurisdiction in criminal and civil cases, and further allowed states having PL 280 jurisdiction to retrocede it to the federal government.

Indian Water Rights And The National Water Commission

CONTROVERSIAL PROPOSALS
WOULD LIMIT INDIAN WATER RIGHTS

By William Veeder

My people, before the white man came you were happy. You had many buffalo to eat and tall grasses for your ponies. You could come and go like the wind. When it grew cold, you could journey to the valleys of the South, where the healing springs are. And when it grew warm, you could return to the mountains of the North.

The white man came. He dug up the bones of our mother, the earth. He tore her bosom with steel. He built big trails and put iron horses on them. He fought you and beat you, and put you in barren places where a horned toad would die.

*Wovoka, a Paiute, to his
followers in 1889.*

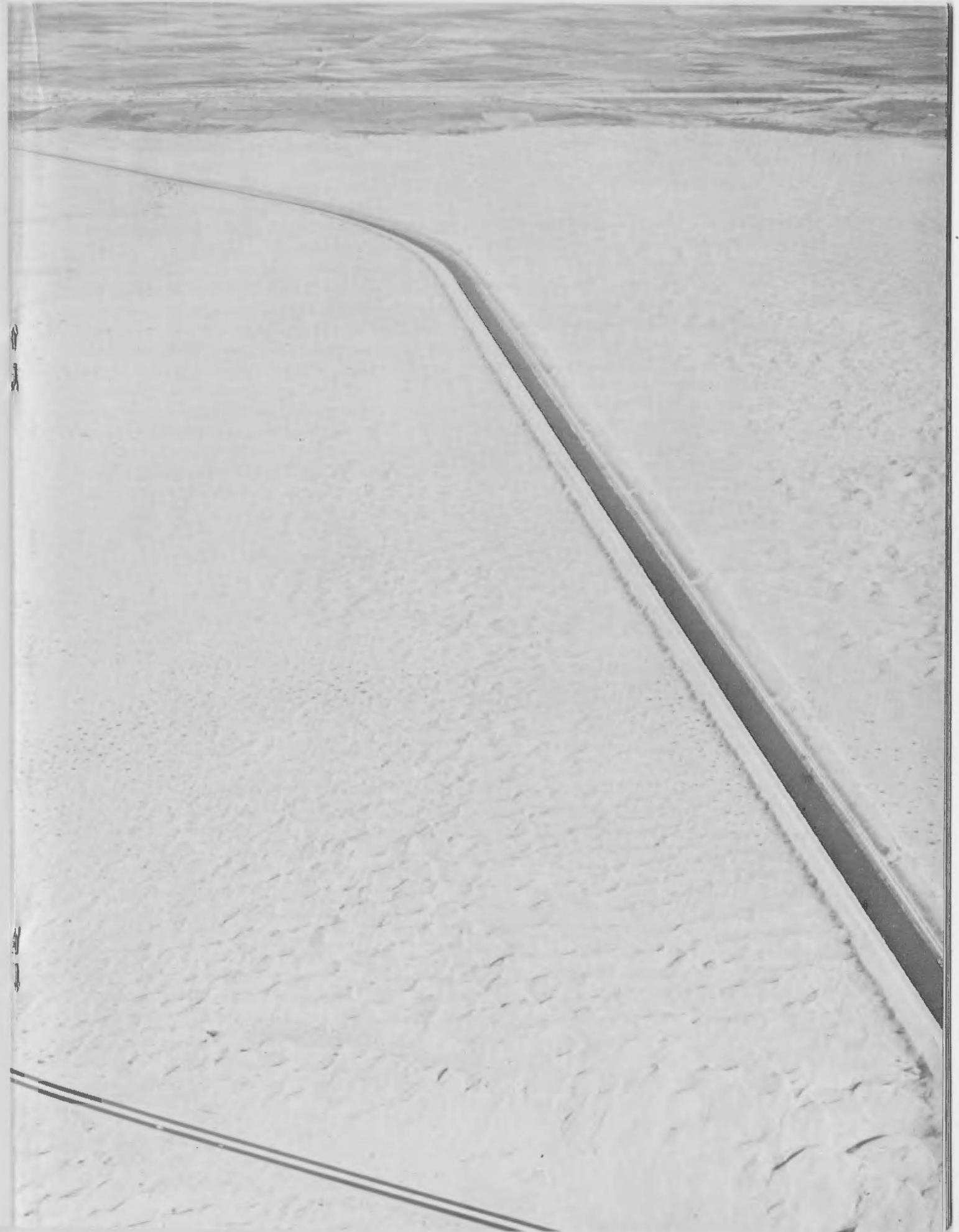
Water is a matter of life and death in the Western United States. Without it farming, fishing, and industry are impossible. For whites, the problem is serious. But whites at least have the option of settling where water is available.

The Indians, however, do not. Their destiny is circumscribed by the boundaries of the reservations allotted them by the Federal Government.

During the 19th century, when the Indians were rounded up and confined by the U.S. Army, water was not a major issue. There wasn't much of it, but it was sufficient for the population at hand.

William Veeder is a water conservation and utilization specialist in the Bureau of Indian Affairs. His article does not purport to reflect the policies of the Interior or Justice Departments respecting the National Water Commission report.

CIVIL RIGHTS DIGEST



By the turn of the century, the demands of white settlers began to outstrip the supply. The Federal Government became involved in irrigation and reclamation, and water rights were fiercely contested.

The course of this struggle as it affected Indians was shaped by two landmark events: passage of the Reclamation Act of 1902, and promulgation of the *Winters Doctrine* in 1908. Together, they plunged the Department of the Interior into a conflict of interest from which it has yet to extricate itself. And the American Indian has been the loser.

The Reclamation Act authorized the Secretary of the Interior to locate, construct, operate, and maintain works for the storage, diversion, and development of waters for the reclamation of arid and semiarid lands in the Western States. That mandate involves such things as irrigation, municipal and industrial water supply, hydroelectric power generation and transmission, flood control, fish and wildlife enhancement, and outdoor recreation. Behind it stands a powerful array of political and financial interests whose fortunes depend on Western development. Those who oppose projects undertaken by the Bureau of Reclamation face nearly hopeless odds.

The landmark *Winters* decision resulted from a case concerning the Fort Belknap Indians in Montana. The Fort Belknap Reservation is the meager residue of a vast area once guaranteed to the Indians by the 1855 Treaty with the Blackfeet. By an agreement in 1888 the Indians were limited to a small semiarid acreage uninhabitable without irrigation. Its northern boundary was the center of the Milk River.

In 1889 water was diverted from the river to irrigate reservation land. Upstream from the Indian diversion, non-Indians constructed dams, water diversions, and other structures preventing the river from flowing downstream to the Indian irrigation project.

The Government obtained an injunction restraining the non-Indian diversion and the injunction was eventually upheld by the Supreme Court. The Ninth Circuit Court of Appeals declared:

In conclusion, we are of the opinion that the court below did not err in holding that "when the Indians made the treaty granting rights to the United States, they reserved the right to use the waters of the Milk River" at least to the extent reasonably necessary to irrigate their lands.

The right so reserved continues to exist against the United States and its grantees [non-Indians], as well as against the state and its grantees.

There are two important points in this decision. One is that the Indians' title to the land included the use of water upon it. The other is that it was the Indians who granted title to the United States, and not the reverse. Therefore, any assets not specifically granted by treaty to the United States were reserved by the Indians for themselves.

Here lie the origins of the conflict of interest within the Department of the Interior. As Trustee for the Indians, the Department is charged with protecting their land and water rights as outlined in *Winters*. As the agency responsible for administering the Reclamation Act, the Department makes countless decisions respecting the allocation of water "in the national interest"—i.e., on behalf of non-Indians. As President Nixon said in a 1970 message to Congress: "No self-respecting law firm" would purport to represent the Western Indians and the Federal agencies within the Interior Department which are the deadliest enemies of the Indians.

This conflict extends to the Justice Department, where the Attorney General is required to render opinions for the Secretary of the Interior and to accept or reject proposals within the Government to institute litigation on behalf of Indians.

The ambivalence created by the conflict of interest continues to the present day. The President has proposed creation of a Trust Counsel Authority, which would independently represent the Indians in questions of land and water rights. That would represent a great advance.

The National Water Commission, however, has recently released a report entitled *Water Policies for the Future*. If the recommendations of this report became the policy of the Federal Government, the Trust Counsel Authority would have little left to protect.

The National Water Commission's report is an attempt to justify and apologize for past, present, and contemplated seizures of Indian water rights for non-Indian projects and purposes. Past violations are excused on the grounds of the violators' alleged ignorance of the law; projected seizures are justified by expediency.

For all practical purposes, the substance of the National Water Commission Indian Water Policy comes down to this: Indian tribes and nations will be deprived of their *Winters Doctrine* rights to the use of water to the extent that those rights were not fully exercised by 1963. Instead, the use of water to which

Indians are entitled will be made available for the benefit of Federal and other non-Indian projects.

Actually, the Water Commission's report does nothing more than ratify existing and historical policies sharply limiting Indians in the exercise of their *Winters Doctrine* rights. The report claims "some extenuating circumstances" for the past seizures of Indian water rights. One such circumstance, according to the report, was that no one knew the nature, measure, or extent of Indian rights for a period of 50 years before 1963.

In 1908, the Supreme Court *Winters* decision declared that non-Indians could not deprive Indians of the water required to make habitable their lands which were "arid" and which "without irrigation, were practically valueless." However, declares the report, "Following *Winters*, more than 50 years elapsed before the Supreme Court again discussed significant aspects of Indian water rights . . . The full reach of the *Winters* case was not readily apparent" from 1908 to 1963 when *Arizona v. California* was decided. Hence, the report claims, expropriations of Indian water rights for non-Indian purposes were, and still are, legally justified.

Such an assertion is patently false. Worse, the report makes far-reaching and drastic recommendations based on that assertion, which would irreparably damage Western tribes and Indian people for all time.

Much is in the record to dispute the Commission's view. Briefly, the *Winters* decision itself is explicit enough on its face. It recognized that the Indian reservation involved in the case would require water to meet the requirements of its inhabitants. Outstanding authorities on the law of Western water rights reviewed in detail the concepts of *Winters* and another 1908 case, *Conrad Investment Co. v. United States*. Those authorities are still widely read and cited, and they belie the contention that the full import of *Winters* was not known or comprehended until 1963.

In 1913, Congress undertook an in-depth investigation of efforts on the part of Interior officials and others to limit the *Winters Doctrine* rights of the Yakima Indians. Opponents of the investigation then fully understood that *Winters* blocked their path.

Since 1908, the Federal courts have sustained *Winters* repeatedly.¹ They have specifically referred to the

¹ *Skeem v. United States* (1921), *United States v. Powers* (1939), and *United States v. Ahtanum* (1956).

right of Indians to expand their water uses to meet increased future demands.

In 1960 the Special Master in *Arizona v. California* again reviewed the unbroken line of decisions applying *Winters* and again concluded that Indians had rights to meet their present and future water requirements. In 1963 the Supreme Court agreed.

Violation of the *Winters Doctrine*, particularly under the Reclamation Act, has been a consistent *de facto* policy of the Federal Government, largely directed at "Indian water rights not yet utilized." The projects built have been primarily, if not exclusively, for the benefit of non-Indians. It is unworthy to represent that these invasions of Indian rights were not intentional. Yet the report contends, "It cannot be persuasively argued that in every development since 1908 investors have had adequate notice of the superior Indian water rights merely because of the decision in the *Winters* case." This assertion casts doubt on the integrity of the whole report.

Indian tribes and nations throughout the Western United States have suffered from the seizure of their water rights "not yet utilized." Those rights exist on over-committed river systems of no small importance. They include the Colorado, San Juan, and Rio Grande river systems; the Truckee River (Pyramid Lake), the San Luis Rey, and the Salt River-Gila River central Arizona areas. Critical water shortages also exist for reservations on the Columbia River system and the Missouri system.

The beneficiaries of these projects are hardly insignificant either. They include such giants as the Metropolitan Water District of Southern California, serving Los Angeles and San Diego, and the cities of Albuquerque and Phoenix with their surrounding agricultural empires.

The report actually recommends rewards for those who have invaded the Indian rights to these streams. If the Indians are allowed to reclaim their rights and funds are appropriated to that end, the report recommends:

1) "(that) the United States provide a substitute supply for the non-Indian user" or

2) if a substitute is not available, compensation to non-Indians for the "impairment of existing values, unless the non-Indian users had notice of the Indian water rights at the time they commenced the development and had reason to believe that the water supply would be inadequate to serve both Indian and non-Indian uses."

The first alternative is clearly untenable. Substitute supplies for those who have invaded Indian rights simply are not available. For example, raiding the Columbia River, a frequently suggested alternative, would wreak havoc on that basin similar to the ecological debacle that has befallen the Colorado. Hence it is necessary to examine the second alternative—compensation out of the Federal treasury.

In the harsh environment of the arid and semiarid West, a harsh principle of law applies: First in time is first in right. That doctrine does not contemplate that an appropriator of water rights junior in time will be paid off if he inadvertently or otherwise invades the rights of a senior appropriator. If the junior claimant unwisely invests his fortune on an inferior right, he loses and even risks bankruptcy. The subsidy recommended by the report indeed would be an innovation in jurisprudence.

The assertion that non-Indian invaders were simply ignorant of Indian rights is spurious anyway. In the Colorado River basin, the Rio Grande, and many other areas, the non-Indian users unquestionably had notice of Indian rights. That is particularly evident in the case of projects built by the Bureau of Reclamation. Reclamation engineers, their lawyers, and administrators were fully aware that their projects invaded Indian rights.

The shortage of water is no new phenomenon either. The short supply in the Colorado stream system has been well known since the drought years of the 1930s, if not before. Yet it was subsequent to that time that most of the invasions of Indian rights have occurred.

The amounts that would be needed present another consideration. It is obvious that the prospect of financing Indian development out of the Federal treasury while, at the same time, paying for invaded Indian rights presents an intolerable financial burden. It is not unreasonable to assume that the Indians would be the party shortchanged.

The National Water Commission's report also proposes that the United States "offer to acquire unused Indian water rights in fully appropriated streams, that is, in streams all of whose waters are being put to beneficial use." Sale of their water rights would doom the tribes to extinction. For the United States—their legal trustee—to urge such a course is incredible.

No self-respecting law firm would suggest that its client do any such thing. In the past, leasing arrange-

ments have either proved satisfactory or at least afforded some future options; outright sale of water would complete the process begun by the "sale" of Manhattan.

If the Indians were to use the water to which they are legally entitled, says the report, "impairment of enormous capital investments . . . would result. . . . Billions of dollars have been invested . . . benefiting non-Indians but using water in which the Indians have a priority of right."

As the report observes, much of the money for projects invading Indian rights has been spent under the direction of the Secretary of the Interior—the Indians' principal trustee. Other invaders can hardly be blamed then, the report maintains: "The Federal Government led the way in developing the West for non-Indian beneficiaries, and if private investors and state and local governments followed, the protection afforded Federal beneficiaries should be accorded to others."



Never mind that the Federal decision-making process was largely influenced in the first place by those same investors, organized into various pressure groups and lobbies.

Questions of compensation and legal right will be moot if environmental considerations do not receive more attention. The overappropriation of water in Western streams is a catastrophe that strikes at the future welfare of the whole Nation. The Indian people will be only the first victims.

Common sense dictates that the continued overbuilding of the Colorado, for example, is a matter requiring immediate action. We are already spending millions of dollars to correct damage to that river, whose salt content created an international conflict

with Mexico. In the valleys of the Salt River and the Gila, the Nation should move to correct the destruction of its own economic base, rather than contemplating further violation of Indian rights.

Regarding the report's primary recommendations concerning "Indian water rights not yet utilized"—by far the most important phase of the report—a general conclusion is unavoidable: The National Water Commission would limit the Indians to their very meager present-day use of water. Indians would be left without the means for future economic development. The resulting dead-end would mean the destruction of Indian tribes as distinct people.

Other recommendations buttress that conclusion. The report suggests that "existing" uses be quantified and recorded for purposes of notice. Yet by far the most important rights for which notice is mandatory, if they are to be preserved, are the "Indian water rights not yet utilized."

All reservations have sufficient information to determine present and future water requirements. Limiting notice to "existing" uses, without notice of claimed but "not yet utilized" rights, is an invitation to assertions that the "existing" uses constitute the maximum claim. Moreover, any recording of rights should include the specific assertion that such recording does not submit them to State jurisdiction.

In light of the legal and ecological disasters already under construction by the Government, the report's after-the-fact recommendations are without merit. For example, it asks that "a final adjudication" be made of Indian rights which predate authorization of conflicting Federal projects. A more effective remedy for the Indians would be immediate action by the Interior Department halting those projects.

The Report also invites disaster by suggesting that immunity be waived by the United States and the Indian tribes against suit by the States. The States have historically been responsible for some of the worst violations of Indian rights, and they are still a threat.

Again, the report would have the Government violate its obligations as trustee. Instead of using the courts to preserve and protect Indian rights, the report would have the Government voluntarily open itself and the Indians to further legal attack.

The Water Commission's report sins in omission as well. The Grand Coulee and Chief Joseph dams use Colville reservation land and water rights to generate

huge amounts of electricity. In return, the Colvilles should receive substantial income in perpetuity from the sale of electric power. No arrangement of that nature is recommended by the report.

Numerous non-Indians are monopolizing Colville water resources under alleged State authority. No mention is made of that outrage, nor are recommendations made for the restoration of Indian rights.

What applies to the Colvilles is equally relevant to the Yakima Nation, the Flathead Indians, the Crows, the Wind River Indians, and others—as well as tribes throughout the Southwest.

Separate from the tribal rights which have been the focus of this analysis are the rights of individual Indians holding land obtained through the General Allotment Act of 1887. Seizure of these rights is a serious problem, but the report refuses to consider them. Its efforts to separate rights to off-reservation sources are superficial and erroneous. Its exclusion of ground water problems defies nature. It is an elementary fact of science that surface streams are supported by ground water, and that ground water is recharged by surface water. Their separation, one from the other, is impossible.

But the overwhelming disappointment with the report which must be felt by the Indians and their allies comes of its total disinterest in preserving Indian rights.

As legal trustee for the Indian tribes and people, the United States—acting primarily through the Secretary of the Interior—is obligated to exercise the highest degree of care, skill, and diligence in protecting, preserving, conserving, and utilizing Indian rights to the use of water for the sole benefit of the Indians. As an agency of the trustee United States, the National Water Commission, when it undertakes to establish a national water policy, should meet the same high standards of performance.

The excuses offered for past and continuing violations of Indian rights; the attempts to limit Indian tribes to their present meager use of water and to encroach upon vital "Indian rights not yet utilized"; the proposals to substitute unavailable water supplies to non-Indians or foot the bill from the national Treasury; the other glaring deficiencies mentioned—all demonstrate a breach of the trustee responsibility.

Indian tribes will have no choice but to reject the National Water Commission's report and to call upon their trustee to do the same.

Legal citations will be provided upon request.



MENOMINEE RESTORATION

REVERSAL OF TERMINATION IS CRITICAL TO MENOMINEE EXISTENCE

By Gary Orfield

Twelve years ago the Menominee Indians of Wisconsin became the principal victims of termination—a policy which attempted to force Indian assimilation by ending tribal status and cutting off Federal services. It was a disaster for the Menominees.

The Menominees' only hope was that Congress and the administration would respond to a remarkable resurgence of tribal unity and leadership which brought the tribe together in a desperate drive for restoration of Federal Indian protections and services. With little national help, the tribe waged an effective battle for Congressional support of the "Menominee Restoration Act." Should the bill pass, the Menominee people may yet prevent the loss of their lands.

Menominee restoration had become a crusade with intense In-

dian support across the country. Vine Deloria, the country's most prominent Indian author, recently testified that because of the Menominee experience, "fear of termination has become almost psychopathic among the Indian people," paralyzing proposals for change and providing bureaucrats with a "weapon" to threaten tribes into submission. For 20 years, Deloria said, the threat has been a "major stumbling block to Indian progress." At a time when some Indian people have resorted to the drastic actions involved in the Bureau of Indian Affairs occupation and the Wounded Knee incident, Deloria saw the Menominee bill as a major test of whether the political system can correct abuses of Indian rights.

The idea of termination grew out of the drive for economy in Government after World War II. In 1953 termination policy became the driving central principle

of Senator Arthur V. Watkins of Utah, chairman of the Subcommittee on Indian Affairs.

Senator Watkins saw his mission as "freeing" Indian people from the bondage of the Federal bureaucracies. He believed that Indians "have innate ability just the same as other people, when they get stimulated with a little ambition and a little necessity." He saw the Indian people as children learning to walk:

You have to do your own walking. And the only way you can walk is to use your own limbs. . . . The United States, this guardian of yours, says . . . you have now arrived at the point where you can do it yourselves. Aren't you going to honor that decision?

No one admired the BIA bureaucracy and it was easy for many Congressmen to accept the theory that liberating Indian people from official paternalism would solve

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their problems. Few bothered, however, to look closely enough at the realities of tribes' situation to find out what this radical shift would mean. The "Indian problem" was attributed to weakness of character and communal economies rather than to the miserable economic base and isolation of reservation lands, poor education, and social, cultural, and governmental disorganization.

The Menominees were a special termination target for two reasons. First, they were one of only three tribes requiring virtually no Federal subsidies—paying for their own schools, a hospital, and even the salaries of most BIA employees. Compared to other tribes, the Menominees seemed prosperous.

The second reason was that the Menominees had recently won an \$8.5 million judgment from the U.S. Court of Claims, which ruled that the Government had illegally mismanaged the tribal forest. The Senate Indian Affairs Subcommittee rejected a Menominee proposal to use this money for improving the tribe's lumber industry and for per capita payments to tribal members. Senator Watkins used his control over the tribe's funds to force Menominees to accept termination.

On June 20, 1953 Senator Watkins went to the Menominee reservation and told a tribal meeting that Congress had already decided that the Menominees must be terminated. (He had piloted an unnoticed resolution on the principle of termination through Congress on a unanimous consent procedure in 1953.) Senator Watkins said he would not release the tribe's money until the Indians accepted termination.

The small community of terribly poor people was offered a Hobson's choice—either vote against termination and receive no payments or vote in favor and accept an unknown future. Either way, Senator Watkins told the Menominee people, they would be terminated.

The tribal meeting approved a resolution for payments and termination. No one explained what termination meant. A month later, after Senator Watkins rejected a Menominee effort to draft a termination bill giving the community a reasonable chance of survival, the Menominees reversed themselves and voted unanimously against termination. They were ready to give up the payments.

Congress, however, ignored the second vote. The first one was cited often as an expression of the tribe's will, and Menominee termination was enacted in 1954.

As the 1961 deadline for termination approached, it became increasingly obvious that the apparent prosperity of the Menominees was an illusion. Tribal funds were largely exhausted and the tribe was running a quarter million dollar deficit each year.

The Menominees' main assets were a magnificent hardwood forest—perhaps the finest east of the Mississippi—and an aging sawmill, which was the main source of jobs. At the time of termination, the sawmill had already been operated for twice its life expectancy, and there was an urgent need for replacement of the basic machinery. The plant was obsolete, inefficient, and expensive to operate. BIA mismanagement had also kept the tribe out of the profitable veneer business and gotten the Menominees involved in a

money-losing pallet construction plant.

On closer examination, it turned out that the only reason the mill appeared to be a profitable venture was because it was tax exempt. Removing that exemption was a basic purpose of the termination policy. In effect, the Menominees had constructed a community economy under a tax umbrella. Termination jerked the umbrella away.

It has been 12 years since termination began. The experience was shattering to many tribal members. Suddenly, they were no longer recognized as Indians and they were denied Indian services. The tribe ceased to exist as an organization and its assets were transferred to a corporation under non-Indian control.

Menominees found they had to use their share of the new corporation's assets—a \$3,000 bond apiece—to purchase the lots for their homes which they had earlier held as part of tribal property. Their hospital was closed down, and no doctor was available in the new Menominee County for more than a decade. The State of Wisconsin even tried to take away the hunting and fishing rights guaranteed by treaty, and Menominees had to carry the case to the Supreme Court. The tribe had to meet the full burdens of local government and to bring all services and mill operations into conformity with the State's demanding standards.

The Menominees survived after termination through massive State and Federal aid, provided by special legislation, and by selling off some of their lands to white outsiders. After more than a century of holding their lands against all



challenges, the Menominees found they had to increase the local tax base to pay the costs of local government. Since termination left them without any investment capital or access to Federal Indian loan programs, there was no option but to sell some of their assets to non-Indians.

Working in cooperation with white real estate promoters, Menominee Enterprises subdivided choice lakeshore land around several Menominee lakes and sold the lots to non-Indians for summer homes. Menominee people could rarely afford the cost of the expensive lake lots and found their shorelines largely closed to Indians. In addition, the company entered into an agreement to rent a central portion of the county to the State of Wisconsin for a State park.

Confronting a deteriorating situation, the Menominee people at

first spent a great deal of energy and emotion on mutual recriminations. The Menominees who worked for the overburdened corporation found it necessary to make hard decisions, hurting other tribal members, in order to avoid rapid bankruptcy. Other Menominees, bitterly opposed to termination, accused the corporation leaders of collaborating with the enemy and selling off the tribe's inheritance.

The end result of the experiment seemed dismally certain. After years of struggle and sporadic congressional assistance, the corporation would go bankrupt or the tribal members would lose control of their land through sale of their stock in the company, once it became legally marketable. Year by year, the situation became darker.

Then a remarkable thing began to happen. In the face of disaster,

new tribal leaders appeared and tribal members began to join with them to launch a remarkable drive to persuade the Federal Government to admit that it had made a mistake and must repair the damage.

The organization began as an attack on the leadership of Menominee Enterprises, which so dominated the life of Menominee County that public opposition was rare. A few young Menominees, working with tribal members living in Chicago and Milwaukee, organized DRUMS (Determination of the Rights and Unity of Menominee Shareholders) in early 1970.

The first DRUMS target was reform of the tribal corporation. In the face of severe harassment, the organization campaigned in favor of Menominee control of the corporation, retention of tribal lands and tribal culture, and restoration

of the tribe. It struggled successfully to win seats on the voting trust that controlled the corporation and waged an arduous but unsuccessful proxy fight to take control of the corporation itself.

The DRUMS protest attracted national attention when Menominees organized a 220 mile walk across Wisconsin, from Menominee County to the State capital, to demand reversal of termination.

The dominance of DRUMS in the Indian community became clear when the organization decisively won election to control the voting trust and installed DRUMS leader Ada Deer as chairman. It was the first time since termination that Menominees had united to assume control of their lands and to defeat candidates supported by the First Wisconsin Trust Co., which voted 42,000 shares of stock held by minors and incompetents.

In 1971, DRUMS leaders worked with Governor Patrick J. Lucey, the Native American Rights Fund, Senator William Proxmire, and Representative David Obey to draft legislation restoring tribal status. Through an extraordinary process of explanation and consultation, the Menominees took the ideas offered them, sharpened their own bill, and brought virtually all of the formerly hostile factions of the tribe together in a rare show of unanimity behind the measure. The bill was endorsed not only by DRUMS, but also by Menominee Enterprises, the local government, and the traditional tribal chiefs.

After months of working out agreement on a bill, the Menominee leaders faced the task of winning support from the State's

congressional delegation. An aggressive tribal delegation, spearheaded by Ada Deer, did an excellent job of lining up sponsors. It was too late in the year, however, for congressional action.

Undaunted, the Menominee lobbyists set out in 1972 to gain necessary political and administrative support. Ada Deer, an enthusiastic and irresistibly committed spokeswoman, won a general statement of support in the Republican platform and met with Representative Lloyd Meeds of Washington who was working on Senator Henry M. Jackson's Presidential campaign. The next year Representative Meeds would become chairman of the House Indian Affairs Subcommittee.

The Menominees even overcame a bizarre twist of fate when reapportionment of the State's congressional districts moved Menominee County from the district of a sympathetic liberal Democrat, Representative Obey, to the

district of a conservative Republican, Harold Froehlich, who owned a summer home on one of the Menominee lakes. Since restoration of the Menominee tribe would be seen by many in Congress as essentially a local issue, the support of the local Congressman was essential to give the bill a reasonable chance. Representative Froehlich wavered on the issue but eventually agreed to support a somewhat modified restoration bill. House consideration began in earnest.

The struggle for restoration reached its first milestone when Chairman Meeds convened the House Indian Affairs Committee in Keshena, Wis. on May 25, 1973 for two days of hearings. Aside from Senator Watkins' brief and crucial visit in 1953, the Menominees had always had to go to Washington to meet the people who would decide their fate. Now, for the first time, a congressional committee held an official hearing



CIVIL RIGHTS DIGEST

in a room packed with spectators, reporters, and television lights.

Ada Deer came forward with dramatic testimony. It had been, she said, almost 20 years since Senator Watkins had come to force termination on the tribe. The result was "a gigantic and revolutionary forced change in the traditional Menominee way of life."

The terrible economic reverses that resulted gave Menominee County the State's highest rate of joblessness. Unemployment was more than five times the State average. Two families in every five earned less than \$3,000 a year; per capita earnings were the lowest in the State. By 1968 the small pre-termination welfare rolls had mushroomed to the point where almost half of the county population was on welfare. This situation persisted in spite of the expenditure of more than \$21 million in special State, Federal, and poverty program assistance.

Worst of all, said Ms. Deer, the entire policy was foredoomed to failure because of its basic incompatibility with Menominee values:

We are expected to give up our Indianness and adopt a way of life none of us want.

Congress decided unilaterally to end its treaty obligations toward us, and attempted to thrust us unprepared and uninformed into a way of life completely unacceptable to us. The effects of this transition have been tragic and disastrous.

Our community has been physically divided by the sale of our heartland to non-Indians. Moreover, the Menominee cannot escape forever the destructive

psychological effects of living in destitution.

The Menominee community was represented at the hearings by a full complement of its internal leadership. Tribal leaders from the time termination was first proposed appeared to explain the circumstances of the original decisions. Young college graduates presented their evidence. A very old man, speaking in Menominee, came forward to pray for the committee to the Great Spirit and to ask angrily why they hadn't done anything yet. Tribal bureaucrats endorsed the legislation their former antagonists had formulated. Even the young leader of the local American Indian Movement (AIM) appeared to express his group's support.

The major opposing testimony came from two representatives of associations of white landowners on the Menominee lakes. The landowners were basically opposed to restoration. They criticized the services provided by the Menominees and advocated takeover of the local government by an adjoining, predominantly white county.

In response, tribal leaders and county officials pointed out that once the Menominees were restored to eligibility for Federal services, Federal aid would exceed the total current local budget. Thus, even though the tax base would be reduced, taxes for county residents would probably decline significantly. Even if the Menominees wished to get revenge on the white land holders, State law sets ceilings on local property taxes and high rates would hurt not only whites but also Menominees who chose to retain private

ownership of the real estate they had purchased.

Underlying the white concerns was racial tension that had been increasing between Menominees and whites since termination. For example, termination forced Menominees to rely much more on the local school district for education. The district had such a poor record in responding to Menominee needs that it was cited by the Department of Health, Education, and Welfare for civil rights violations, and faced the danger of losing Federal funds.

On the reservation a vast gulf exists between white homeowners, who think of the area as merely recreational, and the Indians, who bitterly resent their presence. The situation is likely to worsen drastically if the Indian people lose their remaining assets. If tribal government is restored, further land sales will surely cease, but there has been no suggestion of retaliation against existing white owners.

In eloquent testimony at the Keshena hearing, anthropologist Nancy Lurie warned, "If congress fails to restore the rights of the Menominee tribe, it will have killed another people, scattering the Menominees on the welfare rolls of various urban and rural communities."

The Menominee restoration bill enjoyed impressive support. The Wisconsin congressional delegation was united in its favor. In submitting the bill, Senator William Proxmire recalled that termination had failed to achieve the desired objectives and had been an extremely costly mistake.

"Since 1961," he said, "the Federal Government has spent

over \$12 million and the State of Wisconsin over \$7 million to keep Menominee County functioning. It has cost the American taxpayer over \$19 million to support a tribe that before termination was able to pay for its own support."

Senator Gaylord Nelson said termination "has not worked and will not work." He quoted a BIA report showing that the tribe's per capita income was less than a third of the State average and that there was a 75 percent high school dropout rate.

Pointing out that President Nixon had condemned the termination policy as "morally and legally unacceptable," Senator Nelson argued that it "would be indefensible to admit that Congress erred in its policy of termination and then not to rectify the error by reversing termination."

Representative Froehlich called termination "a misconceived and tragic experiment" which has led to "disorientation, disunity, and despair in the tribe." Quoting another BIA report, he said: "Unless relief is made immediately available . . . MEI (Menominee Enterprises, Inc.) will no longer be economically viable and Menominee County will go under."

When it was introduced, the bill enjoyed a rare ideological cross section of support. Seldom does any piece of social legislation see joint sponsorship from liberal activist Bella Abzug of New York and staunch conservative Edward Derwinski of Illinois. Representative Obey points to the months of discussions which produced the broad consensus.

Before the Washington hearings of the House Indian Affairs Subcommittee, held June 28, 1973, the

major obstacle was lack of administration support. Ada Deer had been lobbying the White House and the Department of the Interior for months. She was deeply frustrated by what she saw as bureaucratic temporizing and subordination of concern to the budgetary constraints of the administration.

Finally she and one of her summer aides, a Menominee nun, penetrated the highest reaches of the White House. They asked and received help from one of the most powerful figures in the administration, Melvin Laird. Although Mr. Laird has never been considered a political liberal on social policy, he has long been a Menominee hero. As the tribe's local Congressman, he fought hard against termination, recognizing earlier than most Wisconsin political leaders that it promised disaster. Later, he had used his influence as a House Republican leader to help pass special legislation in 1966, staving off Menominee bankruptcy for several years.

When he heard that Menominee representatives wanted to talk with him, Mr. Laird rapidly cleared some time on his schedule. He listened sympathetically and assured the Indian women of his deep concern.

Later, when Ada Deer met with the Office of Management and Budget officials who had to approve the Government's position on the bill, they were well aware of Mr. Laird's interest. Soon the word came down that the Interior Department would testify on behalf of the legislation. The Department's statement noted that "there are few, if any, who will argue that termination was not a disaster for the Menominee peo-

ple." It was one of those rare occasions when a bureaucracy openly admitted its own mistake.

In Congress this year the Menominees faced a hopeful situation. For the first time in memory, both the Senate and House Indian Affairs subcommittees had chairmen who are both active and committed to substantial change in Indian conditions. But Indian legislation hardly ranks at the top of Congressional priorities. If success comes, it will be the result of assistance from members of Congress who haven't yet even heard of the tribe.

The most serious barriers to quick action are the amendments supported by local white property owners, some Wisconsin officials, and the Interior Department. The property owners back a two-year delay supported by Congressman Froehlich. Some Wisconsin officials want Congress to empower the Wisconsin legislature to abolish Menominee County, something it could not otherwise do without approval of a referendum of county residents. The Interior Department wants to reclaim sweeping control over Menominee affairs as the price for restoration of Federal trust status and Federal programs. The tribal spokesmen resist all of these changes—especially the delay.

The Menominee tribe, with fewer people and far less resources than the typical small town, accomplished a great deal in unifying behind restoration legislation and bringing it to enactment. Passage of the Menominee restoration act will not only save a tribe, but send a powerful signal to Indian people across the country that a terrible period of threat is over.

INDIANS AND THE MEDIA: A PANEL DISCUSSION

INDIANS USE A NEW WEAPON IN THEIR FIGHT FOR SELF-DETERMINATION

RICHARD LACOURSE: We want to explore the world of communications and the approximately one million Indian people who live in the United States today. And we have people with us who are working in different areas: in film, in television, in radio, and in print news.

Mr. Kim Hodgson is the director of the only Indian-operated radio station in America, which is Ramah Navajo radio in Ramah, New Mexico. Gus Palmer, Jr., is a member of the Kiowa Tribe of Oklahoma, a student at Oklahoma University now completing the first film on Indian art. Gary Dejarnais is the director of the Community Film Workshop in Santa Fe, New Mexico, a member of the Yakima tribe of Washington State now completing a television series authored by the noted Indian writer, Vine Deloria, Jr. Miss Susan Shawn, a Cheyenne-Creek from Oklahoma, is a coordinator of an Indian program in New York City entitled "Seeing Red," which is one of the newer radio shows on the East Coast. Coproducer of that show, also on our panel, is Frank Harjo, a member of the Oklahoma Creek Tribe.

My name is Richard LaCourse. I'm a member of the Yakima tribe from Washington State, and I am news director of the American Indian Press Association News Service. I'd like each of us to give a brief description of the efforts that we're now involved in.

KIM HODGSON: In 1970 the Ramah Navajo people established what I believe was the first Indian-controlled secondary school. The public school in the village of Ramah, about 43 miles southeast of Gallup, had been shut down, and the people had been unsuccessful in getting the State to run buses across county lines and back down the dirt tracks where many of the people lived. So it was impossible for most of the kids to get to school.

The climate was just right at that time to open an Indian controlled school. It was at the time that Presi-

This article is condensed from the transcript of a panel discussion held July 6, 1973 in conjunction with the Smithsonian Institution's Folklife Festival in Washington, D.C.

dent Nixon was forming his policy, on paper at least, of Indians taking control of various aspects of the reservation, and education was one of the key aspects. And the Ramah people elected their own school board, which went to Washington to the Bureau of Indian Affairs. They said: "We want to run a school. You give us the money that you would use to educate these kids in a boarding school, and we'll run our own school." And that essentially is what they did, beginning in 1970.

The Ramah community is about 1,000 square miles. It contains about 230 to 240 families—maybe 1,500 individuals. The problem of talking to them about the school—about its importance, what it means to have an Indian-controlled school, what community control might mean, what kinds of input they could have, why the children should go to that school—all this kind of information is needed to reach the members of the community. But how?

To reach everybody by automobile or pickup truck would probably take about three months, and then you'd have to start all over again. Radio was the logical answer. Everybody can have a radio receiver in the home and get this kind of crucial information about the school. So the Bureau of Indian Affairs and the Office of Economic Opportunity agreed to fund construction of the facility and the first year and a half of operating costs.

I was asked to set up the station from a programming point of view. Curt Schultz, who is chief engineer and station manager, was asked to handle the technical aspects. Everybody else who works for the station, and who has worked for the station, with the exception of people doing purely technical work, has been local Navajo people from Ramah.

We got the station on the air in April of 1972. While the impetus came from the need to get information about the school to the community, the station was to serve a much broader function than that. It was going to serve as a disseminator of information about all aspects of community life.

The beautiful thing about the station is the extent

to which the community and the community members have made it their own. It's not at all uncommon for the people just to walk in and say, "I've got something that I feel is important that I want to talk about," and to sit down at a microphone and record for half an hour or an hour. It always astonishes me how long people in the Ramah community can talk with no notes or anything. It fulfills Marshall McLuhan's theory that orally-based cultures adapt naturally to radio. It certainly has happened in Ramah, and a broad variety of topics are covered of interest to the community.

GUS PALMER: I've become a part of a project with the Cross Cultural Program out of HEW, and I've become involved in film-making. I didn't have any kind of formal training in cinematography. I merely walked about the studios of television stations and picked up a lot of books and read plays, a number of different things, and watched a lot of television and moving pictures.

I started to work for Oklahomans for Indian Opportunity and the Cross Cultural Program came across the director's desk. It listed a number of projects that would be offered to the Indian people in the context of education and cultural awareness, and film making was included. I had written a number of short stories and the director asked me to submit one of the short stories and see what the committee thought of it as a possible screenplay.

The committee asked me to develop a shooting script and then to produce and direct the film. With the help of the Oklahoma University film department, I proceeded to do so—though it was not easy and many hurdles had to be overcome. As a director, I was a little too temperamental at times. But, of course, this is a growing process.

I was like an expectant mother. I've always thought about this, and now the nine months have arrived and we're ready for delivery. So with a lot of luck and if I live to end the editing of the film, I think we'll be producing quite a beautiful child. It deals with Indian life, and I tried to get as close to the aesthetics and symbolism as I could because I thought this would tell the story better than a documentary, where you explain and you show and tell. I wanted mainly action.

The film is 16-millimeter color with sound, and the score was written by an Indian. The involvement of Indian people in the film making, including myself, has been about 97 percent. So I think its perhaps one of the first totally Indian-made films.

GARY DEJARNAIS: I was raised on a reservation, and I can feel again what Gus is feeling. Raised on the Yakima reservation, in Eastern Washington State, to become a film maker meant many years in many different parts of the country, from New York to Los Angeles to Seattle to wherever you had to go. Sometimes it meant undergoing a debilitating experience, accepting another life style alien to you. But for an Indian to be able to get into films, I think, is an extremely important thing, and it's also a growing thing.

I'm director of the Community Film Workshop in Santa Fe, New Mexico, the country's first all-Indian film company, a nonprofit organization. It was formed about three years ago, mainly from funds from the Office of Economic Opportunity to get a training program going that would train Indian youth and get them into television stations and such.

About two years ago we turned the tide and said we think it's a dishonest approach to what the Indian community is looking towards, and what their eventual hopes are. So we decided to knock any association with the Government and go our own way, to develop full-fledged film makers, not just for employment at television stations, but to be able to say, in a very knowledgable way, in a very artistic way, what our life has been like, what we hope it will be like, what our culture was and is, and what it hopes to be.

So, for the last two years we've been going in this direction. We've been bringing in kids from all over the country, from reservations everywhere, teaching the basic arts of film-making, then putting it into a work experience, because the Community Film Workshop is also a professional film company. We've done a number of films of varying length, of varying kind, of varying amounts contract-wise. We recently completed a film for the Department of Labor for a \$50,000 contract.

We are presently doing a television series for National Educational Television on a coproduction with KRMA-TV, the public television outlet in Denver. It's called *As Long As the Rivers Run*. It's an all-encompassing look at Indian history, economics, present problems, past problems, and future projections. It's written by Vine Deloria, Jr., the Indian lawyer and author. All down the line, the film is being produced and worked on by Indians. It's going to be quite an exciting series. It will be the first time, I think, most people in the world will get a really good insight into what Indians think of their own history and their own

culture. We'll be tackling such problems as Indian fishing rights from our point of view.

The money that Community Film Workshop makes in producing the films is turned around, since we are a nonprofit organization. It goes to supporting the students whom we bring in at no cost from across the country and teach the various film arts. We do send a few into television who have more of an inclination to work in that industry. But, by and large, our eventual goal is to train a cadre of Indian film-makers who will return to their own tribes and their own reservations and offer their help to their own people. We are now beginning to see the embryo of a new era among American Indians in relation to communications. How can we better communicate, not only with the non-Indian population, but more importantly, how can we better communicate with ourselves?

One of the most difficult things that we as Indians have to face is communicating within ourselves. Most everyone is still very leery of anyone who comes in with a camera, whether you're Indian or not, which is understandable, because they have been used so often. The thing that we try to do is, first, let them see the script, convincing them who we are and what our intentions are. Many tribes all over the country are really in difficult situations, and need some answers to difficult problems that they're facing. You just possibly may help them find some answers that will be meaningful in their lives and help them improve the conditions of their people.

What turns on most of the chairmen and others of various tribes, is suddenly a latent spark goes off and says someone is saying something about communicating with ourselves.

SUSAN SHAWN: I moved from Oklahoma to New York City to make my fortune as an actress and a writer. I started writing poetry and *Akwesasne Notes* and started publishing.

I began listening to a radio station in New York called WBAI, owned by the Pacifica Foundation, a listener-sponsored chain of stations in New York, Los Angeles, Berkeley, and Houston. It offered such programs as "the Voice of Greece." The Jewish Defense League had a program, and many other groups had programs there. And, the more I listened, the more I realized that it was the best station in New York.

I wondered why there wasn't anything on Indians. New York City has 10,000 Indians, for the most part Iroquois, who are ironworkers. I knew there was an

Indian audience there, so I went to the station and they said, "Well, because we don't know any Indians, and if you want something, go ahead." So Frank Harjo and I started working on a program called "Seeing Red" that we produce and do about everything for. We go out and do our own interviews, we write it, we conduct it, we choose our own music, and I'll let Frank tell you more about the kinds of programs we do.

FRANK HARJO: We do a biweekly program. During Wounded Knee we produced news feeds every day. We basically get a lot of news feeds from the American Indian Press Association, a news service, and our own reporting. So a lot of what we do is news. Although there are a lot of Indians in New York City, most of our audience is non-Indian and so a lot of what we have to get across to them is basic facts, and really simple facts, that they wouldn't bother to find out anywhere else.

For instance, while we were down here (in Washington) covering the occupation of the Bureau of Indian Affairs building, we would have to give some kind of background. You go to Wounded Knee, you have to explain the Fort Laramie Treaty. We basically do news and cultural programs. We're in Washington now covering the Folklife Festival—partly for the music, and a lot for interviews, not specifically with Indians in Washington.

RICHARD LACOURSE: I'm from eastern Washington State, and I have been with the American Indian Press Association since shortly after it was founded in 1971. In the United States, more than 300 Indian newspapers are published. More than 50 radio stations supply either daily, weekly, bi-weekly, or monthly Indian radio shows for an Indian audience, generally by the Indian staff.

In 1970 a group of Indian editors, from 18 papers in the United States, came together out of a self-defined need. The Indian editors—who were from North Carolina, Alaska, the Dakotas, and some urban Indian papers such as Denver—felt that the news which was available to the Indian public was distorted, inaccurate, and not sufficiently responsible or comprehensive. They decided to take things in their own hands and begin to prepare a responsible transmission of news among the Indian people. They worked from the summer of 1970 to the spring of 1971 to develop financing, primarily from the private sector, churches and such, and came into Washington

to set up a news bureau here.

Indian editors from around the country, as things begin to happen, have the responsibility of opening communications with other new people in their own area, the other Indian editors, and Indian people working in radio and television in their own area. For instance, in the recent march in Gallup, the responsibilities of the local editors there were to keep each other informed, primarily by telephone, and to assist each other in the preparation of larger, more comprehensive information for their, for the Indian reading and listening public. In addition, through the operation of a news bureau, which operates by mail, this news is carried on a continuing basis to all the other Indian publications around the country which cannot put their own news together. So, what the News Service is attempting to do is to get a constant, continuous, responsible flow of information about things which really matter within the Indian world to Indian listeners and Indian readers.

The Association itself is in its infancy. Last November, for the very first time, Indian editors from all over the United States and a number of Indian people who work in radio and television and the press, the Alaska Native press, and in Canada got together in Denver. That effort was, for the first time, to define what the problems of communications among Indian people are and what the problems of communications between Indian people are in a society which is no longer controlled by them. What kinds of problems do they have?

I think the central problem, as defined both by Canadian and American Indian people, is that nobody really understands what the special citizenship status is of Indians. Hence we have a whole lot of ignorance, a lot of stereotypes, a lot of things which are flatly called racism. These problems cause the loss of Indian land and create deep human havoc in Indian families, resulting in all the psychological and social woes which we know about that Indian people suffer.

So, the purpose of communicating is to direct a flow of information to Indian people and thus attempt to empower them to make responsible decisions by which their own futures come back into their own hands. That's the basic philosophy of the American Indian Press Association as defined and written by this group of Indian editors.

Previously, I was the only Indian reporter in the State of Washington, working for the largest daily in Seattle. Over a period of the two and one-half

years that I was employed on the *Seattle Post Intelligencer*, I constantly locked horns with the editorial board of that paper, which is part of the large and powerful Hearst Syndicate. Washington State has 37 tribes. But the best that paper was willing to afford Indians was page 38, sometimes on a Saturday morning, which is a throwaway paper.

If you look for Indian news in the majority press, you find the Indians practically edited out of existence. The serious concerns, the complex legal entanglements which ensnarl Indian people are almost never accurately or adequately defined through the media.

So, the Association is an effort finally to use Indian intelligence and the self-defined responsibilities of mature Indian people to define the content of their own lives, their own issues, and to catch the contour of what's happening through Indian eyes, for an Indian readership, viewership, or listenership.

KIM HODGSON: Could I add a little bit. We've been talking about the need for Indian people to communicate to Indian people and I think, for one reason, the field of communication is one in which a lot of positions, jobs, are going to open in the future. We conceive of one of our responsibilities at the Ramah radio station, even though we are a very locally oriented station, as being to train people for media work in the future.

But we're also very pleased, in a sense, that we have been able to develop skills in our local people that have just local significance. The All Indian Pueblo Council is currently involved in a radio and television project, and the initial phase of that project is training. They have placed a number of young men and women from the various Pueblos with various newspapers and radio stations in the New Mexico area. I believe, in fact, that a Zuni Pueblo man is going to be placed with us and will work with us in the next six months.

And so the Pueblo people have really caught hold of this notion of the value of Indian people communicating with Indians. They hope to go to a full radio and newspaper system within two or three years and eventually add television. I think that communications is probably one of the most important industries or occupations for Indian people in the future.

GUS PALMER: If I could ask a question, then, too—I think that those of us who are in Indian communications, whatever degree, believe that it's in an embryo stage, just about ready to bust out. I would

kind of like to find out everyone's opinion about why this is happening.

SUSAN SHAWN: With more and more Indians becoming aware—especially (those) here in D.C. who work through the legislative process—aware of public opinion and how public opinion can save the water of a tribe. Possibly public opinion can grant amnesty for the occupation of the BIA building.

Public opinion can do a number of things and if you know how to manipulate the media—and manipulate has become such a bad word, and one that usually given to criminals or people on the dark side of the law—manipulation is, it can be a good thing. If President Nixon knows how to manipulate the media, it's (called) using the media to his advantage. I think Indian people have learned that you have to have a certain amount of public opinion, you have to go by some of these Harris polls and awaken people if you want the real work to be done.

Certainly we've seen it in the occupation of the BIA building and at Wounded Knee—that was brought to public attention worldwide, something that was in the dormant stage for years and years. People in Germany are now aware that there are Indians, that they still exist.

You know that if there are three people trying to take the water of the tribe, and you can stir up a million people and say our water is being stolen, and you can talk to these three people, then sometimes those three people can be stopped. That is the way that this country's democratic system is supposed to work, that if the people say "no," then it's "no."

KIM HODGSON: I think that there is a more important reason too, and one that's more germane to our situation, and that's self-determination. The media have traditionally been in the hands of the dominant society—almost to the point that it would be difficult to conceive how you would break in, or how it would relate to a community like Ramah, for example. The people began saying, "Wait a minute, we can educate ourselves, we can take over this institution."

When I went there, my notion was: Well I know how to push buttons and you probably know what you want to say to each other, so that the kind of help I would like to give is strictly technical. I'd like to work on the button pushing aspect, but you have to determine the content.

I was somewhat taken aback in the first six months or so to find people saying to me, "Well, we don't know anything about it." It was inconceivable that

they make programming kinds of decisions. Now, that's really changed a great deal. I make almost no decisions in programming. They're being made by the Ramah people in the Ramah community. I just don't think that was within the frame of reference five years ago.

RICHARD LACOURSE: I'd like to add something to that. You mentioned that the whole climate of things has changed a great deal. A lot of people point to the summer of 1970 with Nixon's very famous Indian message. I really find that a difficult question: Why are Indian people turning to communications?

I do think that Indian people today are not 'smarter' than we were 100 years ago. I think that what we have to say is that there's a new confidence and a new desire to speak the truth in a very comprehensive fashion, with the confidence that today it will actually be heard, and that takes a demonstrated competence and ability. But the competence and ability themselves were also there 100 years ago. I think it has to do with the change of the atmosphere in the society as a whole.

In 1963, on the eve of the death of John Kennedy, many Americans were feeling very good. With the inauguration of a new president in 1960 there seemed to be a mood around the country that perhaps we weren't falling apart after all. Here were young beautiful people, many ideas going around the country, and when, on that afternoon in Dallas, the President was murdered, something died in everybody. That sense of hope seemed, in my judgment, to slip away.

Then over a period of a decade we went through immense social havoc, and I think that the most privileged people in America were finally recognized to be Indians, in that the way America had thought about herself for 80, 90, 100 years suddenly was completely gone. We watched through the 1960s the breakup of society—the emergence of Poles as Poles, the blacks as blacks, the Mexican Americans as Chicanos or Spanish-speaking, etc. And the people who have historically resisted America's self-definition have been Indian people. And, when that tide went out, we were left the most privileged creatures here.

We knew who we were. We knew what we could share with the rest of Americans, and we knew what we could not share. This gives the Indian communities, the Indian tribes, perhaps the strongest ace up their sleeve actually to begin transforming the rest of society, and communications is a very large way of doing it.

THOUGHTS ON THE INDIAN DILEMMA

A COMBINATION OF FACTORS HAVE RESTRICTED INDIAN PROGRESS

By Joseph Muskrat

The average American has a limited and stereotyped view of Indians. Americans are more familiar with the history and cultures of many foreign nations than with those of their Indian citizens. The stereotype is evident and pervasive. The knowledge available, even where accurate and of genuine ethnographic value, is too sparse to reflect the reality of contemporary Indian life. Partial appreciation of the Indian problem—as much as ignorance, apathy, or hostility—has led to expensive programs that have failed to produce the results sought.

The major facts are not in dispute. American Indians are the poorest of the poor—the worst educated, clothed, fed, and housed group in the nation. The Indians' rates of disease are four to five times as high as those for white Americans. Unemployment is overwhelming. The lot of the Indian in American society rivals in

Joseph Muskrat, a Cherokee, is director of the Mountain States regional office of the U.S. Commission on Civil Rights. Parts of this article appeared previously in the National Legal Aid and Defender Association magazine Briefcase, July 1970.

bitterness and misery that of the Appalachian white, the migrant Mexican farm worker, and ghetto black.

The situation exists despite the fact that the United States Government, primarily through the Bureau of Indian Affairs, has done virtually everything for the Native American community that practitioners of foreign aid believe ideal to promote development. Infrastructure development, health facilities, education, modern administration—all at a yearly cost of approximately \$1,250 per Indian served—has been available for long periods and in continuous supply. In no instance of overseas aid has per capita expenditure from all sources reached 10 percent of the figure spent on Indians.

Even where adequate medical services, food, employment, and educational facilities are available, they have been either inadequately used or rejected outright by Indians.

Men of good will may differ as to the adequacy of Federal aid to the Indian, but it appears indisputable that the core of the problem is not economic. Other indices

of the contemporary Indian condition point elsewhere.

The average suicide rate for Indians is 10 times that of whites. On the Shoshone Bannock Reservation at Fort Hall, Idaho, a Senate subcommittee learned that suicide rates for teenagers were perhaps 100 times the national average.

For the Nation as a whole, the rate of Indian criminality is nearly seven times that of the national average. The Indian rate of arrest is almost three times that of blacks and eight times that of whites. Nonalcohol-related crimes are six times those of the Nation as a whole and twice those of the Nation's blacks. Arrests for alcoholism are 12 times those of blacks. Urban Indian arrests for alcohol-related crimes are 37 times those of the Nation's blacks. The Indian community is obviously one under extreme stress.

Indian problems—while economic, educational, health-oriented, and occupational on the surface—are at their root political, in the broad sense of the term. The major consequence of the wars between Indians and whites was that the Indians be-



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ganize themselves effectively to deal with their needs and aspirations.

In the light of the foregoing, it is apparent that a central question faces Indians. How can Indians organize to gain the necessary internal cohesion, resources, and capabilities in order to create a satisfactory position within American society?

Some Practical Aspects

The Bureau of Indian Affairs, as the principal agency dealing with Indians, is usually singled out as the primary cause of the Indian condition. The BIA, however, is only partially to blame. In the Department of the Interior, it competes with more influential agencies such as the Bureau of Reclamation—and it loses. In the larger political arena, it is caught between recurring Government economy drives and Indians who demand increases in funds.

The tribal governments find themselves completely dependent on the Federal Government in general, and the BIA in particular, for funds and management. If the tribes complain too much, they foresee the withdrawal of those funds and services. If they are too successful in self-development, they foresee reduced funding before they can afford it. These conditions result in strong resistance and fear of change.

The national Indian organizations, and organizations formed for the benefit of Indians, have achieved only spotty results. Organizations of tribal governments are inherently conservative for the reasons mentioned. Organizations staffed and run by whites often fall into paternalism, doing the planning and implemen-

tation of programs for Indians rather than allowing the Indians to do it themselves. Indian youth organizations hold the most promise but are often bogged down by entanglements with the law as a result of their confrontation politics.

The Office of Economic Opportunity has funded perhaps a dozen legal services programs for Indians. These have had some degree of success, depending on the philosophy and ability of the program's director. The California program, for example, was successful in pointing out many abuses of Indian rights by the State and the BIA. The Navajo program, on the other hand, has involved itself deeply in tribal politics and was ordered off the reservation by the tribal government. A lawsuit resulted in the program's return, but the fight continued, at the expense of funds and abilities needed for more constructive purposes.

The American Friends Service Committee has done much in Indian affairs and is one of the more successful organizations, but its efforts have been only on a local and ad hoc basis.

Unfortunately, few effective Indian advocates exist on a national scale. The Federal Government annually appropriates almost one-half billion dollars for BIA programs, yet no Indian or Indian representative testifies before the budget committees in Congress!

Increased awareness and pride are two indisputable prerequisites to change. The apathy and hopelessness of a decade ago has given way to the advocate in the Brooks Brothers suit and the militant, gun in hand, at Wounded Knee, S. Dak. Advocacy can take many

forms, and while many Indian people condemned the events at Wounded Knee, support of the militants' goals was almost universal.

The new Indian attack has been on two levels: the administration of tribal affairs by the Federal Government has been severely criticized as underfunded and poorly run. Indian people are demanding a larger voice in the control and management of governmental services. At the same time, more criticism of tribal governments has surfaced. Although Indian people had governed themselves effectively for thousands of years before the coming of whites, after their conquest the tribes were compelled to adopt a system of government convenient to their conquerors and not themselves.

The Wheeler-Howard (Indian Reorganization) Act of 1935 was an attempt to bring a uniform (and acceptable) form of government to most tribes. Tribal chairmen and councils replaced hereditary chiefs and elders. Like many colonized nations of the world, Indian governments copied the bureaucracy of their colonizers. With some notable exceptions, the inefficiency and promotion of self-interest on the part of tribal governments matches or exceeds that of the BIA and other Federal agencies dealing with tribes.

The direction of Indian activism has been set and the first feeble steps have been taken. The outcome is far too uncertain to predict. One point, however, is certain: Indian people will never suffer in the future from the sense of inner helplessness which has plagued them since their subjugation.

THE FEDERAL EXECUTIVE BRANCH AND THE FIRST AMERICANS:

A Trustee's Report

By Bradley H. Patterson, Jr.

The Federal executive branch is a trustee in two senses: for reservation Indians, the title to whose land and natural resources is held by the United States in trust for their future; and vis-a-vis the American people as a whole, to whom the President is responsible for faithful execution of the laws.

Both constituencies have the right to expect an accounting: Indian people specifically because they are the direct beneficiaries; and American people generally because of their own growing awareness of and sympathy for Indian concerns, and because they are providing the \$1.45 billion in appropriated funds which the Federal executive branch is expending on Indian affairs during the current fiscal year.

The temptation to be only critical of the Government's handling of Native American affairs is strong. It was just 218 years ago this month that the proclamation offering bounties for the scalping of Indians by colonists issued from Boston's Council Chamber. Down the years since, the examples of perfidy, oppression, and neglect have been a stain on our history.

The sordid past is there. The pertinent question now, however, is: What are we doing about it? Are we only perpetuating the wrongs or are we acting to set them right?

The answer is that we are acting to set them right, but these actions tend to be lost sight of amid the

Bradley Patterson is executive assistant to Leonard Garment, Counsel to the President. His article was submitted to state the administration's position on Indian affairs.

criticism impelled by a sensitivity to the earlier decades. Especially current is the proposition: "Whatever it is you're doing, it is not enough." To judge that proposition fairly, however, one must first ask: What are we doing?

The past is heavy with liabilities; the present still has many. But as a straight matter of fact, what is in the "Assets" column—especially since January, 1969?

Budget

The Bureau of Indian Affairs' budget for fiscal year 1969 was \$261.3 million. Just recently the President signed the Department of the Interior's Appropriations Act. The comparable figure was \$562.1 million—a 224 percent increase in five years.

The budget for the Department of Health, Education, and Welfare's Indian Health Service was \$112.5 million in FY 1969; in FY 1974 it is estimated to be \$218 million.

OEO's Indian Community Action program has been transferred to HEW with a \$9.7 million increase requested in FY 1974 over FY 1973, boosting the total program to \$32.1 million.

The Economic Development Administration in the Department of Commerce began its Indian development work in FY 1966 with a program level of \$4.1 million. In FY 1969 that program was \$17.4 million, and in FY 1973 it totalled \$35.7 million.

Program

What has been done with that money? Here are some samples:

BIA—Ten years ago, there was scholarship money for less than 1,000 Indian college students. In the 1972-73 school year, nearly 14,000 Indian students will receive higher education grants from BIA. A few years back there was not a single Indian lawyer in all of New Mexico and Arizona. Today there are over 100 Indian students enrolled in more than 40 law schools throughout the United States—and similar increases are taking place in other professional fields.

Five hundred students are now attending the Southwest Indian Polytechnic Institute which opened in 1971 at its new 164-acre campus in Albuquerque. One hundred seventy high school and 112 post-secondary students are now studying at the Institute of American Indian Arts at Santa Fe, which began only ten years ago. With help (\$3.9 million so far) from several Federal agencies, major contributions from the Navajo tribe itself, and an all-Indian Board of Regents, the

Navajo Community College has just opened its new campus at Tsale, Ariz.

Secretary Morton reported last March that 8,000 jobs have been opened up through BIA efforts and that there are 475 new Indian-owned enterprises.

INDIAN HEALTH—Since 1969 a new \$7 million Indian hospital has been built at Phoenix, a second is under construction at Tuba City, planning for a third at Zuni is completed, and \$1.2 million is being spent on planning for ten more. In addition, five health centers and two health stations have been constructed. Sixteen tribal organizations are now under contract to man and manage their own health programs, as called for in the President's July 8, 1970 Message. Including the plans for FY 1974, 54,000 Indian homes will have been provided new or improved individual or community water supplies, sewage systems, and solid waste facilities since 1969. There are 50 future Indian MD's in medical school (in 1969 there were 6). Twenty-five Indian community health medics, 93 Indian mental health technicians, and 1,036 Indian community health representatives have completed their training and are now at work in the Indian health care delivery.

In FY 1969 it was estimated that only 24 percent of the dental health needs of Indian people were being met; in FY 1973 it was 41 percent. Infant death among Indians has gone down between 1968 and 1971 by 23 percent, influenza and pneumonia by 21 percent, and tuberculosis by 39 percent. Now that the military draft has ended, new incentives will be sought to ensure that shortage-category doctors will be attracted to serve in the Indian health system.

EDA—In its seven years of partnership with Indian people, EDA has provided \$156.4 million for Indian economic development, and specifically for 37 industrial parks; 72 community, skill-training, and multi-purpose centers; and 37 tourism-recreation complexes. Legislation has been introduced to transform this program further in the direction of Indian self-determination through direct bloc grants to Indian tribal governments.

THE OFFICE OF MINORITY BUSINESS ENTERPRISE—This Office, also in the Department of Commerce, was created in March of 1969. It has increasingly given attention to the needs of Indian business, and just this October 1 created an Indian office within OMBE. Its Indian programming funds have grown from \$1.1 million in FY 1972 to \$1.55 million in FY 1973, and are expected to total \$2.6 million in FY 1974. The head of the Indian office, Joseph Vazquez, is an Indian.

OEO/HEW COMMUNITY ACTION—This program has funded 70 tribal government programs on 150 reservations in 23 states. In addition it has assisted 15 urban Indian centers, including four (Fairbanks, Minneapolis, Gallup, and Los Angeles) which comprise the Model Urban Indian Center project, a special demonstration program begun in 1971 to ascertain how effectively Indian people below the poverty level in urban areas can be linked into the Federal, State, and local services for which they are eligible.

THE AMERICAN INDIAN NATIONAL BANK—On November 15, 1973 a special occasion took place across the street from the White House. The Comptroller of the Currency presented Barney Old Coyote with the charter of the American Indian National Bank, first of its kind in the nation's history. The bank's stock will be purchasable only by Indians. The bank's seven directors are all Indians, and two of its three officers are Indian.

The result of months of collaboration among Indian leaders, Interior, Commerce, OEO, and the Vice President's Office, the bank has an initial capitalization of \$1 million to support Indian enterprise and economic development. An additional Federal contribution of \$900,000 will train Indians as bank managers and loan officers.

INDIAN PERSONNEL—Of the 16,798 persons on the rolls of the Bureau of Indian Affairs as of last September 13, 11,368 or 67 percent are Indian people. Two Federal court decisions differ on Indian preferences; an appeal is being sought to settle the conflicting views.

INDIAN PARTICIPATION—The Bureau of Indian Affairs has a standing rule that every superintendent must consult the tribal councils with which he works in developing the recommendations, and especially priorities in the BIA budgets for each tribe. This process has been scrupulously followed in preparing the FY 1975 budget recommendations.

HEW's new Office of Native American Programs holding two series of regional meetings—first with reservation and second with urban Indian leaders throughout the country—asking for views as ONAP begins its work. Indian law leaders met for a full day last summer with three Assistant Secretaries of Justice and Interior, and their senior staffs, on current Indian litigation. The eight Indian members of the National Council on Indian Opportunity started a series of meetings with individual Cabinet members with a half-day session with Secretary Lynn September 28.

CIVIL RIGHTS DIGEST

RESTORATION ACTIONS—After the President's 1970 Special Message called for the restoration of the Blue Lake lands to the Taos Pueblo, the White House staff joined in a strong effort on the Hill and Congress passed the legislation. The Attorney General reviewed the six-year-old, unresolved Yakima claim and determined that the lands had never been taken by the Federal Government, and the President returned them to the Yakima jurisdiction.

For 12 years, the Menominees of Wisconsin (See Page 35) have sought restoration of their trust status, the ill-advised experiment of termination having been a disaster for them. With special leadership by Presidential Counsellor Laird, the administration joined in strong support of Menominee restoration.

ALASKA CLAIMS—In the spring of 1971, the President called for a liberal settlement of the long-pending Native claims in Alaska. The administration bill was drafted in the closest collaboration with the principal Alaska Native leaders. After considering several alternatives, Congress enacted an historic bill very much as the President had proposed, confirming Native title to 40 million acres of land and providing for a cash settlement of \$462,500,000 and for Native sharing oil revenues up to an additional \$500 million.

CIVIL RIGHTS—The Department of Justice this year established a new Indian Civil Rights Section in the office of the Assistant Attorney General for Civil Rights. It is headed by one of the Department's best: Carl Stoiber, a Phi Beta Kappa and Rhodes Scholar. He, in turn, is recruiting a staff to include Indian lawyers. That section has already been on the scene, along with Justice's Community Relations Service, in the Wounded Knee situation, making sure that every allegation of civil rights violations in Pine Ridge was investigated.

The government's response to the three major Indian confrontations (Alcatraz, the BIA building, Wounded Knee) was—under the policy guidance of White House Special Consultant Leonard Garment—patience, restraint in the use of force, and protracted negotiations.

PROTECTION OF INDIAN RESOURCES RIGHTS—An important Indian tax case arose in 1971, and the Department of Justice was about to take only the IRS side of the case to the Court of Appeals. At White House insistence, Justice agreed to supply also the Government's voice as trustee for the Indian. A brief was submitted embodying the two positions, and the court

decided in favor of the Indian. The White House then took steps to ensure that this procedure will be made applicable to all Indian natural resources cases where the Secretary or the Solicitor of the Department of the Interior invokes it.

Interior and Justice have also gone to the Supreme Court with historic briefs in several landmark cases: *Pyramid Lake*, *McLanahan*, *Mescalero*, *Tonasket*, and *Puyallup*—in each case forcefully asserting Indian rights in the highest court in the land. Similarly strong actions are underway in lower court cases such as *Washington*, *Walton*, *Chamokane Creek*, and *Bel Bay*.

The new Solicitor in the Department of the Interior, Kent Frizzell, is himself one of the Justice Department officials who displayed the greatest patience on the scene during the Wounded Knee confrontation. His new Associate Solicitor for Indian Affairs, Reid Chambers, is a former senior member of the Native American Rights Fund and a former consultant to California Indian Legal Services.

HOUSING—In May 1969, the Department of Housing and Urban Development agreed with BIA and HEW to provide 30,000 new units of subsidized housing on Indian reservations. Secretary Lynn recently informed Indian leaders that even though many of the subsidized programs have been suspended, this promise will be kept. So far, 21,428 of these units are built, under construction, or in the pipeline. The remaining 8,572 units will be funded by the end of FY 1975.

LEGISLATION—All of these activities were given acceleration and direction when the President, on July 8, 1970, sent his Special Message on Indian Affairs to Congress.

The President asked that the outdated House Concurrent Resolution 108, stipulating forced termination as Congressional policy, be stricken from the books. He asked Congress to establish a procedure whereby administration and control of BIA programs would be transferred to tribal organizations whenever they asked for it. The Government would continue to fund those programs and would provide technical assistance for the transfer. BIA or Indian Health employees could become tribal employees, with rights protected.

The President was aware that under present law, Johnson-O'Malley funds specifically intended for Indian children in public schools are often not being used by State and local governments for the direct benefit of the Indian pupils. Therefore his message asked that the Johnson-O'Malley Act be changed so

that the funds could flow directly to Indian tribes and communities—giving the Indians, as he said, “the ability to help shape the schools which their children attend and, in some instances, to set up new school systems of their own.”

The message also called for legislation to broaden the Revolving Loan Fund and to provide additional loan guarantee, insurance, and interest subsidy authority—all to speed Indian economic development. The President proposed the creation of a new Assistant Secretary of the Interior for Indian Affairs, and of an Indian Trust Counsel Authority to carry out the Executive’s trust responsibility to argue in any court or regulatory body for the protection of Indian natural resources rights.

In three and one-half years—despite frequent administration testimony, pleas, press conferences, and representations to Congress—none of the above measures has been enacted. It is very much hoped and believed that the current Congress will act more expeditiously.

REVENUE SHARING—Indian tribal governments and Alaska Native villages participate in general revenue-sharing (318 such tribal governing bodies received \$6.2 million during FY 1972), and Indian governmental bodies will be eligible to receive direct grants under the proposed Responsive Government Act, in addition to the economic development grants for which they will be eligible under the Indian Tribal Governmental Act, introduced last June. They will also be eligible to receive manpower training funds directly, under the administration’s newly proposed manpower reform legislation.

INDIAN CLAIMS—In the past year we have heard much of “broken treaties” and of how Indian people have been the victims of faithless and shoddy dealings with their government. In the decades of the past that was true, and on August 13, 1946 a special body (the Indian Claims Commission) was set up by Congress to hear cases of claims arising out of those broken agreements. Five years later, the filing deadline expired. In all, there have been 611 claims docketed. At the end of last year, 176 of those claims had been dismissed and 208 had been decided in the Indians’ favor, by awards certified to the Treasury Department totalling \$423,926,884. Still pending were 277 claims, and the Claims Commission has been given five more years to complete them.

Among the 227, for instance, are the Sioux claims to which public attention was drawn during the post-

Wounded-Knee period this year. These particular claims are large and complicated and have been characterized by many time-consuming appeals. But they are there and by no means forgotten, and they will be settled in the judicial process which the Congress has prescribed.

And Looking Forward

Of course the task is still undone. Indian people are still at the bottom of the health and poverty scales. Indian health, housing, economic development, education, and resources protection are still not where they should be.

And there are policy issues ahead: the scope of Indian preference; the scope of the Snyder Act; Indian Tribal authority over land-use planning and over reservation water resources; the question of services to State reservations and to Eastern Indian bands; the assistance we can give to urban Indians; Indian eligibility for surplus lands; and the balancing of Indian self-determination with the guarantee of civil rights to Indian dissident groups.

The courts, Congress, and the Executive will all be examining these issues, the latter two in close consultation with responsible Indian leaders and with the full realization of how many needs are still unmet, how many wrongs still unrighted.

But throughout Government—as in many organizations outside—there are sensitive, energetic people at work with significant dollar resources behind them. In Interior and HEW, in Justice and HUD and Labor, in EDA and OMBE, on the Solicitor General’s Staff, at the White House, and in Congress and on congressional staffs, there are men and women with ears tuned and hands employed to reflect the Nation’s and President’s own concern with Indian affairs.

Indian national organizations themselves (the National Congress of American Indian, the National Tribal Chairmen’s Association, Americans for Indian Opportunity) are well represented in Washington, with their staffs in constant touch with these executive branch officials.

We welcome—in fact, seek—constructive criticism from responsible Indian leaders. Are these programs working? Is that \$1.45 billion being used as effectively as possible? If not, what alternatives are there? Which ones have any chance in Congress?

Criticism is invited. But we trust it will be presented against the backdrop of where we have come—and the pace of that progress—in four and one-half years.

READING AND VIEWING



By Alice Timmons

The following titles should serve to introduce the reader to the history and problems of Native Americans.

A History of the Indians of the United States, by Angie Debo (1970, University of Oklahoma Press, Norman, Okla.). A comprehensive historical survey on the American Indian, this is a clear and easy to read analysis of the history and problems of the American Indian from early times to the present.

The Only Good Indian: The Hollywood Gospel, by Ralph and Natasha Friar (1972, Drama Book Specialists, New York, N.Y.). Documentation with illustrations of how the movies, press,

Alice Timmons, a Cherokee, is the librarian for the American Indian collection at the University of Oklahoma library.

and advertising media have used and misused the Indian. The authors charge the movie industry with creating an Indian image which made it almost impossible for whites and Indians to maintain mutual respect. A clever insight into how the media can stereotype a race.

Literature of the American Indian, by Thomas E. Sanders and Walter Peek (1972, Glencoe Press, Beverly Hills, Calif.). One of several new publications outlining the Indian’s contributions to American culture this book brings into better focus the influence and power of the songs, legends, history, stories, and oratory of the Native American—those things which a “literate” society would call its “literature.”

Look to the Mountaintop, ed. by Charles Jones (1972, Gousha

Publications, San Jose, Calif.) Essays by contemporary authors on the history, politics, religion, wealth, legends, and medicine of the Native American. The articles are well organized and well written—a good introductory volume.

We Talk, You Listen: New Tribes, New Turf, by Vine Deloria, Jr. (1970, The Macmillan Company, New York). The author says "the old adage that the Indian did not put the land to use" no longer applies. His book outlines a new concept and interpretation of cultural conflicts regarding the use of land. Deloria observes that wilderness was taken by the Government because "no one lived there," and then cities were built in which no one could live. A perceptive treatise by one of the Nation's leading Indian authors.

The Right to Remain Indian, by Ernest Schusky (1968, Indian Historian Press, San Francisco, Calif.). Originally published as a monograph, this book is concerned with the great differences between the current civil rights struggle of minorities and the special position of American Indians. The unique rights and culture of the Indian create a special citizenship status. The author presents the problems created by these special rights and their effect on the Indians' relationship to non-Indian society.

One Hundred Million Acres, by Kirke Kickingbird and Karen Ducheneaux (1973, MacMillan Company, New York). Increased interest in the legal status of American Indian treaties and land has resulted in this keen analysis by Indian authors of the legal status of Indian land and how and why it was lost. It pre-

sents historical and sociological background of the Indian dilemma created by the philosophical differences toward the use of land.

A Century of Dishonor, by Helen Jackson (1965, Ross and Haines, Inc., Minneapolis, Minn.). A classic on the treatment of the American Indian by the U.S. Government, the materials in this book have been taken from official documents. The author attempts to give an unbiased interpretation of the documents and their disastrous meaning for the Indian tribes.

Textbooks and the American Indian, edited by Rupert Costo and Jeanette Henry (1970, American Indian Historical Society, San Francisco, Calif.). Thirty-two Indian scholars evaluate more than 300 textbooks and contribute a very important and valuable analysis of the misinformation and bias taught in American schools about American Indians.

Indian Oratory, by C.W. Vanderworth (1971, University of Oklahoma Press, Norman, Okla.). A series of famous speeches by Indian leaders showing the intelligence, wit, and eloquence used to plead the cause of the Indian tribes during the early days of treaties and wars. Pictures of the speakers are included along with notes placing the speeches in their historical context.

The Search for an American Identity, by Hazel W. Hertzberg (1971, Syracuse University Press, Syracuse, N.Y.). This volume concerns the modern pan-Indian movement—the reasons for it and its future development. The author points out the importance of Indian identity in preserving, perpetuating, and developing Indian

culture, and discusses the relationship of pan-Indianism to the struggles of other minorities in their efforts to toward self-identification.

This Land is Our Land, by the National Committee on Indian Work of the Episcopal Church (Episcopal Executive Committee, New York, N.Y.). A brief and interesting review of the culture of the American Indian, this booklet identifies various aspects of culture as the Indian views it. The authors outline how misinterpretation by the non-Indian has caused misunderstanding and conflict, and attribute the ineffectiveness of the Federal Government in great part to lack of concern and interest in real Indian culture.

The Indian in American History, by Virgil J. Vogel (1968, Integrated Education Associates, Chicago, Ill.). A frank and straight from the shoulder effort to give the American Indian his rightful place in American history. The author accuses historians of using four methods to create false impressions of Native Americans—obliteration, defamation, disembodiment, and disparagement. He explains how such methods were applied and chronicles their inevitable results.

Two Native American newspapers carry news of national interest.

Wassaja, 1451 Masonic Avenue, San Francisco, Calif. 94117. Published by the American Indian Historical Society. Subscription by contribution.

Akwesasne Notes, Mohawk Nation, via Rooseveltown, N.Y. 13683. The official publication of the Mohawk Nation at Akwesasne. Subscription by contribution.



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